

# November 18 2020 Regular Meeting

## November 18 2020 Regular Meeting - November 18 2020 Regular Meeting

### Agenda, November 18 2020 Regular Meeting

Agenda, November 18 2020 District Board meeting .....	2
---	---

### Interim CEO Contract

Interim CEO Contract .....	5
----------------------------	---

### Public Comment Policy and Procedure

Public Comment Policy and Procedure .....	23
---	----

### Medical Staff Bylaws review

Medical Staff Bylaws Review .....	25
-----------------------------------	----

### Chief of Staff Report

Medical Executive Committee Report, November 2020 .....	28
---	----

Medical Staff Policy and Procedure approvals, Nov. 2020 .....	29
---	----

### Consent Agenda

Minutes, October 21 2020 Regular Meeting .....	43
--	----

Interim Chief Executive Officer report .....	48
--	----

Interim Chief Executive Officers report, Part II, Nov. 2020 .....	66
---	----

Interim Chief Medical Officer Report, November 2020 .....	82
---	----

Chief Nursing Officer report, November 2020 .....	87
---	----

ESEP Quarterly Report, November 2020 .....	100
--	-----

Financial and Statistical reports as of Sept. 30, 2020 .....	101
--	-----

Cerner Implementation Update, November 2020 .....	103
---	-----

Compliance Department Quarterly Report, November 2020 .....	109
---	-----

### Board Member Reports

ACHD Telehealth Questionnaire .....	119
-------------------------------------	-----

**AGENDA**  
**NORTHERN INYO HEALTHCARE DISTRICT**  
**BOARD OF DIRECTORS REGULAR MEETING**  
**November 18, 2020 at 5:30 p.m.**  
**2957 Birch Street, Bishop, CA**

**Northern Inyo Healthcare District invites you to attend this Zoom meeting:**

**TO CONNECT VIA ZOOM:** (A link is also available on the NIHD Website)  
<https://zoom.us/j/213497015?pwd=TDIiWXRuWjE4T1Y2YVFWbnF2aGk5UT09>  
Meeting ID: 213 497 015  
Password: 608092

**PHONE CONNECTION:**  
888 475 4499 US Toll-free  
877 853 5257 US Toll-free  
Meeting ID: 213 497 015

---

1. Call to Order (at 5:30 pm).
2. **Public Comment:** The purpose of public comment is to allow members of the public to address the Board of Directors. Public comments shall be received at the beginning of the meeting and are limited to three (3) minutes per speaker, with a total time limit of 30 minutes for all public comment unless otherwise modified by the Chair. Speaking time may not be granted and/or loaned to another individual for purposes of extending available speaking time unless arrangements have been made in advance for a large group of speakers to have a spokesperson speak on their behalf. Comments must be kept brief and non-repetitive. The general Public Comment portion of the meeting allows the public to address any item within the jurisdiction of the Board of Directors on matters not appearing on the agenda. Public comments on agenda items should be made when that item is considered.
3. New Business:
  - A. Strategic Planning update (*information item*).
  - B. Approval of Interim CEO contract (*action item*).
  - C. Board of Directors Public Comment Policy and Procedure approval (*action item*).
  - D. NIHD Medical Staff Bylaws Ad Hoc Committee update (*information item*).
  - E. Consideration of revised NIHD Medical Staff Bylaws (*action item*).
4. Chief of Staff Report, Charlotte Helvie, MD:

A. Policy and Procedure approvals (*action items*):

1. *Infection Control in OR/PACU Environment*
2. *Adult Oxygen Protocol*
3. *Informed Consent Policy – Practitioner’s Responsibility*

B. Medical Staff Appointments (*action items*):

1. *Jason Phillips, MD (urology) – Provisional Consulting Staff*
2. *Lindsey Ricci, MD (pediatrics) – Provisional Active Staff*
3. *Kelly O’Neal, MD (general surgery) – Locums/Temporary Staff*

C. Telemedicine Staff Appointment – Credentialing by Proxy (*action item*):

*As per the approved Telemedicine Physician Credentialing and Privileging Agreement, and as outlined by 42CFR 482.22, the Medical Staff has chosen to recommend the following practitioners for Telemedicine privileges relying upon Adventist Health’s credentialing and privileging decisions:*

1. *Snow Peterson, MD (sleep medicine) – Distant Site: Adventist Health, St. Helena*

D. Advancement (*action item*):

1. *David Amsalem, MD (emergency medicine) – Advancement from Provisional to Active Staff*

E. Plastic Surgery Privilege Form – NEW (*action item*).

F. Internal Medicine Privilege Form – UPDATE (*action item*).

G. Physician Engagement Survey Results (*information item*).

---

***Consent Agenda (action items)***

5. Approval of minutes of the October 21 2020 regular meeting
6. Interim Chief Executive Officer report
7. Interim Chief Medical Officer report
8. Chief Nursing Officer report
9. Eastern Sierra Emergency Physicians quarterly report
10. Financial and Statistical reports as of September 30 2020
11. Cerner Implementation update
12. Compliance Department Quarterly report

- 
13. NIHD Committee updates from Board members (*information items*).

