



Memo

To: Board of Directors
From: Karl B. Drew
Date: November 4, 2016
Subject: Assistant General Manager – Employment Contract

**** Confidential ****

Attached is a copy of the employment contract for the Assistant General Manager. I believe it is a fair contract for both parties.

The key points are summarized as follows:

- The contract is for 2 years.
- Employment is scheduled to begin November 8, 2016
- Beginning pay is \$3,477 per pay period or \$90,402 per year (bi-weekly pay)
- Employment is at-will.
- Employment may be terminated by District at any time, with or without cause.
 - If termination is initiated by District, District will provide 30-day severance pay if employee signs waiver
- Employment may be terminated by employee with 30-day notice or a mutually agreeable period.

As a legally binding contract between the District and the Assistant General Manager, Board approval of the contract is required. I am asking the Board to approve the contract and authorize the General Manager to sign the contract on behalf of the District.

**EMPLOYMENT AGREEMENT BETWEEN
CRESTLINE VILLAGE WATER DISTRICT
AND ALAN CLANIN**

THIS AGREEMENT (herein "Agreement") is made this ___th day of November, 2016, to be effective November 8, 2016, by and between the CRESTLINE VILLAGE WATER DISTRICT (herein the "DISTRICT"), a California water district as employer, and ALAN E. CLANIN (herein "CLANIN"), an individual as employee, who hereby agree as follows:

**I.
RECITALS.**

A. DISTRICT is a governmental entity existing pursuant to the California Water Code (35000 et seq.), having the powers and duties therein specified.

B. DISTRICT desires to retain CLANIN as its full-time ASSISTANT GENERAL MANAGER (hereinafter "ASSISTANT GENERAL MANAGER").

C. CLANIN has agreed to accept employment as DISTRICT's ASSISTANT GENERAL MANAGER effective November 8, 2016 pursuant to the terms and conditions herein stated.

D. The parties have set forth below the terms and conditions of their Agreement.

**II.
AGREEMENT.**

In consideration of the mutual promises set forth herein, the Parties agree as follows:

CLANIN shall serve as ASSISTANT GENERAL MANAGER of the DISTRICT pursuant to the terms and conditions set forth herein:

A. Compensation.

CLANIN's gross salary shall be Three Thousand Four Hundred Seventy Two Dollars (\$3,472) per pay period, payable consistent with the District's normal payroll practices. CLANIN's salary shall be evaluated annually by DISTRICT's General Manager (hereinafter "GENERAL MANAGER") to consider a merit increase in salary based upon performance. If performance warrants a merit increase, CLANIN shall be entitled to a merit increase which will become effective on his anniversary date. In addition, CLANIN shall receive the same across-the-board, cost-of-living adjustment that is given to other DISTRICT employees generally.

B. Benefits.

Standard Benefits: CLANIN shall receive the same benefits package as that offered to DISTRICT's management employees as the same may from time to time be established by DISTRICT.

C. Duties and Restrictions.

(1) Duties. CLANIN is the ASSISTANT GENERAL MANAGER for DISTRICT, its second highest staff position, and shall be responsible for management and other duties as assigned by the GENERAL MANAGER.

(2) Direction from GENERAL MANAGER: CLANIN shall take direction as to matters of DISTRICT business only from the GENERAL MANAGER, or from a duly authorized BOARD committee which has been granted the power by the BOARD to give direction to CLANIN.

(3) Outside Employment and Activities: CLANIN shall not accept any other employment during the term of this Agreement and shall devote his full time to his DISTRICT position, unless otherwise approved by the GENERAL MANAGER. CLANIN shall not engage in any outside activities during the term of this Agreement that generate conflicts of interest or the appearance thereof (financial or other) with his position as ASSISTANT GENERAL MANAGER. If CLANIN is not certain whether or not a particular proposed outside activity is permitted under this Agreement, he shall ask the GENERAL MANAGER for a determination thereon before engaging in the activity, and the GENERAL MANAGER shall within thirty (30) days make a determination thereon. Failure to act on the part of the GENERAL MANAGER within said thirty (30) day period shall be deemed approval. Notwithstanding any GENERAL MANAGER determination, it is CLANIN's obligation to ensure his activities are not in violation of federal, state or local conflict of interest laws or regulations.

D. Term and Termination of Agreement.

- (1) This Agreement shall continue for a two year term unless terminated sooner as set forth below.
- (2) This Agreement may be terminated at any time as follows:
 - (a) By DISTRICT.

