

Lake Don Pedro Community Services District
9751 Merced Falls Rd., La Grange, CA 95329
(209) 852-2331 – www.ldpcsd.org

DIRECTORS
Danny Johnson, President
Dan Hankemeier, Vice President
Emery Ross
Russell Warren
Nellie Sperry

Special Meeting of the Board of Directors

9751 Merced Falls Road
May 22, 2019 at 4:00 p.m.

Mission Statement: *The Lake Don Pedro CSD is dedicated to providing our customers with ample quantities of high quality water meeting all standards, in a fiscally responsible manner.*

REVISED AGENDA

1. **CALL TO ORDER:** Presiding Officer: Establish Quorum, Pledge of Allegiance:
2. **PUBLIC COMMENT:**
Any person may address the Board at this time on any matter within the jurisdiction of the Board that is NOT ON THE AGENDA. A maximum of three minutes is allowed each person and a maximum of 20 minutes per topic. Any person wishing to address the Board on an item ON THE AGENDA will be given the opportunity at that time. Speakers are encouraged to consult District Management or Directors prior to agenda preparation regarding any District matters, as no action will be taken on non-agenda issues.
3. **Discussion and Action Items**
 - a. Consideration of Adoption of a Resolution Approving an Employment Agreement with Patrick McGowan for the Position of General Manager
 - b. Consideration of Adoption of Resolution Approving Agreement with Kampa Community Solutions, LLC for Management Consulting Services Related to the District's Management Transition.
4. **ADJOURNMENT:**

Meeting agendas and written materials supporting agenda items, if produced, can be received by the public for free in advance of the meeting by any of the following options:

- A paper copy viewed at the District office, 9751 Merced Falls Rd., La Grange, CA 95329 during business hours or mailed pursuant to a written request and payment of associated mailing fees
- An electronic copy received by email. Note - a form requesting email delivery of agendas and/or meeting materials must be completed a minimum of one week in advance of the meeting
- Viewed on the Board page of the District's website
- A limited number of copies of agenda materials will also be available at the meeting

Americans with Disabilities Act Compliance: If you require special assistance to participate in Board Meetings, please contact the LDPCSD Board Secretary at (209) 852-2251 Ext. 2. Advance notification will enable the District to make reasonable arrangements to insure accessibility

EMPLOYMENT AGREEMENT
LAKE DON PEDRO COMMUNITY SERVICES DISTRICT
GENERAL MANAGER

This General Manager Employment Agreement (“Agreement”) entered into and effective this 10th day of June 2019 is made between Lake Don Pedro Community Services District (“District”) and Patrick McGowan (“Employee” or “General Manager”).

RECITALS

A. WHEREAS the District wishes to engage the services of Employee as the General Manager of the District and to provide certain compensation and to establish certain conditions of employment of the General Manager;

B. WHEREAS Employee desires to accept employment as General Manager under the terms and conditions contained in this contract;

C. WHEREAS, in consideration of the mutual covenants and conditions contained in this contract, the parties agree as follows:

SECTION 1. DUTIES

A. The District hereby employs Employee as the General Manager to perform the functions and duties specified by the District [and attached hereto as Exhibit A and incorporated herein by reference].

B. The General Manager position is a full-time, salaried, exempt position. Employee is expected to devote a great deal of time during and outside normal office hours to business of the District and Employee shall remain in the exclusive employment of the District, and shall neither accept other employment nor become employed by any other employer except upon written approval of the District.

C. Employee shall not engage in any activity that is or may become a conflict of interest or which may create an incompatibility of office as defined under California law.

SECTION 2. TERM

A. The term of this Agreement shall be two (2) years commencing on June 10, 2019 and continuing to June 10, 2021, subject to the termination, severance and resignation provisions set forth in this Agreement.

B. The parties understand that the General Manager’s employment is at the will of the District. Nothing in this Agreement shall prevent, limit or otherwise interfere with the Employee or the District’s right to terminate employment at any time in accordance with Section 4 of this Agreement.

SECTION 3. COMPENSATION AND BENEFITS

A. **Salary.** District agrees to pay the General Manager for his services an annual base salary of Ninety-Five Thousand Dollars (\$95,000.00) payable in installments as the same time and manner as other employees of the District (currently bi-weekly).

