



**SPECIAL MEETING OF THE BOARD OF DIRECTORS
TUESDAY, OCTOBER 19, 2021, AT 10:00 A.M.
61750 CHOLLITA ROAD, JOSHUA TREE, CA 92252**

ON MARCH 4, 2020, CALIFORNIA GOVERNOR GAVIN NEWSOM DECLARED A STATE OF EMERGENCY IN CALIFORNIA AS A RESULT OF THE COVID-19 PANDEMIC, FOR WHICH STATE AND SAN BERNARDINO COUNTY PUBLIC HEALTH OFFICIALS HAVE CONTINUED TO RECOMMENDED MEASURES TO PROMOTE SOCIAL DISTANCING. PURSUANT TO GOVERNMENT CODE SECTION 54953, AND CORRESPONDING FINDINGS OF THE BOARD THAT CURRENTLY REMAIN IN EFFECT, **THERE WILL BE NO PUBLIC LOCATION FOR THIS MEETING** AND MEMBERS OF THE BOARD OF DIRECTORS AND PUBLIC MAY ATTEND THIS MEETING BY TELEPHONE OR VIDEO CONFERENCE. THE DISTRICT WILL OFFER ON A FIRST-COME, FIRST-SERVE BASIS FOR UP TO SIX (6) MEMBERS OF THE PUBLIC TO ATTEND ITS MEETING IN PERSON. INTERESTED PERSONS SHALL CONTACT EXECUTIVE ASSISTANT BEVERLY KRUSHAT AT (760) 974-0072 OR BKRUSHAT@JBWD.COM TO MAKE SUCH RESERVATION IF SPACES ARE AVAILABLE.

This meeting will be streamed on Zoom at:

<https://us02web.zoom.us/j/82714989984?pwd=K3JuSXlyRG1KQW1jdE1oc3ZxZG1wQT09>

or you may join by phone at 1-253-215-8782, Meeting ID: 82714989984 Passcode: 419759

AGENDA

1. **CALL TO ORDER -**
2. **PLEDGE OF ALLEGIANCE -**
3. **DETERMINATION OF A QUORUM (ROLLCALL) -**
4. **APPROVAL OF AGENDA -**
5. **PUBLIC COMMENT -** This is the time set aside for public comment on any District-related matter not appearing on the agenda. Government Code prohibits the Board from taking action on these items, but they may be referred to for future consideration. Please state your name and limit your comments to 3 minutes.
6. **CONSENT CALENDAR –** Matters on the Consent Calendar are considered routine in nature and will be enacted in a single motion without discussion. Any Board member or member of the public may request that an item be removed from the Consent Calendar and acted on separately:
 - Special Meeting Draft Minutes of October 13, 2021

7. **CLOSED SESSION –**

Pursuant to Government Code Section 54957 (b)(1) Public Performance Evaluation of the General Manager.

RETURN TO OPEN SESSION –

REPORT ON CLOSED SESSION –

8. **ADJOURNMENT –**

INFORMATION

The public is invited to comment on any item on the agenda during discussion of that item. Members of the public wishing to attend the meeting that require other reasonable modifications or accommodation to facilitate such attendance should contact Beverly Krushat at (760) 366-8438 or bkrushat@jbwd.com as soon as feasible before the meeting to make such request.

Availability of agenda materials: Agenda exhibits and other writings that are disclosable public records distributed to all or a majority of the members of the Joshua Basin Water District Board of Directors in connection with a matter subject to discussion or consideration at an open meeting of the Board are available online at jbwd.com for public inspection, or in the District's office, 61750 Chollita Road, Joshua Tree, CA 92252 ("District Office"). If such writings are distributed to members of the Board less than 72 hours prior to the meeting, they will be available at the reception desk of the District Office and on-line at jbwd.com during business hours at the same time as they are distributed to the Board members.

Disability-related accommodations: The Joshua Basin Water District Board of Directors meeting room is wheelchair accessible. If you require any special disability-related accommodations (e.g., access to an amplified sound system, etc.) please contact Ms. Waszak at the District Office at (760) 366-8438 during business hours at least seventy-two (72) hours prior to the scheduled meeting. This agenda can be obtained in alternative format upon written request to Ms. Waszak in the District Office, at least seventy-two (72) hours prior to the scheduled meeting.

