

SAN JUAN WATER DISTRICT

Board of Director's Workshop Minutes

October 10, 2016 – 9:00 a.m.

BOARD OF DIRECTORS

Pam Tobin	President
Ken Miller	Vice President
Ted Costa	Director
Dan Rich	Director
Bob Walters	Director

SAN JUAN WATER DISTRICT MANAGEMENT AND STAFF

Josh Horowitz	Legal Counsel
---------------	---------------

OTHER ATTENDEES

Shellie Anderson	Bryce Consulting
Tony Barela	SJWD
Rob Watson	SJWD

AGENDA ITEMS

- I. Board Workshop**
- II. Public Comment**
- III. Adjourn**

President Tobin called the meeting to order at 9:00 a.m.

I. BOARD WORKSHOP

1. Report from the September 26, 2016, Legal Affairs Committee meeting on possible terms of new General Manager contract terms

Mr. Horowitz reviewed the recommended issues for Board discussion by the Legal Affairs Committee, which are outlined in the annotated General Manager (GM) contract. A copy of the annotated contract will be attached to the meeting minutes.

For information, no action requested.

2. Discussion of potential terms of new General Manager contract and possible direction to Ad Hoc Committee on General Manager Recruitment on General Manager recruitment and contract issues

The Board discussed contract item 6c regarding the GM's vehicle or allowance. Ms. Anderson will provide the Board with information regarding agencies

providing an allowance or a vehicle to the GM. In addition, the Board would like to know the District's insurance coverage and premium cost for the GM vehicle as well as liability for personal use.

Director Rich prefers to offer just the allowance in order to avoid the insurance and other issues. Director Miller suggested that the pooled vehicle that is about to be replaced should be placed on hold so that if the GM is given an allowance instead of a vehicle then the current GM vehicle could be used as the pooled vehicle. The Board concurred that the contract should be revised to include an allowance.

The Board discussed contract item 6b regarding salary items. Director Costa commented that CalPERS provides an actuarial (age) table that includes projected increases based on anticipated inflation and he suggests that salary increases for the GM are based on the table. The Board also discussed if all increases in the GM's salary should be negotiated based on merit or if the COLA granted to other employees also should be given to the GM, and if any increase above the applicable percentage in the CalPERS actuarial tables should be paid into the GM's 457 Plan (subject to maximums) or another non-pensionable payment made. At the request of Director Rich, Ms. Anderson will provide the Board with information regarding GM salary increases (from a survey she recently completed) which will show if they are based on performance, COLAs or other methods.

Director Walters moved to keep the three options under contract item 6b for negotiation purposes. President Tobin seconded the motion and it carried unanimously.

Mr. Horowitz will revise the contract to include the three options under contract item 6b as well as revise contract item 6a appropriately.

The Board discussed contract item 6d regarding GM benefits. Mr. Horowitz informed the Board that it is his understanding that accrued sick leave and vacation times that are paid out upon retirement are not pensionable income and he will verify that information and report back to the Board. The Board discussed the carry-over of vacation and sick time and paying out the amounts on the books every two years and would like that to be included in the GM contract. The Board directed Mr. Horowitz to include using vacation time each year in the GM contract, as well. In addition, the Board would like additional time-off for the GM to be combined into one amount, instead of having separate administrative and GM leave amounts.

The Board discussed the District's technical policy as it pertains to cell phones. Ms. Anderson commented that the District has a cell phone allowance policy for managers which covers the GM.

The Board discussed contract item 8 regarding termination. Director Costa commented that both the number of days required by GM to give written notice of termination of the contract should equal the number of days of notice that the District must provide if the Board terminates the GM. The Board directed Mr. Horowitz to revise the GM contract to include a 30-day notice with a provision that allows that number to be negotiated at the Board's request, and severance to be 3 months.

Mr. Horowitz reviewed four additional items not in the existing GM contract that the Legal Affairs Committee suggested be discussed by the Board. He explained that a non-compete clause could be problematic as they are generally disfavored in California because they restrict the ability to earn a living; however, he said that the Board could institute a policy that extends the conflict of interest "no contacts" period. The Board directed Mr. Horowitz not to place an extension of the current one-year "no contacts" period in the GM contract.

