

Tuolumne Utilities District
GENERAL MANAGER EMPLOYMENT AGREEMENT

This Employment Agreement (hereinafter referred to as "Agreement") is made and entered into as of this 26th day of October in 2021, by and between Tuolumne Utilities District, Tuolumne County, California, a County Water District formed under applicable provisions of the California Water Code Section 30000, et seq. (hereinafter referred to as "District") and Donald F. Perkins, an individual to be employed by the District as General Manager (hereinafter referred to as "Employee"). In accordance with Section 53262 of the Government Code, this Agreement is subject and conditioned on ratification in an open session of a Regular Meeting of the Board of Directors of the District.

RECITALS

WHEREAS, The District's Board of Directors (hereinafter referred to as "Board") wishes to enter into an employment agreement with Employee, to provide his professional services as General Manager of the District; and

WHEREAS, Employee is familiar with the position's legal requirements, industry standards and responsibilities; and

WHEREAS, Employee represents and warrants that he has the knowledge, skill and ability to serve in such position and wishes to accept such employment on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. OFFER, STANDARDS, DUTIES AND HOURS

- a. CONDITIONS OF OFFER & ACCEPTANCE: District hereby offers, and Employee hereby accepts the position of General Manager of the District. Employee shall perform the duties and responsibilities imposed by law, industry standards, and such legally

permissible further duties and functions as shall, from time to time, be assigned by the Board. More specifically, unless otherwise stated within this Agreement, Employee agrees he is subject to all applicable terms and conditions as set forth in the District's policies, as may be amended from time to time. Employee shall also comply with the District's and state conflict of interest policies and ethics provisions and shall attend ethics and anti-harassment classes as required by law and policy.

- b. POSITION STANDARDS: Employee shall devote such time, interest, and effort to the performance of his duties as may be reasonably necessary to fulfill the above requirements. Employee agrees to perform such services to the best of his ability, in an efficient and competent manner consistent with the standards of the profession. Without limiting the generality of the foregoing, Employee understands and agrees that this position is an exempt, salaried, full-time position with regular required office hours as provided for in this Agreement.
- c. DUTIES: Employee shall perform the duties as prescribed by the Board for the position of General Manager. Employee shall execute all powers and duties in accordance with the policies adopted by the Board, the provisions of California Water Code sections 30580 and 30581, the Government Code, and all other applicable provisions of law. The General Manager has the responsibility of organizing, reorganizing and arranging the District's employees, including administrative and supervisory staff, and staff in charge of business affairs, which, in his judgment, would best serve the District. It is, however, understood and agreed that these responsibilities are specifically limited by the fact that the Board must specifically approve the creation and authorization of positions and the establishment and adjustment of wages. The Employee shall perform essential functions, responsibilities and duties that shall include, but not be limited to, the following:
- Provide overall executive direction of day-to-day and long-term operations and activities of the District, organizing and assigning responsibilities, and directing and overseeing the management provided by subordinate managers.
 - Provide general direction on the design, construction, operation, and maintenance of District facilities.

- Within guidelines established by the Board, direct the establishment of overall strategic plans, long-term goals, and objectives.
 - Keep the Board of Directors advised and informed of District activities and laws, issues or problems that may affect District operations.
 - Review and implement policies adopted by the Board and make appropriate recommendations to the Board.
 - Represent the Board of Directors and the District in contacts with various federal, state and local government agencies, Tribal nations, community groups and businesses, and other professional organizations.
 - Negotiate a variety of contracts and agreements on the District's behalf in accordance with Board Policy.
 - Oversee preparation and implementation of the District budget, grants, contracts, leases, programs and other activities.
 - Supervise personnel and administers personnel rules and regulations.
 - Respond to and resolve difficult and sensitive customer inquiries and complaints.
 - Endeavor to maintain and improve his professional proficiency.
 - Bring all offers and proposals to acquire District real property to the full Board for review and final decision.
 - Performs other related duties as assigned.
- d. Hours of Work: The regular business hours of the District are 7:00 AM to 4:00 PM. The General Manager is expected to be working on District business and available to District staff during regular business hours; however, it is recognized that the General Manager must devote a great deal of time outside the normal hours of business for the District, and to that end the Employee shall be allowed to establish an appropriate work schedule as acceptable by the Board. The schedule shall be appropriate to the needs of the Employer and shall allow Employee to faithfully perform his assigned duties and responsibilities.