JOSHUA BASIN WATER DISTRICT
SPECIAL BOARD OF DIRECTORS MEETING MINUTES
WEDNESDAY, OCTOBER 13, 2021

CALL TO ORDER/PLEDGE OF ALLEGIANCE – President Unger called the meeting to order at 1:09 p.m. via teleconference.

DETERMINATION OF A QUORUM –President Unger, Vice President Floen, Director Doolittle, Director Jarlsberg, and Director Reynolds are in attendance via teleconference.

STAFF PRESENT –Mark Ban, General Manager

APPROVAL OF AGENDA – MSC¹ (Reynolds/Doolittle) 5/0/0 motion carried to approve the Agenda.

Ayes: Doolittle, Floen, Jarlsberg, Reynolds, and Unger

Noes: None

Absent: None

Abstain: None

PUBLIC COMMENT – None

ADJOURN TO CLOSED SESSION – Pursuant to Government Code Section 54957 (b)(1) Public Performance Evaluation of the General Manager the Board of Directors adjourned to Closed Session at approximately 1:12 p.m.

RETURN TO OPEN SESSION – President Unger returned to open session at 1:46 p.m. and stated there was no reportable action.

ADJOURNMENT – MSC¹ (Floen/Jarlsberg) 5/0/0 motion carried adjourn the Special Board of Directors meeting of October 13, 2021 at 1:46 p.m.

Ayes: Doolittle, Floen, Jarlsberg, Reynolds, and Unger

Noes: None

Absent: None

Abstain: None

Respectfully Submitted,

Mark Ban, General Manager & Board Secretary

**EMPLOYMENT AGREEMENT
BETWEEN
JOSHUA BASIN WATER DISTRICT
AND
MARK C. BAN**

This Employment AGREEMENT ("Agreement") is made and entered into effective as of February 5, 2020, by and between JOSHUA BASIN WATER DISTRICT (hereinafter "DISTRICT") and MARK C. BAN (hereinafter "BAN") (mutually referred to as the "PARTIES").

RECITALS

- a. **WHEREAS**, the DISTRICT is a county water district organized and operating pursuant to Division 12 of the California Water Code; and
- b. **WHEREAS**, BAN is currently employed by the DISTRICT as the INTERIM GENERAL MANAGER.
- c. **WHEREAS**, the District, through its BOARD OF DIRECTORS (hereinafter "BOARD"), wishes to engage the services of BAN as the DISTRICT's GENERAL MANAGER; and
- d. **WHEREAS**, BAN affirms that he has read the functions, responsibilities, and duties of the GENERAL MANAGER position set forth in EXHIBIT "A" attached to this AGREEMENT and represents that he is qualified to perform such services as GENERAL MANAGER.



NOW, THEREFORE, the PARTIES agree as follows:

AGREEMENT

SECTION 1. INCORPORATION OF RECITALS. The Recitals set forth above are hereby made a part of this AGREEMENT and are incorporated herein as though set forth in full by this reference.

SECTION 2. ENTIRE AGREEMENT. This AGREEMENT contains the entire AGREEMENT between the PARTIES with respect to the subject matter of this AGREEMENT.

SECTION 3. EMPLOYMENT. The DISTRICT hereby employs BAN, who accepts such employment, to serve as the DISTRICT's GENERAL MANAGER.

DISTRICT  BAN 

SECTION 4. TERM. The term of this **AGREEMENT** shall commence on the effective date of this **AGREEMENT** and shall continue to **DECEMBER 31, 2022**, unless otherwise terminated as provided for in **SECTION 5** of this **AGREEMENT**.

SECTION 5. TERMINATION.

a. It is expressly understood that **BAN**, in his capacity as **DISTRICT GENERAL MANAGER**, is an at-will employee serving at the pleasure of the **BOARD**, subject to termination by the **BOARD** at any time with or without cause. Nevertheless, the **DISTRICT's BOARD** shall not exercise its right of termination during any **ONE HUNDRED AND TWENTY (120)** day period following a general District Election and the seating of newly elected Board Members in December unless termination is for "cause" as defined in **SECTION 11** of this **AGREEMENT**.

b. Nothing in this **AGREEMENT** shall prevent, limit, or otherwise interfere with the right of **BAN** and the **DISTRICT** to mutually terminate this Agreement.

c. **BAN** shall provide the **BOARD** with **THIRTY (30)** days written notice of resignation.

