

## SECOND AMENDMENT TO THE EMPLOYMENT AGREEMENT

This Second Amendment to the Employment Agreement ("First Amendment") is made and entered into on December 21, 2021, by and between Westlands Water District ("Westlands") and Thomas W. Birmingham, ("Employee").

### Recitals

WHEREAS, Westlands and the Employee entered into an employment agreement, which took effect on December 15, 2015, a copy of which is attached hereto as Exhibit 1 ("Employment Agreement"); and

WHEREAS, Westlands and the Employee entered into the First Amendment to the Employment Agreement, a copy of which is attached hereto as Exhibit 2 ("First Amendment"); and

WHEREAS, the First Amendment extended the term of the Employment Agreement until November 30, 2022; and

WHEREAS, Westlands desires to continue Employee's employment, to have the benefit of Employee's skills and service and to secure Employee's commitment to provide continued services beyond November 30, 2022; and

WHEREAS, Employee desires to continue Employee's employment with Westlands beyond November 30, 2022.

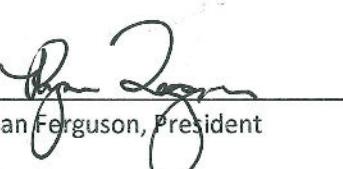
### Amendment

NOW, THEREFORE, in consideration of the above recitals and of the mutual promises, terms, covenants, and conditions set forth herein and in the Employment Agreement, Westlands and the Employee agree as follows:

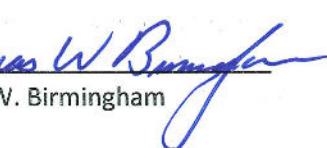
1. The first sentence of paragraph 1 (Term) of the Employment Agreement, as amended by the First Amendment, is hereby deleted and replaced with the following provision: "The term of this Agreement will begin on the Effective Date of this Agreement and will expire on November 30, 2024 (the "Term")."
2. Except as expressly modified by this First Amendment, the Employment Agreement shall remain in full force and effect.

IN WITNESS OF THIS SECOND AMENDMENT, Westlands, through its officer thereunto duly authorized, and the Employee have duly executed this First Amendment effective as of its Effective Date.

WESTLANDS WATER DISTRICT

By:   
Ryan Ferguson, President

Employee

By:   
Thomas W. Birmingham

## Exhibit 1

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### **EMPLOYMENT AGREEMENT**

This Employment Agreement ("Agreement") is effective as of December 15, 2015, ("Effective Date") between Westlands Water District ("Westlands") and Thomas W. Birmingham, ("Employee").

#### **Recitals**

WHEREAS, Westlands desires to continue Employee's employment to have the benefit of his skills and services, to secure Employee's commitment to provide continued services, and to more fully formalize terms and conditions of employment going forward in respect of Employee's recently expanded role with Westlands; and

WHEREAS, Employee desires to continue his employment with Westlands, on the terms and conditions as set forth herein.

NOW, THEREFORE, in consideration of the above recitals and of the mutual promises, terms, covenants, and conditions set forth herein, the parties hereto agree as follows:

1. **Term.** The term of this Agreement will begin on the Effective Date of this Agreement and will expire on November 30, 2020 (the "Term"). Employee's employment may terminate prior to the end of the Term, pursuant to Paragraph 2 or Paragraph 6. Upon the expiration of the Term of this Agreement, Employee shall be an at-will employee of Westlands with no specific term or defined period of employment, to which the severance provision in paragraph 7 shall no longer apply, and employment may be terminated by Employee or Westlands at any time with or without cause or notice.

2. **Death or Disability.**

- a. In the event of the death of Employee during the Term or thereafter, Employee's employment shall terminate as of the date of death and Employee's estate shall be entitled to receive that portion of his annual salary that is earned, but unpaid, through the date of death.
- b. For purposes of this Agreement, "Disability" shall mean the Employee's inability, because of physical or mental illness or incapacity or otherwise, to perform any essential duty of his position, with or without reasonable accommodation, for a period of ninety days or more in any period of 360 consecutive days. In the event of a Disability of the Employee during the Term or thereafter, Employee's employment shall terminate as of the date of notice from Westlands to the Employee terminating his employment due to the Disability. In addition to any benefits to which the Employee shall become entitled under Westlands' benefit plans, the Employee shall be entitled to receive that portion of his annual salary that is earned, but unpaid, through the date of Disability. Additionally, in the event of the Disability of Employee, Westlands shall provide Employee with a one-

time payment of 75% of the annual salary in effect at the time Employee became disabled under the definition of "Disability" above.

