

**EMPLOYMENT AGREEMENT
BETWEEN THE
HAYWARD AREA RECREATION AND PARK DISTRICT AND THE
GENERAL MANAGER**

This Agreement (hereinafter referred to as the “Agreement”) is entered into as of August 25, 2020 by and between the Hayward Area Recreation and Park District, acting through the District Board of Directors, (hereinafter referred to as “District”) and James Wheeler, (hereinafter referred to as the “Employee”).

1. TERM OF EMPLOYMENT.

- A. Subject to the conditions set forth in this Agreement, the Employee shall be employed in the position of General Manager for a sixty (60) month period continuing from October 1, 2020 through September 30, 2025, but subject to the termination provisions herein.
- B. The term of employment may be extended at any time prior to the expiration of this Agreement by the mutual consent of District and the Employee. Such consent must be evidenced by a written amendment to this Agreement approved by the Board of Directors and signed by the District and the Employee.

2. COMMITMENTS OF THE PARTIES.

A. Employee Commitments.

i. Duties, Responsibilities and Authority.

- 1. District retains Employee to perform the duties of the General Manager as set forth in the General Manager job description, attached hereto as Exhibit “A” and incorporated herein by this reference, and any other duties as may be required by the Board of Directors which are not inconsistent with the provisions of this Agreement or the law.
- 2. The Employee shall have those powers and perform all of the duties of the General Manager as set forth in the laws of the State of California, District Ordinances, and District policies and procedures approved by the District from time to time.
- 3. The Employee shall be subject to all District rules, regulations and policies applicable to employees and management and to any subsequently adopted laws, regulations and policies, which do not conflict with this Agreement or the law.
- 4. The Employee shall, subject to the direction and control of the Board of Directors, exercise administrative supervision over the District and its employees so that the statutory and other legal duties of the District are fully satisfied.

5. The Employee shall serve the District diligently and to the best of his abilities in all respects and shall always act in District's best interest in fulfilling its legal responsibilities as a California independent special district and a recreation and park district.
6. The Employee agrees to make sufficient time available to each member of the Board of Directors each week to provide an opportunity to be briefed on District issues subject to the limitations of the Ralph M. Brown Act (Government Code Section 54950 et seq.).
7. The Employee agrees to remain in the exclusive employment of District during the term of this Agreement and shall not accept other employment or perform other services for compensation without having first obtained written consent from the Board of Directors, which the Board of Directors may withhold at its sole discretion.

ii. Hours of Work.

1. The Employee is an exempt, at-will employee but is expected to engage in those hours of work that are necessary to fulfill the obligations of the General Manager's position. The Employee does not have set hours of work as the General Manager, but is expected to be available at all times unless he is on official leave and has designated a full-time management employee in an acting capacity as General Manager.
2. It is recognized the Employee 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 Employee's schedule of work each day and week shall vary in accordance with the work required to be performed. The Employee shall spend sufficient hours onsite to perform the General Manager's duties; however, the Employee has discretion over the Employee's work schedule and work location. Upon request of the Board of Directors, Employee shall provide an accounting of hours worked.

B. Compensation and Benefits.

i. Salary.

1. The District agrees to pay Employee \$17,626.26 monthly. Employee shall be paid at time and in a manner in accordance with the District's customary payroll practices, including all appropriate payroll deductions.
2. Subject to an annual evaluation of performance no later than thirty (30) days after each anniversary date hereof, the District may increase Employee's salary upon satisfactory completion of the goals provided to the Employee by the Board of Directors upon hiring and at each successive annual evaluation. Any future decrease in the salary of the Employee will be made by the Board of Directors only in the event that a decrease is made in the salaries of all District employees. In such event the percentage decrease in the salary of Employee shall be no more than the average percentage decrease of all other District employees.

ii. Benefits.

In addition to the Employee's salary, the Employee shall receive the following benefits:

