

## AMENDED AND RESTATED EMPLOYMENT AGREEMENT

This Amended and Restated Employment Agreement ("Agreement") is made and entered into as of **December 18, 2018**, by and between **South Bay Regional Public Communications Authority** ("Authority") and **Erick B. Lee** ("Lee") (collectively "Parties"), with reference to the following facts and circumstances:

### RECITALS:

WHEREAS, the Authority seeks to hire Lee on a full-time basis in the position of Executive Director of the Authority;

WHEREAS, the Executive Committee of Authority finds that the position of Executive Director requires specialized skills;

WHEREAS, the Executive Committee of the Authority finds that Lee possesses these specialized skills, and wishes to hire Lee as full time Executive Director until such time as the Authority deems Lee's services are no longer necessary;

WHEREAS, Lee has agreed to make himself available to the Authority, to do whatever is necessary and to spend whatever amount of time is necessary to carry out all the responsibilities of the Authority's full time Executive Director; and

WHEREAS, Authority desires to employ Lee and Lee desires to be employed by Authority for the purposes and on the terms and conditions set forth in this Agreement.; and

WHEREAS, the Parties entered into that certain Employment Agreement, dated as of April 9, 2018; and

WHEREAS, the Parties desire to amend and restate the Original Agreement in its entirety.

**NOW, THEREFORE**, in consideration of the mutual covenants set forth herein and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Authority and Lee agree as follows:

**1. Employment.** Authority hereby employs Lee for the purposes and on the terms and conditions set forth in this Agreement. The parties agree that the only rights and benefits accruing to Lee are those afforded under this Agreement so that any implied rights under the law are expressly excluded. Authority shall employ Lee as the Executive Director for the Authority reporting directly to the Executive Committee of Authority. Lee shall serve as Executive Director and be shall be responsible for and shall perform all acts and duties incident hereto, including, but not limited to, the following: Performing all duties and responsibilities of Executive Director as set forth in the appropriate job description of Executive Director and Executive Committee Policies of the Authority now or hereafter adopted and such other duties and responsibilities as from time to time may now or hereafter be assigned to the Executive Director by the Executive Committee.

Lee's employment is on a full-time and "best efforts" basis, meaning that during the term of this Agreement, Lee shall not accept any full or part-time employment or self-employment, including without limitation as an independent consultant, after working hours or otherwise, without the prior written consent of Authority, which may be given, withheld, or conditioned in Authority's sole and absolute discretion. Lee shall devote his full energies, interests, abilities, and productive time to the performance of his duties and responsibilities under this Agreement.

Lee shall work a 4/10 flex schedule unless otherwise directed by the Authority, but the Parties agree that Lee shall commit as many hours and as much effort required to manage the Authority's operations.

## **2. Term of Employment.**

Lee shall serve as Executive Director at the will of the Authority's Executive Committee. The terms of this Agreement are effective for a contract term of three years beginning April 9, 2018 ("Term"), to be evaluated as set forth in this Agreement. The Parties desire that Lee be employed by Authority for the full three (3) years, but this Agreement is not for a specific term as Lee and Authority expressly agree that Lee's employment with the Authority is at-will and that employment may be terminated at any time, with or without cause, by either party. Unless earlier terminated, this Agreement will expire on April 9, 2021, and employment beyond that date will be subject to the Parties executing a new agreement.

## **3. Compensation.**

**a. Basic Salary.** During the Term of this Agreement, Authority shall pay a basic salary to Lee at the rate of \$16,666.66 per month, payable in bi-weekly equal installments (\$200,000.00 per year annualized total), subject to such deductions and withholdings as Authority may from time to time be required to make pursuant to applicable law, governmental regulation or order. Effective the first full pay period following Lee's completion of the first six (6) months of services with the Authority, this basic salary shall be increased by 3% to \$17,166.66 per month, subject to the same deductions and withholdings as specified above.

