

**EMPLOYMENT AGREEMENT FOR
THE HARBORMASTER OF THE OYSTER POINT MARINA
SAN MATEO COUNTY HARBOR DISTRICT**

THIS AGREEMENT is made and entered into as of November 21, 2021, by and between the San Mateo County Harbor District (hereinafter referred to as "District") a public agency and James Smith (hereinafter referred to as "Harbormaster").

RECITALS

WHEREAS, District desires to employ James Smith as the Harbormaster for Oyster Point Marina of District; and

WHEREAS, James Smith desires to accept the position of Harbormaster 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 James Smith as the Harbormaster of Oyster Point Marina of the San Mateo County Harbor District and James Smith agrees to serve in the capacity of Harbormaster on November 21, 2021 under the following terms as follows:

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 Harbormaster. There is no express or implied promise made to Harbormaster for any form of continued employment. Notwithstanding any other provision in this Agreement or in District Personnel Rules and Policies and Procedures, Harbormaster 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 Harbormaster and the District.

B. This Agreement shall commence as of November 21, 2021 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 Operations provides the Harbormaster with written notice at least 60 days prior to the expiration of the base term or any extension.

Section 2. Duties

Harbormaster shall do and perform all services, acts, functions and duties necessary or advisable to perform the duties of Harbormaster as described in the Job Description, attached. Except as otherwise expressly provided in this Agreement, the Harbormaster is subject to all applicable District Personnel Rules and Policies and Procedures.

Section 3. Compensation and Evaluation.

A. Salary. District agrees to pay Harbormaster an annual base salary of \$126,984, 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

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the duties and obligations of Harbormaster.

8. Performance Evaluation. Director of Operations will conduct a performance review and evaluate Harbormaster's performance at least once annually at or near the anniversary of employment with District. Failure of the Director of Operations to complete the evaluation process shall not result in the amendment or extension of this Agreement. Failure of the Director of Operations to evaluate the Harbormaster shall not preclude the Director of Operations 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. Instead of "Paid Holidays and Floating Holidays" the Harbormaster will receive 100 hours of holiday leave on January 1st of each year which can be taken at any time he chooses following the regular process for requesting time off. Fifty (50) of these hours will be credited to the Harbormaster with the first full pay period of each year, and fifty (50) with the first full pay period of following July 1 of each year.

The Harbormaster 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 employees, except as provided below.

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

1. Harbormaster will accrue PTO at the rate of 37.18 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 Harbormaster 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 physician's verification of illness is provided; or
5. Any other time when Harbormaster requires time off for bona fide medical purposes of Harbormaster or his 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

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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 may Harbormaster cash out EIB hours at any time.

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

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

A. Pension. Mr. James Smith is a “legacy” or “classic” member as defined under applicable CalPERS (California Public Employees Retirement System) statutes and regulations and will be afforded pension benefits as a “legacy” or “classic” employee and under the District’s CalPERS retirement formulas. The District’s CalPERS retirement plan participation formula is at 2.5% at age 55.

The District will throughout the Term of this Agreement make contributions required under the terms of the contract between CalPERS and the District. Mr. James Smith’s CalPERS contribution percentage is 7% during Fiscal Year 2021-22 and will increase by 1% each fiscal year to a maximum of 8%. The District will pay, on Mr. James Smith’s behalf, the balance of Mr. Smith’s contribution to CalPERS as well as the employer contribution to CalPERS.

B. Health and Welfare. The District will provide medical, dental, prescription, and vision coverage for Harbormaster and his immediate, eligible family, at a level of coverage substantially the same as the District provides other management employees. Within its discretion, the District reserves the right to seek out and obtain alternative coverage in order to effect cost savings to the District. Harbormaster 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 Harbormaster a group term life insurance policy whose value will be twice the annual salary up to a maximum of \$200,000. The District will pay the premium for such coverage.

D. Deferred Compensation. Harbormaster is eligible to participate in the District’s Deferred Compensation Plan through ICMA Retirement Corp., CalPERS, or such other plan as is presently provided by the District on behalf of its employees.

E. Additional Pay. The District will provide an amount equal to 2% of base salary to the Harbormaster on an annual basis. The Harbormaster may direct these funds to his 457 deferred compensation account or to his flexible spending account or to both

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accounts as he wishes within the rules of the specific plans.

