

**EMPLOYMENT AGREEMENT
FOR
CHANCELLOR OF THE
KERN COMMUNITY COLLEGE DISTRICT**

THOMAS BURKE

This Agreement is made and entered into by and between the Governing Board of the Kern Community College District (“District” or “Board”) and Thomas Burke (“Chancellor”) and is dated for reference purposes as of December 15, 2016.

1. **Term.** The District hereby employs Chancellor for a term beginning January 17, 2017 and terminating on June 30, 2020, subject to the terms and conditions set forth below.

2. **Chancellor’s Duties and Responsibilities.**

a. **General.** The Chancellor is hereby employed as District Chancellor and shall satisfactorily perform the duties of District Chancellor as prescribed by the laws of the State of California and the District's job description for Chancellor. The Chancellor shall use his best efforts and shall devote all time necessary to perform such duties. The Chancellor shall be the Chief Executive Officer of the District and the Secretary to the Board of Trustees.

b. **Personnel Matters.** The Chancellor shall have primary responsibility in making recommendations to the Board regarding all personnel matters including employment, assignment, transfer and dismissal of employees.

c. **Administrative Functions.** The Chancellor, as the Chief Executive Officer, shall: (1) review all policies adopted by the Board and make appropriate recommendations to the Board; (2) periodically evaluate or cause to be evaluated all District employees; (3) advise the Board of sources of funds that might be available to implement present or contemplated District programs; (4) endeavor to maintain and improve his professional competence by all available means, including subscription to and reading of appropriate periodicals and membership in appropriate professional associations; (5) establish and maintain positive community, staff and Board relations; (6) serve as liaison to the Board with respect to all matters of employer-employee relations and make recommendations to the Board concerning those matters; (7) recommend, to the Board, District goals and objectives; and (8) unless unavoidably detained, attend all regular, special and executive session meetings of the Board.

d. **Labor Relations.** As directed by the Board, Chancellor shall serve as the District’s labor representative (without obligation to be physically present at negotiating sessions) with respect to all collective bargaining matters and shall make recommendations to the Board concerning those matters.

e. **Chief Executive Officer.** Chancellor shall act as Chief Executive Officer and shall perform all duties necessary in that connection, including insuring the proper preparation of agenda and minutes of all Board meetings.

f. **Community Relations.** Chancellor shall establish and maintain an appropriate community relations program. Chancellor shall attend important college and community events, develop relationships with other key public and private agencies in each of the District's relevant communities where colleges are located and be significantly involved in the District's relevant local communities.

g. **Statutory and Other Duties/Delegation of Authority.** Chancellor shall be expected to competently perform all other reasonable, necessary, and customary duties of Chancellor, including, but not limited to, those powers and duties provided in Education Code sections 70902 and 72400, Board Policy, and all applicable provisions of law. Chancellor shall recommend to the Board District goals and objectives and, unless unavoidably detained, attend all regular and special meetings of the Board, with the exception of those closed sessions in which the Board discusses matters related to the Chancellor's employment or when excused from closed session by the Board. The Chancellor shall serve as an *ex officio* member on all board committees and subcommittees, and shall be entitled to submit recommendations on any items of business considered by the Board or any committee or subcommittee of the Board. Chancellor's duties shall also include all tasks and powers reasonably necessary to fulfill the duties specified in this Agreement. In addition, Chancellor will satisfactorily perform such further duties as may be assigned or required by the Board. The Chancellor shall only be required to take direction from decisions resulting from a majority of the Board. Individual board members may not, on an individual basis, provide direction to the Chancellor.

h. **Board/Chancellor Responsibilities.** Although Chancellor, as chief executive officer of the Board, shall have primary responsibility for execution of Board policies, the Board shall retain primary responsibility for formulating and adopting Board policies. The parties agree, individually and collectively, not to interfere with or usurp the primary responsibilities of the other party and agree that the Board, individually and collectively, shall promptly refer all criticisms, complaints, and suggestions called to its attention to Chancellor for study and correction or, if an issue of policy is involved, for recommendation to the Board. Chancellor shall report back to the Board after handling complaints referred by the Board or by individual board members. The Board and Chancellor agree to work in a spirit of cooperation and teamwork, and to periodically discuss the Board and Chancellor relationship.

