

EMPLOYMENT AGREEMENT NO. 2

This Second Employment Agreement ("Employment Agreement") is made by and between LYNNE SARAH WRIGHT who is known professionally as Lynne Bourgault (hereinafter, "Bourgault"), an individual, and the EAST BAY REGIONAL PARK DISTRICT (hereinafter, the "Park District"), a California special district.

RECITALS

WHEREAS, the Park District hired Bourgault as General Counsel, for an initial term from January 26, 2022 to January 26, 2025; and

WHEREAS, the Park District desires to continue to employ Bourgault as General Counsel of the Park District according to the terms set forth in this Employment Agreement; and

WHEREAS, Bourgault agrees to continue to serve as the General Counsel of the Park District in accordance with the terms of this Employment Agreement; and

WHEREAS, both the Park District and Bourgault wish to set forth in writing the terms and conditions of Bourgault's continued employment as General Counsel of the District; and

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the District and Bourgault agree as follows:

TERM AND PERFORMANCE OF DUTIES

1. EMPLOYMENT

The Park District hereby agrees to continue Bourgault's employment as an at-will employee in accordance with the terms and conditions set forth below, and Bourgault accepts the offer of such continued at-will employment. During the term of the Employment Agreement, the Park District will pay Bourgault the compensation provided for in this Employment Agreement.

2. TERM

This Employment Agreement shall commence on January 27, 2025 and expire on January 26, 2028, subject to earlier termination as set forth in Sections 13-15 of this Employment Agreement.

3. POSITION AND DUTIES

Bourgault shall serve as General Counsel of the Park District. In that capacity she shall be accountable to the Park District's Board of Directors ("Board") and shall assume overall responsibility for providing legal advice and counsel to the Park District to support the operation of the Park District in accordance with all applicable laws, rules and

regulations and in accordance with the policies and directions heretofore and from time to time established by the Board. As General Counsel, Bourgault shall advise the Park District on current law and anticipated changes in the law, shall oversee all litigation on behalf of and against the Park District, shall draft contracts, ordinances, resolutions, and other legal documents as needed, and shall exercise exclusive and direct administrative and functional authority over the General Counsel's Office.

Bourgault shall, while employed by the Park District, not accept other employment or perform other services for compensation without first having obtained permission from the Board, which the Board may withhold in its sole discretion. The employment of Bourgault shall be, except as otherwise provided in this Employment Agreement or any future written amendments to it, in accordance with the policies, rules, and regulations of the Park District established for the Park District's senior level management personnel as such policies, rules, and regulations presently exist or may be changed or modified by the Board from time to time in the future.

The Park District acknowledges a mutual interest with Bourgault in having Bourgault, on occasion, undertake limited outside activities, including serving as an officer or a board member of park/park district or municipal government organizations, or other related activities, provided that such activities do not distract Bourgault from the performance of her duties as General Counsel for the Park District, or otherwise create negative impacts for the Park District.

Bourgault and the Board acknowledge and agree that it is essential, in view of the important public policies and duties undertaken by the Park District, that the effective relationship between the Board and Bourgault be continued throughout the term of this Employment Agreement and the General Counsel and Board shall work diligently toward that end.

4. HOURS OF WORK

Bourgault shall be an exempt employee under the Fair Labor Standards Act. Bourgault is expected to devote necessary time outside normal office hours to the business of the Park District. Bourgault's schedule of work each day and week may vary in response to the requirements of the work to be performed. Bourgault is expected to spend sufficient hours at the Park District's administrative offices ("Peralta Oaks") to perform her duties.

SALARY

5. SALARY

Bourgault's current salary of \$265,678.40 shall be increased as follows:

- A 3% wage increase effective the first full pay period in March 2024;

- A 2% wage increase effective the pay period that includes November 1, 2024;
- A 5% merit increase effective the pay period that includes January 26, 2025.

Salary shall be paid bi-weekly. General Counsel shall receive the same annual or bi-annual salary adjustment(s) at the same rate and at the same time as such salary adjustments are given to the unrepresented Executive, Confidential, and Management employee group. The Board, in its sole discretion, may give Bourgault other salary adjustments or merit increases.

EVALUATIONS

6. EVALUATIONS

Performance evaluations are an important way for the Board and Bourgault to ensure effective communications about expectations and performance. To assure that Bourgault receives this feedback, the Board shall conduct an evaluation of Bourgault at least once a year. For purposes of providing additional input and feedback, evaluations may occur more frequently. Either the Board or Bourgault can request that the performance evaluation be conducted by a third-party facilitator. In the event that a party requests a third-party facilitator, the Assistant General Manager of Human Resources will develop a list of names of potential third-party facilitators, with input from both Bourgault and the Board. The Board President will select the third-party facilitator from the list created. If the Board, in consultation with the General Counsel, develops a General Counsel Evaluation Policy, that policy may further inform the process and criteria for a performance evaluation.

