

RESOLUTION NO. 2016-343
A RESOLUTION OF THE SOUTH SAN LUIS OBISPO
COUNTY SANITATION DISTRICT BOARD OF DIRECTORS
RATIFYING THE APPOINTMENT OF AND AN EMPLOYMENT CONTRACT FOR
GERHARDT HUBNER AS DISTRICT ADMINISTRATOR FOR THE SOUTH SAN
LUIS OBISPO COUNTY SANITATION DISTRICT

WHEREAS, the former part-time District Manager resigned employment effective September 11, 2015; and

WHEREAS, on September 16, 2015, the South San Luis Obispo County Sanitation District (District) Board of Directors approved replacement of the part-time District Manager position with a full-time District Administrator; and

WHEREAS, the Board desired to recruit for a new District Administrator; and

WHEREAS, the Interim District Administrator was appointed to serve while the Board conducted a recruitment for District Administrator; and

WHEREAS, on March 3, 2016, the Board met in closed session and authorized the Board Chairman to negotiate an employment agreement with Gerhardt Hubner for the District Administrator position; and

WHEREAS, the negotiations resulted in an agreement as to the terms and conditions of employment; and

WHEREAS, on April 6, 2016, the Board reviewed the appointment of and employment agreement for Mr. Hubner in open session, and approved same through a minute order and directed the employment agreement be brought back for formal ratification; and

NOW, THEREFORE, BE IT RESOLVED that the South San Luis Obispo County Sanitation Board of Directors:

1. Adopts a base salary of \$12,500 per month for the classification of District Administrator; and
2. Ratifies the employment agreement for Gerhardt Hubner as District Administrator, attached hereto and incorporated as "Attachment A;" and
3. Authorizes and directs the Chairman of the Board to execute the employment agreement with Gerhardt Hubner.

PASSED AND ADOPTED at a regular meeting of the South San Luis County Sanitation District Board of Directors held this 20th day of April 2016.



**EMPLOYMENT AGREEMENT
BETWEEN THE
SOUTH SAN LUIS OBISPO COUNTY SANITATION DISTRICT AND GERHARDT HUBNER
FOR
DISTRICT ADMINISTRATOR SERVICES**

This Agreement (hereinafter referred to as the "Agreement") is entered into this 24th day of March, 2016, by and between the South San Luis Obispo County Sanitation District, acting through the District Board of Directors, (hereinafter referred to as "District") and Gerhardt Hubner, (hereinafter referred to as the "Employee"), with reference to the following:

WHEREAS, the District has conducted an extensive search for a District Administrator and desires to appoint the best qualified candidate to the position; and

WHEREAS, the District is committed to developing and promoting an effective and professional Management Team, including the District Administrator; and

WHEREAS, the District Administrator shall be an "at-will" employee and shall serve at the pleasure of the District; and

WHEREAS, the District appointed Gerhardt Hubner as the District Administrator on March 16, 2016; and

WHEREAS, it is the desire of the District to provide certain benefits, establish certain conditions of employment, and set working conditions of said Employee; and

WHEREAS, it is the desire of the District to: provide inducement for Employee to remain in such employment; make possible full work productivity by assuring Employee's morale, health, and peace of mind with respect to the future security of his and his family; assist in the maintenance of the health and well-being of Employee; provide a just means for terminating the service of Employee at such time as he may be unable to discharge fully his duties or when the District desires to otherwise terminate his employment; act as a deterrent against malfeasance or dishonesty for personal gain on the part of the Employee and against morally questionable personal financial dealings; and establish a clear and mutually understood system of compensating Employee.

NOW, THEREFORE, in consideration of the promises, terms, and conditions in this Agreement, the District and Employee agree as follows:

1. **TERM OF EMPLOYMENT.**

- A. Employee's status shall be "at-will" and shall serve at the pleasure of the District. Nothing in this Agreement or any other existing or future District document, not specifically amending this Agreement, shall prevent, limit or otherwise interfere with the right of the District to terminate the employment of said Employee at any time and for any reason, or for no reason, subject to the provisions specified in Section 3 of this Agreement.
- B. Subject to the conditions set forth in this Agreement, the Employee shall be employed in the position of District Administrator for a thirty-six (36) month period continuing from April 18, 2016 through April 30, 2019.