3. **Compensation.**

a. **Base Salary.** The Chancellor's annual base salary shall be two hundred seventy thousand dollars (\$270,000). For the 2016-17 school year, the Chancellor's annual salary shall be paid on a pro rata basis since the Chancellor is commencing work on January 17, 2017.

b. **Cost of Living Adjustment.** Subject to the Chancellor's receipt of a satisfactory evaluation, the Chancellor's annually base salary shall be increased, effective July 1st each year of this Agreement, by the percentage change in the consumer price index for the prior fiscal year for all urban consumers (CPI-U) for California as published by the California Department of Finance.

c. **Merit Based Increases.** The Board and the Chancellor shall establish goals each year for the subsequent school year, commencing with the spring of 2017. Satisfactory achievement of the mutually agreed upon goals shall entitle the Chancellor to a merit increase to base salary commencing July 1 following receipt of an evaluation in which the Board determines that the agreed upon goals have been met. Merit based increases shall be in addition to any other increases provided for by this Agreement; thus, the Chancellor shall be eligible for a merit based increase effective July 1, 2018 based on goals established in the spring of 2017 for the 2017-18 school year. The amount of all merit based increases shall be determined by the Board in its sole discretion following input from the Chancellor.

d. **Salary Payment Process.** The Chancellor's compensation shall be payable in approximately twelve (12) equal monthly payments, less all applicable deductions and withholdings required by law or authorized by the Chancellor.

e. **Effective Date.** Salary increases shall be effective on any date ordered by the Board. The Chancellor's salary is understood to be "indefinite or uncertain;" therefore, the Board reserves the right to grant the Chancellor retroactive salary increases notwithstanding anything in the California Constitution that might be interpreted to the contrary.

f. **Salary Increases by Mutual Consent.** The Chancellor's salary is considered to be indefinite and subject to ongoing negotiations with the Board. Accordingly, the Board reserves the right to change the Chancellor's salary at any time during this Agreement with the written consent of the Chancellor. Any change in salary shall not extend the term of this Agreement nor shall it constitute creation of a new Agreement. At the conclusion of each annual evaluation, the parties agree to discuss the Chancellor's compensation and other terms and provisions of this Agreement.

4. **Health and Welfare Benefits.** The Chancellor shall be entitled to the same health and welfare benefits provided to other management employees of the District as such benefits may change from time-to-time. If the Chancellor incurs premiums for plans offered through the District in excess of the District's contribution, the Chancellor shall pay such excess premium costs on a monthly basis via a payroll deduction. The Chancellor shall be responsible to pay all co-pays, deductibles, and other costs in the same manner as other management employees, as those costs may change from time-to-time. The Chancellor may not elect to receive a cash payment in lieu of health benefits from the District.

5. **Sick Leave.** The Chancellor shall, during the term of this Agreement, accrue one (1) day of paid sick leave for each full month of service rendered, up to a maximum of twelve (12) days per year. Credit for leave of absence need not be accrued prior to taking leave; however, if Chancellor uses sick leave in excess of Chancellor's sick leave balance and ceases employment with the District for any reason, the amount owed shall be deducted from any salary owed at the then current per diem rate during the Chancellor's last months of employment.

6. **Holidays.** The Chancellor shall be entitled to holidays on the same conditions as are specified for other management employees.

7. **Work Year.** The Chancellor shall be required to render twelve (12) full months of full and regular service to the District during each annual period covered by this Agreement, exclusive of holidays and vacation. To determine the Chancellor's daily rate of pay, the parties agree that the Chancellor's annual base salary shall be divided by 223.

