

**RESOLUTION NO. SCV-249**

**A RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE SANTA CLARITA VALLEY WATER AGENCY  
APPOINTING DIRK S. MARKS AS DIRECTOR OF WATER RESOURCES  
ON AN INTERIM BASIS AND APPROVING EMPLOYMENT CONTRACT**

**WHEREAS**, Government Code sections 7522.56 and 21221(h) permit the Board of Directors of the Santa Clarita Valley Water Agency to appoint a California Public Employees' Retirement System ("CalPERS") retired annuitant to a vacant position requiring specialized skills during recruitment for a permanent appointment, and provides that such appointment will not subject the retired person to reinstatement from retirement or loss of benefits so long as it is a single appointment that does not exceed 960 hours in a fiscal year; and

**WHEREAS**, the position of Director of Water Resources will become vacant at close of business on December 31, 2021; and

**WHEREAS**, in order to retain efficient and uninterrupted operation and management of the Department of Water Resources, the Board of Directors wishes to appoint Dirk S. Marks to the then vacant position of Director of Water Resources on an interim basis pursuant to Government Code section 21221(h), effective January 4, 2022; and

**WHEREAS**, Dirk S. Marks has extensive experience in day-to-day operations of the Department of Water Resources given his current employment as Director of Water Resources for Santa Clarita Valley Water Agency; and

**WHEREAS**, in compliance with Government Code section 7522.56(f), the Board of Directors of Santa Clarita Valley Water Agency must provide CalPERS this certification resolution when hiring a retiree before 180 days have passed since his or her retirement date; and

**WHEREAS**, Dirk S. Marks will separate from Santa Clarita Valley Water Agency in the position of Director of Water Resources on December 30, 2021, with an effective retirement date of December 31, 2021; and

**WHEREAS**, Government Code section 7522.56 requires that post-retirement employment commence no earlier than 180 days after the retirement date, which is June 30, 2022 for Dirk S. Marks, without this certification resolution; and

**WHEREAS**, Government Code section 7522.56 provides that this exception to the 180-day wait period shall not apply if the retiree accepts any retirement-related incentive; and

**WHEREAS**, the Board of Directors, Santa Clarita Valley Water Agency, and Dirk S. Marks certify that Dirk S. Marks has not and will not receive a Golden Handshake or any other retirement-related incentive; and

**WHEREAS**, an appointment under Government Code section 21221(h) requires an active, publicly posted recruitment for a permanent replacement; and

**WHEREAS**, information regarding the recruitment for a Director of Water Resources will be posted on the Santa Clarita Valley Water Agency's webpage for employment opportunities

available at <https://www.governmentjobs.com/careers/scvwater> no later than January 3, 2022; and

**WHEREAS**, this Section 21221(h) appointment shall only be made once and, therefore, will end on the date immediately preceding the date on which the permanent replacement for the vacant position of Director of Water Resources commences his or her employment or, if earlier, the date that this appointment is terminated by the Santa Clarita Valley Water Agency or Dirk S. Marks; and

**WHEREAS**, it is understood by the Santa Clarita Valley Water Agency and Dirk S. Marks that the combined total hours to be worked by Dirk S. Marks in any fiscal year, for all retired annuitant positions with any CalPERS employers, shall not exceed the 960-hour limitation set forth in California Government Code sections Section 7522.56(d) and 21221(h), unless an exception applies; and

**WHEREAS**, the compensation paid to retirees cannot be less than the minimum nor exceed the maximum monthly base salary paid to other employees performing comparable duties, divided by 173.333 to equal the hourly rate; and

**WHEREAS**, per the Santa Clarita Valley Water Agency's publicly available pay schedule the minimum base salary for the Director of Water Resources position is \$183,289.60 per year, or \$15,274.13 per month at an hourly equivalent of \$88.12 per hour, and the maximum base salary is \$223,288.00 per year, or \$18,607.33 per month at an hourly equivalent of \$107.35 per hour; and