B. **Annual Performance Review.** The Board of Directors of the District shall conduct a six month performance review completed by December 31, 2019 with a potential step increase. Following, this the Board of Directors of the District shall annually review the performance of the General Manager. As part of the General Manager's annual review, the District shall also review and set the level compensation and benefits payable to the General Manager, based on performance, and establish new goals and objectives as appropriate. second review to completed by June 30, 2020.

C. **Benefits.** District will provide the General Manager with the same type and level of benefits as provided to other full time employees of the District, including, but not limited to holidays, sick leave, life insurance, medical insurance, dental insurance and vision insurance in accordance with the District's Personnel rules and policies. The General Manager will also be eligible for employer/employee contributions to the Public Employees Retirement System (CalPERS/PEPRA) to the same extent as other PEPRA employees and in accordance with the District's adopted policies.

D. **Vacation.** The General Manager shall accrue ten (10) days of vacation time off, at the same rate as the District's other full time employees up to a maximum of two-times the annual accrual rate (20 days). Once the maximum is reached, all further accruals will cease until the General Manager has used the time and the accrued leave drops below the maximum.

E. **Personal Leave.** The General Manager shall receive ten (10) days of unpaid personal leave per year on the anniversary date of this Agreement which may be used during that 1-year period. Any unused personal leave remaining at the end of the 1-year period may not be rolled over to the next year.

F. **Administrative Leave.** The General Manager shall receive ten (10) days of paid administrative leave for the fiscal year 2020, and five (5) days of paid administrative leave for the fiscal year 2021. Any unused administrative leave remaining at the end of each fiscal year shall be paid to the General Manager and may not be rolled over to the next year.

SECTION 4. TERMINATION OF EMPLOYMENT

A. **At Will Employee.** The General Manager serves at the pleasure of the District and nothing herein shall be taken to prevent, limit or otherwise interfere with the right of the District to terminate the services of the General Manager with or without cause. There is no express or implied promise made to the General Manager for any form of continued employment. This Agreement is the sole and exclusive basis for an employment relationship between the General Manager and the District.

B. **Termination by Mutual Agreement.** This Agreement may be terminated at any time where the District and the General Manager mutually agree on the terms of such

termination.

C. **Resignation of the General Manager.** Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the General Manager to resign at any time from his position with the District. The General Manager may terminate this Agreement by submitting one hundred and twenty (120) days' written notice of his intention to resign. If the General Manager resigns his employment, he shall not be entitled to any severance pay.

D. **Termination for Cause, or in the Event of Death.** Any other provision of this Agreement to the contrary notwithstanding, this Agreement shall terminate upon the death of the General Manager or in the event the General Manager is terminated by the District for "cause" as defined below. In the event of such termination under this section, the District shall be under no obligation to the General Manager under this Agreement except for prorated salary and benefits due and unpaid to the date of termination. "Cause" for termination employment shall include, by way of illustration and not limitation, any of the following acts or conditions on the part of the General Manager:

(1) As provided in section 2924 of the California Labor Code, as the same shall be amended or replaced from time to time (willful breach of duty, etc.); or

(2) Persistent disregard of duties, including without limitation, failure to perform duties and failure to correct such disregard.

(3) Failure of good behavior either during or after duty hours which is of such a nature that it causes discredit to the District.

(4) Conviction of a felony or entry of a plea of *nolo contendere* to a felony offense;

(5) Conviction of, or entry of a pleas of *nolo contendere* to any crime involving moral turpitude or dishonesty.

(6) Breach of this Agreement

(7) If the Employee is insubordinate or is grossly negligent in performing his duties.

(8) If the Employee violates any policies of the District that cause a

substantial loss or damage or injury to the District's property or employees.

(9) If the Employee habitually fails to report to work;

(10) If the Employee commits actions of fraud, embezzlement, bribery, or other similar serious acts in connection with Employee's employment with the District.

(11) Failure to maintain the necessary certifications from the State Water Resources Control Board required to operate the District's water treatment and distribution systems.