SECTION 6. DUTIES & AUTHORITY.

a. **BAN** shall perform the functions and duties specified in **EXHIBIT "A"** and such other duties and functions as shall, from time to time, be assigned by the **BOARD**, or be required by law. **BAN** shall appoint a member of staff as a "Point of Contact" for members of the **BOARD** and **DISTRICT** employees to contact during vacations or other extended periods of leave should **BAN** be unavailable by phone or email.

b. **BAN** will notify the **PRESIDENT AND VICE PRESIDENT** of the **BOARD** of any absences or scheduled time off that exceeds one (1) working day.

c. **BAN's** normal work schedule shall be from 7:00 a.m. – 5:30 p.m., Monday through Thursday. **BAN** shall also attend Board of Director meetings and Committee meetings as regularly scheduled.

d. **BAN** may devote an appropriate amount of time to water associations and meetings that support the **DISTRICT** so long as the time devoted to these activities does not interfere with the performance of his duties to the **DISTRICT**.

DISTRICT  BAN 

SECTION 7. COMPENSATION.

a. **ANNUAL SALARY.** BAN shall be paid a starting annual salary of **ONE HUNDRED SEVENTY-SIX THOUSAND THREE HUNDRED AND NINETEEN DOLLARS AND 56/100 (\$176,319.56)**. Said compensation shall be paid in **TWENTY-SIX (26)** equal bi-weekly payments.

b. **RETROACTIVE PAY.** BAN's "**INTERIM GENERAL MANAGER**" **AGREEMENT** with the **DISTRICT** ended on **DECEMBER 31, 2019**. BAN shall receive retroactive pay for the period between **DECEMBER 21, 2019** and the date this **AGREEMENT** is approved. Such retroactive pay shall be limited to the difference between BAN's salary as the **INTERIM GENERAL MANAGER** and the salary approved within this **AGREEMENT** and only for the time period specified.

c. **OVERTIME PAY.** As an exempt managerial employee, under no circumstances will BAN be entitled to any overtime pay regardless of the number of hours he may work in a single day or during any work week including weekends and holidays.

d. **BENEFITS.** Upon approval of this **AGREEMENT**, BAN will receive the following benefits:

i. **COST OF LIVING ADJUSTMENTS (COLA).** BAN's COLA adjustments will be negotiated during his annual performance review outlined in **SECTION 8**.

ii. **VACATION.** As a current employee of the **DISTRICT**, BAN will be transitioning from a member of the **MANAGEMENT, SUPERVISORY AND CONFIDENTIAL (MSC) GROUP** to a contract employee. BAN's balance of **VACATION**, at the time this **AGREEMENT** is approved, as accrued during his employment as the **DISTRICT'S ASSISTANT GENERAL MANAGER – OPERATIONS** and **INTERIM GENERAL MANAGER**, shall be paid out to BAN as compensation in lieu of **VACATION**. BAN shall then receive **FOUR (4) WEEKS** of paid vacation per year. Unused **VACATION** time shall remain on the books for the term of BAN's employment and may be used as compensation in lieu of **VACATION** so long as **FORTY (40) HOURS** of vacation time remains on the books and BAN has taken **FORTY (40) HOURS** of **VACATION** leave within the same calendar year.

DISTRICT  BAN 

- iii. **SICK LEAVE.** As a current employee of the **DISTRICT**, **BAN** will be transitioning from a member of the **MANAGEMENT, SUPERVISORY AND CONFIDENTIAL (MSC) GROUP** to a contract employee. **BAN's** balance of **SICK LEAVE**, at the time this **AGREEMENT** is approved, as accrued during his employment as the **DISTRICT'S ASSISTANT GENERAL MANAGER – OPERATIONS** and **INTERIM GENERAL MANAGER**, shall be paid out to **BAN** as compensation in lieu of **SICK LEAVE**. **BAN** shall then receive **TEN (10) DAYS** of paid **SICK LEAVE** per year. Unused **SICK LEAVE** shall remain on the books for the term of **BAN's** employment.

