

**EMPLOYMENT AGREEMENT FOR THE
ASSISTANT DIRECTOR OF ADMINISTRATIVE SERVICES
OF THE SAN MATEO COUNTY HARBOR DISTRICT**

THIS AGREEMENT is made and entered into as of, August 28, 2023 by and between the San Mateo County Harbor District (hereinafter referred to as "District") a public agency and Rachelle Modena (hereinafter referred to as "Manager").

RECITALS

WHEREAS, District desires to employ Rachelle Modena as Assistant Director of Administrative Services for the District; and

WHEREAS, Rachelle Modena desires to accept the position of Assistant Director of Administrative Services pursuant to the terms and conditions set forth in this Employment Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, District hereby appoints Rachelle Modena as Assistant Director of Administrative Services and Manager and Rachelle Modena agrees to serve in capacity of Assistant Director of Administrative Services beginning on August 28, 2023 under the following terms:

Section 1. Term

A. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the District to, at any time and in its sole discretion, terminate the services of Manager. There is no express or implied promise made to Manager for any form of continued employment. Notwithstanding any other provision in this Agreement or in District Personnel Rules and Policies and Procedures, Manager serves on an at will basis, and may be terminated at any time with or without cause. This Agreement is the sole and exclusive basis for an employment relationship between Manager and the District.

B. This Agreement shall commence as of August 28, 2023, and shall continue for a one-year term (Term), unless this Agreement is terminated by either party as hereinafter provided. This Agreement shall automatically renew for consecutive one-year terms unless the Director of Administrative Services or General Manager provides the Manager with written notice at least 60 days prior to the expiration of the base term or any extension.

Section 2. Duties

Manager shall do and perform all services, acts, functions and duties necessary or advisable to perform the duties of Assistant Director of Administrative Services as described in the Job Description, attached. Except as otherwise expressly provided in

this Agreement, the Manager is subject to all applicable District Personnel Rules and Policies and Procedures.

Section 3. Compensation and Evaluation.

A. Salary. District agrees to pay Manager an annual base salary of \$135,000 payable in installments at the same time and in the same manner as other management employees of the District are paid, for the faithful and diligent performance of the duties and obligations of Manager.

B. Performance Evaluation. The Director of Administrative Services or General Manager will conduct a performance review and evaluate Manager's performance at least once annually at or near the anniversary of employment with District. Failure of the Director of Administrative Services or General Manager to complete the evaluation process shall not result in the amendment or extension of this Agreement. Failure of the Director of Administrative Services to evaluate the Manager shall not preclude the Director of Administrative Services or General Manager from giving notice of termination or non-renewal in accordance with the terms of this Agreement.

Section 4. Holidays: Vacation: Leave

A. Holidays, Vacation and Leave. Manager will be entitled to "Paid holidays and Floating Holidays" in accordance with the District's established holiday schedule plus three float holidays every calendar year for the term of the contact. Float holidays may not be carried over into the next calendar year. Manager will be entitled to bereavement leave, jury duty leave and other leave required by law in accordance with leave policies established from time to time by the Board of Harbor Commissioners for all of its Managers, except as provided below.

B. Paid Time Off. Manager will receive annual Paid Time Off (PTO) as governed by District Policy and Procedure 6.5.1 modified as follows:

1. Manager will accrue PTO at the rate of 22 hours of PTO per month.
2. Unused PTO will carry over from year to year up to a total maximum of 540 hours, in accordance with District Policy and Procedure 6.5.1.

C. Extended Illness Bank (EIB). The EIB is an individual account containing accrued hours designed for severe or long-term illness. The EIB may be used when Manager experiences a severe or long-term illness and one of these circumstances:

1. Is admitted to a hospital; or
2. Otherwise qualifies for State Disability benefits; or
3. Is eligible for Workers Compensation Benefits; or
4. When PTO, if available, has been used consecutively for the equivalent for one week's work and a medical provider's verification

of illness is provided; or

5. Any other time when Manager requires time off for bona fide medical purposes of Manager or their immediate family (e.g., spouse, child, or parent), and a physician's verification of illness is provided.

EIB is not to be used for regular or routine physician or dental appointments for self or family. EIB accrual rates are equivalent to 3.08 hours biweekly. There is no maximum number of EIB hours that may be accumulated. In no event or at any time may the Manager cash out EIB hours.