SECTION 2. EMPLOYEE AND BOARD RESPONSIBILITIES:

The Board is the governing body of the District. The General Manager has the primary responsibilities for the execution of District Policies, whereas the Board retains the responsibility of formulating and adopting said policy.

SECTION 3. EFFECTIVE DATE AND TERM:

- a. Effective Date and Term: This Agreement shall be effective on October 26, 2021, and end on October 31, 2026.
- b. Extension of Agreement: At the end of the term, the Agreement shall automatically be extended for a period of one year, unless the board advises the Employee, in writing, at least sixty (60) days prior to the end of this Agreement that it does not intend to extend this Agreement. Nothing in this section shall preclude the Parties from mutually extending or modifying this Agreement for a different term at any time.
- c. Death: This agreement shall automatically terminate upon the Employee's death.
- d. Incapacity or Disability: In the event Employee is incapacitated or is otherwise unable to perform (his) duties because of a physical or mental disability or medical condition that the District is unable to reasonably accommodate, the District shall have the option to terminate this Agreement, as allowed under applicable Federal, State and local laws, including the Americans with Disabilities Act and California Fair Employment and Housing Act. In this case, termination would be considered *without cause* and in accordance with Section 8 of this Agreement.

SECTION 4. COMPENSATION:

The Employee is paid the annual sum of \$190,000 per year for his full-time services, accruing neither overtime nor compensatory time, prorated and payable bi-weekly, subject to the following adjustments:

- a. Merit Increases: Each year, beginning one (1) year after the Employee's promotion date, the Board may, at its sole discretion, determine if a merit-based salary or other salary and/or benefit increase(s) is(are) warranted and act accordingly by majority vote. Any such increase(s) will be subject to a written amendment to this Agreement indicating the amount and effective date of the increase(s).
- b. Compensation Considerations: The Board, at its sole discretion, may or may not consider salary and benefit increases received by regular employees of the District in any compensation changes contemplated for the General Manager.
- c. Performance Compensation: Following Employee's annual performance evaluation, as required under Section 7 of this Agreement, Employee may, be eligible, at the Board's sole discretion, for an annual discretionary bonus of between zero percent (0%) and ten percent (10%) of Employee's base salary. The factors or criteria considered for the bonus are developed by the Board following discussions and input from Employee on an annual basis. The District shall endeavor to provide the factors to the Employee well before the scheduled annual performance evaluation. Such Performance Compensation shall be in the form of a lump sum or cashable time off, not reportable to CalPERS as compensation earnable.

SECTION 5. EMPLOYMENT BENEFITS:

The Employee's tenure and long-term service in the public sector have been considered in determining the benefits that will be afforded to the Employee, and are as follows:

- a. Use of District Vehicle: The Employee shall have access to a District vehicle for his use in travel related to District business, pursuant to approved budgets, including travel to and from District meetings, conferences, training, and classes, but excluding travel to and from home.