E. **Disability Termination.** If Employee shall, for whatever reason, become incapable of performing any of the essential functions of his position, even with reasonable accommodation by the District, either (1) permanently, or (2) for a period exceeding the period of leave available to the Employee under the Family Medical Leave Act or the California Family Rights Act, or accrued sick leave, whichever is longer, then Employee shall be deemed to have suffered a disability. As the General Manager position requires Employee to devote a great deal of time both during and outside of normal office hours to the business of the District, Employee recognizes that granting a leave longer than the time period stated in this section may constitute an undue hardship on the District. In accordance with applicable law, any request for leave that does constitute an undue hardship shall be grounds for termination of this Agreement.

SECTION 5. PROFESSIONAL GROWTH AND STANDING

A. The District encourages the continuing professional growth of the General Manager through his participation in activities such as those conducted by or sponsored by the California Special Districts Association (CSDA). To that end, the District shall support the General Manager's applicable for CSDA Board membership and related activities. Participation in such activities shall be considered normal work days.

B. The District shall proportionally fund the General Manager's attendance, including registration, travel, meals and related costs at industry functions and training activities, such as the CSDA annual conference, General Manager Summit, Legislative Action Days and similar activities. These activities shall be coordinated with the District and costs reimbursed in accordance with applicable District policies and rules and regulations.

SECTION 6. GENERAL PROVISIONS

A. **Law Governing Agreement; Venue.** This Agreement will be governed by and construed in accordance with the laws of the State of California. Venue of any action shall be in the Superior Court for the County of Merced or the United States District Court for the Eastern District of California, Fresno Division.

B. **Entire Agreement.** This Agreement supersedes any and all other agreements, whether written or oral, between the District and the General Manager with respect to the General Manager's employment hereunder. Any modification of this Agreement shall be effective only if embodied in a formal amendment duly adopted by the District and reduced to a fully executed written document.

C. **Notices.** Any notices given pursuant to the terms of this contract shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

(i) DISTRICT:

Lake Don Pedro Community Services District

9751 Merced Falls Road

La Grange, CA 95329

Telephone: 209-852-2331

Facsimile: 209-852-2268

Internet: www.lpdcisd.org

(ii) GENERAL MANAGER:

Patrick McGowan
2435 Brookdale Drive
Merced, CA 95340
Telephone: 209-617-9777
Email: Patrickmcg213@gmail.com

(iii) COPY TO:

Raymond L. Carlson, Esq.
LDPCSD General Counsel
Griswold, LaSalle, Cobb, Dowd & Gin, L.L.P.
111 E. 7th St.
Hanford, CA 93230
Telephone: 559-584-6656
Facsimile: 800-947-1859
Email: carlson@griswoldlasalle.com

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial process. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service. Notice may be given by facsimile transmission or email provided a report of the facsimile transmission or email is made contemporaneous with the transmission or sending of the email.

D. **Waiver.** No waiver by either party hereto with respect to performance of any other provision of this Agreement shall be binding unless expressed in writing, nor be deemed a waiver of any preceding or succeeding required performance hereunder.

E. **Assignment.** This Agreement is not assignable by the District or the General Manager.

F. **Severability.** In the event that any provision of this Agreement has finally held or determined to be illegal or void by a court having jurisdiction over the parties, the remainder of this Agreement shall remain in full force and effect unless the parts found to be void are wholly inseparable from the remaining portion of the Agreement.

SIGNATURES FOLLOW ON NEXT PAGE

IN WITNESS THEREOF, the District has caused this Agreement to be signed and executed on its behalf by the Chair of the Board of Directors. It has also been executed by the General Manager on the date first above written.

LAKE DON PEDRO COMMUNITY SERVICES DISTRICT

By: _____
Danny Johnson, Chair of the Board

GENERAL MANAGER

By: _____
Patrick McGowan, General Manager

APPROVED AS TO FORM:

Raymond L. Carlson, District Legal Counsel

Item 3 b.

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is made and entered into this 22nd day of May, 2019, by and between Lake Don Pedro Community Services District hereinafter referred to as "Client" and Kampa Community Solutions, LLC, hereinafter referred to as "Consultant".