**WHEREAS**, the hourly rate paid to Dirk S. Marks will be \$107.35 per hour; and

**WHEREAS**, Dirk S. Marks will not receive any other benefit, incentive, compensation in lieu of benefits or other form of compensation in addition to this hourly pay rate; and

**WHEREAS**, the entire employment agreement between Dirk S. Marks and Santa Clarita Valley Water Agency has been reviewed by this body and is attached herein; and

**WHEREAS**, no matters, issues, terms or conditions related to this employment and appointment have been or will be placed on a consent calendar; and

**WHEREAS**, pursuant to Government Code Section 7522.56(e)(1), Dirk S. Marks must certify in writing to the Santa Clarita Valley Water Agency upon accepting an offer of employment that he has not received any unemployment insurance compensation arising out of prior employment with a public employer that is subject to Government Code section 7522.56 during the 12-month period preceding the effective date of this appointment.

**NOW, THEREFORE, BE IT RESOLVED THAT**, the Board of Directors of Santa Clarita Valley Water Agency hereby finds, determines, and resolves as follows:

1. The Board of Directors has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

2. The Board of Directors certifies the nature of the employment of Dirk S Marks as described herein and detailed in the attached employment agreement and that this appointment is necessary to perform the critically needed functions to ensure the ongoing success of the Santa Clarita Valley Water Agency's water resource management program.


3. The Board of Directors hereby waives the 180-day waiting period pursuant to Government Code section 7522.56(f)(1).

4. The Board of Directors hereby appoints Dirk S. Marks as interim Director of Water Resources effective January 4, 2022 subject to the provisions set forth in an employment agreement, until the date immediately preceding the date on which the permanent replacement for the vacant position of Director of Water Resources commences his or her employment, unless earlier terminated, pursuant to the authority provided under Government Code sections 21221(h) and 7522.56, pending the recruitment, selection and employment of a permanent Director of Water Resources, to provide the specialized skills necessary to handle the day-to-day operations of the Department of Water Resources.

5. The employment agreement for Dirk S. Marks, a copy of which is enclosed herein as Exhibit "A", is approved by the Board of Directors, effective January 4, 2022.


6. The General Manager is authorized to execute said agreement on behalf of the Santa Clarita Valley Water Agency, with such technical amendments as may be deemed appropriate by the General Manager and General Counsel.

**PASSED, APPROVED AND ADOPTED** by the Board of Directors of the Santa Clarita Valley Water Agency at a regular meeting held on this 4th day of January 2022.

  
President

I, the undersigned, hereby certify: That I am the duly appointed and acting Secretary of the Santa Clarita Valley Water Agency, and that at a regular meeting of the Board of Directors of said Agency held on January 4, 2022, the foregoing Resolution No. SCV-249 was duly and regularly adopted by said Board, and that said resolution has not been rescinded or amended since the date of its adoption, and that it is now in full force and effect.

DATED: January 4, 2022.

  
Secretary



## **EXHIBIT A**

### **AGREEMENT FOR INTERIM DIRECTOR OF WATER RESOURCES SERVICES**

THIS AGREEMENT is made and entered into this 4th day of January 2022, by and between the Santa Clarita Valley Water Agency (“SCV Water”) and Dirk S. Marks (“MARKS”). In consideration of the mutual covenants and agreements set forth herein, the Parties agree as follows:

#### **RECITALS**

This Agreement is made and entered into with respect to the following facts:

A. SCV Water seeks to engage MARKS on an interim basis to serve in the position of Interim Director of Water Resources in accordance with the terms set forth in this Agreement; and

B. MARKS desires to accept employment as Interim Director of Water Resources in consideration of and subject to the terms, conditions and benefits set forth in this Agreement; and.

C. MARKS’ employment is authorized by Government Code Sections 7522.56 and 21221(h), which permit the Board of Directors to appoint a California Public Employees’ Retirement System (“CalPERS”) retiree to a vacant position requiring specialized skills during recruitment for a permanent appointment, and provide that such appointment will not subject the retired person to reinstatement from retirement or loss of benefits, so long as it is a single appointment that does not exceed 960 hours in a fiscal year, inclusive of all hours worked for other all CalPERS employers, unless an exception applies.