3. **Duties and Authority.** Westlands shall employ Employee as its General Manager and General Counsel or as its General Manager for the Term, or in such other positions and with such other titles as Westlands may determine, and Employee shall perform all functions of those positions, with diligence and loyalty, as prescribed by the laws of the State of California and Westlands' Rules and Regulations, as may be amended by Westlands from time to time.

4. **Annual Salary.** During the Term of this Agreement, Westlands agrees to pay Employee an annual salary of four hundred, twenty thousand dollars (\$420,000.00), payable in accordance with the District's standard payroll practices and intervals. Employee's annual salary will be reviewed in February of each year as part of Westlands' annual management employee salary review process; provided, that in no event shall Employee be paid less than four hundred, twenty thousand dollars (\$420,000.00) per year. Any increase in salary shall be effective on the first day of the month following action by Westlands, through its Board, to increase Employee's salary and shall become considered an amendment to this Agreement and shall become part thereof. Westlands retains the discretion to provide Employee with any annual or performance-based bonus for exemplary success in managing and representing Westlands and for consideration of Employee's continued exemplary performance on the behalf of Westlands, after written evaluation of Employee's performance.

5. **Membership in State Bar.** Employee shall throughout the Term of this Agreement maintain membership in good standing in the State Bar of California as long as he is employed as the General Manager and General Counsel; provided, that such requirement will not be treated as a material term to this Agreement in the event that Employee serves solely as the General Manager. Westlands shall pay Employee's annual dues in the State Bar of California and the American Bar Association and his reasonable costs, including costs of travel, lodging, and meals, of mandatory continuing legal education.

6. **Termination of Employment.** Employee may be discharged for Just Cause during the Term of this Agreement. Just Cause shall mean (i) the conviction of a felony or crime involving moral turpitude; (ii) any act of dishonesty, misappropriation, embezzlement, intentional fraud or similar conduct by Employee involving Westlands; (iii) Employee's failure to comply with the Westlands Board's reasonable instructions, after 15 days' written notice; or (iv) a material breach of this Agreement. If Employee is terminated for Just Cause, neither Employee nor his estate shall be eligible for a Severance Payment, as set forth below in paragraph 7.

7. **Severance Payment.** During the Term of this Agreement, Westlands may terminate Employee's employment without Just Cause or notice, but in the event of such a termination without Just Cause or notice, Employee will be entitled to a severance payment equal to Employee's monthly salary multiplied by the number of months left on the unexpired Term of this Agreement; provided, that if the unexpired Term of this Agreement is greater than eighteen (18) months, the maximum severance payment shall be an amount equal to the Employee's monthly salary multiplied by eighteen (18).

8. **Benefits.** Westlands will pay Westlands' share of retirement benefit payments to the California Public Employees Retirement System in accordance with Westlands' existing contract with the California Public Employees Retirement System. Westlands will pay 100% of Employee's health insurance premiums and 75% of any eligible family member's health insurance premiums for coverage in Westlands' health insurance program. Westlands will acquire for benefit of Employee's designated beneficiary a life insurance policy with a death benefit equivalent to one year of Employee's annual salary in effect at the time of death. Employee shall accrue annual leave and sick leave in accordance with Westlands' general policy.

9. **Automobile.** Westlands shall provide to Employee, at his election, a reasonable car allowance (up to a maximum monthly benefit of \$750.00) or the use of a Westlands vehicle. Westlands and Employee hereby recognize that the reasonableness of any car allowance is affected by circumstances and Employee's duties and responsibilities, and therefore agree that what is reasonable under the circumstances shall be determined solely by the mutual agreement of both parties.

10. **Expense Reimbursement.** During employment, Westlands shall reimburse Employee for reasonable and approved business expenses, made and substantiated in accordance with the policies and procedures established from time to time by Westlands.

11. **Reasonable Time and Effort.** During his employment, Employee shall devote such time, interest, and effort to the performance of this Agreement as may be fairly and reasonably necessary.

12. **Outside Business Activities and Conflicts of Interest.** During employment, Employee shall devote his full business time, energy, and ability exclusively to the business and interests of Westlands, and shall not, without Westlands' prior written consent, render to others services of any kind for compensation, or engage in any other business activity that would materially interfere with the performance of his duties under this Agreement. During employment, Employee shall avoid any activity or relationship that would create a conflict of interest with respect to his employment relationship with, duties and obligations toward, or the interests of Westlands.