8. **Automobile Expense Reimbursement.** The Chancellor, at his sole cost and expense, shall provide, operate, and maintain a motor vehicle for travel required in the performance of his duties and responsibilities. Except in an emergency, the Chancellor shall not utilize a vehicle, fuel, or repair services provided by the District. The Chancellor shall be entitled to mileage reimbursement for travel outside the District's boundaries at established Internal Revenue Service rates, as those rates may change over time. The Chancellor shall be required to pay for in-district travel costs personally. The Chancellor shall not be entitled to an automobile or gasoline allowance.

9. **Outside Professional Activities.** By prior approval of the Board, the Chancellor may undertake for consideration outside professional activities, including consulting, teaching, speaking and writing. The Chancellor's outside professional activities shall not occur during regular work hours and shall not interfere in any way with the performance of the Chancellor's duties. In no event will the District be responsible for any expenses attendant to the performance of such outside activities.

10. **Tax Deferred Compensation Plans.** During January of each year commencing January of 2018, if the Chancellor receives a satisfactory evaluation or better, the District shall contribute to Chancellor's Supplemental Retirement Plan (the "Plan") under section 403b of the Internal Revenue Code ("Code") an amount equal to percent (6%) of the Chancellor's then annual base salary ("Plan Contribution"). (See Evaluation, section 12).

The Plan shall be an employer paid plan with non-discretionary contributions by the District. The Chancellor shall have no right to receive such contributions in cash. The Plan documents must meet the requirements of the Code. Funds for the Plan shall be invested in such investment vehicles as are allowable under the Code and state law. The Chancellor shall direct the investment of his accounts under the Plan among the options provided for under the Plan to the extent permitted under law. The District shall have no liability for any investment decisions made by the Chancellor. The contributions to the Plan and earnings thereon shall at all times be vested with the Chancellor.

The Plan Contribution made during each calendar year shall not exceed the maximum amount permitted by law. If the Chancellor's employment terminates for any reason, he shall nonetheless be entitled to receive all Plan Contributions made prior to the effective date of his termination. In addition to the above, the Chancellor shall be entitled to use the District's IRC Section 125 plan and the District's Section 403b plan in any manner allowed by law on the same terms and conditions that such plans are made available to other management employees. All contributions to such plans by the Chancellor shall conform to all requirements of law.

11. **Vacation.** The Chancellor shall earn two (2) days of vacation for each full month of service rendered. Vacation days may be accumulated from year-to-year but in no event will more

than ninety (90) vacation days or seven hundred and twenty (720) hours be paid for at the expiration of this Agreement or accumulated at any one time. Vacation must be scheduled at a time convenient to the Board and the operations of the District. The Chancellor shall be entitled to be paid for up to seven (7) days of accumulated, unused vacation each year at the Chancellor's then current daily rate. If the Chancellor exercises this option, he shall do so in writing so that the vacation payout occurs in June each year. Upon termination of this Agreement for any reason, accumulated, unused vacation, if any, will be paid at the Chancellor's then current daily rate up to the maximum set forth above. Should the Chancellor cease employment with the District with a negative vacation balance due to having used vacation in advance of its accrual (which may be done with prior written approval of the Board), the amount owed shall be deducted from any salary owed at the then current per diem rate during the Chancellor's last months of employment. (All vacation accrued by the Chancellor prior to the commencement date of this Agreement shall roll over, shall not count toward the accrual cap set forth above, and may be used as otherwise permitted by District policy without reference to the ninety (90) day cap set forth above. Any vacation accrued prior to the commencement of this Agreement and remaining as of the Chancellor's termination shall be paid to Chancellor.)

12. **Evaluation.** The Board shall evaluate the Chancellor in writing at least once each year, with the exception that, during the 2017-18 school year, the Chancellor shall receive an interim evaluation in January of 2018 and a final evaluation by June 30, 2018 for the time period from July 1, 2017 to June 30, 2018.