- b. Vacation: The Employee shall continue accruing vacation at a rate commensurate to employee's years of service per the District's personnel policy. The maximum vacation accrual for the Employee shall be four hundred forty-four (440) hours (55 days). If the maximum accrual is reached, vacation no longer accrues until some of the previously accrued vacation hours are used. The Employee cannot receive vacation pay for hours he has not accrued. Vacation leave does not accrue if the Employee is on leave without pay.
- c. Administrative Leave: The Employee shall receive forty (40) hours (5 days) of Administrative Leave per calendar year commensurate with other salaried employees of the District. Any remaining unused Administrative Leave will be paid at the end of December of each year beginning on December 31, 2021.
- d. Health Insurance: The District currently provides group health insurance to District employees and eligible dependents under the California Public Employees' Retirement System (CalPERS) Health Benefit Program. The District may secure, at its sole discretion, an alternate plan at some point in the future. The District will pay 85% of the premium cost for the coverage selected by the employee. Employee contributions for premium may be paid each pay period using pre-tax money in accordance with Section 125 of the IRS code up to the maximum allowed by law.
- e. Dental and Vision Insurance: The District provides, at no cost to the Employee dental and vision insurance for the Employee and his eligible dependents, including orthodontics for dependents up to 26 years of age, as currently provided through Delta Dental Plan of California and Vision Service Plan, respectively. These plans and benefits may be modified in the future.
- f. Life Insurance: The District provides, at no cost to the Employee, a term life insurance policy of two-times the Employee's annual salary up to a maximum life insurance policy amount of \$300,000.
- g. Short- and Long-Term Disability: Short and Long-Term Disability Insurance shall supplement State Disability payments and other disability earnings subject to the plan. This benefit is provided at no cost to the Employee.
- h. Employee Assistance Program (EAP): The EAP provides confidential assistance with difficulties related to family and relationships, substance abuse, legal and financial

concerns, and stress and emotional problems. This service is provided by the District at no cost to the Employee and his eligible dependents.

i. Retirement Benefits:

1. The Employer provides Employee with retirement benefits through the California Public Employees' Retirement System (CalPERS) at Employee's current retirement formula based on Employee's original hire date with the District.

| Member Type | Retirement Formula | Final Compensation Period | Employee Contribution |
|------------------|--------------------|---------------------------|-----------------------|
| Classic – Tier 1 | 2.7% @ 55 | Single Highest Year | Employee pays full 8% |

The District will pay the "*Employer*" Portion only of the retirement contribution.

2. Retiree Health Insurance Benefits will be provided to the Employee, based on the Employee's original hire date with the District in accordance with TUD current policy.

- j.* Sick Leave Benefit: Upon promotion, the Employee shall continue accruing 3.69 hours of sick leave per bi-weekly pay period (12 days per year). Sick leave does not accrue if the Employee is on leave without pay. Upon retirement, the Employee may elect to receive payment for sick leave hours in accordance Resolution No. 31-20 or convert sick leave hours toward service credit in accordance with the Public Employees' Retirement Law (Government Code Section 20965).
- k.* Holidays: The District recognizes twelve (12) paid holidays. The Employee will also be granted eight (8) additional hours of time off annually. The eight hours will appear on the first payroll check in January and must be used during the calendar year or the time will be forfeited.
- l.* Workers' Compensation: Pursuant to the State of California Labor Code, Section 3700, et seq., the District shall secure workers' compensation insurance for the Employee at District expense.

SECTION 6. GENERAL BUSINESS EXPENSES:

- a. Professional Development: Subject to prior approval of the specific dues, subscriptions and memberships by the Board of Directors, the District agrees to pay for professional dues and subscriptions of the General Manager as may be necessary for professional development, membership and participation in regional, state, and local associations, and organizations necessary and desirable for the General Manager's continued professional participation, growth, and advancement, and for the good of the District.
- b. Official Travel Expenses: Subject to the funds approved and available in the General Manager's travel budget, the District agrees to pay for travel and subsistence expenses of Employee for professional and official travel, meetings, short courses, institutes, seminars and occasions to regional, state, and local governmental groups and committees in which Employee serves as a member to adequately continue the professional development of General Manager and to pursue necessary official functions for Employer. Reimbursement for Employee travel in personal vehicle is subject to Section 5a. of this Agreement.
- c. Additional Expenses: Subject to approved budget allocation, any additional expenses incurred while performing District business will be reimbursed in accordance with district policy.
- d. Computer & Mobile Phone: Recognizing the importance of constant communication and maximum productivity, the District, at the Employee's request, shall provide the Employee a laptop computer or tablet and necessary software, and/or a mobile/smart phone consistent with the typical equipment and service providers used by the District for Employee's use required for the Employee to perform his duties and to maintain communication with District staff and officials as well as other individuals who are doing official business with the District. This equipment shall be made available to Employee once every five (5) years.
- e. Bonds: Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

SECTION 7. PERFORMANCE EVALUATIONS:

- a. Frequency of Evaluations: The Board shall evaluate the performance of the Employee at six (6) months and twelve (12) months from appointment and annually thereafter. The evaluation shall be based on the duties and agreed upon performance objectives. The Board shall review and evaluate the performance of Employee in writing on an annual basis. The evaluation will also set forth mutually deferred goals to be achieved by the Employee in the subsequent year. The performance goals for the initial twelve (12) months of the agreement are provided as "*Exhibit A - PERFORMANCE COMPENSATION FACTORS*" and by reference hereto are incorporated herein. The Employee will be provided an adequate opportunity to discuss his evaluation with the Board at the Board meeting. The Employee may be eligible, if warranted in the Board's sole discretion, to receive a "*merit increase*" and/or "*Incentive Pay*" and/or "*Benefit Increase*" (collectively referred to as "*Compensation Increase*" at the end of the annual evaluation. Any such agreed Compensation Increase must be expressly memorialized in a subsequent written and executed Amendment to this Agreement that is approved by the Board in an open session meeting in accordance with Section 54953(c)(3) of the Government Code. Failure of the Board to conduct a performance evaluation shall not prohibit the Board from terminating this Agreement in accordance with Section 8 of this Agreement
- b. Performance Objectives: The performance review and evaluation process set forth herein is intended to provide review and feedback to the Employee to facilitate more effective management of the District. Nothing herein shall be deemed to alter or change the employment status of Employee, nor shall this Section be construed as requiring "cause" to terminate this Agreement or the services of Employee hereunder. The Employee shall meet with the Board each year to identify the District's and Employee's performance objectives for the following year. Said performance objectives shall be proposed by the Employee in writing and submitted to the Board for approval. If the Board does not approve said performance objectives, they shall establish reasonable performance objectives following consultation with the Employee. The performance objectives shall be

consistent with Board policy and the duties and responsibilities set forth in this Agreement.

SECTION 8. TERMINATION AND DISMISSAL:

The Employee shall serve at the will and pleasure of the District Board of Directors and may be terminated at any time, with or without cause. Nothing in this Agreement shall be construed to prevent the District from terminating this Agreement and the services of the Employee in its sole discretion. The following provisions shall apply to termination and dismissal:

- a. Without Cause Termination and Terms and Conditions of Severance Pay: If the Board of Directors terminates the employment of the Employee *without cause* prior to the termination date of this Agreement, the District shall offer the Employee a payment in an amount equal to the lesser of six (6) times his current monthly base salary and medical benefits, or the number of the remaining months of this Agreement times his current monthly base salary and medical benefits, in a lump sum (hereinafter referred to "Severance Pay") subject to the following terms and conditions:
1. Employee understands that acceptance of the District's offer of Severance Pay as noted in this Section is contingent on Employee's execution of a "Severance Agreement and Release" as identified in Exhibit "B" of this Agreement at the time of termination of employment.
 2. Upon Employee's execution of the "Severance Agreement and Release" referenced in Exhibit "B" of this Agreement, Severance Pay shall be payable in a lump sum pursuant to the terms of said agreement.
 3. Employee agrees and understands that his acceptance of the District's offer of Severance Pay at the time his at-will employment has been terminated by the Board of Directors pursuant to the execution of the "Severance Agreement and Release" identified in Exhibit "B" of this Agreement shall constitute liquidated damages and his sole and exclusive remedy for any termination of this Agreement by the Board of Directors as noticed in said agreement.

4. Severance pay shall be subject to Government Code section 53243 et seq.

b. For Cause Termination: The Board of Directors shall have the right to discharge the Employee and terminate this Agreement *for cause* in the event of:

1. Any willful breach of duty of this Agreement or violation of law or the District's policies by the Employee in the course of his employment;
2. The Employee's habitual neglect of or failure to perform his duties as outlined in this Agreement; or
3. Conviction of a felony or a crime involving moral turpitude.