Section 5. Retirement, Health and Welfare, and Other Benefits

Except as otherwise modified by this Section, Manager will be entitled to participate in all Manager benefit plans applicable to other management employees of the District including, but not limited to, a deferred compensation plan, health, dental, vision, workers compensation, flexible spending account, life/accidental death and dismemberment, short-term disability insurance benefits, health reimbursement arrangement, subject to the terms and conditions of any such Manager benefit plan and any applicable District Personnel Rules and Policies and Procedures. To the extent future changes are made in the coverages provided or Manager contributions are required, Manager will be subject to those changes.

A. Pension. Manager shall participate in the CalPERS retirement plan. Manager is either defined as: 1) a new member under applicable CalPERS statutes and regulations, and is subject to the retirement benefit formula of 2% at age 62 with 3-year final compensation; 2) or is a classic member under applicable CalPERS statutes and regulations if the Manager has previous employment without a break in service within the last six months and is covered under CalPERS as a classic member. The benefit formula for classic members is 2.5% at age 55. Manager shall pay the full employee share of the member contribution as determined by CalPERS through payroll withholding. The District shall not pay any portion of the Manager's member contribution.

B. Health and Welfare. The District will provide medical, dental, prescription, and vision coverage for Manager and their immediate, eligible family, at a level of coverage substantially the same as the District provides other Managers. Within its discretion, the District reserves the right to seek out and obtain alternative coverage in order to effect cost savings to the District. Manager agrees to pay 15% of the benefit premium cost for health insurance through payroll deductions. The District pays 100% of Dental and Vision premium obtained through the Special District Risk Management Authority.

C. Group Life Insurance. The District will provide Manager a group term life insurance policy of \$200,000. The District will pay the premium for such coverage.

D. Deferred Compensation. Manager is eligible to participate in the District's Deferred Compensation Plan through CalPERS 457 plan, or such other plan as is presently provided by the District on behalf of its employees.

E. Additional Pay. The District will make contributions in an amount equal to 3%

of Manager's base salary, in accordance with the procedures in place for other employees of the District. The Manager may direct these funds to their 457 deferred compensation account or to their flexible spending account or to both accounts as they wish within the rules of the specific plans.

F. Social Security. The District does not participate in Social Security. A pension based on earnings not covered by Social Security can affect the amount of your Social Security benefit. Further information is provided at <https://www.ssa.gov/planners/retire/wep.html> under the Windfall Elimination Provision.

Section 6. Other Obligations of the District

A. Office, Supplies, Business Expenses. District agrees to provide Manager with an office, computer equipment, supplies and such other facilities and services (including a cellular phone) commensurate with the Manager's position in order to facilitate the performance of their duties. The Manager may request reimbursement for expenses they incur in the direct performance of the District's business, as the Director of Administrative Services or General Manager may approve. Such expenses may be reimbursed regularly as they are incurred and submitted for reimbursement in compliance with any District Personnel Rules and Policies and Procedures.

B. Professional Development Activities. District agrees to budget for and pay for the travel, meals, accommodations, registration and other expenses of Manager for conferences, seminars, and such other occasions as are reasonably necessary for Manager to fulfill their duties, and to further Manager's professional growth and advancement. Such service and conferences include, but may not be limited to, those sponsored by the California Special District Association (CSDA) or California Association of Harbormasters and Port Captains. Such expenses must be appropriately documented and approved by the Director of Administrative Services or General Manager and in compliance with District Personnel Rules and Policies and Procedures.

Section 7. Termination and Severance Pay

A. Termination With Cause. District may terminate Manager at any time during the term of this Agreement for Cause (as defined below). For purposes of this Agreement, "Cause" shall include the following: (a) malfeasance demonstrated by a pattern of failure to perform job duties diligently and professionally; (b) the refusal to implement or follow District's reasonable personnel rules, policies, procedures or directives; (c) the breach of a material provision of this Agreement; (d) committing an act of fraud, dishonesty, misrepresentation, moral turpitude, or the misappropriation of property belonging to the District; (e) conviction of any criminal act; or (f) the commission of an act that has a direct, substantial, and adverse effect on District's business interests or reputation. District will have no obligation to pay the severance payment set forth in paragraph 7.B, below. Manager will only be entitled to any unpaid

compensation due to them as a matter of law, including the unused balance of any PTO Leave.

Nothing in this Agreement prevents, limits, or otherwise interferes with Manager's right to resign at any time from their position with the District. Manager will give 30 days' written notice to District prior to the effective date of resignation unless a lesser period has been mutually agreed upon by the parties.

