

# **NIPOMO COMMUNITY SERVICES DISTRICT**

**Wednesday, November 18, 2009**

**9:00 A. M.**

## **SPECIAL MEETING AGENDA AND NOTICE**

### **BOARD of DIRECTORS**

**JAMES HARRISON, PRESIDENT**  
**LARRY VIERHEILIG, VICE PRESIDENT**  
**ED EBY, DIRECTOR**  
**MICHAEL WINN, DIRECTOR**  
**BILL NELSON, DIRECTOR**

### **PRINCIPAL STAFF**

**BRUCE BUEL, GENERAL MANAGER**  
**LISA BOGNUDA, ASSIST. GENERAL MANAGER**  
**DONNA JOHNSON, BOARD SECRETARY**  
**JON SEITZ, GENERAL COUNSEL**  
**PETER SEVCIK, DISTRICT ENGINEER**

### **MEETING LOCATION**

**District Board Room**  
**148 S. Wilson Street**  
**Nipomo, California**

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The public has the right to comment on any item on the Special Meeting Agenda when the item is being considered.

A Special Meeting of the Nipomo Community Services District will be held on Wednesday, November 18, 2009, at 9:00 a.m. in the District Board Room, 148 S. Wilson Street, Nipomo, CA. The Special Meeting will be held concurrently with the Nipomo Community Services District regular meeting set for that date. Pursuant to this Notice, the following item will be added to the regular meeting agenda as a Special Meeting item:

**E. ADMINISTRATIVE ITEMS**

- E-5) APPROVE THE INTERIM GENERAL MANAGER CONTRACT BETWEEN THE NIPOMO COMMUNITY SERVICES DISTRICT AND MICHAEL S. LEBRUN. [RECOMMEND APPROVAL]**

TO: BOARD OF DIRECTORS  
FROM: LISA BOGNUDA (LSB)  
DATE: NOVEMBER 16, 2009

**AGENDA ITEM  
E-5  
NOVEMBER 18, 2009**

**APPROVE THE INTERIM GENERAL MANAGER CONTRACT**

**ITEM**

Approve the Interim General Manager Contract between the Nipomo Community Services District and Michael S. LeBrun [RECOMMEND APPROVAL]

**BACKGROUND**

On Friday, November 13, 2009, the Board of Directors interviewed three excellent candidates for the Interim General Manager position. The Board of Directors selected Michael S. LeBrun, subject to entering into an employment contract.

**RECOMMENDATION**

Staff recommends that the Board approve the Interim General Manager Agreement

**ATTACHMENTS**

- Draft Interim General Manager Employment Agreement

**NIPOMO COMMUNITY SERVICES DISTRICT  
INTERIM GENERAL MANAGER  
EMPLOYMENT AGREEMENT**

Attachment:  
Exhibit "A" – Interim General Manager Job Description

This Agreement (sometimes referred to herein as "Contract"), is made and entered into by and between the Nipomo Community Services District, (herein referred to as "District"), and Michael S. LeBrun, (herein referred to as "Temporary Contract Employee") with reference to the following recitals:

**RECITALS**

A. District is a Community Services District organized and operating pursuant to 61000 et. seq., of the California Government Code.

B. Temporary Contract Employee has read the Job Description for the Interim General Manager (Exhibit "A") and possesses the required knowledge, education/experience and licenses/certificates described in the Job Description.

C. District desires to enter into a Contract Employment relationship with Michael S. LeBrun as Interim General Manager;

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, the parties agree as follows:

**SECTION 1. DUTIES**

A. District hereby agrees to employ Michael S. LeBrun as Interim General Manager. A general description of the duties and responsibilities of the Interim General Manager are set forth in the Job Description, attached hereto as Exhibit "A" and incorporated herein by this reference.

B. Michael S. LeBrun agrees to perform the function and duties of the position of Interim General Manager and to perform other duties specified by statute and any additional duties as may be assigned from time to time by the District Board of Directors.

**SECTION 2. TERM**

A. Subject to approval by Board of Directors and providing District with proof of insurance as required by Section 9, this Contract shall take effect on November 30, 2009, at 8:00 a.m. ("Effective Date").