Nothing in this Agreement shall preclude the Board from evaluating the Chancellor more than once each year. Such performance evaluations may take place at the request of the Chancellor or the Board. The evaluation shall be based upon mutually agreed upon goals and objectives, the Chancellor's job description, and any other criteria agreeable to the parties. As part of the evaluation process, the Chancellor will provide the Board with an annual report regarding the State of the District. This report will include reports regarding each of the District's colleges and centers. The Board's evaluation of the Chancellor shall be completed no later than June 30 each year.

The Board shall conduct its evaluation of the Chancellor in closed session meetings of the Board. The Board President shall then meet with and provide a copy of the evaluation report to the Chancellor during a closed session Board meeting. Each year following completion of the evaluation process, the parties shall mutually establish goals for the succeeding year, which shall serve as the basis for determining Chancellor's entitlement to a merit based salary increase.

At the conclusion of each year's annual evaluation (including the initial interim evaluation scheduled for January 2018), the Board shall determine in writing on the Chancellor's evaluation form whether or not the evaluation is "satisfactory" or "unsatisfactory." If the Board determines that the Chancellor's evaluation is "satisfactory" or better, the Chancellor shall be entitled to: (1) the COLA increase as set forth in section 3; (2) a merit based salary adjustment as set forth in section 3; and (3) a 403b Contribution as set forth in section 10. If the Board determines that the Chancellor's evaluation is "unsatisfactory," the Chancellor's base salary shall remain unchanged. If the Board fails to evaluate the Chancellor in a timely fashion, the Chancellor shall remind the Board of these time line requirements and the Board shall thereafter promptly evaluate the

Chancellor.

The Board shall publicly report whether the Chancellor's evaluation is "satisfactory" or "unsatisfactory," so that the public is informed regarding whether or not the Chancellor has received a salary adjustment.

If the Board determines that the Chancellor's evaluation is unsatisfactory, the Chancellor, in collaboration with the Board, will prepare an action plan, if necessary, which will address areas identified as needing clarification, emphasis or improvement. The action plan will be included as an addendum to the evaluation report. If a jointly prepared action plan cannot be agreed upon, the Board in its sole discretion shall issue the action plan. The Chancellor and the Board shall sign the evaluation report and action plan. The Chancellor shall have ten (10) days from receipt of any evaluation to respond in writing to the evaluation. Evaluations and action plans relating to the Chancellor and any written comments in response shall be placed in the Chancellor's personnel file. The evaluation procedures and requirements set forth in this Agreement shall be the exclusive means by which the Chancellor is evaluated and are intended to supersede any other provisions concerning evaluation that might exist in applicable law or by virtue of any District rules, regulations, policies or other agreements.

The Chancellor shall provide timely written reminders to the Board of all evaluation time line requirements to assist with implementation of timely evaluations. A failure to properly or timely evaluate the Chancellor shall not preclude the Board from giving notice of termination in accordance with Section 17 of this Agreement nor shall it constitute a default by the District.

13. **Expense Reimbursement.** The District shall reimburse the Chancellor for documented actual and necessary expenses incurred within the scope of his employment, including but not limited to, business travel outside the District and travel within the District that requires an overnight stay (e.g., lodging, meals, parking) so long as such expenses are permitted by the District policy or incurred with approval of the Board and are not otherwise paid under other terms of this Agreement. For reimbursement, the Chancellor shall submit and complete expense claims in writing in accordance with the District's policies, rules, and regulations. The Chancellor's expense claims shall be supported by appropriate written documentation verifying the contents of the report prior to authorization for reimbursement. The Chancellor is also authorized to use District credit cards, in lieu of travel reimbursement, to pay for travel-related expenses authorized under this provision.