In the event of the Employee's termination *for cause*, the Employee shall not be entitled to any severance pay or continuation of health benefits at District expense.

c. Voluntary Termination: The Employee may terminate this Agreement at any time upon a minimum of thirty (30) days written notice to the Board of Directors, or any other mutually agreed upon time period. If the Employee should exercise this option to voluntarily terminate this Agreement (resign or retire from District employment), the Employee shall not be entitled to any severance pay or continuation of health benefits at District expense, except as may apply in the event Employee retires from the District and receives health benefits in compliance with CalPERS regulations and statutes and District Policies.

d. Agreement Expiration: Upon the expiration of this Agreement at the end of its term or any extended term, the Employee shall not be entitled to any severance pay or continuation of health benefits, except those limited to the provision of COBRA benefits or CalPERS regulations and statutes.

SECTION 9. APPLICABLE LAW:

This Agreement shall be constructed in accordance with and governed by the laws of the State of California. The parties agree that jurisdiction and/or venue of any action involving the validity, interpretation, or enforcement of this Agreement or any of its terms, provisions, or obligations, or claiming breach thereof, shall exist exclusively in a

court or government agency located within the County of Tuolumne, State of California. The parties further agree that this Agreement may be used as evidence in any subsequent proceeding in which any of the parties allege a breach of this Agreement or seek to enforce its terms, conditions, provisions, or obligations.

SECTION 10. SEVERABILITY:

Should any provision of this Agreement be determined by a court of competent jurisdiction to be invalid, unconstitutional, or otherwise unenforceable, the remainder of this Agreement shall be deemed severable, shall not be affected and shall remain in full force and effect.

SECTION 11. ENTIRE AGREEMENT:

- a. Supersedes Prior Agreements: This Agreement constitutes the entire Agreement between the District and the Employee and supersedes all prior agreements respecting the same subject, provided however, that all practices as described in the Personnel Policy or the District's Board Policies, as they now exist or may hereafter be amended shall apply to the Employee, unless contrary to specific provisions of this Agreement.
- b. No Representations: Each party agrees and acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or any one acting on behalf of any party, which are not included herein and that any agreement, statement, or promise not contained in this Agreement shall not be valid or binding on either party.

SECTION 12. WAIVER OF RIGHTS:

Any waiver at any time by either party hereto of its rights with respect to a breach or default, or any other matter arising in connection with this Agreement, shall not be deemed to be a waiver with respect to any other breach, default or matter.

SECTION 13. REMEDIES NOT EXCLUSIVE:

The use by either party of any remedies specified herein for the enforcement of this Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

SECTION 14. HEADINGS:

The paragraph headings used in this Agreement are for reference only and shall not in any way limit or amplify the terms and provisions hereof, nor shall they enter into the interpretation of this Agreement.

SECTION 15. INTERPRETATION:

The parties acknowledge that each party has reviewed, negotiated, and had an opportunity to discuss with counsel this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any document executed and delivered by any party in connection with transactions contemplated by this Agreement.

SECTION 16. INDEMNIFICATION:

District shall provide for the defense of Employee in any action or proceeding alleging an act or omission within the scope of employment of Employee in conformance with State Law (Government Code Sections 995, et seq.). In addition, any funds provided by District for the legal criminal defense of Employee shall be fully reimbursed to the District by Employee if the Employee is convicted of a crime involving an abuse of his office or position as required under Government Code Section 53243.1.

SECTION 17. BINDING EFFECT

This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Employee, but nothing herein shall be construed as an authorization or right of any party to assign his/its rights or obligations hereunder. Any assignment of the rights or obligations of Employee hereunder without the express written approval of District shall be void.

SECTION 18. NOTICES

Any notices to be given hereunder by either party to the other may be affected either by personal delivery in writing or by certified mail, postage prepaid with return receipt requested. Mailed notices shall be addressed to the parties at the addresses indicated below or as changed by written notice delivered in accordance with this Section. Notices delivered personally shall be deemed communicated as of actual receipt (confirmed by witness or declaration); mailed notices shall be deemed communicated as of three (3) business days after mailing.