1. Group Insurance. District agrees to provide the same type and level of insurance benefits as provided to other full-time management employees within District's employ, such as medical, dental, disability and life insurance.
2. Retirement. District agrees to provide the same type and level of retirement benefits as provided to other full-time management employees within District's employ. Employee shall pay the full employee contribution rate, which is currently 7%. Employee shall forfeit his right to unaccrued retirement benefits should he in the performance of his official duties be convicted of a felony under State or federal law.
3. Deferred Compensation. Employee may voluntarily participate in the District's Deferred Compensation Plan.
4. Automobile. Unless District provides a District vehicle for Employee's business use, District agrees to pay Employee an automobile allowance in the amount of \$425 per month for the use of his personal vehicle while on District business. The Employee agrees to pay all costs of ownership, insurance, maintenance and all other costs related to this vehicle. The Employee shall not be entitled to mileage reimbursement for travel within District boundaries. Employee shall maintain at his own expense an automobile general liability and property damage insurance policy with limits of at least \$300,000 for personal injury and \$100,000 for property damage and an umbrella policy of no less than \$1,000,000 at all times. Such policies shall name the District as an additional insured party and be primary to any District insurance policy. Employee shall provide District with copies of the certificates of insurance prior to the use of Employee's vehicle for District business.
5. Business Expenses. District agrees to reimburse the Employee for District-related business expenses and travel expenses, subject to State law and such rules, regulations and policies as the District has or may establish and amend from time to time.
6. Association Dues. District agrees to pay on behalf of the Employee any annual professional association dues as required for membership in professional organizations common to the field of parks and recreation, special district management and/or public administration, if the Employee's membership in such association is reasonably considered to be beneficial to the District.
7. The District agrees to pay the travel and subsistence expenses of the Employee to pursue official functions for the District, and meetings and occasions to continue the professional development of the Employee,

including, but not limited to, national, state, regional and local training conferences; short courses, institutes and seminars; and, governmental groups and committees upon which the Employee serves as a member subject to annual review and approval by the Board of Directors.

8. Holidays, Vacation and Sick Leave. District agrees that policies, rules and regulations of District for other full-time management employees regarding holidays, vacation and sick leave and other leaves of absence as they now exist, or as may be amended, shall apply to the Employee with the exception that
 - a. at the start of the term of this Agreement, District agrees to provide the Employee with vacation leave accruals at the same rate as other full-time management employees that have completed thirteen (13) years of continuous employment and shall increase annually thereafter as provided for other full-time management employees.
9. Administrative Leave. The District recognizes that extraordinary efforts may be required of the Employee to fulfill the responsibilities of the General Manager position, and that the General Manager position is designated as being exempt from the overtime provisions of the Fair Labor Standards Act. The District agrees to provide five (5) days of Administrative Leave at the start of the term of this Agreement and then on January 1 for each remaining year of the Agreement. An additional five (5) days may, upon written request of Employee, be granted annually at the discretion of the Board of Directors. Except for the initial five (5) days, Administrative Leave shall be used in the calendar year in which it is provided.

C. Board of Directors Commitments.

- i. The Board of Directors sets policy for the governance and administration of the District, and it implements its policies through the General Manager.
- ii. The Board of Directors 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 of Directors commits to spending time each year outside of regular Board Meetings to work with the 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.

D. Mutual Commitments.

- i. Strategic Workshops.
 1. As soon as practicable after October 1, 2020 the Board of Directors and the Employee will meet to review the District's existing Master Plan and Strategic Plan and/or set out goals and priorities for the Employee to implement prior to the Employee's annual performance evaluation or such other dates as determined in the course of the meeting.

2. Thereafter the review and update of the Board of Directors' Strategic Plan will occur following each election of the Board between January 1st and March 31st. For purposes of clarity, the Board of Directors and the Employee shall further establish a relative priority among those strategic goals and objectives within the Strategic Plan.

ii. Annual Performance Evaluation.

1. The District Board of Directors shall conduct an evaluation of the Employee's performance at least once each year. The District and Employee agree that performance evaluations, for the purpose of mid-course corrections, may occur at any time. The parties agree that the initial evaluation shall occur within 180 days of the Employee's start date and then no later than 30 days following the first anniversary of the start of the term of this Agreement and each year thereafter.
2. The annual review and evaluation shall be in accordance with specific criteria developed jointly by the Board of Directors and the Employee during the initial strategic planning and goal setting workshop described in Section 2.D.i.1 above.
3. In addition to the annual strategic plan workshops the Board of Directors and the Employee may further define such goals and performance objectives during the annual evaluation as they mutually determine are necessary for the proper operation of the District for the attainment of the Board of Directors' policy objectives. The District and the Employee shall further establish a relative priority among those goals and performance objectives. The parties may use an outside facilitator paid for by the District to assist with conducting the Employee's annual performance evaluation.