**b. Annual Performance Evaluation.** Upon completion of the first six (6) months of services with the Authority, and then upon completion of every year of service with the Authority, the Executive Committee of the Authority shall conduct an annual evaluation of Lee's performance. Upon completion of the annual performance evaluation the Executive Committee may, at its sole discretion, award Lee a merit-based increase in his basic Salary of up to a 5% wage increase based on factors including but not limited to Lee's performance during the past year and adjustments relative to increases in base pay provided to Lee's subordinates.

**c. Automobile Allowance.** Authority will pay Lee an automobile allowance of \$600.00 per month, payable in bi-weekly equal installment (\$7,200.00 per year annualized total), subject to such deductions and withholdings as Authority may from time to time be required to make pursuant to applicable law, governmental regulation or order.

**d. Medical/Dental Cafeteria Allowance.** Authority will provide Lee a medical/dental cafeteria allowance of \$ 1,800 per month (\$21,600 per year annualized total) effective April 9, 2018, the first day of Lee's services as Executive Director of the Authority, subject to such deductions and withholdings as Authority may from time to time be required to make pursuant to applicable law, governmental regulation or order.

**e. Life Insurance.** Authority will provide Lee group life insurance in the amount of \$100,000.00 on the first day of the month following his commencement as Executive Director in accordance with the provisions of any contract between the Authority and any company or companies of the Authority's choosing.

**f. Deferred Compensation.** Authority will contribute an amount equal to \$1,541.66 per month (\$18,500 per year annualized total) as deferred compensation for Lee's benefit into the Authority's deferred compensation plan effective April 9, 2018, the first day of Lee's services as Executive Director of the Authority.

**g. Cell Phone Expense.** Lee has declined the use of an Authority-owned cell-phone during his tenure as Executive Director.

**h. Reimbursement for Business Expenses.** Lee shall be compensated only as provided in this Agreement. Authority recognizes that certain expenses of a non-personal and general job related nature may be incurred by Lee and accordingly, Authority, pursuant to its expense reimbursement policy, agrees to reimburse Lee for such reasonable expenses as are submitted to Authority for approval. Any such requests for reimbursement, including local parking fees, shall be accompanied by expense receipts, statements, or personal affidavits and audits thereof in a like manner as other demands against the Authority. Lee shall not incur any overnight travel expenses without prior written approval of the Chair of the Executive Committee.

**i. General Leave Accrual; Holidays.** Lee shall accrue general leave at the rate of 20 hours for every one (1) month of continuous service. Provided however that Lee shall not accrue/accumulate general leave in excess of 336 hours. Lee shall have the ability to cash out 50% of his accrued general leave each year.

Lee shall also be entitled to take off the following fixed public holidays during which the Authority's administrative offices shall be closed or which may otherwise be established by a resolution of the Executive Committee: New Year's Day; Martin Luther King, Jr. Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Day after Thanksgiving; Christmas Eve; and Christmas Day.

**j. Fringe Benefits.**

**1. Retirement.** The Authority has contracted with the California Public Employees Retirement System (CalPERS) for coverage for Classic Members under the basic plan for non-safety employees without modifications. All full-time employees are

**5. Miscellaneous.**

**a. Confidential Information.** Lee acknowledges and stipulates that in the performance of his duties, the Authority discloses and entrusts him with certain confidential or proprietary information. Lee agrees not to directly or indirectly disclose or use at any time any such information, whether it be in the forms of records, lists, data, personnel information, drawings, reports, or otherwise, of a business or technical nature, which was acquired or viewed by Lee during Lee's relationship with the Authority unless such disclosure is authorized by the Authority in writing, required by law, or required in the performance of the duties of the Executive Director. This provision shall survive the termination or expiration of this Agreement.

**b. Assignment.** This Agreement is for the unique personal services of Lee and may not be assigned by Lee without the expressed written consent of Authority. Except as so provided, this Agreement shall be binding upon and inure to the benefit of the respective heirs, personal representatives, successors and assigns of the parties hereto.