14. Reports from Board members (*information items*).
15. Adjournment to Closed Session to/for:
  - A. Conference with legal counsel, existing litigation (*pursuant to Gov. Code Section 54956.9(d)(1)*). Name of case: Robin Cassidy v. Northern Inyo Healthcare District.
  - B. Conference with legal counsel, anticipated litigation/significant exposure to litigation (*pursuant to Paragraph 2, subdivision D of Government Code Section 54956.9*), 3 cases.
16. Return to Open Session and report of any action taken (*information item*).
17. Adjournment.

*In compliance with the Americans with Disabilities Act, if you require special accommodations to participate in a District Board meeting, please contact administration at (760) 873-2838 at least 48 hours prior to the meeting.*

## **AGREEMENT FOR EMPLOYMENT OF INTERIM CHIEF EXECUTIVE OFFICER**

This EMPLOYMENT AGREEMENT is made as of this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between KELLI DAVIS (“DAVIS”) and NORTHERN INYO COUNTY LOCAL HOSPITAL DISTRICT (“DISTRICT”).

### **RECITALS**

A. DISTRICT is a Local Healthcare District duly organized and existing under the laws of the State of California and more specifically pursuant to the provision of Health and Safety Code §§ 32000, et seq. known as the Local Healthcare District Law.

B. DISTRICT owns and operates NORTHERN INYO HOSPITAL (“HOSPITAL”), an acute care licensed hospital facility located in Bishop, California.

C. The DISTRICT desires to engage and employ DAVIS as its Interim Administrator and Chief Executive Officer to serve at the pleasure of the Board of Directors of the DISTRICT pursuant to the terms and provisions of this Agreement and to continue her employment as the Chief Operating Officer.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

### **AGREEMENT**

#### **1. Title and Scope of Employment**

A. DAVIS shall be the Interim Administrator and Chief Executive Officer (“CEO”) of HOSPITAL. In this regard, DAVIS agrees to devote such amount of time to the conduct of the business of HOSPITAL as may be reasonably required to effectively discharge her duties, subject to the supervision and direction of District’s Board of Directors. DAVIS agrees to perform those duties and have such authority and powers as are customarily associated with the office of Administrator and Chief Executive Officer of a licensed general acute care hospital and as more fully set forth in **Exhibit 1**, attached hereto and made a part hereof. In addition to the foregoing, the specific duties and obligations of DAVIS shall include, without limitation, as prescribed by the California Health Care District Law (*Health & Safety Code § 32000, et seq.*, and other applicable State and Federal law). The DISTRICT reserves the right to modify this position and duties at any time in its sole and reasonable discretion. DAVIS acknowledges and understands that as the Interim CEO and administrator of a Healthcare District hospital, she is a public officer and a public employee pursuant to California Law.

B. DAVIS shall also continue to perform the duties of the Chief Operating Officer as those are specified in the existing job description.

#### **2. Term of Employment/At-Will Employment**

A. The initial term of employment shall be for a term of one (1) year beginning on July 1, 2020, (the “Effective Date”) and terminating at 5:00 p.m. on June 30, 2022. At all times, DAVIS shall be an “at will” employee as provided in Section 32121(h) of the *California Health & Safety Code (“the CODE”)* and shall serve at the pleasure of the Board of Directors of the DISTRICT. DAVIS acknowledges that “at will” employees may be terminated by the DISTRICT at any time, with or without cause and without notice or an opportunity to be heard regarding such employment decisions and all such employees may voluntarily terminate their employment at any time.

B. The parties agree that the initial term of this Agreement may be extended by mutual written agreement.

C. Should the Board exercise its right to terminate DAVIS’s employment as Interim Administrator and Chief Executive Officer, DAVIS shall be offered the opportunity to return to the position of Chief Operating Officer (“COO”), except if she is terminated “for cause” as specified in Section 9.4 of this Agreement. Should DAVIS return to the position of COO, her salary and compensation will be determined based on the salary schedule in effect for the COO position and shall be set at the discretion of the DISTRICT.

### **3. Place of Employment**

Performance of services under this Agreement shall be rendered in the City of Bishop and the County of Inyo and within the boundaries of the DISTRICT (including satellite offices and facilities), subject to necessary travel requirements for the position and duties described herein.

### **4. Loyal and Conscientious Performance of Duties**

DAVIS represents and warrants to the best of her ability and experience, that she will at all times loyally and conscientiously perform all duties and obligations to the DISTRICT during the term of this Agreement. As an exempt salaried senior management employee, she shall work such hours as is required by the nature of his job description and duties.

### **5. Devotion of Full Time to the DISTRICT Business**

5.1 DAVIS shall diligently and conscientiously devote her entire productive time, ability, energy, knowledge, skill, attention and diligent efforts to the furtherance of his duties and obligations to the DISTRICT during the term of this Agreement.