14. **District Technology Devices.** The District shall provide the Chancellor with a District-owned laptop computer, tablet or other wireless email device and a smart phone (each a "Technology Device"). The Chancellor shall use all Technology Devices in accordance with the District policies and legal requirements. All Technology Devices provided by the District are the property of the District and the District shall have the sole right to control access to, and use of, Technology Devices through its policies and the law. The Chancellor may use the Technology Devices for personal use in a manner consistent with those policies. The Chancellor agrees to sign all technology use agreements or other forms that are required of other District employees.

15. **Professional Dues.** The District agrees to pay the Chancellor's membership fee for participation in the Association of California Community College Administrators and any other similar statewide professional organizations of the Chancellor's choice. In addition, the District agrees to pay for membership fees associated with the Chancellor's participation in local community civic organizations.

16. **Tax/Retirement Issues.** Notwithstanding any other provision of this Agreement, the District shall not be liable for any state, federal, or employment tax consequences or retirement consequences as a result of this Agreement. Chancellor shall assume sole liability and responsibility for all state, federal employment, tax, retirement consequences, any designated beneficiary, heirs, administrators, executors, successors or assigns of the Chancellor, including, but not limited to, whether any form of compensation is creditable for purposes of retirement and shall defend, indemnify and hold harmless the District from all such consequences. Chancellor further declares that prior to signing this Agreement he apprised himself of relevant data and received independent advice and counsel regarding the state and federal tax consequences and the retirement consequences of this Agreement.

17. **Professional Meetings.** The Chancellor is expected to attend appropriate professional meetings at the local, state and national levels. The Board encourages the Chancellor to continue his professional growth and community involvement. The Chancellor shall endeavor to maintain and improve professional competence by attending seminars and courses offered by public and private educational institutions, by reading current trade publications, maintaining membership in the community, professional, and business organizations, and attending community, professional, and business meetings at the local, state, and national level.

18. **Termination.**

a. **Mutual Consent.** This Agreement may be terminated by the mutual agreement of the parties at any time.

b. **Resignation.** The Chancellor may resign and terminate this Agreement only by providing the Board with at least sixty (60) calendar days advance written notice, unless the parties agree otherwise.

c. **Non-renewal of the Agreement by District.** The Board may elect not to renew this Agreement for any reason without cause or a hearing by providing six (6) month's prior written notice to the Chancellor as provided under California Education Code Section 72411; however, failure to issue a notice of non-renewal shall only extend this contract for one (1) additional year on the same terms and conditions notwithstanding Education Code section 72411 and other applicable provisions of law.

d. **Termination for Cause.** The Board may terminate the Chancellor for: (1) acts done in bad faith to the detriment of the District; (2) refusals or failures to act in accordance with specific provisions of this Agreement or Board directives; (3) breach of this Agreement; (4) unsatisfactory performance; (5) misconduct or dishonest behavior; or (6) conviction of or a "nolo contendere" plea to a crime involving dishonesty, breach of trust, or physical harm to any person.

The existence of such cause shall constitute a material breach of this Agreement and shall extinguish all rights and duties of the parties under this Agreement. If such cause exists, the Board shall meet with the Chancellor and submit a written statement of the grounds for termination and copies of written documents the Board believes supports the termination. If the Chancellor disputes the charges, the Chancellor shall then be entitled to a conference before the Board in a closed session meeting. The Chancellor and the Board shall each have the right to be represented by counsel at their own expense. The Chancellor shall have a reasonable opportunity to respond to all matters raised in the charges. The conference with the Board shall not be an evidentiary hearing and neither party shall have the opportunity to call witnesses. If the Board, after considering all evidence presented, decides to terminate this Agreement, it shall provide the Chancellor with a written decision. The decision of the Board shall be final. The Chancellor's conference before the Board shall be deemed to satisfy the Chancellor's entitlement to due process of law and shall be the Chancellor's exclusive right to any conference or hearing otherwise required by law. The Chancellor waives any other rights that may be applicable to this termination for cause proceeding with the understanding that completion of this hearing exhausts the Chancellor's administrative remedies and then authorizes the Chancellor to contest the Board's determination in a court of competent jurisdiction.

e. **Termination without Cause.** The Board may, for any reason, without cause or a hearing, terminate this Agreement at any time upon fifteen (15) calendar days' prior written notice to the Chancellor. During this fifteen (15) calendar day period, the District shall communicate with the Chancellor about the Chancellor's employment and the parties shall discuss whether the Chancellor's employment relationship can be terminated by mutual agreement.

