

## **AMENDED EMPLOYMENT AGREEMENT**

THIS AGREEMENT, entered into as of July 1, 2019, is by and between MOJAVE WATER AGENCY, a self-governing special district formed under California Water Code Appendix Section 97 et seq. (“Employer”), and THOMAS MCCARTHY, an individual (“Employee”). Employer and Employee agree to the following terms and conditions of employment:

1. **Period of Employment.**

(a) **Basic Term.** Employer shall employ Employee for a period of three (3) years which began on July 1, 2018. As used herein, the phrase “Employment Term” shall refer to the entire period of employment of Employee by Employer hereunder, whether for the periods mentioned above or whether extended or earlier terminated as hereinafter provided. The term of this Agreement will expire on June 30, 2021. This agreement may be extended by mutual agreement of the parties.

2. **Duties and Responsibilities.**

(a) **Position.** Employee shall serve as the General Manager / Chief Engineer for the Employer. In that capacity Employee shall perform all services, acts, and functions necessary or advisable to lawfully manage and conduct the business of Employer in accordance with all legal requirements and the policies, procedures, rules, and regulations established by Employer’s Board of Directors, and subject to the direction, prior consent, and subsequent ratification of Employer’s Board of Directors. Employee shall devote his best efforts and full-time attention to the performance of his duties and shall report directly to Employer’s Board or Directors.

(b) **Availability and Work Schedule.** During the Employment Term, Employee shall perform all services required by this Agreement at Employer’s headquarters during Employer’s regular business hours, unless Employee’s presence at other locations or during different times is necessary to fully and completely perform the duties of the position assumed by Employee. In addition, Employee shall maintain his permanent residence in an area that is in close proximity to Employer’s headquarters, and shall otherwise be available to Employer 24 hours a day by telephone, pager, or other equipment furnished by Employer for this purpose

(c) **Prohibited Activities.** Except upon the prior written consent and express approval or Employer’s Board of Directors, Employee (during the Employment Term) shall not (i) borrow on behalf or Employer any amount of money during any fiscal year; (ii) spend or obligate Employer’s funds in amounts in excess of the sums budgeted for expenditure by Employer’s Board of Directors; (iii) accept any other employment; (iv) engage directly

or indirectly in any other business, commercial, civil, or professional activity, whether or not pursued for pecuniary advantage, that is or may be competitive with Employer, that might create a conflict of interest with Employer, or that otherwise might interfere with the business of Employer or any Affiliate or Employer; or (v) accept any position with an outside agency without prior approval of Employer's Board of Directors. An "Affiliate" shall mean any person or entity that directly or indirectly controls, is controlled by or is under common control with Employer.

(d) Representations. Employee represents and warrants (i) that he is fully qualified and competent to perform the responsibilities for which he is being hired pursuant to the terms of this Agreement; and (ii) that Employee's execution of this Agreement, his employment with Employer, and the performance of his proposed duties under this Agreement shall not violate any obligation he may have to any former employer (or other person or entity), including any obligations with respect to proprietary or confidential information of any person or entity.

### 3. Compensation.

(a) Salary. Employer shall pay Employee a salary at the rate of TWO-HUNDRED FORTY THOUSAND THREE HUNDRED SEVENTY SEVEN DOLLARS (\$240,377.00) per year beginning July 1, 2019, in accordance with Employer's duly established practices. Employer may, but is not obligated to, increase Employee's salary as deemed appropriate by Employer's Board of Directors in the exercise of its sole discretion upon completion of its annual review of Employee's job performance.

(b) Administrative Leave. For the period January 25, 2020 to June 30, 2020, the employee shall receive 17 hours of leave that must be used prior to July 1, 2020. Thereafter, the employee shall receive 40 hours of administrative leave per fiscal year (July 1). This leave is not to be accrued and if not used within the fiscal year, is lost to the employee.

(c) Car Allowance. Employer shall provide a car allowance of EIGHT HUNDRED DOLLARS (\$800.00) per month to the Employee.

(d) Benefits. During the Employment Term, Employee shall be entitled to receive full contribution by Employer of Employer's share only, as required by PERS to the Public Employees Retirement System. Employee shall be required to make the Employee's contribution as required by PERS to the Public Employees Retirement System. All other benefits provided by Employer to its exempt employees in accordance with Employer's standard policies shall be provided to Employee. Employer shall provide payment of the monthly PERSCare health insurance premium for Employee and Employee's dependents. As Employee becomes eligible therefor,

Employee shall have the right to participate in and to receive benefits from all present and future benefit plans specified in Employer's policies and generally made available to similarly situated employees of Employer. The amount and extent of benefits to which Employee is entitled shall be governed by the specific benefit plan as amended. Employee also shall be entitled to any benefits or compensation tied to termination as described in Section 4. Nothing stated in this Agreement shall prevent Employer from changing or eliminating any benefit during the Employment Term as Employer, in its sole discretion, may deem necessary or desirable. No statement concerning benefits or compensation to which Employee is entitled shall alter in any way the term of this Agreement, any renewal thereof, or its termination. All compensation and comparable payments to be paid to Employee under this Agreement shall be less withholdings as required by law.