5.2. During the term of this Agreement, DAVIS shall not engage in any other business duties or pursuits, nor render any services of a commercial or a professional nature, to any other person, organization or entity, whether for compensation or otherwise, without written consent of the DISTRICT, which consent shall be within the sole and absolute discretion of the DISTRICT.

5.3 This Agreement shall not be interpreted to prohibit DAVIS from making personal investments or conducting private business affairs, so long as those activities do not

materially or substantially interfere or compete in any way with the services required under this Agreement. DAVIS shall not directly or indirectly, acquire, hold, or obtain any ownership of other financial interest in any business enterprise competing with a or similar in nature to the business of the DISTRICT or which may be in contravention of any conflict-of-interest code or regulations adopted by any federal, state or local agency, prohibition, law, rule, regulation, or ordinance, including any conflict-of-interest code adopted by the DISTRICT.

## **6. Compensation and Benefits**

6.1. Base Salary and Additional Wages. As of the Effective Date, DAVIS shall be paid an annual salary of Two Hundred and Sixty-Three Thousand, Six Hundred Dollars (\$263,600) (“Base Salary”). Said sum shall be paid in equal installments structured, and on the same schedule as, pay periods for DISTRICT employees. DAVIS is also expected to perform the duties of the COO during the term of this Agreement and this Base Salary encompasses this expectation.

6.2. Quarterly Bonus. DAVIS shall also be eligible, from January 1, 2021 to June 30, 2021 for quarterly bonuses of up to Eight Thousand, Seven Hundred and Fifty Dollars (\$8,750). These bonuses are solely at the discretion of the Board of Directors who shall establish the criterion and performance metrics for eligibility. The quarterly time frames shall be January 1 to March 31; April 1 to June 30; and should this Agreement be extended, the other quarterly time frames are July 1, to September 30 and October 1, to December 31.

6.3. Retirement or Pension Benefits. DAVIS shall be eligible to participate in all employee benefit programs of the DISTRICT offered from time to time during the term of this Agreement by the DISTRICT to employees or management employees, to the extent DAVIS qualifies under the eligibility provisions of the applicable plan or plans, in each case consistent with the DISTRICT’s then-current practice as approved by the Board of Directors from time to time. Subject to the extent financially feasible for the DISTRICT, the foregoing shall not be construed to require the DISTRICT to establish such plans or to prevent the modification or termination of such plans once established, and no such action or failure thereof shall affect this Agreement. DAVIS recognizes that the DISTRICT has the right, in its sole discretion, to amend, modify, or terminate its benefit plans without creating any rights in his. DAVIS expressly understands and agrees that she is not eligible for participation in the DISTRICT’s 401(a) Defined Contribution Plan.

6.4. Paid Time Off. DAVIS shall be entitled to Paid Time Off (“PTO”) as described in DISTRICTS’s PTO policy.

6.5. Health Insurance and other Miscellaneous Benefits. DAVIS shall, at all relevant times during the term of this Agreement, receive health insurance, dental coverage, and other miscellaneous fringe benefits of employment that are similar to those offered to managerial and other full-time supervisory employees of the DISTRICT. Miscellaneous fringe benefits shall include, but not be limited to, life insurance, plus the opportunity to purchase, at her own expense and subject to applicable Internal Revenue Service regulations, additional life insurance beyond

that already provided by the DISTRICT to all employees in multiples of one, two or three times his annual base salary.

6.6 Holidays and Additional Leave Time. DAVIS shall be entitled to paid holidays and additional leave time in a manner substantially similar to that provided for other full-time managerial and supervisory employees of the DISTRICT.

6.7 Continuing Education and Professional Activities. The DISTRICT encourages DAVIS to participate in community functions, continuing education programs, seminars, and other gatherings of professional organizations. In connection herewith, the parties shall meet and confer on a periodic basis to enable DAVIS to participate in a reasonable number of these activities, with reasonable tuition, attendance fees, travel and lodging costs being paid by the DISTRICT. Benefits provided under this Paragraph shall include annual dues for membership in one Bishop service club.

7. Performance Review. At or near 90 days from the Effective Date, and thereafter at or near each annual anniversary date of employment, the Board of Directors shall conduct a performance review, including salary and compensation in light of her job performance and the DISTRICT's financial condition. The DISTRICT may, in the sole discretion of the Board of Directors, adjust salary and compensation by amounts and inclusion or exclusion of benefits as it deems appropriate. Any reduction in benefits must be similar to those suffered at or near the same time by managerial and other full-time supervisory employees of the DISTRICT. Nothing in this paragraph shall be construed to imply or infer an obligation on the part of DISTRICT to increase the salary of DAVIS. The Board of Directors, in its sole and absolute discretion, may conduct such reviews and performance evaluations on a more frequent basis.