If this Agreement is terminated, any cash settlement related to the termination that Manager may receive from District will be fully reimbursed to District if Manager is convicted of a crime involving an abuse of their office or position with District. This Agreement shall be subject to the provisions of Government Code sections 53243-53243.4 which require reimbursement to the District under circumstances stated therein.

B. Termination Without Cause. In the event Rachelle Modena is terminated without cause by the District during the term of this Agreement and during such time as Manager is willing and able to perform their duties under this Agreement, District shall provide Manager written notice of said termination. In the event of such termination, and provided that Rachelle Modena executes a full and complete waiver and release of any and all claim(s) which were known or reasonably should have been known by Manager and arising out of their employment and termination thereof, the District will pay Manager a cash payment of one month compensation for each full year of employment with the District, on a pro-rated basis as appropriate, up to a maximum of six (6) months of compensation, based on Manager's then-current annual base salary subject to the limitations imposed by Government Code 53260, which provides as follows: "regardless of the term of the contract, if the contract is terminated, the maximum cash settlement that an employee may receive shall be an amount equal to the monthly salary of the employee multiplied by the number of months left on the unexpired term of the contract. However, if the unexpired term of the contract is greater than 18 months, the maximum cash settlement shall be an amount equal to the monthly salary of the employee multiplied by 18." The intent of this provision is to satisfy the requirements in Government Code sections 53260-53264 and shall be interpreted consistently with those statutes. In addition, and regardless of any entitlement to severance benefits, Manager will receive a cash payment of the unused balance of any PTO and any other payments required by law. Any cash payments will be subject to the general payroll withholdings. Any cash settlement shall be paid within 30 calendar days of the date Manager executes the full and complete waiver and release of all claims.

The District's decision to terminate Manager's employment without cause is not subject to challenge.

However, if another vacant position is available in the District, for which the Manager is qualified, the Manager may be given an opportunity to fill that vacant position instead of being terminated.

Section 8. Other Terms and Conditions of Employment

The General Manager will fix any other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Manager, provided such terms and conditions are not inconsistent with provisions of this Agreement or law.

Section 9. Equitable Relief

A. Availability of Injunctive Relief. In accordance with rule 1281.8 of the California Code of Civil Procedure, the parties agree that any party may petition the court for injunctive relief where either party alleges or claims a violation of any agreement regarding intellectual property, confidential information or noninterference. The parties shall bear their own attorneys' fees and costs.

B. Administrative Relief. The parties understand that this Agreement does not prohibit Assistant Director of Administrative Services from pursuing an administrative claim with a local, state or federal administrative body or government agency such as the Department of Fair Employment and Housing, the Equal Employment Opportunity Commission, or the workers' compensation board.

Section 10. General Provisions

A. Notices. Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by certified mail, postage prepaid with return receipt requested or by email. Mailed notices shall be addressed to the parties at the addresses indicated below or as changed by written notice delivered in accordance with this Section. Notices delivered personally shall be deemed communicated as of actual receipt; emailed and mailed notices shall be deemed communicated as of three (3) calendar days after emailing or mailing.

To the District: 504 Avenue Alhambra, Suite 200
 P.O. Box 1449
 El Granada, CA 94018

To Manager: Rachelle Modena
 

B. Entire Agreement. This Agreement contains all of the covenants and agreements between the parties with respect to the employment of Manager any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made which are not embodied herein and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement will be effective only if in writing signed by both parties.

C. Provisions Severable. If any provision or any portion hereof is held invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

D. Headings. The headings used in connection with this Agreement are for

reference purposes only and shall not be construed as part of this Agreement.

E. Construction. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

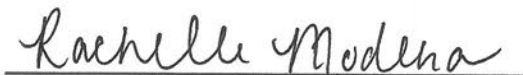
F. Waiver of Breach. The waiver by District of a breach of any provision of this Agreement by Manager shall not operate or be construed as a waiver of a subsequent breach by Manager.

G. Assignment. This Agreement is not assignable by either District or Manager.

H. Voluntary Nature of Agreement. Manager acknowledges and agrees that they are executing this Agreement voluntarily and without any duress or undue influence by the District or anyone else. Manager further acknowledges and agrees that they have carefully read this Agreement and that they have asked any questions needed for them to understand the terms, consequences and binding effect of this Agreement and fully understand it. Finally, they agree that they have been provided an opportunity to seek the advice of an attorney of their choice before signing this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

By:



Rachelle Modena

By:



James Pruett, General Manager