The GENERAL MANAGER may terminate this Agreement at any time, either with or without cause by providing written notice to CLANIN. None of the DISTRICT's policies related to disciplinary action shall apply to CLANIN as he is an at-will employee that serves at the

pleasure of the GENERAL MANAGER. (Other provisions of the DISTRICT's Personnel Manual, excluding those related to disciplinary action, shall apply to CLANIN.)

(b) By CLANIN.

CLANIN may terminate this Agreement at any time by giving DISTRICT thirty (30) days' advance written notice of his intent to terminate, or sooner by mutual agreement. In the event that CLANIN exercises his right to terminate under this subparagraph, he shall not be entitled to any severance as described in section E, below.

E. Severance.

(1) In the event that CLANIN's employment is terminated by DISTRICT without cause, CLANIN shall be entitled to one (1) months' salary as severance, payable in a lump sum.

(2) CLANIN will not be entitled to severance if his employment is terminated by the DISTRICT at any time for cause, or if CLANIN resigns.

(a) Cause for termination shall be defined for purposes of this Agreement to include: (i) malfeasance; (ii) gross negligence; (iii) fraud; (iv) serious misconduct; (v) conviction of, or plea of guilty or nolo contendere to any felony as defined by California law on the part of CLANIN. (A plea or verdict of guilty or a finding of guilt by a court in a trial without a jury is deemed to be a conviction within the meaning of this clause irrespective of a subsequent order under provisions of section 1203.4 of the Penal Code allowing withdrawal of a plea of guilty and entering a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusations or information); or (vi) other material violation of DISTRICT policies or rules.

(3) Separately Negotiated: Waiver. The parties expressly acknowledge and agree that these severance pay provisions have been independently negotiated. Acceptance at the time of termination by CLANIN of the severance pay benefits provided by this section shall operate as a full and complete waiver and release of any and all rights, claims and/or causes of action which CLANIN may have, or have had, at any time, in the past or in the future, arising out of CLANIN's employment by DISTRICT, including, but not limited to, claims for wrongful termination. (CLANIN agrees to sign a Severance Agreement that is substantially similar to the one attached as Exhibit "A".) If CLANIN wishes to retain any such rights, CLANIN must decline to accept the severance benefits provided by this section.

Acceptance of the severance benefits under this paragraph will operate as a general release on the part of CLANIN as to all claims, known or unknown, and CLANIN specifically waives the provisions of California Civil Code Section 1542 which provide:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.”

(4) Pursuant to Government Code Section 53243 et seq., if CLANIN is convicted of a crime involving an abuse of office or position, as defined below, all of the following shall apply: (1) if CLANIN was provided with paid leave pending an investigation into the matter, CLANIN shall be required to fully reimburse the DISTRICT for those amounts paid; (2) if the DISTRICT, in its discretion, paid for the criminal defense of CLANIN, CLANIN shall be required to fully reimburse the DISTRICT for all amounts paid if the DISTRICT paid any severance pay under this AGREEMENT, CLANIN shall be required to fully reimburse the DISTRICT for all amounts paid.

(a) “Abuse of office or position” means either:

- (i) An abuse of public authority, including but not limited to, waste, fraud, and violation of the law under color of authority; or
- (ii) A crime against public justice, including, but not limited to, a crime described in Title 5 (commencing with Section 67), Title 6 (commencing with Section 85), or Title 7 (commencing with Section 92) of Part 1 of the Penal Code.

E. Governing Law.

This Agreement shall be interpreted and enforced in conformance with California law.

F. Entire Agreement.

This Agreement represents the entire agreement between the parties and supersedes any prior agreements, written or oral, and any representations, written or oral, not expressly included herein.

G. Venue.

The venue for any litigation to interpret or enforce this Agreement shall be the San Bernardino Superior Court.

H. Integration Clause.

If any part, provision, paragraph or subparagraph of this Agreement shall be held to be void or unenforceable by a final judgment of a court of competent jurisdiction, then unless that provision is found in such proceeding to be material to this Agreement, said void or unenforceable provision shall be severed from this Agreement and the balance of this Agreement shall remain in full force and effect. In the event that the void or unenforceable provision is found to be material to this Agreement, then the entire Agreement shall be voided.