To the District: Tuolumne Utilities District
18885 Nugget Blvd.
Sonora, CA 95370
Attention: President, Board of Directors

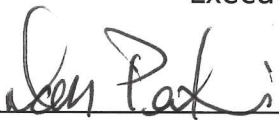
To Employee: Donald F. Perkins
20651 Caylor Dr.
Soulsbyville, CA 95372

SECTION 19. AMENDMENTS:

Any modifications of this Agreement will be effective only if in writing and signed by both the Employee, adopted by the Board of Directors and executed by the District.

IN WITNESS WHEREOF, the Tuolumne Utilities District Board of Directors has caused this Agreement to be signed and executed on its behalf by its Board President, and duly attested by its Clerk of the Board / District Secretary, and Employee has signed and executed this agreement, both in duplicate, the day and year first above written.

Executed on October 26, 2021 in the County of Tuolumne.

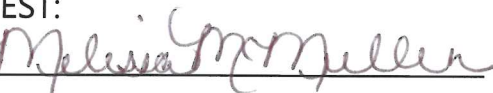


Donald F. Perkins, Employee



Barbara Balen, President, Board of Directors
Tuolumne Utilities District

ATTEST:

By: 

Melissa McMullen, Executive Secretary/Board Clerk

EXHIBIT "A"
PERFORMANCE COMPENSATION FACTORS

For the twelve (12) month period commencing with the Employee's hire date the Board has agreed to consider the following factors in the performance compensation calculation / performance evaluation with such factors being subject to modification or adjustment by mutual consent after the first twelve (12) month performance review:

(1) Labor-Management and Community Relations Achievements, including:

- a. Implementing the current MOU, and preparing the Board for emerging labor relation issues and goals for the next MOU;
- b. Improving internal communications and employee morale through "tailgate" discussions, monthly "all staff" meetings and/or other activities that build trust with management staff and employees; and
- c. Establishing leadership by demonstrating inclusive, transparent and ethical relationships with local agencies, Tribal governments and local community organizations;

(2) Organizational & Financial Achievements, including:

- a. Conducting a Cost of Service Study with rate recommendations for residential and commercial treated water, raw water and wastewater services after the expiration of the current rate study;
- b. Reviewing and recommending changes to current District rates, charges and fees as they pertain to connections, service capacity and other district services;
- c. Reviewing and recommending changes to the District organizational classification and compensation plan; and

- d. Revising and implementing the Strategic Plan and providing the Board with progress reports and conducting the annual update; and
- e. Preparing the annual budget and various reports on the status of certain financial activities of interest to the Board;

(3) Planning & Long-term Operational and Capital Improvement Achievements, including:

- a. Implementing the Capital Improvement Plan and keeping projects on schedule and within budget;
- b. Expanding productivity by implementing more contract engineering and construction services for District maintenance, repair and construction projects, while at the same time expanding District employee conducted construction activities;
- c. Developing inventive ways to address repair and maintenance on the ditch system while maintaining its historic integrity; and (d) obtaining grant and loan funding for both traditional and new innovative projects and activities for the community's benefit;
- d. Incorporating innovative elements in project design and operations that anticipate and mitigate various issues related to climate change, including changes in water supply, fire risk and management, flooding, and energy efficiencies.

(4) Administrative, Legal and Support Achievements, including:

- a. Building and cultivating a District culture that is progressive, collaborative and customer focused;
- b. Maintaining regular office hours consistent with Board expectations.

- c. Working effectively with regulatory agencies and other stakeholders on permitting and compliance issues;
- d. Implementing automated systems for billing, customer services, operations, and personnel management.
- e. Taking classes to further individual professional development as a general manager, such as leadership courses offered by California Special Districts Association and training focused on understanding and utilizing innovative solutions for issues facing the Sierra Nevada and the foothills in regard to climate change.

This incentive compensation bonus shall be provided by the following calculation: Each category shall be considered to have a value of twenty percent (20%) of the full ten percent (10%) of base salary bonus. The Board shall calculate bonus entitlement for each calendar year by assessing the degree of performance of each category. For instance:

- Exceptional performance of one category shall constitute a potential bonus of up to two percent (2%) of Employee's base salary.
- Exceptional performance of two categories shall constitute a potential bonus of up to four percent (4%) of Employee's base salary.
- Exceptional performance of three categories shall constitute a potential bonus of six percent (6%) of Employee's base salary.
- Exceptional performance of all four categories shall constitute a potential bonus equivalent up to the eight percent (8%) of base salary.