RETIREMENT, HEALTH & OTHER BENEFITS

7. RETIREMENT

Bourgault will be covered by the Park District's CalPERS plan during her employment as a "Classic Member" and entitled to the "miscellaneous" 2.5% at 55 retirement formula, subject to confirmation by CalPERS. Bourgault shall make the same percentage contributions to her pension as required for other Class Member management employees, which currently is 8% of the normal cost of the 2.5% at 55 retirement formula as defined and determined annually by CalPERS, which contributions shall be made in accordance with Section 414(h)(2) of the Internal Revenue Code.

8. HEALTH AND OTHER "FRINGE BENEFITS"

Bourgault shall receive the same health, dental, life insurance, and disability benefits, as afforded other Park District management employees, excluding benefits specific to public safety managers, if any, at the same levels and under the same conditions they are provided to other Park District management employees. Bourgault

shall be eligible for the retiree health benefits described in the Park District's Personnel Administrative Manual for an employee in the General Counsel or District Counsel classification hired or promoted to be a management employee at the Park District on or after January 1, 2012. The Park District shall pay such other mandatory employer costs associated with Bourgault's employment including unemployment compensation, Workers' Compensation and Medicare contributions.

9. DEFERRED COMPENSATION

Bourgault shall be eligible to participate in the Park District's deferred compensation plan and receive the benefit of any Park District contributions (if any) to the deferred compensation plan to the same extent as the most generous rights of any other Park District management employees so long as consistent with PEPRRA and the Internal Revenue Code.

10. HOLIDAYS AND OTHER LEAVES

Except as provided in Section 11 below, Bourgault shall receive the same paid holidays and other leaves as other Park District management employees as set forth in the Personnel Administrative Manual.

11. ADMINISTRATIVE, VACATION AND SICK LEAVE

Bourgault shall receive eighty (80) hours of Administrative Leave at the beginning of January for the term of this Employment Agreement. Administrative Leave hours shall be used during the calendar year in which they are accrued and may not be carried over into a subsequent calendar year and may not be cashed out.

Bourgault shall continue to accrue vacation on a bi-weekly basis. As of February 2025, Bourgault shall accrue vacation on a bi-weekly basis at a rate equivalent to one hundred ninety-two and four tenths (192.4) hours per year, and thereafter be entitled to an annual accrual rate that is eight (8) hours higher after each continuous year of Park District service. Annual carryovers of vacation and cash out shall be as provided in the Park District's Personnel Administrative Manual for other Park District management employees.

Bourgault shall accrue Sick Leave on a bi-weekly basis as set forth in the Personnel Administrative Manual for other Park District management employees.

13. PROFESSIONAL MEMBERSHIPS

Unless provided otherwise in the Park District's adopted budget, the Park District shall pay Bourgault's membership dues in traditional organizations of benefit to Bourgault and the Park District, including but not limited to California State Bar dues, and/or with

such organizations and associations that enhance both Bourgault's standing and the Park District's reputation.

The Park District will pay for registration, travel, accommodations, meals, etc. for attendance at conferences deemed reasonably necessary by Bourgault subject to the Legal Division's budget and consistent with the Park District's reimbursement policies and policies for out of state travel.

SEPARATION FROM EMPLOYMENT

14. AT WILL EMPLOYMENT

Bourgault shall continue to be an at-will employee, which employment the Park District may, in its sole discretion, terminate at any time, with or without cause, with or without notice, and without any rights to process or appeal, except to the extent specifically set forth in this Employment Agreement.

15. RESIGNATION/RETIREMENT/DEATH

Bourgault agrees to make her best efforts to provide the Park District with at least ninety (90) days written notice of the effective date of Bourgault's resignation or retirement. Bourgault and her assigns shall not be entitled to any severance payments, other than those required by law or Park District policy (for example, cash out of accrued vacation) if she resigns, retires or dies during the term of this Employment Agreement.

16. TERMINATION

The Park District, through a majority vote of its Board of Directors, may terminate this Employment Agreement prior to the expiration of the term at its sole and absolute discretion, with or without cause. The term "cause" is defined below for the purposes of this Employment Agreement.

If the Park District decides to terminate this Employment Agreement without "cause" or to medically separate Bourgault due to Disability (as defined below) prior to January 25, 2028, the Park District and the Board shall use best efforts to give Bourgault at least thirty (30) days prior written notice of such no-cause termination or medical separation. In addition, the Park District will provide Bourgault with a lump sum severance amount equal to Bourgault's monthly base salary at the time of payment multiplied by the lesser of either:

(a) twelve (12) months; or

(b) the number of months, including partial months, remaining before this Employment Agreement expires.

Bourgault shall only be eligible for severance under this Section and Employment Agreement if she signs and delivers to the Board a general and full release of all claims (consistent with applicable state and federal laws) against the Park District, including without limitation its current and former elected officials, officers, agents and employees, in a form satisfactory to the Board.

In exchange for the payment of severance, Bourgault also agrees to cooperate with the Park District in the transition of her duties to a new or interim General Counsel.