C. The term of employment may be extended at any time prior to the expiration of this Agreement by the mutual consent of District and the Employee. Such consent must be evidenced by a written Amendment to this Agreement approved by the Board and signed by the District and the Employee.

2. COMMITMENTS OF THE PARTIES.

A. Employee Commitments.

i. Duties, Responsibilities and Authority.

1. District retains Employee to perform the duties of the District Administrator and any other duties as may be required by the Board of Directors which are not inconsistent with the provisions of this Agreement or the law.
2. The Employee shall have those powers and perform all of the duties of the District Administrator as set forth in the laws of the State of California, District Ordinances, and District policies and procedures approved by the District from time to time.
3. The Employee shall be subject to all District rules, regulations and policies applicable to employees and management and to any subsequently adopted laws, regulations and policies, which do not conflict with this Agreement or the law.
4. The Employee shall, subject to the direction and control of the District Board of Directors, exercise administrative supervision over the District and its employees so that the statutory and other legal duties of the District are fully satisfied.
5. The Employee shall serve the District diligently and to the best of his abilities in all respects and shall always act in District's best interest in fulfilling its legal responsibilities as a county sanitation district organized under California Health and Safety Code Section 4700 et seq..
6. The Employee agrees to make sufficient time available to each member of the District Board of Directors each week to provide an opportunity to be briefed on District issues.
7. The Employee agrees to remain in the exclusive employment of District during the term of this Agreement and shall not accept other employment or perform other services for compensation without having first obtained written permission from the Board, which the Board may withhold at its sole discretion.

ii. Hours of Work.

1. The Employee is an FLSA exempt, at-will employee but is expected to engage in the hours of work that are necessary to fulfill the obligations of the District Administrator's position. The Employee is a full-time employee expected to work the normal business hours of the District and

is expected to be available at all times unless he is on official leave and has designated a full-time management employee in an acting capacity as District Administrator.

2. It is recognized the Employee must devote a great deal of time to the business of the District outside of the District's customary office hours, and to that end the Employee's schedule of work each day and week shall vary in accordance with the work required to be performed. The Employee shall spend sufficient hours onsite to perform the District Administrator's duties; however, the Employee has discretion over the Employee's work schedule and work location.

B. District Commitments.

i. Salary.

1. The District agrees to pay Employee \$12,500.00 monthly. Employee shall be paid in accordance with the District's customary payroll practices.
2. Thereafter, and subject to an annual evaluation of performance no later than thirty days after the anniversary date hereof, the District may increase Employee's compensation upon completion of the goals provided to the Employee by the Board upon hiring and at each successive annual evaluation. Any future decrease in the salary of the Employee will be made by the Board of Directors only in the event that a decrease is made in the salaries of all District employees. In such event the percentage decrease in the salary of Employee shall be no more than the average percentage decrease of all other District employees.

ii. Benefits.

In addition to the Employee's salary, the Employee shall receive the following benefits:

1. Group Insurance. District agrees to provide the same type and level of insurance benefits as provided to the Plant Superintendent, such as medical, dental, disability and life insurance.
2. Retirement. District agrees to provide the same type and level of retirement benefits as provided to the Plant Superintendent. Employee shall pay the full employee contribution rate, which is currently 8%.
3. Automobile. Unless District provides a District vehicle for Employee's business use, District agrees to pay Employee an automobile allowance in the amount of \$350 per month for the use of his personal vehicle while on District business. The Employee agrees to pay all costs of ownership, insurance, maintenance and all other costs related to this vehicle. The Employee shall not be entitled to mileage reimbursement for travel within District boundaries. Employee shall maintain at his own expense an automobile general liability and property damage insurance policy with

limits of at least \$300,000 for personal injury and \$100,000 for property damage and an umbrella policy of no less than \$1,000,000 at all times.

