

FIRST AMENDED EMPLOYMENT AGREEMENT

THIS FIRST AMENDED EMPLOYMENT AGREEMENT, entered as of May 22, 2019, is by and between INLAND EMPIRE UTILITIES AGENCY a Municipal Water District organized and operating pursuant to California Water Code Section 71000 et seq. ("Employer"), and SHIVAJI DESHMUKH an individual ("Employee"). Employer and Employee agree to the following terms and conditions of employment:

WHEREAS, The Parties have previously entered into an Employment Agreement effective April 8, 2019; and

WHEREAS, certain changes to the Employment Agreement are deemed necessary to bring that agreement into conformity with other executive management employment agreements currently in effect at the Agency (Employer);

NOW THEREFORE the Parties agree as follows:

1. Period of Employment.

- (a) **Basic Term.** Commencing on April 8, 2019 and continuing until June 30, 2024, (the "Term Date"), Employer shall employ Employee as the General Manager. The Term Date may be extended under Section 1 (b), unless the employment is terminated sooner in accordance with Section 5 below. 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.
- (b) **Renewal.** This Agreement shall be automatically renewed for an additional one (1) year period on the Term Date and on each anniversary thereof, unless one party gives to the other advance written notice of non-renewal at least sixty (60) days prior to such date. Either party may elect not to renew this Agreement with or without cause, in which case this Section 1 (b) shall govern Employee's termination and not Section 5 [except for Employee's termination obligations set forth in Section 5(g), which shall remain in effect].

2. Duties and Responsibilities.

- (a) **Position.** Employee shall serve as the General Manager for the Employer. In that capacity, Employee shall perform all services, acts, and functions necessary and proper 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 ("the Board"), and subject to the direction, prior consent, and subsequent ratification of the Board. Employee's duties shall include, but shall not be limited to, supervising Employer's personnel and financial matters, attending meetings of the Board and its Committees, supervising the administration of all operations of Employer, subject to policies set by the Board, and managing and conducting all the business of Employer. In addition, Employee shall report directly to the Board and shall perform any special duties assigned or delegated to him by the Board.

- (b) Availability and Work Schedule. In order that nothing interfere with the performance of Employee's duties under this Agreement or create any conflicts of interest during his employment, Employee shall devote his full energies, interest, abilities, and productive time to the satisfactory performance of this Agreement and shall not engage in any other activities except as otherwise approved by the Board. 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.
- (c) Prohibited Activities. Except upon the prior written consent and express approval of the Board, Employee (during the Employment Term) shall not (i) borrow on behalf of 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 the Board; (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 of Employer; or (v) accept any position with an outside agency without prior approval of the Board. 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) Base Salary. Employer shall pay Employee a Base Salary at the rate of \$285,000.00 per year during the Employment Term in accordance with Employer's duly established practices. For purposes of this Agreement, the term "Base Salary" shall be defined as Employee's annual gross compensation, exclusive of the cost of any insurance or other benefits made available to Employee. Base Salary shall be payable to Employee in installments consistent with Employer's regular pay period cycles and subject to appropriate withholdings. Employer may, but is not obligated to, increase Employee's Base Salary as deemed appropriate by the Board in the exercise of its sole discretion upon completion of its annual review of Employee's job performance.
- (b) Cost of Living Adjustment. Employee shall be entitled to cost of living increases commensurate with those cost of living increases extended to other executive management employees.

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- (c) Performance Award. During the Employment Term, Employer, in the exercise of its discretion, may also pay Employee a Performance Award in addition to Base Salary for successful completion of goals and objectives established by the Board. For purposes of this Agreement, the term "Performance Award" shall be defined as meritorious compensation, subject to appropriate withholdings, not included in the calculation of Base Salary. The maximum amount of any Performance Award that Employee may receive under this Agreement shall be ten percent (10%) of Base Salary.
- (d) Automobile Allowance. During the Employment Term, Employer shall provide Employee an automobile allowance of \$700.00 per month for use of Employee's personal vehicle on Employer's business. The automobile allowance includes full compensation for all costs, depreciation, operation, maintenance and repairs, insurance, gasoline, tires and oil, and all other incidental expenses associated with the operation of Employee's personal automobile on Employer's business.
- (e) Benefits. During the Employment Term, Employee shall be entitled to receive those benefits provided by Employer to its executive management employees in accordance with Employer's standard policies. 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. Medical benefits shall be made available to Employee and his dependents in an amount equal to the cost of the most generous family coverage premium available through the Public Employment Retirement System (PERS). Employer will pay the monthly premium on the medical and dental benefit provided by Employer to Employee. Employee may exercise the option to accept 100% of the value of the health benefits described herein as cash in lieu of coverage, however, Employee must provide Employer with proof of health coverage through an alternative provider. Commencing on the month following retirement, whereupon Employee receives a retirement allowance from PERS, Employer shall provide Employee and his dependents medical, dental and vision, and other Employer provided insurance coverage, to the extent that it is provided to other executive management employees. Employee also shall be entitled to any benefits or compensation tied to termination as described in Section 5 below. All compensation and comparable payments to be paid to Employee under this Agreement shall be less withholdings required by law.
- (f) Supplemental Insurance. Employee shall receive term life insurance coverage from Employer 1x employee's annual salary up to \$300,000 during the Employment Term. Employee shall cooperate with Employer if Employer seeks to obtain "key employee" insurance coverage on Employee for the benefit of Employer.
- (g) Vacation. Subject to paragraph 4b of this Agreement, Employee shall be entitled to one hundred sixty (160) hours of vacation time each employment anniversary year during the Employment Term without loss of compensation, eighty (80) hours of which shall be credited to Employee's account immediately upon execution of this Agreement and the remainder of which shall accrue in the same manner as otherwise applicable to executive management employees of Employer. Upon termination of employment, Employee shall be entitled to payment of all accrued but unused vacation leave at the rate of compensation in effect at the time of termination in conformance with Employer's then-current policy.