- iv. **ADMINITRATIVE LEAVE.** **BAN** shall receive **FORTY (40) HOURS** of paid **ADMINISTRATIVE LEAVE** per year. Such leave must be used within a single calendar year (January 01 – December 31). **BAN** shall be compensated for any balance of **ADMINISTRATIVE LEAVE** left on the books after **DECEMBER 31** of each year.

- v. **HEALTH CARE.** **BAN** shall receive medical, dental and vision coverage utilizing a **DISTRICT** approved plan of his choosing where applicable. The **DISTRICT's** starting contribution to his overall **HEALTH CARE** costs will be capped at **ONE THOUSAND, NINE HUNDRED AND EIGHTY-FIVE DOLLARS AND 54/100 (\$1985.54)** per month. Such **HEALTH CARE** benefits, and their associated caps may be negotiated during annual performance evaluations at the discretion of the **BOARD**.

- vi. **457 CONTRIBUTION MATCH.** The **DISTRICT** shall match contributions made by **BAN** into a **DISTRICT** approved 457 Deferred Compensation Plan by 25%. Such matches shall not exceed **ONE THOUSAND DOLLARS (\$1,000.00)** per annum.

- vii. **LIFE INSURANCE.** **BAN** shall receive **LIFE INSURANCE** coverage, paid by the District. **LIFE INSURANCE** coverage shall be equal to **2 TIMES BAN's** annual salary; however, such coverage shall not exceed **ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$150,000.00)** without **BAN** first agreeing to a medical examination per the requirements of the **DISTRICT's LIFE INSURANCE** provider.

DISTRICT  BAN 

- viii. **LONG TERM DISABILITY (LTD).** The **DISTRICT** shall provide **LTD** coverage for **BAN** at no cost.
- ix. **EMPLOYEE ASSISTANCE PLAN (EAP).** The **DISTRICT** shall provide **BAN** access to its **EAP** at no cost.
- x. **DISTRICT WELLNESS PROGRAM.** **BAN** shall receive the benefit of being enrolled within the **DISTRICT's WELLNESS PROGRAM** as it is approved by the **BOARD**. The **WELLNESS PROGRAM** is subject to any changes that may occur as approved by the **BOARD**.
- xi. **BUSINESS EXPENSES.** **BAN** will be reimbursed for documented and reasonable **BUSINESS EXPENSES** in connection with the performance of his duties under this **AGREEMENT** and in accordance with the **DISTRICT's** general policies on business expenses.
- xii. **DISTRICT VEHICLE.** **BAN** shall be provided a **DISTRICT VEHICLE** for commuting purposes and di minimis personal use.

SECTION 8. PERFORMANCE REVIEWS. Within the month of January, beginning in January of 2021, the **BOARD** will evaluate **BAN's** performance and other relevant factors and shall consider making reasonable adjustments to **BAN's** annual base salary and benefits as the **BOARD** deems appropriate, in accordance with the results of said evaluation. The **BOARD** shall meet and confer with **BAN** in regard to such evaluation and the conclusions to be reached therefrom; however, it is understood that the **DISTRICT** and its **BOARD** makes no commitment to increase or otherwise adjust **BAN's** salary at any particular time or on any regular basis. In addition to the above, the **DISTRICT's BOARD** may, at its discretion, evaluate **BAN's** performance at more frequent intervals as it deems appropriate.

SECTION 9. REIMBURSEMENT TO DISTRICT. Notwithstanding anything to the contrary in this **AGREEMENT**, if **BAN** is convicted of a crime involving an abuse of his office or position, **BAN** shall fully reimburse the **DISTRICT** as follows:

- A. For any paid leave salary provided by the **DISTRICT** pending an investigation. (See Government Code Section 53243.)
- B. For any funds provided by the **DISTRICT** for the legal criminal defense of **BAN**. (See Government Code Section 53243.1.)