F. Longevity Health Insurance Premium Payment Program. As Mr. James Smith was hired prior to July 1, 2009, he is entitled to continue his and his dependents' then existing health, dental and vision benefits, and life insurance, at District expense, upon leaving District employment, provided that he meets the following conditions:

- His total service at the time of termination, for any reason is not less than twelve (12) years;
- He became an employee after January 1, 1981;
- He was not terminated for good cause.

The District shall pay the premiums or other charges for qualifying individual's continuing coverage for health; dental, vision, and life Insurance benefits pursuant to the following formula: for each two (2) months of service of an individual, the District will pay one (1) month's premium for said health and welfare benefits and one (1) month's premium for said life insurance. The premium paid shall be that to provide, at the minimum, the standard health, dental, vision, and life insurance benefits provided to the individual and/or his/her dependents at the time the individual leaves District employment, plus any additions to coverage or increased policy limits provided to continuing Employees, subject to the provisions of the insurance itself which may limit the level of continuing benefits or coverage.

Thereafter, the individual may continue the health and welfare or insurance benefits by personal payment if authorized by the respective carriers. If a qualified individual dies before the District's obligation to pay premiums expires, the District will continue to pay the applicable premiums for the individual's spouse and/or dependents, if any, until the District's obligation expires.

If any individual who is otherwise eligible for these continuing benefits obtains similar benefits through any new employment or service with a public or private entity, other than benefits provided as a self-employed individual, the premiums paid by District for said benefit shall cease permanently, regardless of the cessation of said secondary employment benefit(s).

Any qualified individual has the right to demand that the District may direct payment of the cost of the then applicable health and welfare or life insurance premiums to any other carrier or provider of the individual's choosing. Such payments shall not exceed that which the District would have paid had the individual remained in the District's available programs.

This Section is subject to revision or elimination on the basis of future actions by the legislature of the State of California or the Board of Harbor Commissioners of the San Mateo County Harbor District. Should this Section be modified or eliminated all benefits previously earned and vested shall be maintained if permitted by Law. This Section shall be changed only after the parties "meet and confer" and such changes shall not become effective until ratified by the parties.

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Section 6. Other Obligations of the District

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

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

Section 7. Termination and Severance Pay

A. Termination Without Cause. In the event Harbormaster is terminated without cause by the General Manager during the term of this Agreement and during such time as Harbormaster is willing and able to perform his duties under this Agreement, General Manager shall provide Harbormaster written notice of said termination. In the event of such termination, and provided that Harbormaster executes a full and complete waiver and release of any and all claim(s) which were known or reasonably should have been known by Harbormaster and arising out of his employment and termination thereof, the District will pay Harbormaster a cash payment of one month of 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 Harbormaster'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, Harbormaster 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 Harbormaster executes the full and complete waiver and release of all claims.

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

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

B. Termination With Cause. District may terminate Harbormaster 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.A, above. Harbormaster will only be entitled to any unpaid compensation due to him as a matter of law, including the unused balance of any PTO Leave.

C. Nothing in this Agreement prevents, limits, or otherwise interferes with Harbormaster's right to resign at any time from his position with the District. Harbormaster 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.

D. If this Agreement is terminated, any cash settlement related to the termination that Harbormaster may receive from District will be fully reimbursed to District if Harbormaster is convicted of a crime involving an abuse of his 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.

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 Harbormaster, 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 Harbormaster from pursuing an administrative claim with a local, state or federal administrative body or government agency such as the Department of Fair Employment and


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Housing, the Equal Employment Opportunity Commission, or the workers' compensation board.

Section 11. General Provisions

A. Notices. Any notices to be given hereunder by either party to the other may be affected either by personal delivery in writing or by certified mail, postage prepaid with return receipt requested. 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; mailed notices shall be deemed communicated as of three (3) calendar days after mailing.

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

To Harbormaster: James Smith
 

B. Entire Agreement. This Agreement contains all of the covenants and agreements between the parties with respect to the employment of Harbormaster in 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 Director shall not operate or be construed as a waiver of a subsequent breach by Director.

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


H. Voluntary Nature of Agreement. Harbormaster acknowledges and agrees that he is executing this Agreement voluntarily and without any duress or undue influence by the District or anyone else. Harbormaster further acknowledges and agrees that he has carefully read this Agreement and that he has asked any questions needed for him to understand the terms, consequences and binding effect of this Agreement and fully understand it. Finally, he agrees that he has been provided an opportunity to seek the advice of an attorney of his choice before

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signing this Agreement.

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

By: 
James Smith

By:  11/23/2021
James B. Pruett
General Manager