## 8. Indemnification; Directors & Officers Insurance

8.1 Indemnification. The DISTRICT shall indemnify and defend DAVIS against reasonable expenses (including reasonable attorney's fees), judgments (excluding any award of punitive damages), administrative fines (but excluding fines levied after conviction of any crime), and settlement payments incurred by her in connection with such actions, suits or proceedings to the maximum extent permitted by law and by the bylaws and governing documents of the DISTRICT in the event DAVIS is made a party, or threatened to be made a party, to any threatened or pending civil, administrative, and/or investigative action, suit or proceeding, by reason of the fact that she is or was an officer, manager, or employee of the DISTRICT, in which capacity she is or was performing services within the course and scope of the employment relationship of this Agreement.

8.2 D&O Insurance. The DISTRICT shall use reasonable commercial efforts to maintain Directors & Officers insurance for the benefits of DAVIS with a level of coverage comparable to other hospitals and healthcare districts similarity situated with regard to geography, location, and scope of operations.

## 9. Severance Compensation



9.1 Termination by DISTRICT Without Cause; Pay in Lieu of Notice. In the event DAVIS'S employment is terminated by the DISTRICT for any reason other than: (1) "For Cause" (as defined in Section 9.4 below); or (2) due to the death of DAVIS, DAVIS will be offered the opportunity to return to her COO position at compensation set by the DISTRICT. Should DAVIS elect not to return to the COO position, DISTRICT will pay to DAVIS, subject to DAVIS signing a full release in a form set forth in Exhibit 2, a lump sum severance pay equal to three months of DAVIS' Base Salary ("Severance Pay"). The Severance Pay will be paid as specified in in Exhibit 2. Notwithstanding the foregoing, in no event during the term of this Agreement may Severance Pay exceed the number of months remaining of the term of the Agreement at the time of termination.

9.2 Termination by DISTRICT For Cause. In the event DAVIS's employment is terminated by the DISTRICT "For Cause" (as defined in Section 9.4 below), DAVIS shall not be entitled to any Severance Pay and shall not be offered the opportunity to return to the COO position..

9.3 Termination by DAVIS for any Reason; No Severance; Ninety-Day Notice Requested. In the event DAVIS terminates her employment with DISTRICT for any reason, DAVIS or DAVIS's estate will not be entitled to any Severance Pay. Except in cases of death, DAVIS is requested to give the DISTRICT ninety (90) days' prior written notice of her intent to terminate this Agreement for any reason.

9.4 Definitions. For purposes of this Agreement, the following terms have the following meanings:

"For Cause" means termination by DISTRICT of DAVIS's employment: (i) by reason of DAVIS's serious abuse such as fraud, embezzlement, misappropriation of DISTRICT property, willful dishonesty towards, or deliberate injury or attempted injury to, the DISTRICT; (ii) by reason of DAVIS's material breach of this Agreement, including, but not limited to, performing services for a competitor during the term of this Agreement; (iii) by reason of DAVIS's intentional misconduct with respect to the performance of DAVIS's duties under this Agreement; or (iv) DAVIS's repeated failure to perform the essential functions of his job in a satisfactory fashion; provided, however, that no such termination will be deemed to be a termination For Cause unless the DISTRICT has provided DAVIS with written notice of what it reasonably believes are the grounds for any termination For Cause and DAVIS fails to take appropriate remedial actions during the ten (10) day period following receipt of such written notice.

**10. Business Expenses.** The DISTRICT shall promptly reimburse DAVIS for reasonable and necessary expenditures incurred by her for travel, entertainment, and similar items made in furtherance of her duties under this Agreement and consistent with the policies of the DISTRICT as applied to all management staff. DAVIS shall document and substantiate such expenditures as required by the policies of the DISTRICT, including an itemized list of all expenses incurred, the business purposes of which such expenses were incurred, and such receipts reasonably can provide.

**11. No Assignment.** Due to the unique nature of services being rendered by DAVIS to the DISTRICT as provided for herein and that this Agreement is for personal services of DAVIS who shall not assign, sublet, delegate, or otherwise convey his rights and obligations pursuant to this Agreement. Any attempt to so assign by DAVIS shall be deemed null, void and shall entitle the DISTRICT to immediately terminate this Agreement, and DAVIS shall not be entitled to compel payment of Severance Pay.

**12. Remedies.** Enforcement of any provisions of this Agreement shall be by proceedings at law or in equity against any person or entities violating or attempting to violate any promise, covenant, or condition contained herein, either to restrain violation, compel action, or to recover damages. Any and all remedies provided by this Agreement, operation of law, or otherwise, shall be deemed to be cumulative, and the choice or implementation of any particular remedy shall not be deemed to be an election of remedies to the mutual exclusion of any other remedy provided for herein, by operation of law, or otherwise.

**13. Attorney's Fee.** In the event any action at law or in equity is initiated to enforce or interpret the terms of this Agreement, or arises out of or pertains to this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which that party may be entitled.