RECITALS

WHEREAS, Client desires to obtain services from Consultant as specified in Section 1; and

WHEREAS, Consultant is duly licensed, qualified and equipped to perform said services for the benefit of Client; and

NOW, THEREFORE, Client and Consultant agree as follows:

1. **Scope of Work.** Client engages the services of Consultant as an independent contractor to perform the work and render professional, as needed management consulting services in special district administration. The Work is generally described as follows: specialized management consulting during transmission in management and in the completion of existing projects

Consultant shall (a) provide all labor, equipment, material, supplies, advice, consultation, analysis, administration, and preparation of policies, procedures and documents required or necessary to properly, competently and completely perform the Work; (b) determine the method, details and means of doing the Work; and (3) perform the Work in a manner commensurate with the highest professional standards of qualified and experienced personnel in Consultant's field.

2. **Payment.** In exchange for the Work, Client shall pay to Consultant a fee based on [*select one*]:

X Consultant's actual time and material necessarily and actually expended on the Work in accordance with Consultant's hourly billing rate of \$110 per hour.

3. **Term.**

A. This Agreement shall take effect on the above date and shall continue in effect until completion of the Work unless sooner terminated as provided below.

B. Time is of the essence in this Agreement.

C. This Agreement may be terminated for any or all portions of the Work by either party upon written notice to the other party.

D. In the event of such abandonment, postponement or default by Client, Client shall pay Consultant for all services performed and all expenses incurred in performance of this Agreement. The total amount paid to Consultant shall be in an amount which bears the same ratio

to the total fee otherwise payable under this Agreement as the services actually rendered hereunder by Consultant bear to the total services necessary for the full performance of the Work. Services actually rendered hereunder up to the date of such termination of this Agreement, include both completed services and services in the process of completion.

E. In the event of default in performance by Consultant, the provisions of Section 4 hereof shall apply.

4. **Default by Consultant.** If Consultant fails to advance the Work, or performs work that does not comply with the requirements of this Agreement, or fails to perform any task or produce any documents required by this Agreement, or is guilty of any other material breach of the terms of this Agreement, Client may suspend payment until such time as the default is remedied by Consultant.

5. **Ownership of Documents.** Every document prepared by Consultant under this Agreement shall be the exclusive property of the Consultant. By this Agreement, Consultant transfers the right, title and interest in such documents to Client only for the purposes specifically stated herein. To the extent any document prepared under this Agreement constitutes a copyrightable work, the Work under this Agreement shall be considered a work for hire and by this Agreement Consultant shall be deemed to transfer all rights, title and interest in the copyrightable work to Client, including the exclusive copyright, but only to the extent necessary to fulfill the objectives and purposes stated in this Agreement. Draft, Proprietary or Trademark Documents prepared by Consultant under this Agreement shall not be provided by Client to any other person or entity without Consultant's prior written approval.

6. **Compliance with Laws.** Consultant shall perform the Work in compliance with all applicable federal, state and local laws and regulations regarding safety of persons and property and their protection from damage, injury or loss, including applicable Cal-OSHA regulations. Consultant also shall possess and maintain all permits, licenses and certificates that may be required for it to perform the Work. Consultant shall comply with all laws and regulations as required by local, state and federal agencies regarding nondiscrimination including, but not limited to, Title VII of the Civil Right of 1964, the Americans with Disabilities Act, the Age Discrimination Employment Act of 1967, and the California Fair Employment and Housing Act. The Consultant is aware of the Client's anti-harassment policy and agrees to abide by the policy, practices and procedures set forth and established by the Client.

7. **Insurance.**

A. Types and Limits. Consultant at its sole cost and expense shall procure and maintain for the duration of this agreement the following types and limits of insurance:

<u>Type</u>	<u>Limits</u>
Commercial Public Liability	\$1,000,000 per occurrence
Property Damage and Automobile Liability	\$1,000,000 per accident
Workers' Compensation	statutory limits
Employers' Liability	\$1,000,000 per accident

B. Other Requirements. Said insurance shall also specifically cover the contractual liability of Consultant. If Consultant fails to maintain such insurance, Client may declare a default in the performance of this Agreement and exercise the remedies specified in Section 5 of this Agreement.