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- (h) Sick Leave. Subject to paragraph 4b of this Agreement, Employee shall be entitled to accrue sick leave each year during the Employment Term without loss of compensation, in an amount commensurate with executive management employees. Upon termination of employment, Employee shall be entitled to payment of all accrued but unused sick leave at the rate of compensation in effect at the time of termination in conformance with Employer's then-current policy including, but not limited to, policies limiting the accrual of sick leave.
- (i) Executive Leave. Subject to paragraph 4b of this Agreement, Employee shall be entitled to eighty (80) hours of executive leave each fiscal year during the Employment Term without loss of compensation, all of which shall be credited to Employee's account immediately upon execution and again on the first day of July of each year during the Employment Term. Executive leave shall accrue in the same manner as otherwise applicable to executive management employees of Employer.
- (j) Professional Development. Employer shall pay for travel and subsistence expenses of Employee for professional and office meetings, conferences, workshops and occasions adequate to continue the professional development of Employee and to adequately pursue necessary official functions for Employer. All such expenditures shall be in conformity with the applicable policies and procedures of Employer.
- (k) General Expenditures. Employer recognizes that certain expenses of non-personal and job affiliated nature are incurred by Employee in conjunction with his responsibilities hereunder and shall reimburse or pay said general expenses in accordance with existing Employer policy for other executive management employees.

4. Other Terms and Conditions of Employment.

- (a) Automobile Insurance. Employee shall, at his sole expense, acquire and maintain in effect always during the term of this Agreement automobile insurance, in a form acceptable to the Board, covering all motor vehicles operated by Employee while on Employer's business and providing liability limits for bodily injury and property damage of not less than \$500,000, and uninsured and underinsured motorist coverage of at least \$500,000, combined single limit per occurrence. Employer and its officers, directors, and employees shall be expressly covered as additional insureds on all insurance required under this Agreement, and endorsements evidencing such coverage shall be provided to the Board. On June 30 of each year Employee shall provide the Board with certificate(s) of insurance which reflect(s) the coverages required under this Agreement, in a form acceptable to the Board, and signed by the insurer(s) or an authorized representative. The said certificate(s) shall contain a stipulation that none of the coverages required under this Agreement will be canceled, modified, non-renewed, or suffer any changes in conditions except after at least thirty (30) days prior written notice to the Board. All insurers providing the coverages required under this Paragraph shall be admitted, domestic carriers with all evidences of coverages countersigned by authorized representatives properly licensed in the State of California. Said insurers must also possess at least an "A: XIII" policyholder's rating in accordance with the current Best's Key Rating Guide or equivalent.
- (b) Employer Reservation. Employer shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of

Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement or applicable law. Except as herein provided, all other requirements of the ordinances, resolutions, and regulations and rules of Employer relating to vacation and sick leave, retirement and pension system contributions, holidays, and other fringe benefits and working conditions, as they now exist or hereafter may be amended, also shall apply to Employee as they would to other employees of Employer, in addition to said benefits enumerated specifically herein.

- (c) Evaluation of Performance. Employer shall evaluate the performance of Employee not less than every twelve months, or more often at the Employer's discretion. Such written and/or oral evaluations shall be used as a basis for determining in the exercise of the Employer's sole discretion any adjustments to compensation and/or benefits to which Employee may be entitled.
- (d) Personnel Manual. Subject to paragraph 4b of this Agreement, all provisions, terms and conditions of the Executive Management Employees Personnel Manual not in conflict with the terms of this Agreement shall apply. To the extent such a conflict occurs, this Agreement shall be controlling.
- (e) Classification. The position of General Manager shall be deemed a separate classification of employee.

5. 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 because of any physical or mental incapacity, Employee has been or will be prevented from properly performing his duties under this Agreement for more than six (6) consecutive months, then to the extent permitted by law, the Board may terminate the Employment Term, pursuant to Section 5(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 and a lump sum cash payment equal to three (3) months base salary; 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, the 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 on or off the Employer's premises or during working or non-working time (which

may affect the Employee's relationship to his job and/or the Employer'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 six (6) consecutive months.