**14. Integration.** It is intended by the parties that this Agreement be the final expression of the intentions and agreements of the Parties. This Agreement supersedes any and all prior or contemporaneous agreements, either oral or in writing, between the parties hereto and contains all the covenants and agreements between the parties. No other agreements, representations, inducements, or promises, not contained in this Agreement shall be valid or binding. Any modification of this Agreement shall be effective only if it is in writing and signed by the party to be charged. In the event of any conflict or inconsistency with any term or provision of this Agreement and any written personnel policy or procedure of the DISTRICT, this Agreement shall prevail, except as may otherwise be prohibited by law.

**15. Effect of Waiver** No waiver of any breach of any term, covenant, agreement, restriction, or condition of this Agreement shall be construed as a waiver of any succeeding breach of the same or any other covenant, agreement, term, restriction, or condition of this Agreement. The consent or approval of either party to or of any action or matter requiring consent or approval shall not be deemed to waive or render unnecessary any consent to or approval of any subsequent or similar act or matter.

**16. Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, personal representatives, successors, and assigns of each of the parties hereto. This provision shall not supersede or abrogate the provisions of Paragraph 11.

**17. Severance.** In the event any term or provision of this Agreement is deemed to be in violation of law, null and void, or otherwise of no force or effect, the remaining terms and provisions of this Agreement shall remain in full force and effect.



## **EXHIBIT 1**

### **Job Duties**

The job duties of the Administrator and Chief Executive Officer shall include, but not be limited to, the following:

- To temporarily designate an individual to act for herself in his absence, in order to provide the DISTRICT with administrative direction at all times.
- To carry out all policies established by the Board of Directors and medical staff of HOSPITAL.
- To serve as a liaison officer and channel of communications between the DISTRICT Board of Directors and any of its committees, professional staff and independent contractors, and the medical staff.
- To prepare an annual budget showing the expected receipts and expenditures as required by the Board of Directors and prepare the DISTRICT forecasts.
- To recruit, select, employ, control, manage and discharge all employees.
- To develop and maintain personnel policies and practices for the DISTRICT.
- To insure that all physical plant facilities and properties are kept in good state of repair and in operating condition.
- To supervise all business affairs and insure that all funds are collected and expended to the best possible advantage of the DISTRICT.
- To submit not less than monthly to the Board of Directors or its authorized committees or officers reports showing the professional service and financial activities of the DISTRICT and to prepare and submit such special reports from time to time as may be required or requested by the Board of Directors.
- To attend all meetings of the Board of Directors and, if requested, attend meetings from time to time of board committees, both standing and *ad hoc*.
- To perfect and submit to the Board of Directors for approval and maintain a plan of organization of the personnel and others concerned with the operations of the DISTRICT.
- To prepare or cause to be prepared all plans and specifications for the construction and repair of buildings, improvements, works, and facilities of the DISTRICT.
- To maintain proper financial and patient statistical data and records; data required by governmental, regulatory, and accrediting agencies; and special studies and reports required for the efficient operation of the DISTRICT.
- To represent the Board of Directors as a member, ex-officio, of all its committees and adjunct organizations, including the Medical Staff, the Medical Staff Executive Committee, and Auxiliary organizations, unless the Board of Directors directs otherwise or unless it or DAVIS determine that his attendance and participation would be inappropriate or otherwise not in the best interests of the District.

- Attend, or name a designee to attend, in his capacity as an *ex officio member*, all meetings of the Medical Staff and its committees, within the parameters of the Medical Staff Bylaws adopted by the DISTRICT.
- To report to the Board of Directors on a regular basis within the scope of purview of informing the Board concerning the competency and performance of all individuals who provide patient care services at HOSPITAL but who are not subject to the medical staff peer review and privilege delineation process. Such reports shall be received by the Board in executive or closed session pursuant to *Health & Safety Code §32155* and applicable portions of the Ralph M. Brown Act (*Government Code §54900, et seq.*)
- To recruit physicians and other medical providers as same may be needed from time to time to meet medical service needs of the communities served by the DISTRICT.
- To supervise independent contractor professional services agreements between physicians and other medical providers and the DISTRICT.
- To perform any other duties that the Board of Directors may deem to be in the best interests of the DISTRICT.

**EXHIBIT 2**  
**Form of Release**

**SEPARATION AND RELEASE AGREEMENT**

This Separation and Release Agreement (“Agreement”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2015 by and between Northern Inyo County Local Hospital District (“Employer”) and KELLI DAVIS, an individual (“Employee”).

In consideration of the covenants undertaken and the releases contained in this Agreement Employer and Employee agree as follows:

1. Separation of Employment. Employee’s last day of employment with Employer is \_\_\_\_\_.

2. Consideration. For and in consideration of the release of all claims as set forth hereafter, Employer shall pay to Employee the total sum of \$\_\_\_\_\_ (the “Severance Payment”). *The Severance Payment shall be subject to all applicable state and federal withholdings.*

The Severance Payment shall be reported by Employer on an IRS form W-2. Employee hereby declares that that the sum paid pursuant to this paragraph 2 represents adequate consideration for the execution of this Agreement and the release of all claims as set forth herein.