For purposes of this Employment Agreement, Disability shall mean the inability, due to a physical or mental health condition, to perform the essential functions of the General Counsel position with or without a reasonable accommodation. Any decision to medically separate Bourgault must be based on the written opinion of a licensed physician appointed by the Board concluding that the General Counsel is not able to perform the essential functions of the General Counsel position with or without reasonable accommodation because of a physical or mental health condition. The cost of any physician evaluation and/or written opinion shall be paid by the Park District.

In the event Bourgault is terminated for (1) continued abuse of drugs or alcohol which materially affects the performance of her duties; (2) repeated and protracted unexcused absences from the General Counsel's office; (3) conviction of or pleading nolo contendere to a felony or misdemeanor involving moral turpitude; (4) theft of Park District property or improper use of Park District funds; (5) willful misconduct or malfeasance; (6) dishonesty; (7) behavior during or outside of employment that causes discredit to the Park District; (8) acceptance of employment from another source which is inconsistent with full time employment as the Park District's General Counsel and in violation of Section 3 of this Agreement; or (9) any material breach of this Employment Agreement, the Park District shall have no obligation to continue the employment of Bourgault or to pay any severance under this Agreement. Any one or more of the above enumerated items constitutes "cause" for purposes of this Agreement.

In accordance with California Government Code sections 53243, 53242.1 and 53242.2, if Bourgault is placed on paid leave pending an investigation, or the Park District pays for Bourgault's legal criminal defense, or if severance is paid Bourgault due to termination of this contract, Bourgault will fully reimburse the Park District for such costs and payments if she is subsequently convicted of or pleads no contest to a crime involving the abuse of her office or position. For the purpose of this paragraph, "abuse of office or position" shall be as defined in Government Code section 53243.4.

17. INDEMNIFICATION

The Park District shall defend and indemnify Bourgault and pay any costs, legal fees, and judgments assessed against Bourgault arising out of an act or omission occurring in the course and scope of Bourgault's performance of her duties under this Employment Agreement. Notwithstanding the foregoing however, the Park District shall

not be required to defend or indemnify Bourgault for claims, actions, damages, fees or actions when the defense or indemnity is prohibited, restricted or limited by law, including without limitation California Government Code sections 825 and 996.2 through 995.8.

18. EXPIRATION OF AGREEMENT

Per Section 2 of this Employment Agreement, the expiration date of this Employment Agreement shall be January 26, 2028, unless the Park District and Bourgault enter into a written agreement to extend the term of this Employment Agreement or enter into a new employment agreement. The Board and Bourgault shall begin discussions regarding a potential term extension no later than July 26, 2027. Bourgault shall not be entitled to any severance payments, other than those required by law or District policy if this Employment Agreement is not extended and she works until the expiration of this Employment Agreement.

MISCELLANEOUS PROVISIONS

19. LAW GOVERNING AGREEMENT

This Employment Agreement will be governed and construed in accordance with the laws of the State of California. Any action to enforce or interpret this Employment Agreement shall be commenced and maintained in California State Superior Court for the County of Alameda or in the United States District Court for the Northern District of California.

20. REIMBURSEMENT

Bourgault is entitled to reimbursement for all sums necessarily and reasonably incurred and paid by her in the performance of her duties so long as Bourgault submits requests for reimbursement in the same form and manner as is required by the Park District and by custom and practice for other Park District management employees.

21. SEVERABILITY

In the event that any term of this Employment Agreement is finally held or determined to be illegal or void by a court having jurisdiction over the Park District and Bourgault, the remainder of this Employment Agreement shall remain in full force and effect unless the term or terms held to be illegal or void are wholly inseparable from the remaining portions of the Employment Agreement.

22. PARITY IN CONSTRUING AGREEMENT

Both the Park District and Bourgault have had the opportunity to participate in the drafting of this Employment Agreement. Consequently, terms, conditions, or provisions

of this Agreement shall not be construed against one party and in favor of the other based upon who actually drafted the Employment Agreement.

23. INTEGRATION CLAUSE

The Park District and Bourgault acknowledge that this Employment Agreement constitutes the sole and entire agreement of the parties in this matter, and supersedes any prior agreements, and that any modifications may be made only in a writing signed by both the Park District and Bourgault and approved by the Board. The Park District and Bourgault agree that there are no representations, agreements, arrangements or understandings, whether written or oral, between the parties relating to the subject matter of this Employment Agreement which are not fully set forth in this Employment Agreement.

24. NOTICES

All notices, requests, demands, consents, and other communications required by this Agreement shall be transmitted in writing and shall be deemed to have been given at the time of delivery if given in person or within twenty-four (24) hours after being sent by certified mail, postage prepaid, return receipt requested and addressed to the Park District at its principal administrative office, to the attention of its Board President with a copy to the Clerk of the Board, and to Bourgault at the latest address in the Park District's employment records or at any other address which a party shall give notice of pursuant to this section.

EAST BAY REGIONAL PARK DISTRICT

LYNNE BOURGAULT

Elizabeth Echols, President
Board of Directors



Date: _____

Date: 12/11/24

APPROVED AS TO FORM:
