

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("Agreement") is made and entered into as of January 18, 2017, by and between Tehachapi-Cummings County Water District ("**District**"), and Thomas P. Neisler ("**Employee**").

RECITALS

WHEREAS, The District desires to employ Employee as General Manager of the District;

WHEREAS, Employee desires employment with the District in the position of General Manager pursuant to the terms and conditions of employment set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties do agree as follows:

1. TERM OF EMPLOYMENT

The District hereby appoints Employee to serve as General Manager, and Employee agrees to serve in this capacity beginning January 18, 2017 (the "Effective Date"), and continuing for an initial term of three years, subject to termination by District at any time with or without cause, as provided in this Agreement. Unless the District gives a written notice of non-renewal to Employee at least sixty (60) days prior to expiration of the initial or any subsequent term, this Agreement shall automatically renew for an additional one (1) year term. Such renewed employment shall be on the same terms as this Agreement. Employee shall provide the District with sixty (60) days prior written notice in advance of Employee's intent to resign or retire.

2. DUTIES OF EMPLOYEE

a. Description of Services as General Manager. Employee's duties shall be as provided in California Water Code sections 30580 and 30581, and shall include, but shall not be limited to, the job description attached hereto as Exhibit A.

b. Devotion of Time. Employee shall devote such time, effort, ability and attention to the business of the District during the Term as may be required to perform faithfully and fully the duties of General Manager of the District. Employee shall not be employed by any other person or entity while employed as General Manager of the District.

3. COMPENSATION

a. Salary. The District shall pay Employee a salary at the annualized rate of One Hundred Thirty Thousand Dollars (\$130,000) for Employee's services as

General Manager, payable in accordance with the District's customary payroll practices. Employee's performance and salary shall be reviewed at least once annually, typically in June of each year. Employee shall be eligible for all COLA increases granted to full-time employees of the District.

b. District Vehicle. The Employee shall be provided with a vehicle for Employee's business use as General Manager. The Employee may use the District vehicle to travel to and from Employee's residence to work site up to a maximum one-way distance of 15 miles, and for work-related activities, as well as for incidental personal use. District will be responsible for cost of insurance, maintenance and fuel.

c. Retirement Benefits. Employee shall be entitled to participate in any retirement plan generally made available to full-time employees of the District that is in effect during the Term of this Agreement, subject to the terms and conditions of any such plan.

4. EMPLOYEE BENEFITS

a. Health and Welfare Benefits. In addition to Employee's salary, Employee shall be eligible to participate in the employee benefits generally made available to full-time employees of the District as detailed in the District Employee Handbook. Employee's participation in the employee benefits is subject to the terms and conditions of any such benefit plan and any applicable District policies as may be amended from time to time. The District may modify its employee benefit plans and policies, including the scope of and/or provider of benefits, in its sole discretion.

b. Paid Time Off.

i. Vacation. Employee shall retain all vacation time earned before the Effective Date. Employee shall continue to accrue vacation in accordance with policies contained in District Employee Handbook, except that beginning on the Effective Date Employee shall be entitled to 20 vacation days each year, accrued biweekly at the rate of 0.769 days. Employee shall not take more than 10 consecutive workdays as vacation days without prior approval of the District.

ii. Sick Leave. Employee shall accrue twelve paid sick days annually in accordance with the District Employee Handbook.

iii. Holidays. Employee shall be entitled to paid holidays in accordance with the District's established holiday schedule for all of its employees and included in the District Employee Handbook.

c. **Other Benefits.** Except as otherwise modified by this Agreement, Employee shall be entitled to all other benefits, if any, accorded to other full-time employees of the District.

5. **PERFORMANCE EVALUATION**

a. **Frequency.** The Board of Directors of the District (Board) shall evaluate the performance of the Employee once quarterly during the first year of this Agreement, semi-annually during the second year of this Agreement, and at least annually thereafter. The District shall provide Employee with a summary written statement of the findings of the evaluation by the Board and provide an opportunity for Employee to discuss said findings with the Board.

b. **Criteria.** The Board and Employee shall jointly define goals and performance objectives which they determine beneficial for the proper operation of the District and attainment of the Board's policy objectives. These goals and objectives and any other performance review criteria, which may be subjective and objective, will be set forth in writing. The goals, objectives, and other review criteria will be reasonable given the annual operating and capital budgets and appropriations provided.

c. **Results.** The Board shall classify the results of the annual Performance Evaluation as either "satisfactory" or "unsatisfactory." If an "unsatisfactory" result is determined, the Board shall provide Employee with a written plan for improvement, and Employee shall have an opportunity to cure any unsatisfactory performance within 30 days of the evaluation. If a "satisfactory" result is determined for all reviews conducted during a calendar year, the Board shall consider whether any merit salary increase is appropriate.

6. **TERMINATION AND SEVERANCE PAY**

a. **Termination upon Notice by Either Party.** Employee shall be 'at will' and serve at the pleasure of the District. Except as limited by the other paragraphs of this Section, nothing in this Agreement shall prevent or otherwise interfere with the right of the District or Employee to sever the employment relationship evidenced by this Agreement at any time or for any reason. Employee shall be entitled to receive at termination all compensation and benefits earned through the date of termination plus all benefits accrued. No other compensation, payment or benefits of any kind will be provided by the District upon termination of Employee's employment with the District except as otherwise provided in subsection 6.c.

b. **Termination for Cause.** The District may terminate this Agreement immediately, without advance notice, upon any of the following occurrences:

- i. Employee is determined by a court or administrative body to have engaged in conduct constituting a felony or offense involving moral

- turpitude, or dishonesty including fraud, theft, or embezzlement;
- ii.** Employee's conviction or plea of nolo contendere or the equivalent of any felony;
 - iii.** Harassment, abusive or other behavior by Employee that, in the reasonable judgment of District, could interfere with the business of District, threaten District's workforce or could result in liability for District;
 - iv.** Any intentional and material act of dishonesty, misappropriation, embezzlement, intentional fraud, or similar conduct by Employee;
 - v.** Material damage to any District property that is caused by Employee's willful or grossly negligent conduct;
 - vi.** Employee's threats or acts of violence in the workplace or in the course and scope of any District activity, or breach of this Agreement which results in any material harm to the District;
 - vii.** Employee's gross negligence or intentional or willful refusal to follow the reasonable, material and lawful directions of the Board; or
 - viii.** Employee's material non-performance or breach of this Agreement or any other statutory duty owed by Employee to the District that is not otherwise remedied to the District's reasonable satisfaction within thirty (30) days of Employee's receipt of written notice from Employer of such non-performance or breach.
 - ix.** Misconduct, which includes:
 - (1) Dishonesty;
 - (2) Theft;
 - (3) Discourtesy;
 - (4) Misusing or destroying District property or the property of another on District premises;
 - (5) Violating conflict of interest rules;
 - (6) Disclosing or using confidential or proprietary information without authorization;
 - (7) Falsifying or altering District records, including an application of employment;
 - (8) Being under the influence of, using, or possessing alcohol or illegal substances on District property or while conducting District business;
 - (9) Gambling on District premises or while conducting District business;
 - (10) Possessing a firearm or other dangerous weapon on District property or while conducting District business;

- (11) Being convicted of a crime that indicates unfitness for the job or raises a threat to the safety or well-being of the District, its employees, customers, or property; or
 - (12) Failing to report to the District, within five days, any criminal conviction.
 - (13) Violation of any District policy, procedure, or rule.
 - (14) Engaging in conduct that puts the District in disrepute.
- x. Employee becomes so disabled, physically or mentally, that in the reasonable judgment of District, Employee is unable to fully perform its duties under this Agreement. Disability shall include alcohol or substance abuse resulting in impairment that could potentially bring discredit on the District, or create potential liability in the discharge for Employee's duties hereunder.

c. Severance Pay Upon Termination Other Than for Cause. Upon termination of Employee's employment by the District for any reason other than for permanent disability (where Employee is unable to perform the essential functions of his position with or without reasonable accommodation), for death or for Cause as defined in subsection 6.b., the District shall continue to pay to Employee severance pay consisting of Employee's then current salary, less required payroll deductions, in regular installments, in accordance with the District's customary payroll practices, for (i) a period of two (2) months during the first year of this Agreement, (ii) four (4) months during the second year of this agreement, and (iii) six (6) months during the third year of this Agreement and any subsequent term, or (iv) the remainder of the term of this Agreement, whichever period is less. The District shall also continue to provide and pay for all insurance coverages in place at time of termination for the same severance period. The District will also continue to make the employer's portion of Employee's CalPERS contributions during this period.

7. **GENERAL PROVISIONS**

a. Entire Agreement. This Agreement and those documents and statutes referred to herein contain all of the covenants and agreements between the parties with respect to the employment by the District of Employee as General Manager of the District in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made which are not embodied herein and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement will be effective only if in writing signed by both parties.

b. Construction. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

c. Waiver of Breach. The waiver by one party to this Agreement of a breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver of a subsequent breach by the other party.

d. Assignment. This Agreement shall inure to the benefit of the successors and assigns of The District. Except as expressly provided in this Agreement, Employee may not sell, transfer, assign, or pledge any of his rights or interests, pursuant to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first indicated above.

TEHACHAPI-CUMMINGS COUNTY WATER DISTRICT

By: 
Rick Zanutto, President

EMPLOYEE

By: 
Thomas P. Neisler

SEVENTH AMENDMENT TO EMPLOYMENT AGREEMENT

THIS SEVENTH AMENDMENT TO EMPLOYMENT AGREEMENT is executed on MARCH 16, 2022, by Tehachapi-Cummings County Water District (“**District**”) and Thomas P. Neisler (“**Employee**”).

RECITALS

WHEREAS, the District and the Employee are parties to an Employment Agreement dated January 18, 2017, as amended by the First, Second, Third, Fourth, Fifth, and Sixth Amendments to the Employment Agreement (“**Employment Agreement**”);

WHEREAS, Section 3.a of the Employment Agreement provides that Employee’s annual salary is \$155,902.45 and that “Employee’s performance and salary shall also be reviewed at least once annually;”

WHEREAS, in July 2021, the Board granted full-time employees of the District, including Employee, a cost-of-living adjustment of three percent (3%);

WHEREAS, on review of Employee’s performance and salary, the Board at its February 16, 2022, regular meeting approved a merit increase in Employee’s annual salary of \$4,817.39 (3%); and

WHEREAS, the parties wish to amend the Employment Agreement to reflect the merit increase and cost-of-living adjustment;

NOW, THEREFORE, IT IS AGREED as follows:

AGREEMENT

1.0. Amendment of Section 3.a. Section 3.a of the Employment Agreement is deleted in its entirety and replaced with the following:

Effective February 28, 2022, the District shall pay Employee a salary at the annualized rate of \$165,396.91 for Employee’s services as General Manager, payable in accordance with the District’s customary payroll practices. Employee’s salary shall be adjusted annually for a cost-of-living adjustment in the percentage granted to full-time employees of the District. Employee’s performance and salary shall also be reviewed at least once annually.

2.0. Scope. Except as amended by this and other amendments, the Employment Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first stated above.

TEHACHAPI-CUMMINGS COUNTY
WATER DISTRICT

EMPLOYEE

By 
Robert W. Schultz, President

By 
Thomas P. Neisler