4. Business Expenses. District agrees to reimburse the Employee for District-related business expenses and travel expenses, subject to State law and such rules, regulations and policies as the District has or may establish and amend from time to time.
5. Association Dues. District agrees to pay on behalf of the Employee any annual professional association dues as required for membership in professional organizations common to the field of wastewater special district management and public administration, and/or if the Employee's membership in the Association is reasonably considered to be beneficial to the District.
6. The District agrees to pay the travel and subsistence expenses of the Employee to pursue official functions for the District, and meetings and occasions to continue the professional development of the Employee, including, but not limited to, national, state, regional and local training conferences; short courses, institutes and seminars; and, governmental groups and committees upon which the Employee serves as a member subject to annual review and approval by the District Board of Directors.
7. Holidays, Vacation and Sick Leave. District agrees that policies, rules and regulations of District for the Plant Superintendent relating to holidays, vacation and sick leave and other leaves of absence as they now exist, or as may be amended, shall apply to the Employee with the following exception.
 - a. At the start of the term of this Agreement, District agrees to provide a vacation bank of 40 hours and the Employee's vacation leave accrual will begin at 15 days annually.
8. Management Leave. The District recognizes that extraordinary efforts may be required of the Employee to fulfill the responsibilities of the District Administrator position, and that the District Administrator position is designated as being exempt from the overtime provisions of the Fair Labor Standards Act. The District agrees to provide five (5) days of Administrative Leave at the start of the term of this Agreement and then on January 1 for each remaining year of the Agreement. An additional five (5) days may, upon written request of Employee, be granted annually at the discretion of the Board of Directors.

C. District Board of Directors Commitments.

- i. The District Board of Directors sets policy for the governance and administration of the District, and it implements its policies through the District Administrator.
- ii. The District Board of Directors recognizes that to meet the challenges facing the District they must exercise decisive policy leadership. As one step in carrying out this leadership responsibility, the District Board of Directors commits to spending time each year outside of regular Board Meetings to work with the District

Administrator and staff on creating and revisiting the District's Strategic Plan, for setting goals and priorities for the District, and to work on issues that may be inhibiting the maximal achievement of District goals.

D. Mutual Commitments.

i. Strategic Workshops.

1. As soon as practicable after the Employee's start date, the District Board of Directors and the Employee will meet to review the District's existing Strategic Plan and/or set out goals and priorities for the Employee to implement prior to the Employee's annual performance evaluation or such other dates as determined in the course of the meeting.
2. Thereafter the review and update of the District Board of Directors' Strategic Plan will occur following each election of the Board between January 1st and March 31st. For purposes of clarity, the District Board of Directors and the Employee shall further establish a relative priority among those strategic goals and objectives within the Strategic Plan.

ii. Annual Performance Evaluation.

1. The District Board of Directors shall conduct an evaluation of the Employee's performance at least once each year. The District and Employee agree that performance evaluations, for the purpose of mid-course corrections, may occur at any time. The parties agree that the initial evaluation shall occur within 180 days of the Employee's start date and then no later than 30 days following the first anniversary of the start of the term of this Agreement and each year thereafter.
2. The annual review and evaluation shall be in accordance with specific criteria developed jointly by the District Board of Directors and the Employee during the initial strategic planning and goal setting workshop described in Section 2.D.i.1 above.
3. In addition to the annual strategic plan workshops the District Board of Directors and the Employee may further define such goals and performance objectives during the annual evaluation as they mutually determine are necessary for the proper operation of the District for the attainment of the District Board of Directors' policy objectives. The District and the Employee shall further establish a relative priority among those goals and performance objectives. The parties may use an outside facilitator paid for by the District to assist with conducting the Employee's annual performance evaluation.

3. TERMINATION AND SEVERANCE.

The following provisions shall apply to the District's termination of Employee:

- A. The District shall have the right to terminate this Agreement at any time with or without cause. Termination shall require a vote of the District Board of Directors as set forth in

the Public Resources Code of the State of California, and a thirty (30) day written notice to the Employee.