D. MARKS represents that he is a retired annuitant of CalPERS within the meaning of Government Code §§ 7522.56 and 21221(h) (“Statutes”) and acknowledges that his compensation is statutorily limited as provided in Government Code § 21221(h). MARKS represents that, as of the effective date of this Agreement, he has not worked for another CalPERS state or contracting agency as a retired annuitant during the 2021-2022 fiscal year, and that he therefore acknowledges that he can work up to 960 hours for SCV Water, a state agency or other CalPERS contracting agencies (collectively “CalPERS Agencies”) during the 2021-2022 fiscal year. MARKS represents that he has not received unemployment compensation from any CalPERS Agencies during the 12-month period preceding the effective date of this Agreement.

E. SCV Water has determined that it is necessary to hire MARKS, a retired annuitant, because the position of Interim Director of Water Resources requires special skills, and MARKS, by virtue of his experience has those special skills.

F. Although MARKS’ retirement became effective on December 30, 2021, less than the 180 days from the effective date of this Agreement, the Board of Directors took action on January 4, 2022, pursuant to Government Code Section 7522.56(f), to deem the appointment of MARKS within the 180-day period as critically necessary as reflected in Resolution No. SCV-249.

NOW, THEREFORE, SCV Water and MARKS, in consideration of the mutual covenants and agreements herein contained, agree as follows:

1. **DESIGNATION OF INTERIM DIRECTOR OF WATER RESOURCES.**

In accordance with Resolution No. SCV-249, MARKS is appointed Interim Director of Water Resources of SCV Water under the terms of this Agreement.

2. **POSITION AND DUTIES.**

2.1 **Position.** MARKS has been appointed by the Board of Directors as Interim Director of Water Resources of SCV Water to perform, on a basis set forth in Paragraph 4 below, the duties and functions pertaining to the Director of Water Resources position, and to perform other legally permissible duties and such functions as the General Manager shall from time-to-time assign. The General Manager shall have the authority to determine the specific duties and functions which MARKS shall perform under this Agreement and the means and manner by which MARKS shall perform those duties and functions. MARKS agrees to devote all his business time, skill, attention, and best efforts to the discharge of the duties and functions assigned to him by the General Manager.

2.2 **Term.** MARKS shall commence the performance of his duties as the Interim Director of Water Resources on January 4, 2022, or at such later date as the parties hereto shall agree in writing ("Commencement Date"). This Agreement shall expire as of the first of the following to occur: (i) upon the employment commencement date of a permanent Director of Water Resources employed by SCV Water; (ii) upon MARKS working 960 hours for all CalPERS Agencies during fiscal year 2021-2022 or 960 hours in any subsequent fiscal year; or (iii) upon termination of the Agreement by either MARKS or SCV Water as provided below.

2.3 **At-Will.** MARKS acknowledges that he is an at-will, temporary employee of SCV Water who shall serve at the pleasure of the General Manager at all times during the period of his service hereunder and shall be subject to termination by the General Manager at any time without advance notice and without cause. The terms of SCV Water's personnel rules, policies, regulations, procedures, ordinances, and resolutions regarding administrative personnel (collectively "Personnel Policies"), as they may be amended or supplemented from time to time, shall not apply to MARKS, and nothing in this Agreement is intended to, or does, confer upon MARKS any right to any property interest in continued employment, or any due process right to a hearing before or after a decision by the General Manager to terminate his employment, except as is expressly provided in Section 2.2 [Term] or Section 4 [Termination] of this Agreement. Nothing contained in this Agreement shall in any way prevent, limit or otherwise interfere with the right of SCV Water to terminate the services of MARKS, as provided in Section 2.2 [Term] or Section 4 [Termination]. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of MARKS to resign at any time from his position with SCV Water, subject only to the provisions set forth in Section 2.2 [Term] or Section 4 [Termination] of this Agreement. This at-will employment shall be expressly subject to the rights and obligations of SCV Water and MARKS, as set forth in Section 2.2 [Term] or Section 4 [Termination] below.