I. Independent Review: Interpretation.

CLANIN and DISTRICT affirm in signing this Agreement that they have each had an opportunity to review and consider this Agreement, and to have it reviewed and to receive advice from independent advisors of their own choosing, including attorneys, and that each knowingly and voluntarily enters into this Agreement. CLANIN and DISTRICT further affirm that this Agreement was the mutual product of their negotiations, including give and take, and that neither party shall be considered the drafter of this Agreement such that the Agreement is interpreted against that party.

J. Public Record.

CLANIN acknowledges that this Agreement, upon final execution, will become a public record under California law available for public inspection and copying.

K. Duty to Defend and Indemnify.

DISTRICT agrees to defend, indemnify and hold harmless Employee against any claim or action against him for an injury arising out of an act or omission occurring within the scope his employment as an Employee of the DISTRICT as required by California Government Code Section 825, et seq. CLANIN must make a request for defense in writing not less than ten (10) days before the day of trial, and reasonably cooperate in good faith in the defense of the claim or action. If CLANIN does so, the DISTRICT shall pay any judgment based thereon or any compromise or settlement of the claim or action to which the DISTRICT has agreed. Notwithstanding the above, the DISTRICT shall only indemnify CLANIN for punitive or exemplary damages as authorized in Government Code Section 825, or its successor. The DISTRICT shall also provide defense to CLANIN as required by California Government Code Section 995, or its successor.

L. Counterparts.

This Agreement may be signed in counterparts. Any such counterpart when executed shall constitute an original of this Agreement and all such counterparts together shall constitute one and the same Agreement.

DATED: _____

CRESTLINE VILLAGE WATER DISTRICT

By: _____

KARL DREW
GENERAL MANAGER

DATED: _____

By: _____

ALAN CLANIN
ASSISTANT GENERAL MANAGER

APPROVED BY BOARD ACTION DATED _____

EXHIBIT A

SEVERANCE AGREEMENT AND GENERAL RELEASE OF CLAIMS

This Severance Agreement and General Release of Claims (hereinafter "Agreement") is made and entered into between CRESTLINE VILLAGE WATER DISTRICT (hereinafter "CVWD") and ALAN CLANIN (hereinafter "Employee"), and is made in light of the following:

RECITALS

1. Employee was employed by CVWD and separated from employment as an at-will employee effective _____, 20__.
2. The parties have now agreed to settle any and all disputes, now in existence or arising in the future, between CVWD and Employee regarding the employment and separation of Employee.
3. Employee acknowledges that CVWD denies that Employee has any claims which may be asserted against it, but that CVWD desires to avoid incurring any costs and expenses related to any possible claims, and desires to compensate Employee as the sole means of settlement by providing the severance benefits set forth herein. Therefore, Employee makes this Agreement expressly recognizing that the making of this Agreement does not in any way constitute an admission of wrongdoing or liability on the part of CVWD.

AGREEMENT

4. In consideration of this Agreement, CVWD agrees that Employee shall receive severance pay equal to one (1) month of salary, exclusive of benefit and other non-cash remuneration. Payment shall be made in one lump sum mailed to Employee on the Effective Date of this Agreement. This amount shall be treated as wages, with withholding made for taxes and a W-2 will be issued by CVWD. However, amounts will not be withheld for medical or other insurance, retirement or other CVWD-provided benefits, nor will these benefits be provided by CVWD after the separation date.
5. CVWD agrees that this Agreement does not release CVWD from providing Employee any vested benefits he has accrued prior to his termination of employment (for example, accrued but unused vacation pay or retiree medical benefits).
6. Employee agrees that all employment reference checks initiated by Employee or at Employee's request will be directed to the Human Resources Manager, or to the successor position in Human Resources, who will state the dates of employment and the position held.
7. In consideration of the promises of CVWD contained in this Agreement, Employee agrees that by signing this Agreement Employee represents that he has not filed and gives up any and all rights he may have to file a grievance, claim or complaint of any kind against CVWD arising from his employment and separation, except as may be necessary to enforce the terms of this Agreement, or for workers' compensation or unemployment insurance benefits, or as otherwise required by law. Employee understands and expressly agrees that this Agreement extends to all claims of every nature and kind whatsoever, known or unknown, suspected or

unsuspected, past or present, and waives all rights under California Civil Code Section 1542, which states as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