In consideration for exercise of this right, the District shall pay Chancellor for twelve (12) months. The Chancellor shall be paid Chancellor's monthly salary at the rate in effect during the Chancellor's last month of service. As a condition of payment, the Chancellor shall be obligated to seek other employment and he shall notify the District immediately if he earns income from any employment-related activity as defined above. If the Chancellor finds other employment, the District will begin paying the Chancellor on a monthly basis only the difference between Chancellor's monthly salary and the amount which the Chancellor earns from any other employment-related source (whether as employee, independent contractor, consultant or self-employed), if any such difference exists.

For purposes of this Agreement, the term "salary" shall include only the Chancellor's regular monthly base salary and shall not include the value of any other stipends, reimbursements or benefits received under this Agreement. Payments made pursuant to this early termination provision may be made in a lump sum or on a monthly basis, at District's sole election. All payments made pursuant to this early termination provision shall be subject to all of District's regular payroll deductions and shall be treated as salary payments.

Subject to the District's insurance carriers' rules, requirements and restrictions, the Chancellor shall also be entitled to the same District contribution toward health benefits as the Chancellor was receiving at the time of his termination, for the remainder of the unexpired term

of this Agreement, a period of twelve (12) months, or until the Chancellor obtains other employment, whichever occurs first.

Any such termination shall be in writing, shall specify the effective date of the termination, and shall terminate all of the Chancellor's employment rights and entitlements with the District. The Chancellor shall execute a full release of claims against the District and its officers, agents and employees as a condition of receipt of the severance payment; otherwise, no severance payment shall be required and termination shall be effective nonetheless.

The parties agree that damages to the Chancellor which may result from the Board's early termination of this Agreement cannot be readily ascertained. Accordingly, the parties agree that the damage payments made pursuant to this early termination clause, along with the District's agreement to provide paid health benefits, constitutes reasonable liquidated damages for the Chancellor, fully compensates the Chancellor for all tort, Agreement, and other damages of any nature whatsoever, whether in law or equity, and does not result in a penalty. The parties agree that the District's completion of its obligations under this provision constitutes the Chancellor's sole remedy to the fullest extent provided by law. Finally, the parties agree that this provision meets the requirements governing maximum cash settlements as set forth in Government Code sections 53260, et seq.

If the Chancellor is terminated without cause and elects to retire instead of fulfilling his obligation to seek other employment as set forth above, the parties agree that, effective upon the date of the Chancellor's retirement with CalSTRS or CalPERS, the District's obligations to make the payments described in this paragraph shall end.

f. **Termination for Disability/Fitness for Duty Examination.** Upon request from the Board or the Chancellor, the Chancellor shall obtain an examination to determine the Chancellor's fitness for duty or potential need for accommodation. Following the examination, the Chancellor shall file the physician's report regarding the Chancellor's ability to perform the essential functions of the position with the Board. Upon request by the Board or the Chancellor, the Chancellor shall undergo an examination by a District appointed physician. Prior to the examination, the Chancellor agrees to execute District provided medical releases from all treating physicians authorizing the District appointed physician to review all medical records. The District appointed physician shall review this Agreement, the District's job description for the position, and be provided background information related to the duties of the position. The Chancellor shall submit all costs to the District's insurance carrier. All non-insured costs shall be borne by the District. The physician shall submit a confidential written report to the Board and the Chancellor addressing the Chancellor's fitness to perform the job. The physician's report shall specifically indicate whether or not the Chancellor has any physical or mental impairment that limits the Chancellor's ability to perform the essential functions of the Chancellor's position. Only confidential medical information necessary to assess whether the Chancellor is able to perform the essential functions of the position shall be provided to the Board. If the Chancellor is determined to be a disabled employee under state or federal law, the physician's report shall indicate what reasonable accommodations, if any, may be available to allow the Chancellor to perform the essential functions of the position so that the District can make an informed decision about reasonable accommodations. If the District determines that the Chancellor is disabled and,