The Board directed Mr. Horowitz to include a non-disclosure clause in order to make the law clear in the GM's contract.

The Board discussed having a one year contract followed by a 2-3 year contract. The Board directed Mr. Horowitz to include a one year contract term, but no consensus was reached on whether renewal terms of the contract should be two or more years. The Board agreed that the renewal terms would be negotiated with the selected candidate, but will discuss this issue further.

The Board discussed including a dispute resolution clause and attorney's fees provisions clause. Mr. Horowitz recommends a dispute resolution clause that includes both mediation and binding arbitration under the California Civil Code statutes, but not the attorney's fee provisions clause. The Board requested that a dispute resolution clause be added to the GM contract.

Per Director Rich's request, Ms. Anderson will look to see what the average amount is paid for relocation expenses and will report back to the Board. In addition, President Tobin requested that each Board member provide 5-6 questions to ask the candidates during the interviews. Ms. Anderson will provide the Board with a draft list of questions for review and comments.

For information, no action requested.

3. Discussion of the District's existing employee benefits program

This item was not discussed.

II. PUBLIC COMMENT

There were no public comments.

III. ADJOURN

The meeting was adjourned at 11:06 a.m.

ATTEST:

TERI GRANT, Board Secretary

PAM TOBIN, President
Board of Directors
San Juan Water District

**SAN JUAN WATER DISTRICT
EMPLOYMENT AGREEMENT WITH GENERAL MANAGER**

[Note: This is the existing agreement between the Board and Shauna Lorance, but it has been annotated to include the Legal Affairs Committee's recommended issues for Board discussion of possible modifications to the substantive terms of the contract. I have not included any suggested edits to the actual language of the agreement at this time, but can do so if directed by the Board.]

This Agreement, entered into as of January 1, 2007, amends and supersedes the agreement entered into as of November 12, 2003, by and between San Juan Water District, a public agency ("District"), and Shauna Lorance, an individual ("Ms. Lorance"), who agree as follows:

1. **Recitals.** The District has selected Ms. Lorance as the General Manager of the District, and Ms. Lorance consents to such selection, subject to the terms of this Agreement.

2. **Employment.** The District hereby employs Ms. Lorance as General Manager of the District commencing on December 22, 2003, subject to the terms and conditions of this Agreement. Ms. Lorance hereby accepts such employment on the terms and conditions of this Agreement. In accordance with the provisions of section 53262 of the Government Code, this Agreement is subject to ratification in an open session of a meeting of the Board of Directors of the District.

3. **Term.** This Agreement will remain in effect until terminated by either party in accordance with the provisions of Article 8 of this Agreement.

4. **Duties.** Ms. Lorance's duties under this Agreement will be those assigned to the office of the General Manager, as described in the job description for the General Manager position, as adopted and amended from time to time by the District Board of Directors, and such other duties and responsibilities as may be assigned by the District Board of Directors. The current job description for the General Manager is attached as Exhibit A to this Agreement. Ms. Lorance will be the chief executive officer of the District, and work under the direction of the District Board of Directors.

5. **Work Hours.** Ms. Lorance will devote her full time, attention and energies to her duties, and will be available to work at such times as necessary to fully and competently perform the duties of General Manager, regardless of the number of hours involved. Ms. Lorance acknowledges that the duties of General Manager may require an average of more than forty hours per week, and that some day-to-day work hours may vary. Ms. Lorance will not be compensated for overtime hours worked or otherwise earned, or be entitled to compensatory time off for hours worked in excess of eight hours per day or forty hours per week. Ms. Lorance will not engage in any conduct or other employment or business that would interfere with her responsibilities and duties to the District or that would reflect unfavorably on the interests of the District.