The Severance Payment shall be made on the eighth (8<sup>th</sup>) day after this Agreement is executed by Employee, provided Employee has, before this date, forwarded a copy of the executed Agreement to Employer. If the 8<sup>th</sup> day falls on a weekend or holiday, the Severance Payment shall be made on the next business day.

The Severance Payment shall be mailed to Employee at the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

It is understood and agreed that Employer is not involved with nor liable for the apportionment, if any, of the settlement proceeds between Employee and his attorney(s), if any, and any other person or entity, including, but not limited to, any payment of applicable taxes, other than those payroll taxes withheld in accordance with this paragraph.

3. General Release and Discharge. Employee on behalf of herself, her descendants, dependents, heirs, executors, administrators, assigns, and successors, and each of them, hereby covenants not to sue and fully releases and discharges Employer, its subsidiaries, affiliates and joint ventures, past, present and future, and each of them, as well as its and their trustees, directors, officers, agents, attorneys, insurers, employees, representatives, partners, shareholders, assigns, predecessors and successors, past, present and future, and each of them (hereinafter together and collectively referred to as "Releasees") with respect to and from any and all claims, demands, rights, liens, agreements, contracts, covenants, actions, suits, causes of action, obligations, debts, costs, expenses, attorneys' fees, damages, judgments, orders and liabilities of whatever kind or nature in law, equity or otherwise, whether now known or unknown, suspected or unsuspected, absolute or contingent, and whether or not concealed or hidden, which Employee now owns or holds or which Employee has at any time heretofore owned or held or may in the future hold against said Releasees, arising out of or in any way connected with Employee's employment relationship with Employer, the termination of Employee's employment with Employer, or any other transactions, occurrences, acts or omissions or any loss, damage or injury whatever, known or unknown, suspected or unsuspected, resulting from any act or omission by or on the part of said Releasees, or any of them, committed or omitted prior to the date of this Agreement. With the exception of the amount set forth under Paragraph 2 of this Agreement, such released and discharged claims include, but are not limited to, without limiting the generality of the foregoing, any claim under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Family and Medical Leave Act, the California Fair Employment and Housing Act, the California Family Rights Act, the California Labor Code (excluding a claim under the California Workers' Compensation Act, or a claim for wages due and owing as of the date of this Agreement), ERISA, any claim for retirement benefits pursuant to a retirement plan sponsored by Employer, or any claim for severance pay, bonus, sick leave, holiday pay, life insurance, health or medical insurance or any other fringe benefit. In addition, Employee agrees and covenants not to file any suit, charge or complaint against Releasees with any administrative agency with regard to any claim, demand liability or obligation arising out of his employment with Employer or separation there from. However, nothing in this Agreement shall be construed to prohibit Employee from filing a charge with or participating in any investigation or proceeding conducted by the EEOC or a comparable state or local agency. Notwithstanding the foregoing sentence, Employee agrees to waive his right to recover monetary damages in any charge, complaint or lawsuit filed by Employee or by anyone else on Employee's behalf in any charge or proceeding conducted by the EEOC or a comparable state or local agency.

4. Waiver of Statutory Provision. It is the intention of Employee in executing this instrument that the same shall be effective as a bar to each and every claim, demand and cause of action hereinabove specified. In furtherance of this intention, Employee hereby expressly waives any and all rights and benefits conferred upon her by the provisions of Section 1542 of the California Civil Code and expressly consents that this Agreement shall be given full force and effect according to each and all of its express terms and provisions, including those related to

unknown and unsuspected claims, demands and causes of action, if any, as well as those relating to any other claims, demands and causes of action hereinabove specified. Section 1542 provides:

**“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”**

Employee acknowledges that she may hereafter discover claims or facts in addition to or different from those which she now knows or believes to exist with respect to the subject matter of this Agreement and which, if known or suspected at the time of executing this Agreement, may have materially affected this settlement.

Nevertheless Employee hereby waives any right, claim or cause of action that might arise as a result of such different or additional claims or facts. Employee acknowledges that she understands the significance and consequence of such release and such specific waiver of Section 1542.

5. Waiver of ADEA and OWBPA Claims. Employee expressly acknowledges and agrees that, by entering into this Agreement, she is waiving any and all rights or claims that she may have arising under the Age Discrimination in Employment Act of 1967, as amended by the Older Workers’ Benefit Protection Act, 29 U.S.C. § 621 et seq., and as provided under the Older Workers’ Benefit Protection Act of 1990 which have arisen on or before the date of execution of the Agreement. Employee further expressly acknowledges and agrees that:

- A. In return for the execution of this Agreement, Employee will receive compensation beyond that which she was already entitled to receive before entering into this Agreement;
- B. Employee has read and understands the terms of this Agreement.
- C. Employee has been advised to consult with legal counsel before signing this Agreement;
- D. Employee has been provided full and ample opportunity to study this Agreement, including a period of at least twenty-one (21) days within which to consider it.
- E. To the extent Employee takes less than twenty-one (21) days to consider this Agreement before execution, Employee acknowledges that she has had sufficient time to consider this Agreement with her counsel and that she expressly, voluntarily and knowingly waives any additional time;



F. Employee is informed hereby that she has seven (7) days following the date of execution of this Agreement in which to revoke the Agreement. and that the Agreement shall not become effective or enforceable until the seven (7) day revocation period expires. Notice of revocation must be made in writing and must be received by the EMPLOYER by sending a letter to Irma Rodriguez Moisa, Atkinson, Andelson, Loya, Ruud & Romo, 12800 Center Court Drive, Suite 300, Cerritos, CA 90703; Email [imoisa@aalrr.com](mailto:imoisa@aalrr.com); or by FAX (562) 653-3657.