following an interactive dialogue with the Chancellor, that the Chancellor is unable to perform the essential functions of the position, the parties agree that this Agreement may be terminated on six (6) months' written notice. Termination of this Agreement due to the Chancellor's inability to perform the essential functions of the position shall terminate the obligations of both parties under this Agreement.

During the pendency of the termination notice, the Chancellor shall exhaust all accumulated sick leave, vacation entitlements and all other paid leaves. Health and welfare benefits shall remain available to the Chancellor until the Chancellor's employment relationship with the District is ended.

g. **Termination for Inappropriate Fiscal Practices.** Notwithstanding any other provision of this Agreement to the contrary, if the Board believes, and subsequently confirms through an independent audit, that the Chancellor has engaged in fraud, misappropriation of funds, or other illegal fiscal practices, then the Board may terminate the Chancellor and the Chancellor shall not be entitled to the cash, salary payments, health benefits or other non-cash settlement as set forth above. This provision is intended to implement the requirements of Government Code Section 53260, subdivision (b).

h. **Abuse of Office Provisions.** In accordance with Government Code sections 53243 et seq., and as a separate contractual obligation, if the Chancellor receives a paid leave of absence or cash settlement and this Agreement is terminated for any reason, such paid leave or cash settlement shall be fully reimbursed to the District by the Chancellor if the Chancellor is convicted of a crime involving an abuse of office or abuse of the position of Chancellor. In addition, if the District funds the criminal defense of the Chancellor against charges involving abuse of office or position and the Chancellor is then convicted of such charges, the Chancellor shall fully reimburse the District all funds expended for the Chancellor's criminal defense.

19. **Annual Reporting Requirements.** Chancellor shall report the Chancellor's use of sick leave and vacation days in the same manner as all other District employees.

20. **Mediation.** The Chancellor and Board agree to make a good faith effort to settle any dispute that arises under this Agreement through discussion and negotiations. If the dispute is not resolved within thirty (30) days, the dispute shall be mediated unless the parties agree otherwise in writing. Both parties shall make a good faith effort to select a mediator and complete the mediation process within sixty (60) calendar days. If the parties cannot agree on a mediator, the mediator shall be appointed by the State Conciliation and Mediation Service or other agreeable mediation service. The mediator's fee, if any, shall be paid by the District. Each party shall bear its own attorney fees and costs. Any mediator selected by the parties shall have expertise in the area of the dispute and be knowledgeable in the mediation process. No person shall serve as mediator in any dispute in which that person has any financial or personal interest in the outcome of the mediation. The mediator's recommendation for settlement, if any, shall not be binding on the parties. Mediation pursuant to this provision shall be private and confidential. Only the parties and their representatives may attend any mediation session. Other persons may attend only with the written permission of both parties. All persons who attend any mediation session

shall be bound by the confidentiality requirements of California Evidence Code section 1115 et seq. and shall sign an agreement to that effect.

21. **General Provisions.**

a. **Governing Laws and Venue.** This Agreement, and the rights and obligations of the parties, shall be construed and enforced in accordance with the laws of the State of California. The parties also agree that, in the event of litigation, venue shall be the appropriate state court located in Kern County, California.

b. **Severability.** If any term or provision of the Agreement shall, to any extent, be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of the Agreement shall continue in effect.

c. **Construction.** This Agreement shall not be construed more strongly against either party regardless of who is responsible for its preparation.

d. **Entire Agreement.** This Agreement contains all the understandings and agreements between the parties. It supersedes and replaces any prior agreement between the parties. There are no oral understandings, terms or conditions, and neither party has relied upon any representations, express or implied, not contained in this Agreement.