3. TERMINATION AND SEVERANCE.

The following provisions shall apply to the District's termination of Employee:

- A. The District shall have the right to terminate this Agreement at any time with or without cause. Termination shall require a vote of the Board of Directors as set forth in the Public Resources Code of the State of California, and, except as otherwise provided herein, a thirty (30) day written notice to the Employee.
- B. Except as provided in Section 3C below, in the event that the District terminates this Agreement as provided in Section 3A above, the District shall pay the Employee an amount equal to the monthly salary of Employee multiplied by the number of months remaining on the term of employment, but not to exceed six (6) months, in monthly installments, consistent with normal District payroll practices, with all appropriate payroll deductions taken. Accrued vacation, holidays and other accrued time shall be paid on the termination date. Employee shall be entitled to continued health insurance benefits in accordance with applicable law, at Employee's expense, and shall also be entitled to any retiree medical benefits as they apply to other full-time management positions. Payment in accordance with this Section 3B shall constitute the full and complete compensation

due to Employee as a result of the termination of this Agreement and will release the District from any further obligation under this Agreement and State and federal law related to Employee's employment with the District. Should the Employee be convicted of any crime involving an abuse of his office, as defined in Government Code Section 53243.4, fraud, he will not be entitled to any severance payment hereunder, shall forfeit any funds paid pursuant to this provision and shall reimburse the District all such funds received. This provision is intended to implement the requirements of Government Code Section 53243.2 and 53260 and shall be interpreted consistently therewith.

- C. In the event that the Employee: (1) materially breaches this Agreement and fails or is unavailable to cure the breach within fifteen (15) days' notice given by District; (2) is convicted of a felony, or misdemeanor involving moral turpitude; (3) fails to perform his duties to the extent that it is established that such failure of his performance amounts to malfeasance or material dereliction of duty; or (4) fails or refuses to follow a direct, lawful order by the District, then District may immediately terminate this Agreement without obligation to pay any severance payments to Employee pursuant to Section 3B.
- D. The Employee shall not be removed during the ninety (90) day period preceding or following any District election for membership on the District Board of Directors, or during the 90-day period following any change in membership of the District Board of Directors, except upon four-fifths vote of the District Board of Directors, and/or as provided in Section 3C, above.
- E. Given the at-will nature of the position of General Manager, an important element of the Employment Agreement pertains to termination. It is in both the District's interest and that of the Employee that any separation of the General Manager is done in a businesslike manner.

4. RESIGNATION.

The following provisions shall apply to the Employee's termination of this Agreement:

- A. In the event that the Employee voluntarily resigns from the position of General Manager, Employee agrees to provide District with a minimum of thirty (30) days' written notice, unless the parties agree otherwise. The Employee shall not be entitled to any salary or benefits after the actual dates of resignation, except as provided in Section 4B, or any payment of severance pursuant to Section 3(B), above.
- B. The Employee shall be entitled to continued health benefits in accordance with applicable law, at Employee's expense, and is also entitled to any retiree medical benefits as they apply to other full-time management positions.
- C. During the period from the stated intent to resign and actually leaving, the Employee shall continue to faithfully and competently perform the duties of General Manager as set forth in this Agreement.

5. GENERAL PROVISIONS.

A. Amendments. This Agreement may be amended at any time by mutual written agreement of the District Board of Directors and the Employee.

B. Conflict of Interest.

i. The 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 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 and are approved by the Board as set forth in Section 2(A)(i)(7) above.

ii. The 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 Employee's District employment.

C. Indemnification. The District shall defend, save harmless and indemnify the Employee against any claim or action to the extent required by, and subject to the limitations contained in the Government Code. Employee shall cooperate in the defense of any such claim or action. The District may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon.

D. 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 found shall be rendered 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.

6. DISPUTES.

A. Any controversy between the District and the Employee involving the construction or application or any of the terms, provisions, or conditions of this Agreement shall, on the written request of either party, served on or other, be submitted to binding arbitration before an American Arbitration Association arbitrator and in accordance with AAA arbitration rules governing employment disputes. Arbitration shall comply with and be governed by the provisions of the California Code of Civil Procedure Section 1280, *et seq.* Cost of arbitration shall be equally shared by the District and the Employee.

B. District and the Employee shall mutually agree upon one neutral arbitrator to hear and determine the dispute. If the District and the Employee cannot so agree, either party may initiate the strike selection process through AAA for appointment of an arbitrator.

7. NOTICES.

Any written notices required by the Agreement shall be either given in person or by first class mail with the postage prepaid and address as follows:

To District: President, Board of Directors
Hayward Area Recreation and Park District
1099 'E' Street
Hayward, CA 94511

To Employee: James Wheeler
(Address on File)

8. ENTIRE AGREEMENT.

This Agreement supersedes any and all other agreements and/or understandings, whether oral or in writing, concerning General Manager's employment hereunder.

In Witness Whereof, District and the Employee have executed this Agreement as of the date first written above.

Hayward Area Recreation and Park District

Employee

Paul W. Hodges, Jr.
Paul W. Hodges, Jr. (Date)

James Wheeler 9/18/20
James Wheeler (Date)

ATTEST:

Marian Handa 11/16/20
Clerk of the Board (Date)

APPROVED AS TO FORM:

C. S. Kidder 10-13-20
Curtis S. Kidder, District General Counsel (Date)