2.4 **Hours of Work.** MARKS shall devote the time necessary to adequately perform his duties as Interim Director of Water Resources. The parties anticipate that MARKS will work a sufficient number of hours per week allocated between regular business hours and

hours outside of regular business hours including, without limitation, attendance at regular and special Board meetings and other SCV Water functions as the General Manager may direct. However, in no event shall MARKS be required to work in excess of 960 hours in fiscal year 2021-2022 and 960 hours per each subsequent fiscal year for SCV Water, including hours worked for other CalPERS Agencies during such fiscal years. The position of Interim Director of Water Resources shall be deemed a non-exempt position under California wage and hour law.

### 3. COMPENSATION.

3.1 Rate of Pay. For all services performed by MARKS as the Interim Director of Water Resources under this Agreement, SCV Water shall pay MARKS compensation at the rate of \$107.35 per hour according to the public available pay schedule in place for SCV Water employees paid bi-weekly subject to the limitations provided below.

(a) Compliance with CalPERS requirements. It is the intent of the parties to compensate MARKS only to the extent permitted under Government Code sections 7522.56 and 21221(h), and corresponding CalPERS regulations and policy statements. The Rate of Pay set forth above is based on the salary limitations established by CalPERS and is not less than the minimum, nor more than the maximum rate of pay, for the position of Deputy Director of Water Resources as listed on SCV Water's publicly available pay schedule, divided by 173.333 to equal an hourly rate.

(b) Recordation and Reporting of Hours Worked. MARKS will comply with all applicable CalPERS regulations governing employment after retirement, including the recordation and reporting of all hours worked for SCV Water to CalPERS as may be required. SCV Water shall assist in any such reporting obligations to CalPERS. Additionally, MARKS shall keep SCV Water continually apprised of any hours worked by MARKS for other CalPERS Agencies during the term of this Agreement.

3.2 Benefits. Other than the compensation described in Section 3.1, MARKS will receive no other benefits, incentives, compensation in lieu of benefits, or any other form of compensation. MARKS understands and agrees that he is not, and will not be, eligible to receive any benefits from SCV Water, including any group plan for hospital, surgical, or medical insurance, any SCV Water retirement program, or any paid holidays, vacation, sick leave, or other leave, with or without pay, or any other job benefits available to an employee in the regular service of SCV Water, except for Worker's Compensation Insurance coverage or similar benefits required by state or federal law.

### 4. TERMINATION.

4.1 By SCV Water. This Agreement may be terminated by SCV Water for any reason thirty (30) days after providing written notice to MARKS of such termination. SCV Water's only obligation in the event of such termination will be payment to MARKS of all compensation then due and owing as set forth in Section 3.1 [Rate of Pay] up to and including the effective date of termination. However, this Agreement may be terminated immediately if necessitated by changes to CalPERS statutory or regulatory requirements.

4.2 By MARKS. This Agreement may be terminated by MARKS for any reason thirty (30) days after providing written notice to SCV Water of such termination. SCV

Water shall have the option, in its complete discretion, to make MARKS' termination effective at any time prior to the end of such period, provided SCV Water pays MARKS all compensation as set forth in Section 3.1 [Rate of Pay] then due and owing his through the last day actually worked.

4.3 No Notice for Expiration. Nothing in this Section 4 [Termination] shall be construed to require either party to give advance written notice in order for the Agreement to expire as set forth in Section 2.2 [Term].

4.4 Termination Obligations. MARKS 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 his incident to his employment belongs to SCV Water and shall be returned promptly to SCV Water upon termination of MARKS' employment. MARKS' obligations under this subsection shall survive the termination of his employment and the expiration of this Agreement.