- (d) By Employer Not for Cause. Notwithstanding paragraph 5 (c), Employee is deemed an "at will" employee and the Board may dismiss Employee without cause by a majority vote notwithstanding anything to the contrary contained in or arising from any statements, policies, or practices of Employer relating to the employment, discipline, or termination of its employees. If such termination occurs, Employer shall pay Employee all compensation then due and owing for the period prior to termination, plus a lump sum cash payment equal to six (6) months Employee's base salary and thereafter all of Employer's obligations under this Agreement shall cease.
- (e) By Employee Not for Cause. At any time, Employee may terminate his employment for any reason, with or without cause, by providing Employer ninety (90) days advance written notice. The Board 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 worked, plus an amount equal to the base salary Employee would have earned through the balance of the notice period, not to exceed ninety (90) days; thereafter, all of Employer's obligations under this Agreement shall cease.
- (f) By Employee for Good Reason. At any time, Employee may terminate his employment for good reason (as defined below) by giving ninety (90) days advance written notice to Employer. "Good Reason" shall be any material breach of this Agreement by Employer that remains uncured at the end of the above notice period. The Board shall have the option in its complete discretion to make Employee's termination effective at any time prior to the end of the above notice period, provided Employer pays Employee all compensation due and owing through the last day worked and through the balance of the notice period not to exceed ninety (90) days. If Good Reason is found to exist pursuant to Section 7 of this Agreement, the maximum amount that Employer shall be liable to Employee therefore shall be a monetary sum 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, which shall be in lieu of any damages under this Agreement for any alleged breach. Thereafter, all of Employer's obligations under this Agreement shall cease.
- (g) 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.
- (h) Proprietary Information. "Proprietary Information" is all information and any idea 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 during his 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 any termination of employment, Employee shall not use any Proprietary Information and shall not disclose any Confidential Information except with the express written consent of Employer.

6. Arbitration.

- (a) Arbitrable Claims. All disputes between Employee (his attorneys, successors, and assigns) and Employer (its Affiliates, shareholders, directors, officers, employees, agents, successors, attorneys, and assigns) of any kind whatsoever, including without limitation all disputes relating in any manner to the employment or termination of employee and all disputes arising under this Agreement ("Arbitrable Claims"), shall be resolved by arbitration. All persons and entities specified in the preceding sentence (other than Employer and Employee) shall be considered third-party beneficiaries of the rights and obligations created by this Section. Arbitrable Claims shall include but are not limited to contract (express or implied) and tort claims of all kinds, as well as all claims based on any federal, state, or local law, statute, or regulation, excepting only claims under applicable worker's compensation law and unemployment insurance claims. Arbitration shall be final and binding upon the parties and shall be the exclusive remedy for all Arbitrable Claims. THE PARTIES HEREBY WAIVE ANY RIGHTS THEY MAY HAVE TO TRIAL BY JURY REGARDING ARBITRABLE CLAIMS.
- (b) Procedure. Arbitration of Arbitrable Claims shall be in accordance with the Employment Dispute Resolution Rules of the American Arbitration Association ("AAA Employment Rules") which can be found at <https://www.adr.org> except as provided otherwise in this Agreement. In any arbitration, the burden of proof shall be allocated as provided by applicable law. Either party may bring an action in court to compel arbitration under this Agreement and to enforce an arbitration award. Otherwise, neither party shall initiate or prosecute any lawsuit or administrative action in any way related to any Arbitrable Claim. All arbitration hearings under this Agreement shall be conducted in San Bernardino County, California. The Federal Arbitration Act shall govern the interpretation and enforcement of this Section 6. The fees of the arbitrator shall be borne by Employer.
- (c) Confidentiality. All proceedings and all documents prepared about any arbitrable claim shall be confidential and unless otherwise required by law, the subject matter thereof shall not be disclosed to any person other than the parties to the proceedings, their counsel, witnesses, and experts, the arbitrator and if involved, the court and court staff.

- (d) Continuing Obligations. The rights and obligations of Employee and Employer set forth in Section 6 of this Agreement shall survive the termination of Employee's employment and the expiration of the Employment Term.

7. 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 Address:

Board of Directors
Inland Empire Utilities Agency
P.O. Box 9020
Chino Hills, CA 91709

8. 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 the 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.

9. 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.

10. 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.

11. Assignment.

Neither party shall assign any rights or obligations under this Agreement.

12. 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.

13. 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.

14. Governing Law.

This Agreement shall be governed by and construed in accordance with the law of the State of California.

15. Interpretation.

This Agreement shall be construed according to its fair meaning and any uncertainty or ambiguity contained herein shall not be interpreted against the party responsible for drafting 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.

16. Employee Acknowledgement.

Employee acknowledges that he has had the opportunity to consult legal counsel regarding 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.

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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: 
PAUL HOFER, President
Board of Directors
Inland Empire Utilities Agency

ATTEST:

By: 
KATI PARKER, Secretary
Inland Empire Utilities Agency

EMPLOYEE:

By: 
Shivaji Deshmukh

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