C. Consultant shall be permissibly self insured or shall carry full workers' compensation coverage for all persons employed, either directly or through subcontractors, in carrying out the Work contemplated by this Agreement and in accordance with the Workers' Compensation Act contained in the Labor Code of the State of California. If Consultant fails to maintain such insurance, Client may declare a default in the performance of this Agreement and exercise the remedies specified in Section 5 of this Agreement.

D. Consultant agrees to furnish a certificate or certificates substantiating the fact that it has taken out the insurance set forth above for the period covered by the Agreement and all evidence substantiating coverage of Client and its agents and employees. All insurance is to be placed with insurers with a current A.M. Best rating A:VII or better unless otherwise accepted in writing by Client.

Each such certificate shall bear an endorsement precluding the cancellation or reduction in coverage of any policy covered by such certificate before the expiration of thirty (30) days after Client shall receive notification of such cancellation or reduction.

9. **Independent Contractor.** The parties hereto agree that at all times during the term of this Agreement Consultant, Consultant's employees and agents hired to perform services pursuant to this Agreement are independent contractors and are not agents or employees of Client. Consultant shall have control over the means, methods, techniques, sequences, and procedures for performing and coordinating the Work required by this Agreement. Client shall have the right to control Consultant only insofar as the result of Consultant's services rendered pursuant to this Agreement. If, in the performance of this Agreement, any third parties are employed or contracted by Consultant, such employees or subcontractors shall be entirely and exclusively under the direction, supervision and control of Consultant. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment or contract shall be determined by Consultant, and Client shall have no right or authority over such persons or the terms of their employment or contract.

Therefore, neither Consultant or any third persons employed by or contracted by Consultant to perform services pursuant to this Agreement shall be entitled to workers' compensation benefits from Client should Consultant or any of its employees or contractors sustain an injury in the course of performing services specified in this Agreement. Furthermore, neither Consultant nor any third persons or contractors employed by Consultant shall be entitled to any other benefits payable to employees of Client. Consultant hereby agrees to defend and hold Client harmless from any and all claims that may be made against Client based on any contention by any third party that an employer/employee relationship exists or that a contractual relationship exists between Client and that third party by reason of this Agreement.

Consultant represents that it, and its employees and contractors, if applicable, are properly licensed and will remain so during the progress of the Work contemplated by this Agreement.

10. **Entire Agreement.** This writing and the documents incorporated herein by reference, represent the sole, entire, exclusive and integrated contract between the parties concerning the Work, and supersedes all prior oral and/or written negotiations, representations or contracts. Each

party to this Agreement acknowledges that no representations or promises have been made by any party hereto which are not embodied herein, and that no other agreement or promise not contained in this Agreement or in the incorporated documents shall be valid or binding. This Agreement may be amended only by a subsequent written contract approved and executed by both parties.

11. **Successors and Assignment.** This Agreement shall bind and inure to the benefit of the heirs, successors and assigns of the parties; however, Consultant shall not subcontract, assign or transfer this Agreement or any part of it without the prior written consent of Client.

12. **No Waiver of Rights.** Any waiver at any time by either party of its rights as to a breach or default of this Agreement shall not be deemed to be a waiver as to any other breach or default. No payment by Client to Consultant shall be considered or construed to be an approval or acceptance of any Work or a waiver of any breach or default.

13. **Severability.** If any part of this Agreement is held to be void, invalid or unenforceable, then the remaining parts will nevertheless continue in full force and effect.

14. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of California.

15. **Notice.** Any notice, invoice or other communication that is required or permitted to be given under this Agreement shall be in writing and either served personally or sent by prepaid, first class U.S. mail addressed as follows:

Client: _____

Consultant: _____

Any party may change its address by notifying the other party of the change in the manner provided above.

16. **Attorneys Fees.** In the event of litigation between the parties, or if a party becomes involved in a litigation because of wrongful acts of the other party, the prevailing or innocent party shall be entitled to an award of reasonable attorneys fees from the other party. The prevailing party will be entitled to an award of attorneys fees in an amount sufficient to compensate the prevailing for all attorneys fees incurred in good faith.

CLIENT

By: _____

Name

Title

CONSULTANT

By: _____

Name

Title