Employee understands that the right of revocation set forth in this section of this Agreement applies only to the release of any claim under the ADEA, and if Employee elects to revoke this Agreement for ADEA claims, the District will have the option to: (i) enforce this Agreement in its totality, excluding waived ADEA claims, or (ii) rescind the entire Agreement

6. Confidentiality of Release Agreement. Employee shall keep confidential the terms and conditions of this Agreement, all communications made during the negotiation of this Agreement, and all facts and claims upon which this Agreement is based (collectively referred to as the “*Confidential Settlement Information*”). Neither Employee nor his agents or attorneys shall, directly or indirectly, disclose, publish or otherwise communicate such Confidential Settlement Information to any person or in any way respond to, participate in or contribute to any inquiry, discussion, notice or publicity concerning any aspect of the Confidential Settlement Information. Notwithstanding the foregoing, Employee may disclose the Confidential Settlement Information to the extent he/she is required to do so to his/her legal counsel, accountants and/or financial advisors, or to anyone else as required by applicable law or regulation. Employee agrees to take all steps necessary to ensure that confidentiality is maintained by any and all of the persons to whom authorized disclosure is or was made, and agree to accept responsibility for any breach of confidentiality by any of said persons. Employee shall not make any public, oral or written or otherwise derogatory or negative comments about Employer concerning Employee's employment or the separation thereof; provided, however, that this Agreement does not preclude Employee from giving testimony as may be required by legal process. In the event that Employee is served with legal process which potentially could require the disclosure of the contents of this Agreement, he/she shall provide prompt written notice (including a copy of the legal process served) to Employer.

7. Non-Disparagement. Employee shall not make any public, oral or written or otherwise derogatory or negative comments about Employer or anyone associated with Employer concerning Employee's employment or the separation thereof; provided, however, that this Agreement does not preclude Employee from giving testimony as may be required by legal process. Employee acknowledges and agrees that the obligations set forth in this paragraph 7 are essential and important. Employee agrees his breach of this paragraph will result in irreparable injury to Employer, the exact amount of which will be difficult to ascertain. Accordingly, Employee agrees that if he/she violates the provisions of this paragraph 7, Employer shall be

entitled to seek specific performance of Employee's obligations under this paragraph and liquidated damages in the sum of \$10,000.

8. Trade Secrets. Employee acknowledges that she has occupied a position of trust and confidence with the Employer prior to the date hereof and has become familiar with the following, any and all of which constitute trade secrets of Employer (collectively, the "*Trade Secrets*"): (i) all information related to customers including, without limitation, customer lists, the identities of existing, past or prospective customers, customer contacts, special customer requirements and all related information; (ii) all marketing plans, materials and techniques including but not limited to strategic planning ; (iii) all methods of business operation and related procedures of the Employer; and (iv) all patterns, devices, compilations of information, copyrightable material, technical information, manufacturing procedures and processes, formulas, improvements, specifications, research and development, and designs, in each case which relates in any way to the business of Employer. Employee acknowledges and agrees that all Trade Secrets known or obtained by her, as of the date hereof, is the property of Employer. Therefore, Employee agrees that she will not, at any time, disclose to any unauthorized persons or use for his own account or for the benefit of any third party any Trade Secrets, whether Employee has such information in her memory or embodied in writing or other physical form, without Employer's prior written consent (which it may grant or withhold in its discretion), unless and to the extent that the Trade Secrets are or becomes generally known to and available for use by the public other than as a result of Employee's fault or the fault of any other person bound by a duty of confidentiality to the Employer, Employee agrees to deliver to Employer at any time Employer may request, all documents, memoranda, notes, plans, records, reports, and other documentation, models, components, devices, or computer software, whether embodied in a disk or in other form (and all copies of all of the foregoing), relating to the businesses, operations, or affairs of Employer and any other Trade Secrets that Employee may then possess or have under his control. Employee agrees his breach of this paragraph will result in irreparable injury to Employer, the exact amount of which will be difficult to ascertain. Accordingly, Employee agrees that if she violates the provisions of this paragraph 8, Employer shall be entitled to seek specific performance of Employee's obligations under this paragraph.

9. No Admission of Liability. This Agreement is the result of compromise and negotiation and shall never at any time or for any purpose be deemed or construed as an admission of liability or responsibility by any party to this Agreement. The parties continue to deny fully such liability and to disclaim any responsibility whatsoever for any alleged misconduct in connection with this Agreement.