5. PROPRIETARY INFORMATION. "Proprietary Information" is all information and any idea pertaining in any manner to the business of SCV Water (or any SCV Water affiliate), its employees, clients, consultants, or business associates, which was produced by any employee of SCV Water in the course of his/her employment or otherwise produced or acquired by or on behalf of SCV Water. Proprietary Information shall include, without limitation, trade secrets, product ideas, inventions, processes, formulae, data, know-how, software and other computer programs, copyrightable material, marketing plans, strategies, sales, financial reports, forecasts, and customer lists. All Proprietary Information not generally known outside of SCV Water' s organization, and all Proprietary Information so known only through improper means, shall be deemed "Confidential Information." During his employment by SCV Water, MARKS shall use Proprietary Information, and shall disclose Confidential Information, only for the benefit of SCV Water and as is, or may be, necessary to perform his job responsibilities under this Agreement. Following termination, MARKS shall not use any Proprietary Information and shall not disclose any Confidential Information, except with the express written consent of SCV Water. MARKS' obligations under this Section shall survive the termination of his employment and the expiration of this Agreement.

6. NOTICE. Notices required pursuant to this Agreement shall be given by personal service upon the party to be notified or by delivery of same to the custody of the United States Postal Service, or its lawful successor, postage prepared and addressed as follows:

SCV Water  
27234 Bouquet Canyon Road  
Santa Clarita, CA 91350  
Attn: General Manager

MARKS  
Dirk S. Marks  
[Address on File with Human Resources]

7. REIMBURSEMENT. SCV Water shall reimburse MARKS for authorized, reasonable and necessary travel expenses incurred by MARKS in the performance of his duties pursuant to this Agreement. MARKS shall document and claim said reimbursement for such travel in the manner and forms required by the SCV Water. All reimbursements shall be for actual



expenses and shall be subject to and in accordance with California and federal law and SCV Water's adopted reimbursement policies. Such reimbursements **shall not be reported** to CalPERS. Other than as specifically provided herein, MARKS shall receive no other compensation or reimbursements for expenses incurred by his in performance of this Agreement.

## 8. **GENERAL PROVISIONS.**

8.1 **Waiver.** No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding, unless executed in writing by the party making the waiver.

8.2 **Integration.** This Agreement is intended to be the final, complete, and exclusive statement of the terms of MARKS' employment by SCV Water. 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 MARKS, and it may not be contradicted by evidence of any prior or contemporaneous statements or agreements. To the extent that the practices, policies, or procedures of SCV Water, now or in the future, apply to MARKS and are inconsistent with the terms of this Agreement, the provisions of this Agreement shall control.

8.3 **Amendments.** This Agreement may not be amended except in a written document signed by MARKS and the General Manager.

8.4 **Assignment.** MARKS shall not assign any rights or obligations under this Agreement. SCV Water may, upon prior written notice to MARKS, assign its rights and obligations hereunder.

8.5 **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.

8.6 **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.

8.7 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, with venue proper only in Los Angeles County, State of California.

8.8 **Interpretation.** This Agreement shall be construed as a whole, according to its fair meaning, and not in favor of or against any party. By way of example and not in limitation, this Agreement shall not be construed in favor of the party receiving a benefit nor against the party responsible for any particular language in this Agreement. Captions are used for reference purposes only and should be ignored in the interpretation of the Agreement. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, cancelled superseded or changed by any oral agreement, course of conduct, waiver or estoppel.



8.9 Acknowledgment. MARKS acknowledges that he has had the opportunity to consult legal counsel in regard to 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.

8.10 Status of Recruitment. SCV Water warrants that as of the Commencement Date it has initiated the process for the recruitment of a permanent replacement to the Director of Water Resources position.

IN WITNESS WHEREOF, SCV Water has caused this Agreement to be signed and executed on its behalf by the General Manager and duly attested to by its Board Clerk, and MARKS has signed and executed this Agreement, as of the date first indicated above.

MARKS

SCV WATER

\_\_\_\_\_  
Dirk S. Marks

\_\_\_\_\_  
Matthew G. Stone, General Manager

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Board Secretary

\_\_\_\_\_  
Best Best & Krieger LLP  
General Counsel