Thus, exceptional completion of the four (4) factors would result in an amount up to eighty percent (80%) of the available bonus. The final twenty percent (20%) of the available bonus will be awarded at the Board's sole discretion based on a determination of outstanding performance.

EXHIBIT "B"
SEVERANCE AGREEMENT AND RELEASE

1. **Parties.** This Severance Agreement and Release ("Agreement") is made and entered into by and between Donald F. Perkins, his heirs, representatives, successors, assigns, executors, and administrators (hereinafter referred to collectively as "Employee") and TUOLUMNE UTILITIES DISTRICT ("District").

2. **Separation of Employment.** The parties acknowledge that pursuant to Section 8 ("Severance Pay") of the General Manager Employment Agreement ("Termination and Dismissal"), the District has terminated Employee from his at-will employment as of [*insert separation date*] (the "Separation Date"). Pursuant to Section 8 of the Employment Agreement, Employee has voluntarily agreed to accept the following severance payment from the District in consideration of the terms of this Agreement.

3. **Severance Payment.** Employee acknowledges that the District has no prior obligation to provide him with any severance benefits. However, pursuant to Section 8 of the Employment Agreement, and as consideration for this Agreement and the conditions set forth herein, the District agrees to provide the Employee the following benefits (collectively, "the Severance Payment"):

- A. [*Insert Number*] months severance pay in an amount equal to his current monthly base salary and medical benefits in the amount of [*insert written dollar amount*] dollars and [*insert written cents amount*] cents (\$XX,XXX.XX), less applicable payroll tax withholdings and deductions, in one lump sum payment.

The Separation Payment shall be made within ten (10) days after expiration of the revocation period provided in Section 12.

4. **Payment For Earned Compensation.** Regardless of whether Employee executes this Agreement, Employee acknowledges that he has been paid for all salary,

unused vacation or other benefits, if any, earned by him up to and including the Separation Date.

5. **Release of Claims and Parties.** As consideration for the Separation Payment and agreements described above, Employee on behalf of himself, his heirs, representatives, successors, and assigns, hereby irrevocably and unconditionally waives, releases and forever discharges the District and/or any of its members of the Board of Directors, officers, deputies, employees, agents, servants, representatives, successors, assigns, predecessors, divisions, branches, or attorneys, and all persons acting by, through, under or in concert with the District, past or present (collectively "Released Parties"), and each and all of them, from any and all charges, complaints, lawsuits, claims, liabilities, claims for relief, obligations, promises, agreements, contracts, interests, controversies, injuries, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, liens, judgments, indebtedness, and expenses (including attorneys' fees, interest, expenses, and costs actually incurred), of any nature whatsoever, whether in law or in equity, **KNOWN OR UNKNOWN**, suspected or unsuspected, actual or potential (hereinafter referred to as "claim" or "claims") which Employee at any time had or claimed to have, or which Employee may have or claim to have regarding any and all facts and circumstances that have occurred as of the date of this Agreement, including, without limitation, any and all claims related or in any manner incidental to Employee's employment with the District and his separation from employment with the District. It is expressly understood by Employee that among the various rights and claims being waived by him in this release are those arising under the Age Discrimination in Employment Act of 1967 (29 U.S.C. § 621, *et. seq.*)

6. **Section 1542 Waiver.** The matters specifically released and dismissed by this Agreement shall include, but are not necessarily limited to, all claims and causes of action which Employee has against the District and/or any of the Released Parties arising on or before the date that this Agreement is executed, and **ANY OTHER CLAIM OF ANY TYPE WHATSOEVER AGAINST THE DISTRICT, AND/OR ANY OTHER RELEASED PARTY, WHETHER SUCH CLAIM IS KNOWN OR UNKNOWN TO EMPLOYEE AND/OR HIS REPRESENTATIVES AND ATTORNEYS** arising on or before the date that this Agreement

is executed. As a further consideration and inducement for this Agreement, to the extent permitted by law, Employee hereby waives and releases any and all rights under Section 1542 of the California Civil Code or any analogous state, local, or federal law, statute, rule, order or regulation, he has or may have with respect to any claims against the District. California Civil Code Section 1542 reads as follows:

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 hereby expressly agrees that this Agreement shall extend and apply to all unknown, unsuspected, and unanticipated claims, injuries, losses and damages as well as those that are now known and/or disclosed.