**c. Severability.** Each provision, sub provision or term of this Agreement is intended to be severable and shall continue in full force and effect although other provisions herein may be determined invalid or void for any reason.

**d. Incorporation.** The Recitals are true and correct and incorporated into this Agreement by this reference.

**e. Attorneys' Fees.** In the event suit is brought to enforce the terms of this Agreement, the prevailing party shall be entitled to costs and reasonable attorneys' fees, including without limitation those costs and fees incurred upon any appeal, as awarded by the court.

**f. Entire Agreement; Amendments.** This Agreement contains the entire agreement of the Parties with respect to the subject matter covered hereby and may be amended, waived or terminated only by an instrument in writing signed by the parties hereto. This Agreement shall be interpreted according to its fair meaning and not for or against the Party which drafted same.

**g. Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

**h. Governing Law.** This Agreement has been executed in the State of California and shall be governed in accordance with the laws, rules and regulations of the State of California in every respect. This Agreement is further subject to Authority's By-Laws and the Board's policies, rules and regulations as now or hereafter adopted.

**i. Conflict of Laws.** This Agreement shall prevail in the event there is a conflict between this Agreement and any Board policies, rules and regulations adopted hereafter.

required to belong to the system. The Authority's retirement coverage formula of 2% shall be effective at sixty (60) years of age.

2. **Vision Plan.** Lee and his dependents shall be eligible for coverage in the vision plan under the terms and conditions of the contract executed between Authority and the insuring agency. The Authority shall pay one hundred percent of the premium charged.

3. Lee shall not receive fringe benefits of any kind from the Authority other than those specifically stated herein. Authority shall provide liability insurance coverage for Lee's acts within the course and scope of his duties as the Authority's Executive Director.

#### 4. **Termination.**

a. **Separation.** (Employment At-Will) Either Authority or Lee may terminate this Agreement at any time with or without cause by delivering written notice of its election to the other.

b. **Termination upon Disability.** Lee's employment with Authority shall cease upon the date of his death or physical or mental disability to the extent that Lee becomes disabled for more than thirty (30) consecutive days or sixty (60) days in the aggregate in any 12-month period to perform his duties on a full-time basis. Upon termination for death or physical or mental disability, Lee shall be entitled to receive the compensation described in Section 3 through the date of termination of this Agreement.

c. **Separation - Severance.** In the event of the Authority's termination of this Agreement without cause, the Authority shall pay Lee a severance payment equal to his current monthly salary as described in Section 3(a) of this Agreement and as may have been increased by the Authority, exclusive of all benefits, multiplied by the number of months left on the unexpired term of the Agreement. However, if the unexpired term of the contract is greater than six (6) months, the maximum cash settlement shall be an amount equal to his monthly salary multiplied by 6. All severance payments shall be made to Lee within thirty (30) days of the effective date of his involuntary separation

d. **Termination - No Severance.** If Lee's employment is terminated by Authority because he has been found guilty of acts of moral turpitude or misusing or abusing his office or position, as solely determined by the Authority, then Lee shall not be entitled to a Severance as stated in Section 4(c) of this Agreement. In that case, Lee shall receive only the monthly compensation described in Section 3(a) above earned to the date of termination.

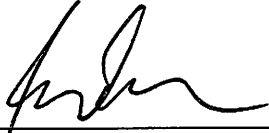
e. **Termination - Accrued Leave.** Upon the conclusion of this Agreement or if either party terminates this Agreement, Lee shall be paid for accrued unused General Leave not to exceed a maximum of 336 hours.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

**SOUTH BAY REGIONAL PUBLIC COMMUNICATIONS AUTHORITY**

**ERICK B. LEE**

By:  12/18/18  
Edward Medrano  
Chair of the Executive Committee

By:   
Erick B. Lee