B. Subject to the provisions set forth in Section 3, below, this Contract shall automatically terminate one (1) week after the permanent District General Manager starts employment with District ("Termination Date").

C. Nothing in this Contract shall prevent, limit or otherwise interfere with the right of Temporary Contract Employee to resign at any time from his position with District, subject only to the provisions set forth in Section 3 of this Contract.

### **SECTION 3. TERMINATION AND SEVERANCE PAY.**

A. Temporary Contract Employee understands and expressly agrees that he has no constitutionally protected property or other interests in his employment as Interim General Manager. Temporary Contract Employee understands and expressly agrees that he serves at the will and pleasure of the District Board of Directors and that he may be terminated or asked to resign at any time by the District Board of Directors, with or without cause.

B. Termination Without Cause: Temporary Contract Employee serves at the will and pleasure of the District's Board of Directors, and may be terminated without cause. In the event the District terminates Temporary Contract Employee without cause, Temporary Contract Employee shall receive a lump sum cash payment (severance pay) equal to two weeks (80 hours) of employment (or \$4,422.40). The District shall deduct all normal withholdings required by law and District normal payroll deductions with respect to any amounts paid under this section.

C. Termination For Cause: In the event Temporary Contract Employee is terminated for good cause, Temporary Contract Employee shall be entitled to all salary earned, but not paid as of the date of termination only. Temporary Contract Employee shall not be entitled to any other compensation, including, without limitation, any severance compensation. For purpose of this Agreement, "good cause" shall include, but not necessarily be limited to, any of the following:

- (1) Any material breach by Temporary Contract Employee of any term or provision of this Agreement;
- (2) Temporary Contract Employee's failure to perform his duties in a professional and responsible manner consistent with generally accepted standards of the profession;
- (3) Temporary Contract Employee's misfeasance;

- (4) Temporary Contract Employee's malfeasance;
- (5) Conduct unbecoming the position of Interim General Manager or likely to bring discredit or embarrassment to the District;
- (6) Insobriety;
- (7) Conviction of a misdemeanor involving moral turpitude;
- (8) Conviction of a felony;
- (9) Engaging in illegal business practices in connection with the District's business;
- (10) Misappropriation of the District's assets;
- (11) Excessive unexcused absences of Temporary Contract Employee from his employment during usual working hours; or
- (12) Failure to perform or habitually neglecting the duties which he is required to perform under this Agreement.

D. Temporary Contract Employee may terminate this Contract at any time by giving District twenty-one (21) calendar days written notice in advance, unless the parties otherwise agree in writing. Should Temporary Contract Employee fail to give such notice, Temporary Contract Employee shall pay to the District as liquidated damages the sum of forty dollars (\$100) per working day (not to exceed a maximum of 5 days per week), for the difference between the number of actual days of prior notice and twenty-one (21) calendar days. Temporary Contract Employee agrees that the liquidated damages may be deducted from his final paycheck.

E. If this Agreement is terminated by District for cause pursuant to Section C, above and it is later determined that the termination was wrongful, such termination automatically shall be converted and treated as a Termination Without Cause under Section B, above, and Temporary Contract Employee shall be entitled to receive only the amounts payable hereunder in the event of a Termination Without Cause.

#### **SECTION 4. SALARY AND WORKING HOURS**

Subject to the time off provisions of Section 5, the following shall apply to Temporary Contract Employee.

A. Salary. District agrees to pay Temporary Contract Employee for his services rendered, a monthly salary of \$9,583.33 (nine thousand and five hundred eighty-three dollars and thirty-three cents) with normal withholdings deducted as

required by law, payable in equal installments at the same time as other employees of the District are paid.

B. Hours per week. Temporary Contract Employee shall work a minimum of 40 (forty) during normal District business hours per week.

#### **SECTION 5. TIME OFF**

Temporary Contract Employee may take time off for the purposes of vacation as follows:

(1) Temporary Contract Employee may take time off for vacation as follows:

- a. January \_\_\_\_\_ 2009, through February \_\_\_\_\_ 2009,
- b. From December 25, 2009, through December 31, 2009,
- c. District legal holidays.