e. **Amendments.** This Agreement cannot be changed or supplemented orally. It may be modified or superseded only by a written instrument executed by both parties.

f. **Non-Assignment.** This is an Agreement for personal services. The Chancellor shall have neither the right nor the power to transfer any rights under this Agreement.

g. **Board Approval.** The parties agree that the effectiveness of this Agreement is contingent upon approval by the District's Governing Board.

h. **Binding Effect.** This Agreement shall be for the benefit of and shall be binding upon all parties and their respective successors, heirs and assigns.

i. **Execution of Other Documents.** All parties to this Agreement shall cooperate fully in the execution of any other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms of this Agreement.

j. **District Rules and Regulations.** This Agreement is intended by the parties to be the sole instrument governing the relationship between the parties unless a provision of law, now or hereinafter enacted, is specifically applicable to this Agreement or to the Board/Chancellor relationship. Thus, the parties expressly agree that the District's policies, rules, and practices shall not be applicable to the Chancellor or affect the employment relationship between the Chancellor and the Board unless specifically referenced in this Agreement.

k. **Management Hours.** The parties recognize that the demands of the position will require the Chancellor to average more than eight (8) hours a day, five (5) days per week, and/or more than 40 hours per week. The parties agree that Chancellor shall not be entitled to overtime compensation.

l. **Independent Review.** The parties have had the opportunity to obtain, and have obtained, independent legal or other professional advice with regard to this Agreement, including tax and retirement consequences. The parties acknowledge that the terms of this Agreement have been read and fully explained and that those terms are fully understood and voluntarily accepted.

m. **Execution.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Photographic copies of such signed counterparts may be used in lieu of the originals for any purpose.

n. **Public Record.** The parties recognize that, once final, this Agreement is a public record and must be made available to the public upon request.

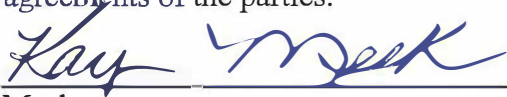
o. **Waiver.** Any waiver of any breach of any term or provision of this Agreement shall be in writing and shall not be construed to be a waiver of any other breach of this Agreement.

p. **Integration.** This Agreement constitutes a complete and exclusive statement of the understanding between the parties with respect to its subject matter. This Agreement supersedes any and all other prior communications between the parties, whether written or oral. All prior agreements between the Board and the Chancellor and all prior promises, negotiations or representations related to the subject matter of this Agreement not expressly set forth in this Agreement are of no force and effect.

q. **Indemnity.** As required by Government Code section 995, the District shall defend and indemnify the Chancellor from any and all demands, claims, suits, actions, and legal proceedings brought against the Chancellor in the Chancellor's individual or official capacity as an agent and employee of the District to the extent required by law. Upon retirement from the District, the Chancellor will continue to be entitled to defense and indemnity for any actions taken against Chancellor to the extent required by law.

r. **Further Assurances.** Each of the parties shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations under this Agreement and to carry out the intent and agreements of the parties.

Dated: December 15, 2016



Kay Meek
President, Kern Community College District
Board of Trustees

ACCEPTANCE OF OFFER

I accept the above offer of employment and the terms and conditions thereof and will report for duty as directed above.

I have not entered into an Agreement of employment with the Governing Board of another district or any other employer that will in any way conflict with the terms of this Employment Agreement.

I certify under penalty of perjury under the laws of the State of California that all statements contained in my application for employment and other documents I submitted in connection with my application are true and complete. I understand that if the District discovers false, incomplete, or misleading statements on my application or any other documents I have submitted in connection with my application, such statements shall justify immediate dismissal for cause.

Dated: December 15, 2016


Thomas Burke
Chancellor

This Agreement was approved by the Board of Trustees in open session at a regularly called meeting held on December 15, 2016.