- B. Except as provided in Section 3C below, in the event that the District terminates this Agreement as provided in Section 3A above, the District shall pay the Employee six (6) months current salary in six (6) consecutive monthly installments, consistent with normal District payroll practices, with all appropriate payroll deductions taken. Accrued vacation, holidays and other accrued time shall be paid on the termination date. Employee shall be entitled to continued health insurance benefits in accordance with applicable law, at Employee's expense, and shall also be entitled to any retiree medical benefits as they apply to other full-time management positions. Payment in accordance with this Section 3B will release the District from any further obligation under this Agreement. Should the Employee subsequently be convicted of any crime, such as fraud, he will forfeit any funds paid pursuant to this provision and reimburse the District all such funds received.
- C. In the event that the Employee: (1) materially breaches this Agreement and fails or is unavailable to cure the breach within 15 days' notice given by District; (2) is convicted of a felony, or misdemeanor involving moral turpitude; (3) fails to perform his duties to the extent that it is established that such failure of his performance amounts to malfeasance or material dereliction of duty; or (4) fails or refuses to follow a direct, lawful order by the District, then District may immediately terminate this Agreement without obligation to pay any severance payments to Employee pursuant to Section 3B.
- D. The Employee shall not be removed during the ninety (90) day period preceding or following any District election for membership on the District Board of Directors, or during the 90-day period following any change in membership of the District Board of Directors.
- E. Given the at-will nature of the position of District Administrator, an important element of the Employment Agreement pertains to termination. It is in both the District's interest and that of the Employee that any separation of the District Administrator is done in a businesslike manner.

4. RESIGNATION.

The following provisions shall apply to the Employee's termination of this Agreement:

- A. In the event that the Employee voluntarily resigns from the position of District Administrator, Employee agrees to provide District with a minimum of thirty (30) days' written notice, unless the parties agree otherwise. The Employee shall not be entitled to any salary or benefits after the actual dates of resignation, except as provided in Section 4B.
- B. The Employee shall be entitled to continued health benefits in accordance with applicable law, at Employee's expense, and is also entitled to any retiree medical benefits as they apply to other full-time management positions.

- C. During the period from the stated intent to resign and actually leaving, the Employee shall continue to faithfully and competently perform the duties of District Administrator as set forth in this Agreement.

5. GENERAL PROVISIONS.

- A. Amendments. This Agreement may be amended at any time by mutual written agreement of the District Board of Directors and the Employee.
- B. Conflict of Interest.
 - i. The District Administrator shall not engage in any business or transaction or shall have a financial or other personal interest or association, direct or indirect, which is in conflict with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties. Personal as distinguished from financial interest includes interest arising from blood or marriage relationships or close business, personal, or political associations. This section shall not serve to prohibit independent acts or other forms of enterprise during those hours not covered by active District employment, providing such acts do not constitute a conflict of interest as defined herein and are approved by the Board as set forth in Section 2(A)(i)(7) above.
 - ii. The District Administrator shall also be subject to the conflict of interest provisions of the California Government Code and any conflict of interest code applicable to the Employee's District employment.
- C. Indemnification. The District shall defend, save harmless and indemnify the Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as District Administrator. The District may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon.
- D. Severability. If any clause, sentence, part, section or portion of this Agreement is found by a court of competent jurisdiction to be illegal or unenforceable, such clause, sentence, part, section, or portion found shall be rendered as though it were not part of this Agreement and the remaining parts of this Agreement shall be fully binding and enforceable by the Parties hereto.

6. NOTICES.

Any written notices required by the Agreement shall be either given in person or by first class mail with the postage prepaid and address as follows:

To District: Chair, Board of Directors
South San Luis Obispo County Sanitation District
1600 Aloha Place
Oceano, CA 93445

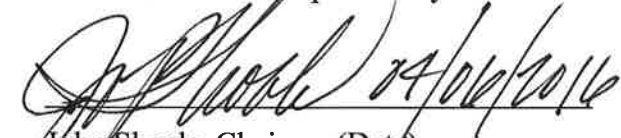
To Employee: Gerhardt Hubner

ENTIRE AGREEMENT.


This Agreement supersedes any and all other agreements and/or understandings, whether oral or in writing, concerning District Administrator's employment hereunder.

In Witness Whereof, District and the Employee have executed this Agreement as of the date first written above.


South San Luis Obispo County Sanitation District


John Shoals, Chair. (Date) 04/06/2016

District Administrator


Gerhardt Hubner (Date) 3/25/16

ATTEST:


Clerk of the Board (Date) 4/6/2016

APPROVED AS TO FORM:

Attorney for District (Date)