In addition to the Agency's Section 125 Flexible Spending Plan, employer shall deposit an amount of \$2,500 annually into an Agency sponsored Tax Deferred Compensation Plan for the employee.

(e) Vacation. Employee shall be entitled to 160 hours of vacation time each year of the Employment Term without loss of compensation. Employee may be absent from his employment for vacation only at such times as Employer's Board of Directors shall determine from time to time. Unused vacation time shall be carried over in accordance with the policies established by Employer's Board of Directors.

(f) Professional Dues and Conferences. Employer shall pay all reasonable travel, lodging, and entrance fees and costs associated with Employee's attendance at conferences and seminars, as well as payment of annual dues levied by professional organizations and community affiliation costs that receive prior approval by Employer's Board of Directors.

Employer shall maintain its ACWA membership during the term of this Agreement.

(g) Employee became a member of the Public Employee's Retirement System after January 1, 2013. Pursuant to Government Code 7522.10 of the PEPRA, employee is currently subject to a limitation of compensation (ONE HUNDRED FORTY FIVE THOUSAND SIX HUNDRED SIXTY SIX DOLLARS [\$145,666.00] in 2018), that is adjusted annually, which may be used by PERS in making a calculation of retirement benefits for the Employee. This benefit is currently two percent (2%) at 62 years of age under the PERS retirement formula now in effect for Employee. Employee's current salary is above this compensation limit established by PERS in its calculation of retirement benefit contribution which can be made by Employer. Employer agrees to make a contribution to a Tax Deferred

Compensation Plan established by the Employer. Such contribution to this Plan will be in an amount not to exceed the annual equivalent PERS contribution rate (7.266% in fiscal year 2017/2018) on the compensation above the annually adjusted cap (\$145,666.00 in 2018) to such Tax Deferred Compensation Plan. Employee will also contribute the employee cost share rate (currently 6.5% in fiscal year 2017/2018) into the plan once the compensation cap is reached. [For example, "If salary is \$200,000 the additional contribution will be based on the compensation over the annual cap (\$200,000 - \$145,666 or \$54,334) times the employer annual rate at the time of calculation (7.266% in 2017/2018) or \$3,947.91. The employee contribution will be \$54,334 times the annual employee cost share at the time of calculation (6.5% in 2017/2018) or \$3,531.71. These rates and amounts will be adjusted annually as the compensation limits and PERS rates are adjusted.

It is recognized that this compensation cap may be amended annually, and the terms of the California Public Employee's Pension Reform Act may be updated from time to time. Both Employer and Employee shall meet and confer in good faith to comply with the terms of this section or any changes thereto that would alter the methodology of payment into a deferred compensation plan. This benefit will terminate on June 30, 2021 unless extended by mutual agreement of Employee and Employer.

#### 4. Termination of Employment.

(a) By Death. The Employment Term shall terminate automatically upon the death of Employee. Employer shall pay to Employee's beneficiaries or estate as appropriate any compensation then due and owing, including payment for accrued, unused paid time off, if any. Thereafter, all obligations of Employer under this Agreement shall cease. Nothing in this section shall affect any entitlement or Employee's heirs to the benefits of any life insurance plan or other applicable benefits.

(b) By Disability. If by reason of any physical or mental incapacity Employee has or will be prevented from properly performing his duties under this Agreement for more than twelve (12) weeks in any one (1) year period, then to the extent permitted by law, Employer may terminate the Employment Term, pursuant to Section 4 (c), below, upon two (2) weeks advance written notice. Employer shall pay Employee all compensation to which he is entitled up through the last business day of the notice period; thereafter, all obligations of Employer under this Agreement shall cease. Nothing in this Section shall affect Employee's rights under any applicable Employer disability plan.

(c) By Employer For Cause. At any time, and without prior notice, Employer may terminate Employee for cause (as defined below). Employer

shall pay Employee all compensation then due and owing for the period prior to termination, thereafter all of Employer's obligations under this Agreement shall cease. "Cause" shall include, but not be limited to, unsatisfactory performance, misconduct, moral turpitude, failure to follow policies or procedures material breach of this Agreement, excessive absenteeism, unlawful conduct off the Employer's premises or during non-working time (which may affect the Employee's relationship to his or her job, the District's reputation or good will in the community), layoff pursuant to a bona fide reduction in force, and to the extent permitted by law, unavailability for work due to disability for more than twelve (12) weeks in any one (1) year period (subject to the Employer's rights to deny reinstatement to Employee who shall qualify as a "key employee", to prevent substantial and grievous economic injury to its operations).

(d) By Employer Not For Cause. Employer may dismiss Employee without cause notwithstanding anything to the contrary contained in or arising from any statements, policies, or practices or Employer relating to the employment, discipline, or termination of its employees. Employer shall pay Employee all compensation then due and owing for the period prior to termination, plus a lump sum cash payment equal to Employee's base salary, prorated over the remaining balance of the unexpired Employment Term, or over a period of six (6) months, whichever is less, and thereafter all of Employer's obligations under this Agreement shall cease. In no event shall the employee's employment be terminated 120 days prior to or 180 days following a general election in which members of the Board of Directors stand for election. Employee shall be entitled to all unused vacation and floating holidays and Employer shall continue health benefits for six (6) months upon termination pursuant to this subsection.