6. **Compensation.** For all services to be rendered by Ms. Lorance under this Agreement, the District will provide to Ms. Lorance the following salary and benefits:

a. During the term of this Agreement, Ms. Lorance will be paid a salary in the amount of \$12,892 per month (i.e., \$154,710 per year; "Base Salary"), provided that, the Base Salary will be subject to (1) the same cost of living increase (if any) as approved by the Board of Directors for all District Employees on July 1 of each year (provided that, Ms. Lorance will not receive a cost of living increase on July 1, 2007); and (2) the amount of any merit salary increase approved by the Board of Directors for the General Manager. In

January of every year, the Board may pay Ms. Lorange up to 10% of her annual base salary as pay-for-performance based upon the Board of Directors' evaluation of her performance during the prior year.

b. The District Board of Directors may, at any time during the term of this Agreement, increase Ms. Lorange's Base Salary. The Board of Directors will conduct an annual review each year of Ms. Lorange's job performance, and consider a merit salary increase.

[The LAC proposes the following issues for Board discussion of salary:

(1) Sole potential annual increase for GM is a negotiated annual merit increase based on performance.

(2) Merit increases are limited to match percentages in CalPERS' actuarial (age) tables.

(3) Instead of incentive award or merit pay above CalPERS actuarial percentage, District makes payment of difference to GM's 457 plan.]

c. During the term of this Agreement, the District will provide a District vehicle for the business and personal use of Ms. Lorange, and pay all insurance, maintenance and operating costs of the District vehicle.

[LAC proposes considering the vehicle provision – review and make possible revisions per negotiations with GM candidate.]

d. Ms. Lorange will be entitled to receive all other employee benefits (including, but not limited to, vacation and sick leave, accrual of vacation and sick leave, retirement system membership and employer contributions, deferred compensation investment opportunities, and employee and dependent coverage on health, dental and other group insurance programs) as provided in the District Personnel Manual (as amended from time to time by the Board of Directors) and as otherwise provided to other regular full-time District employees, but not including overtime or compensatory time off benefits, and provided that, Ms. Lorange will be entitled to 40 hours per year of Administrative Leave and 56 hours per year of General Manager's leave.

[The LAC proposes the following issues for Board discussion of benefits:

(1) Administrative leave and GM leave – review and make possible revisions.

(2) GM benefits to be reviewed generally to identify items that can be changed from existing personnel policy and benefit plans and if any fact any such changes should be made.]

e. Ms. Lorange will be entitled to be reimbursed for the reasonable amount of her actual and necessary expenses incurred in carrying out her duties as General Manager to the extent that her expenses have been properly documented in conformance with the District Personnel Manual and the Internal Revenue Service's requirements for an Accountable Plan. Reimbursement for travel-related expenses incurred by Ms. Lorange as General Manager for travel outside of the United States will require the prior approval of the Board of Directors.

1. Other Terms and Conditions of Employment. Ms. Lorange's employment also will be governed by the District Personnel Manual, and the District and Ms. Lorange will comply with all applicable provisions of the Personnel Manual. If any term or condition of this Agreement is inconsistent or in conflict with a term or condition of the Personnel

Manual, the provisions of this Agreement will govern. Ms. Lorange acknowledges that the position of General Manager is one requiring frequent and highly-visible contact and involvement with members of the public and the community, and that in many respects the General Manager is the spokesperson and representative of the District. Ms. Lorange will not engage in any conduct within or outside the scope of her employment with the District that reflects unfavorably on or discredits the District, its Board of Directors, or other employees.

2. Termination. This Agreement may be terminated in any one of the following ways:

a. By mutual agreement of the parties, expressed in writing.

b. By Ms. Lorange, upon giving to the District not less than 90 days' prior written notice of her election to terminate, provided that, the District will consider a reduction of this period of notice, if requested by Ms. Lorange, if the purpose of the notice of termination is for Ms. Lorange is to pursue employment with an entity other than the District.