13. **Passive Investments.** This Agreement shall not be interpreted to prohibit Employee from making passive personal investments or conducting personal business affairs if those activities do not materially interfere with the services required under this Agreement.

14. **Severability.** If any of the provisions or portions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions or portions will not be affected and remain in full force and effect.

15. **Governing law.** This Agreement will be governed by and interpreted under the laws of the State of California.

16. **Captions.** The captions and headings used in this Agreement are for convenience of reference only and will not be considered in construing or interpreting the terms of this Agreement.

17. **Binding Arbitration**. The parties agree that any dispute arising under or relating to this Agreement or Employee's employment with or separation from Westlands shall be submitted to final and binding arbitration before a single neutral arbitrator in accordance with the employment dispute rules and procedures of the American Arbitration Association. To the extent required by law based upon the claims in the dispute, Westlands shall pay the fees and costs of the arbitrator that exceed those normally incurred in the filing of a lawsuit in court. The arbitrator shall apply federal and California substantive law, including any applicable statutes of limitation. Adequate discovery will be permitted by the arbitrator consistent with applicable law and the objectives of arbitration. The award of the arbitrator, which shall be in writing summarizing the basis for the decision, shall be final and binding upon the parties (subject only to limited review as required by law) and may be entered as a judgment in any California court of competent jurisdiction. This provision, and any petition to compel arbitration brought under it, will be governed by the Federal Arbitration Act, and a court of competent jurisdiction may reform this provision if and to the minimum extent necessary to comply with applicable law and to effectuate the intent of the parties to resolve the specified disputes through arbitration.

18. **No Waiver**. No waiver by either party of any failure by the other party to keep or perform any covenant or condition of this Agreement will be deemed to be a waiver of any proceeding or succeeding breach of the same or other covenant or condition.

19. **Entire Agreement**. This Agreement contains the entire agreement and understanding between the parties to it with respect to the matters covered hereby and supersedes all such prior agreements, negotiations, and discussions, whether written or oral.

IN WITNESS OF THIS AGREEMENT, the parties have signed their names to this Agreement effective as of its Effective Date.

WESTLANDS WATER DISTRICT

By: Don Peracchi  
Don Peracchi, President

EMPLOYEE

Thomas W. Birmingham  
Thomas W. Birmingham

**Exhibit 2**

**FIRST AMENDMENT TO THE EMPLOYMENT AGREEMENT**

This First Amendment to the Employment Agreement ("First Amendment") is made and entered into on January 30, 2020, by and between Westlands Water District ("Westlands") and Thomas W. Birmingham, ("Employee").

**Recitals**

WHEREAS, Westlands and the Employee entered into an employment agreement, which took effect on December 15, 2015 and a copy of which is attached hereto as Exhibit 1 ("Employment Agreement"); and

WHEREAS, the Employment Agreement provides that it will expire on November 30, 2020; and

WHEREAS, Westlands desires to continue Employee's employment, to have the benefit of his skills and service and to secure Employee's commitment to provide continued services beyond November 30, 2020; and

WHEREAS, Employee desires to continue his employment with Westlands beyond November 30, 2020.

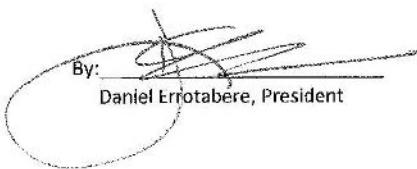
**Amendment**

NOW, THEREFORE, in consideration of the above recitals and of the mutual promises, terms, covenants, and conditions set forth herein and in the Employment Agreement, Westlands and the Employee agree as follows:

1. The first sentence of paragraph 1 (Term) of the Employment Agreement is hereby deleted and replaced with the following provision: "The term of this Agreement will begin on the Effective Date of this Agreement and will expire on November 30, 2022 (the "Term")."
2. Except as expressly modified by this First Amendment, the Employment Agreement shall remain in full force and effect.

IN WITNESS OF THIS FIRST AMENDMENT, Westlands, through its officer thereunto duly authorized, and the Employee have duly executed this First Amendment effective as of its Effective Date.

WESTLANDS WATER DISTRICT

By:   
Daniel Erratobere, President  
Employee

By:   
Thomas W. Birmingham