(e) By Employee Not For Cause. At any time Employee may terminate his employment for any reason, with or without cause, by providing Employer thirty (30) days advance notice. Employer shall have the option in its complete discretion to make Employee's termination effective at any time prior to the end of such notice period, provided Employer pays Employee all compensation due and owing through the last day actually worked, plus an amount equal to the base salary Employee would have earned through the balance of the notice period, not to exceed thirty (30) days; thereafter, all of Employer's obligations under this Agreement shall cease.

(f) Termination Obligations. Employee agrees that all property, including without limitation all equipment, tangible Proprietary Information (as defined below), documents, records, notes, contracts, and computer-generated materials furnished to or prepared by Employee incident to his employment belongs to Employer and shall be returned promptly to Employer upon termination of Employee's employment. Employee's

obligations under this subsection shall survive the termination of his employment and the expiration of this Agreement.

5. Proprietary Information. "Proprietary Information" is all information and any ideas pertaining in any manner to the business of Employer (or any Affiliate), its employees, agents, contractors, or consultants, which was produced by any employee of Employer in the course of his or her employment or otherwise produced or acquired by or on behalf of Employer. "Proprietary Information" shall include without limitation, trade secrets, protocol ideas, inventions, processes, formulas, data, know-how, software and other computer programs, copyrightable material, plans, strategies, customer lists and information, financial reports, and the contents of documents protected from disclosure under the California Public Records Act, Government Code Section 6250 et seq., or other provisions of applicable law. All "Proprietary Information" not generally known outside of Employer's organization, and all Proprietary Information so known only through improper means, shall be deemed "Confidential Information." During his employment by Employer, Employee shall use Proprietary Information and shall disclose Confidential Information only for the benefit of Employer and as is necessary to perform his job responsibilities under this Agreement. Following termination, Employee shall not use any Proprietary Information and shall not disclose any Confidential Information except with the express written consent of Employer. By way of illustration and not in limitation of the foregoing, following termination; Employee shall not use any Confidential Information to solicit Employer's customers or to compete against Employer. Employee's obligations under this section shall survive the termination of his employment and the expiration of this Agreement.
  
6. Notices. Any notice under this Agreement must be in writing and shall be effective upon delivery by hand, upon facsimile transmission to the number provided below (if one is provided), or three (3) business days after deposit in the United States mail, postage prepaid, certified or registered and addressed to Employer at the address below or to Employee at the last known address maintained in Employee's personnel file. Employee shall be obligated to notify Employer in writing of any change in his address. Notice of change of address shall be effective only when done in accordance with this Section.

**Employer's Notice of Address:**

Board of Directors  
Mojave Water Agency  
13846 Conference Center Drive  
Apple Valley, California 92307  
Telephone: (760) 946-7000  
FAX Phone No. (760) 240-2642

7. Action by Employer. All actions required or permitted to be taken under this Agreement by Employer, including without limitation, exercise of discretion, consents, waivers, and amendments to this Agreement, shall be made and authorized only by Employer's Board of Directors. The failure of Employer to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by Employee shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.
8. Integration. This Agreement is intended to be the final, complete, and exclusive statement of the terms of Employee's employment by Employer. This Agreement supersedes all other prior and contemporaneous agreements and statements, whether written or oral, express or implied, pertaining in any manner to the employment of Employee by Employer, and it may not be contradicted by evidence of any prior or contemporaneous statement or agreements. To the extent that the practices, policies, or procedures of Employer now or in the future, apply to Employee and are inconsistent with the terms of this Agreement, the provisions of this Agreement shall control.
9. Amendments. This Agreement may not be modified or amended except by a writing signed by each of the parties hereto. Failure to exercise any right under this Agreement shall not constitute a waiver of such right.
10. Assignment. Employee shall not assign any rights or obligations under this Agreement. Employer may upon written notice to Employee assign its rights and obligations hereunder.
11. Severability. If a court or arbitrator holds any provision of this Agreement to be invalid, unenforceable, or void, the remainder of this Agreement shall remain in full force and effect.
12. Attorneys' Fees. In any legal action, arbitration, or other proceeding brought to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.
13. Governing Law. This Agreement shall be governed by and construed in accordance with the law of the State of California.
14. Interpretation. This Agreement shall be construed as a whole according to its fair meaning and any uncertainty or ambiguity contained herein shall not be interpreted against the party responsible for the drafting of this Agreement. The captions or sections and subsections of this Agreement are for reference only and are not to be construed in any way as a part of this Agreement.

15. Employee Acknowledgment. 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 parties hereto have caused this Agreement to be executed by their respective officers as of the date first written above.

**EMPLOYER:**

By: \_\_\_\_\_  
President, Board of Directors  
Mojave Water Agency

**ATTEST:**

By: \_\_\_\_\_  
Secretary, Mojave Water Agency

**EMPLOYEE:**

By: \_\_\_\_\_