(2) Provided that Temporary Contract Employee's duties are duly delegated and the President has been provided with a minimum of 10 (ten) calendar days notice, then, in addition to the vacation time authorized by subparagraph (1), Temporary Contract Employee may take additional vacation days not to exceed two (2) days in a thirty (30) day period.

(3) Temporary Contract Employee's monthly compensation shall be proportionally reduced for vacation time off.

#### **SECTION 6. BENEFITS**

Temporary Contract Employee shall not receive District benefits such as health insurance, retirement, vacation or sick leave. Temporary Contract Employee shall not be credited for holidays or leave for jury duty.

#### **SECTION 7. EXPENSES**

The District shall reimburse Temporary Contract Employee for incurred expenses as follows:

A. Automobile.

1. The District will supply an automobile for Temporary Contract Employee's use in performing services for the District.
2. In the event Temporary Contract Employee is required to use his own automobile in performing services for the District than District shall reimburse Temporary Contract Employee for automobile expenses at the prevailing IRS per diem mileage rate for expenses incurred.

- B. Payment. Temporary Contract Employee shall invoice District on a monthly basis for automobile expenses referenced in this Section A(2) which shall be considered for approval as part of the monthly Warrant Register prior to payment.

#### **SECTION 8. EMPLOYMENT STATUS**

A. Temporary Contract Employee understands and agrees that he is not entitled to be paid compensation comparable to a regular District employee performing similar work, but that the compensation received herein is negotiated for services rendered by Temporary Contract Employee.

B. Temporary Contract Employee understands and agrees that the terms of his employment is governed only by this Contract and that no other right of regular employment is created hereby.

#### **SECTION 9. AUTOMOBILE INSURANCE**

General Manager shall procure and maintain automobile insurance coverage, on an "occurrence basis", with companies authorized to do business in the State of California, with coverage of no less than five-hundred thousand dollars (\$500,000) per accident.

#### **SECTION 10. PERSONNEL POLICIES**

Temporary Contract Employee has read and agrees to be bound by the following District Policies:

- A. INJURED ON DUTY
- B. SAFETY
- C. USE OF DISTRICT VEHICLES AND PROPERTY
- D. APPEARANCE AND CONDUCT
- E. SUBSTANCE ABUSE
- F. SEXUAL HARASSMENT
- G. HARASSMENT
- H. FITNESS FOR DUTY

## **SECTION 11. NOTICES.**

A. Notices pursuant to this Agreement shall be in writing and shall be deemed received at the earlier of either (a) actual receipt, or (b) three (3) days following deposit in the U.S. Mail as provided below. Notices delivered by U.S. or private mail shall be directed to the addresses shown below, provided that a party may change addresses by giving written notice to the other party in accordance with this subsection:

1. District:  
Nipomo Community Services District  
148 S. Wilson Street, Nipomo, CA 93444  
Attn: President of the Board of Directors
2. Temporary Contract Employee:  
Michael S. LeBrun  
2268 Callendar Road, Arroyo Grande, CA 93420

B. Notices under this section may be:

- (1) Served personally; or
- (2.) Sent by facsimile (provided a hard copy is mailed within one (1) business day); or
- (3) Delivered by first class U.S. Mail, certified, with postage prepaid and a return receipt requested; or
- (4) Sent by Federal Express or equivalent private mail delivery service.

## **SECTION 12. GENERAL PROVISIONS.**

A. Temporary Contract Employee shall comply with all local and state requirements regarding conflicts of interest and shall avoid personal involvement in situations which are inconsistent or incompatible with a position of Interim General Manager or give rise to the appearance of impropriety.

B. Subject to the provisions of Sections 995 et seq. of the Government Code and upon request of Temporary Contract Employee, District shall provide for the defense of any civil action or proceeding brought against him, in his official or individual capacity or both, on account of an act or omission in the scope of his employment as an employee of the District.

C. The terms of this Agreement are intended by the parties as the final expression of their Agreement and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. The parties further intend that this Agreement constitutes the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial or arbitration



proceeding, if any, involving this Agreement. Any amendments to this Agreement must be in writing and executed by both parties.