7. **Entire Agreement and Admissibility.** This Agreement constitutes the complete understanding between or among Employee on the one hand, and the District and any other Released Party on the other hand, and supersedes any and all prior agreements, promises, representations, or inducements, no matter their form, concerning the subject matter of this Agreement. The parties desire that this Agreement represents a single integrated contract expressing the entire agreement of the parties with respect to matters set forth herein. No promises, agreements, or modifications to this Agreement made subsequent to the execution of this Agreement by these parties shall be binding unless reduced to writing and signed by authorized representatives of these parties. The parties to this Agreement represent that this Agreement may be used as evidence in any subsequent proceeding in which any of the parties alleges a breach of this Agreement or seeks to enforce its terms, provisions or obligations.

8. **Representation by Counsel.** Employee acknowledges that he is fully aware of his right to discuss any and all aspects of this matter with an attorney of his choice, that

the District has advised him of that right, that he has carefully read and fully understands the provisions of this Agreement and that he is voluntarily entering into this Agreement.

9. **Severability.** Should any of the provisions or terms of this Agreement be determined illegal, invalid, or unenforceable by any court or governmental agency of competent jurisdiction, validity of the remaining parts, terms, or provisions, shall not be affected thereby and said illegal, invalid, or unenforceable part, term, or provision shall be deemed not to be a part of this Agreement.

10. **Governing Law.** This Agreement is made and entered into in the State of California, and shall be governed, interpreted, and enforced under the laws of the State of California. The parties agree that jurisdiction and/or venue of any action involving the validity, interpretation, or enforcement of this Agreement or any of its terms, provisions, or obligations, or claiming breach thereof, shall exist exclusively in a court or government agency located within the County of Tuolumne, State of California. The parties further agree that this Agreement may be used as evidence in any subsequent proceeding in which any of the parties allege a breach of this Agreement or seeks to enforce its terms, conditions, provisions, or obligations.

11. **Time for Acceptance of Agreement.** Employee may accept this offer by signing below no later than twenty-one (21) days from the day he receives it and by returning the signed and dated Agreement to the District no later than the close of business on the twenty-first (21st) day after the date he receives this offer.

12. **Right of Revocation.** This Agreement contains a waiver and release of all claims that Employee may currently have under the Age Discrimination in Employment Act of 1967 (29 U.S.C. §621-634). Employee understands and agrees that he:

- A. Has reviewed all aspects of this Agreement;
- B. Has carefully read and fully understands all of the provisions of this Agreement;
- C. Has had a full twenty-one (21) days within which to consider this Agreement before executing it;

- D. Is, through this Agreement, releasing the District from any and all claims he may have;
- E. Knowingly and voluntarily agrees to all of the terms set forth in this Agreement;
- F. Knowingly and voluntarily intends to be legally bound by the terms set forth in this Agreement;
- G. Was advised, and by this Agreement is advised in writing, to consider the terms of this Agreement and consult with his attorney prior to executing this Agreement;
- H. Has a full seven (7) days following the execution of this Agreement to revoke this Agreement and has been and is hereby advised in writing that this Agreement shall not become effective or enforceable until the revocation period has expired; and
- I. Understands that rights or claims including those under the Age Discrimination in Employment Act of 1967 (29 U.S.C. §621-634) that may arise after the date of this Agreement is executed are not waived.

PLEASE READ CAREFULLY. THIS SEPARATION AGREEMENT AND RELEASE INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.

EMPLOYEE

DATED: _____

By _____
Donald F. Perkins

TUOLUMNE UTILITIES DISTRICT

DATED: _____

By _____
Barbara Balen
President, Board of Directors