8. Employee, on behalf of himself, his relatives, heirs, estate, executors, administrators, successors and assigns, fully releases and discharges CVWD and CVWD's current and/or former board members, officers, employees, agents or attorneys, from all actions, causes of action, claims, judgments, obligations, damages, and liabilities of whatsoever kind and character, including, but not limited to, any actions, causes of action, claims, judgments, obligations, damages, or liabilities relating to his employment with and separation from CVWD, including, but not limited to, those arising out of any claims for violation of any alleged contract, express or implied; any covenant of good faith and fair dealing, whether express or implied; any tort; any administrative remedy; any federal, state, or local law, statute or regulation based on or related to the Americans with Disabilities Act (42 U.S.C. §§12101-12213), the Age Discrimination in Employment Act (29 U.S.C. §§621-634), Title VII, Civil Rights Act of 1964 (42 U.S.C. §§2000-2000 (e)-1-17), the California Fair Employment and Housing Act (Gov. Code §§12900-12996), the Fair Labor Standards Act of 1938 (29 U.S.C. §§201, et seq.), the California Government Code, or the California Labor Code, except for workers' compensation or unemployment insurance benefits.

Further, Employee represents and warrants that Employee has not filed any lawsuits, complaints, charges or grievances against CVWD and/or its current and/or former board members, officers, employees, agents or attorneys with any court or governmental agency arising out of Employee's employment with and separation from CVWD, except for workers' compensation or unemployment insurance benefits, or as otherwise required by law.

Further, Employee agrees that under this Agreement, Employee waives any claim for damages incurred at any time after the date of this Agreement because of alleged continuing effects of any alleged unlawful acts or omissions involving the employment with and separation from CVWD, and any right to sue for injunctive relief against the alleged continuing effects of alleged acts or omissions.

9. Employee represents and acknowledges that in executing this Agreement, Employee did not rely and has not relied upon any representation or statement not set forth herein made by or on behalf of CVWD, and that this Agreement sets forth the entire agreement between the parties.

10. Age Discrimination Claims.

(a) Employee understands and agrees that, by entering into this Agreement, (i) except for claims arising after the date this Agreement is signed, Employee is waiving any rights or claims Employee might have under the Age Discrimination in Employment Act, as amended

by the Older Workers Benefit Protection Act; (ii) Employee has received consideration beyond that to which he was previously entitled; (iii) Employee has been advised to consult with an attorney before signing this Agreement; and (iv) Employee has been offered the opportunity to evaluate the terms of this Agreement for not less than 21 days prior to his execution of the Agreement, even though Employee may elect to sign this Agreement before said period of consideration expires. Employee agrees that changes, whether material or immaterial, do not restart the 21-day consideration period.

(b) Employee may revoke this Agreement (by written notice to Employer's Labor Attorney, Bradley Neufeld) for a period of seven days after his execution of the Agreement, and it shall become enforceable only upon the expiration of this revocation period without prior revocation by Employee.

11. The parties agree that should any non-material provision of this Agreement be declared illegal or invalid by decision of any court of law or administrative agency, all other provisions of this Agreement shall nevertheless remain in full force and effect.

12. This Agreement sets forth the entire Agreement between the parties hereto and fully supersedes any and all prior agreements or understandings between the parties hereto pertaining to the subject matter hereof.

13. This Agreement is made and entered into in the State of California and shall in all respects be interpreted and enforced and governed by and under the law of the State of California.

14. This Agreement may be executed in any number of counterparts. Any such counterpart when executed shall constitute an original of the Agreement and all such counterparts together shall constitute one and the same agreement.

15. EMPLOYEE FURTHER STATES THAT HE HAS CAREFULLY READ THIS SEVERANCE AGREEMENT; THAT HE UNDERSTANDS THAT THE CONSIDERATION TO BE GIVEN TO HIM UNDER THIS AGREEMENT IS IN ADDITION TO WHAT HE IS ENTITLED TO IN THE ABSENCE OF THIS AGREEMENT; THAT HE HAS HAD THE OPPORTUNITY TO HAVE IT FULLY EXPLAINED TO HIM BY AN ATTORNEY OF HIS CHOICE; THAT ONCE EFFECTIVE, THIS AGREEMENT IS FINAL AND BINDING; THAT THE ONLY PROMISES MADE TO HIM TO SIGN THIS SEVERANCE AGREEMENT AND

GENERAL RELEASE OF ALL CLAIMS ARE THOSE STATED ABOVE; AND THAT HE IS SIGNING IT VOLUNTARILY.

Dated: _____

ALAN CLANIN

Dated: _____

GENERAL MANAGER
CRESTLINE VILLAGE WATER DISTRICT