D. In the event of Temporary Contract Employee's death, Temporary Contract Employee's heirs, legatees, devisees, executors or legal representatives shall be entitled to all salary earned, but not paid. Temporary Contract Employee and his heirs, legatees, devisees, executors or legal representatives shall not be entitled to any other compensation, including, without limitation, any severance compensation.

E. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

F. This Agreement shall be governed by the laws of the State of California. Temporary Contract Employee and the District agree that venue for any dispute shall be in San Luis Obispo County, California.

G. The parties acknowledge that they understand the significance and consequences of this Agreement. The parties also acknowledge that they have been given full opportunity to review and negotiate this Agreement and execute it only after full reflection and analysis, and that they have had an opportunity to review this document and its application and meaning with their respective attorneys and advisors. This Agreement shall not be interpreted against the party who prepared the initial draft because all parties participated in the drafting of this Agreement by having ample opportunity to review and submit suggested changes or corrections for incorporation into the final version of this Agreement.

H. Temporary Contract Employee may not assign this Agreement in whole or in part.

I. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument, and shall be governed by the laws of the State of California.

J. This Agreement shall become effective on the date the Agreement is approved by the District Board of Directors.

**IN WITNESS WHEREOF**, District and Temporary Contract Employee have executed this Contract on the day and year first set forth above.

I have read this Contract and agree to be employed by the District under the terms and condition herein stated. I understand and agree that no representative of the District has the authority to enter into any agreement, expressed or implied, that would modify the terms and conditions of this Contract.

\_\_\_\_\_  
Michael S. LeBrun,  
Temporary Contract Employee

\_\_\_\_\_  
Date

\_\_\_\_\_  
James Harrison, President  
Board of Directors  
Nipomo Community Services District

\_\_\_\_\_  
Date

DRAFT

**EXHIBIT "A" TO  
INTERIM GENERAL MANAGER'S EMPLOYMENT CONTRACT  
JOB DESCRIPTION  
NIPOMO COMMUNITY SERVICES DISTRICT**

**1. GENERAL**

Under policy direction of the Board of Directors, plans, organizes, coordinates and supervises all District functions and activities related to the production and distribution of potable water within the District and the collection, treatment and disposal of wastewater within the Town division and Blacklake division and other functions of the District including contract administration for solid waste services. Additionally, the Interim General Manager provides policy guidance and program evaluation to staff and the Board of Directors; fosters cooperative working relationships with intergovernmental and regulatory agencies, the public, various public and private organizations and District staff; performs related work as assigned. This position FLSA exempt.

**2. EXAMPLES OF DUTIES (Illustrative Only)**

A. Plans, organizes, coordinates and administers, either directly or through subordinate supervisors, the work of the District in accordance with the adopted goals and objectives of the Board of Directors and applicable laws and regulations.

B. Provides ongoing Project Administration for the all the District projects including, but not limited to, the Santa Maria Intertie Project, the Southland Waste Water Treatment Upgrade Project, the development of Park services, the Urban Water Management Plan Update and the Willow Road Waterline Project.

C. Prepares and administers the budget for the District; reviews all District expenditures; provides financial management for the District.

D. Prepares Agendas, with the cooperation of the President, for all meetings of the Board of Directors.

E. Assures that appropriate notice of Board meetings is posted and that other legal notification requirements are met.

F. Responsible for the preparation of Staff Reports for Agenda items.

G. Prepares for and attends all regular and special meetings of the Board of Directors and other meetings as directed by the Board of Directors.

H. Represents the Board and the District in contacts with governmental agencies, community groups and various business, professional and legislative organizations and District customers; acts as a District liaison with the media.

I. Directs and reviews special studies; provides for contract services as required and administers various service contracts.

J. Administers discipline as required; provides guidance and direction to staff regarding policies and procedures.

K. Prepares a variety of correspondence, policies, procedures, reports, minutes and other written materials.

L. Maintains and directs the maintenance of official District files.

M. Assures that the Board is kept informed of the financial status of District programs and activities.

N. In concert with the District Counsel, monitors changes in the law and operational process changes that may affect District operations; implements operational and procedural modification as required.

### **3. LICENSING AND CERTIFICATION**

A. Must possess a valid California Class C driver's license and have a satisfactory driving record.

B. Must be bondable by District's fidelity bond insurer.