c. By the District, for cause, upon giving to Ms. Lorange written notice of immediate termination. The written notice of termination will specify (1) the particular cause(s) and the facts and circumstances justifying the termination of the Agreement for cause, and (2) the opportunity of Ms. Lorange to be heard before the District Board of Directors on the reasons for her termination. If Ms. Lorange requests a hearing, the hearing will be held at the Board's earliest convenience in a closed session, unless Ms. Lorange requests an open session hearing. After the hearing, the Board may affirm, modify or reverse its decision to terminate for cause. For purposes of this Agreement, the following will justify termination for cause: willful breach of duty; habitual neglect of duty; gross insubordination; conviction of a crime involving moral turpitude; conduct that makes it impossible or impracticable to perform the duties under this Agreement, or that seriously impedes District operations; conduct that tends to bring discredit to the District, or conduct unbecoming an employee in public service; mishandling of District funds; any intentional misrepresentation or fraud in connection with the performance of her duties; or, theft of District property.

d. By the District, without cause, upon giving to Ms. Lorange written notice of immediate termination and payment of severance pay in an amount equal to Ms. Lorange's then monthly salary multiplied by 6 months, consistent with the provisions of Government Code sections 53260 through 53264.

Notwithstanding the provisions of any District rule, regulation, policy, procedure or practice to the contrary, upon termination of Ms. Lorange's employment, whether with or without cause, Ms. Lorange will not be entitled to any compensation, damages or other monetary award except as specifically authorized by this Agreement.

[The LAC proposes the following issues for Board discussion of the termination provisions:

(1) By law, an employment agreement between SJWD and the GM must include a term concerning severance pay, but the actual amount of severance can be any amount from zero (except for any actual compensation owed to date of termination) to 18 months. The applicable statute limits the actual amount of severance to the lesser of the remaining term of the employment contract or the amount provided in the contract subject to the 18-month maximum.

(2) The number of days required by GM to give written notice of termination of the contract should equal the number of days of notice District must provide if the Board terminates.]

9. Entire Agreement. This writing constitutes the sole, entire, integrated and exclusive contract between the parties respecting Ms. Lorange's employment by the

District, and any other contracts, contract terms, understandings, promises or representations not expressly set forth or referenced in this writing are null and void, and of no force and effect.

10. Notices. Any notice to be given to Ms. Lorance will be sufficiently served if given to her personally, or if deposited in the United States Mail, regular pre-paid mail, addressed to her at her most recent residence address as shown on the District payroll records. Any notice to be given to the District will be addressed and delivered or mailed to the District Board of Directors at the District office.

11. Successors and Assigns. This Agreement is personal to Ms. Lorance. She may not transfer or assign the Agreement or any part of it. Subject to this restriction on transfer and assignment, this Agreement will bind, and inure to the benefit of, the successors, assigns, heirs and legal representatives of the parties.

12. Amendments. This Agreement may be amended only by a subsequent writing approved and signed by both parties. Any amendment by the District must be approved by the District Board of Directors at a public meeting. Individual Board members do not have the authority, express or implied, to amend, modify, waive or in way alter this Agreement or the terms and conditions of Ms. Lorance's employment.

13. Waiver. The waiver at any time by either party of its rights with respect to a default or other matter arising in connection with this Agreement will not be deemed a waiver with respect to any subsequent default or matter.

14. Construction and Interpretation. The parties agree and acknowledge that this Agreement has been arrived at through negotiation, and that each party has had a full and fair opportunity to revise the terms of this Agreement. Consequently, the normal rule of construction that any ambiguities are to be resolved against the drafting party will not apply in construing or interpreting this Agreement.

SAN JUAN WATER DISTRICT

GENERAL MANAGER

By: _____
President, Board of Directors

Shauna Lorance

Attest:

Secretary

Date

[The LAC also proposed discussion on the following items:

(1) Non-compete clause (Alternative: revolving door ordinance that extends the statutory one-year "no contacts" period.)

(2) Non-disclosure clause (Note: GM already has this obligation as a matter of law, but it would be acceptable to include an express provision if the Board desires.)

(3) Initial contract term of one year, then renew contract every two to three years.

(4) Dispute resolution/attorneys' fees provisions.]