DISTRICT  **BAN** 

- C. For any cash settlement provided by the **DISTRICT** related to the termination of **BAN**'s employment. (See Government Code Section 53243.2.)
- D. For purposes of this **SECTION 9**, "abuse of office or position" means either of the following:
 - (i) An abuse of public authority, including, but not limited to, waste, fraud, and violation of the law under color of authority. (See Government Code Section 53243.4(a).)
 - (ii) A crime against public justice, including, but not limited to, a crime described in Title 7 (commencing with Section 92) of Part 1 of the Penal Code. (See Government Code Section 53243.4(b).)

SECTION 10. SEVERANCE PAY.

- a. In the event **BAN** elects to terminate this **AGREEMENT**, he shall not be entitled to severance pay.
- b. In the event **BAN**'s employment is terminated by the **DISTRICT** at any time, without cause; he will be entitled to severance pay equal to his monthly salary multiplied by **FOUR (4)**. The **BOARD**, at their discretion, may elect to increase **BAN**'s severance package; however, such a severance cannot exceed those limitations provided for within Government Code Section 53260.
- c. The severance pay provisions provided for in **SECTION 10(b)** above shall be paid in one (1) lump sum.
- d. In the event **BAN**'s employment is terminated by the **DISTRICT** for "cause", he will not be entitled to severance pay.

SECTION 11. DEFINITION OF TERMINATED FOR "CAUSE". Terminated for "cause" means the occurrence or existence of any of the following with respect to **BAN** as reasonable and in good faith determined by the **BOARD**: (a) acts in bad faith and to the detriment of the **DISTRICT**; (b) exhibits in regard to his employment: unfitness for service, misconduct, dishonesty, or incompetence; or (c) breaches of any material term of this **AGREEMENT**.

DISTRICT  BAN 

SECTION 12. SUCCESSORS AND ASSIGNS. The terms and conditions of this **AGREEMENT** shall inure to the benefit of and be binding upon the **DISTRICT's** successor agency or entity as the case may be.

SECTION 13. MODIFICATIONS. Modifications of this **AGREEMENT** may only be made by formal, written amendment approved and executed by both **PARTIES.**

SECTION 14. SEVERABILITY. If any provision of this **AGREEMENT** is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

SECTION 15. CONSTRUCTION. This **AGREEMENT** shall not be construed more strongly against either party regardless of which party prepared it.



SECTION 16. CALIFORNIA LAW AND VENUE. This **AGREEMENT** shall be governed by the laws of the State of California. Proper venue for any litigation concerning this **AGREEMENT** shall be in San Bernardino County.

SECTION 17. NOTICES. Notice pursuant to the **AGREEMENT** shall be given by depositing in the custody of the United States Postal Service, postage prepaid, addressed as follows:

- (1) **DISTRICT:** Board President, Joshua Basin Water District
61750 Chollita Road
Joshua Tree, CA. 92252

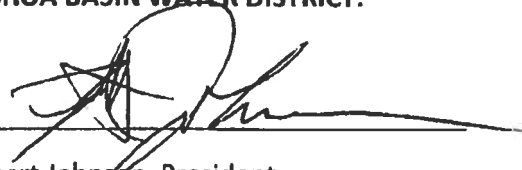
- (2) **BAN:** Mr. Mark Ban
ADDRESS ON FILE

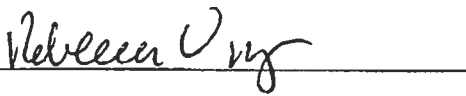
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DISTRICT  **BAN** 

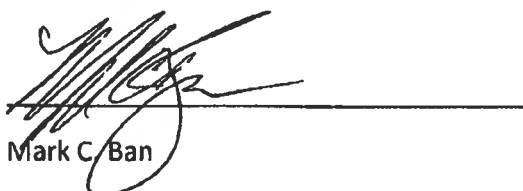
IN WITNESS WHEREOF, the **PARTIES** hereto have caused this **AGREEMENT** to be signed by the **PARTIES**, all as of the day and year first above written.


JOSHUA BASIN WATER DISTRICT:

By 
Robert Johnson, President

By 
Rebecca Unger, Vice President

MARK C. BAN:


Mark C. Ban

DISTRICT  BAN 