10. Complete Agreement/Modification. This instrument constitutes and contains the entire agreement and understanding concerning Employee's employment, the separation of that employment and the other subject matters addressed herein between the parties, and supersedes and replaces all prior or contemporaneous negotiations, representations, understandings and agreements, proposed or otherwise, whether written or oral, concerning the subject matters hereof.

This is an integrated document. This Agreement may be amended and modified only by a writing signed by Employer and Employee.

11. Severability of Invalid Provisions. If any provision of this Agreement or the application thereof is held invalid, such provisions shall be severed from this Agreement, and the remaining provisions shall remain in effect, unless the effect of such severance would be to alter substantially this Agreement or obligations of the parties hereto, in which case the Agreement may be immediately terminated.

12. Counterpart Execution; Effect; Photocopies. This Agreement may be executed in counterparts, and each counterpart, when executed, shall have the efficacy of a signed original. Photographic copies of such signed counterparts may be used in lieu of the originals for any purpose.

13. No Assignment. Employee hereby represents that she has not heretofore assigned or transferred, or caused or purported to assign or transfer, to any person any of the claims released herein. If any such transfer or assignment or purported transfer or assignment occurred prior to the execution of this Agreement, Employee hereby agrees to indemnify and hold Employer harmless from and against any and all claims, demands, obligations, debts, liabilities, costs, expenses, rights of action, causes of action or judgments based upon or arising from any such transfer or assignment or purported transfer or assignment. Any assignment after the execution of this Agreement may only be made with the express written approval of all parties hereto. Employer and Employee represent and warrant that, prior to executing this Agreement, each has not filed any complaints or charges of lawsuits with any court or governmental agency against the other based in whole or in part upon any matter covered, related to or referred to in this Agreement.

14. No Third Party Beneficiaries. Nothing contained in this Agreement is intended nor shall be construed to create rights running to the benefit of third parties.

15. Prior Litigation. Employee represents and warrants that, prior to executing this Agreement, she has not filed any complaints or charges of lawsuits with any court or governmental agency against the Employer based in whole or in part upon any matter covered, related to or referred to in this Agreement.

16. Governing Law. This Agreement shall be interpreted under the laws of the State of California. Exclusive venue for any legal action under California law shall be Inyo, County, California and, if brought under federal law, the United States District Court for Eastern California in Fresno, California.

17. Complete Defense. This Agreement may be pled as a full and complete defense, and may be used as the basis for an injunction against any action, claim, suit, worker's compensation action or any other proceeding which may subsequently be instituted, prosecuted or

attempted, which is based in whole or in part upon any matter covered, related to or referred to in this Agreement.

18. Attorneys' Fees. In the event of litigation between Employee and Employer relating to or arising from this Agreement, the prevailing party or the party designated as such by the arbitrator or judge shall be entitled to receive reasonable attorneys' fees, costs, and other expenses, in addition to whatever other relief may be awarded, including such fees and costs any may be incurred in enforcing a judgment or order entered in any arbitration or action. Any judgment or order entered in such arbitration or action shall contain a specific provision providing for the recovery of such attorneys' fees and costs. In addition, any award of damages as a result of the breach of this Agreement or any of its provisions shall include an award of prejudgment interest from the date of the breach at the maximum rate of interest allowed by law.

19. Advice from Counsel. Employee represents and agrees that she has been advised and fully understands that she has the right to discuss all aspects of the Agreement with legal counsel; that she has carefully read and fully understand and appreciates all provisions of this Agreement, and the effect thereof; and that she is voluntarily entering into this Agreement.

20. Future Employment. Employee agrees that she is not now or hereafter entitled to employment or reemployment with Employer and she agrees not to knowingly seek such employment on any basis, including as an independent contractor or through an employment agency.

21. Cooperation in Litigation. Employee agrees to cooperate with Employer and its legal counsel with respect to any litigation now pending, or filed in the future in which Employee may be called as a witness to testify either at trial or deposition and to reasonably cooperate with Employer in the preparation of his testimony for same.

22. Notice. All notices and other communications required by this Agreement shall be in writing, and shall be deemed effective: (a) when personally delivered; (b) when mailed by certified or registered mail, return receipt requested; or (c) when deposited with a comparably reliable postage delivery service (such as Federal Express); addressed to the other party at the following address:

**EMPLOYER:**

\_\_\_\_\_  
\_\_\_\_\_

**Attention:** \_\_\_\_\_

**EMPLOYEE:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The parties may change their respective addresses by giving each other prior written notice of the change.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_, California.

By \_\_\_\_\_

Executed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_, California.

By \_\_\_\_\_

**WAIVER OF 21 DAY CONSIDERATION PERIOD**

I, KELLI DAVIS, hereby acknowledge that I was given 21 days to consider the foregoing Agreement and voluntarily chose to sign the Agreement before the expiration of 21-day period.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_,  
California.

\_\_\_\_\_  
KELLI DAVIS



























































































































































































































