



Date: July 14, 2022

To: Board of Directors

From: Anthony Constantouros, Interim General Manager

Subject: Employment Agreement with Michael Gancasz

Recommendations:

Approve an At-Will Employment Agreement with Chief Michael Gancasz and authorize the Interim General Manager to sign.

Rationale for Recommendation:

After coming to the department in January 2021, Chief Gancasz received his appointment as Chief of Police in May 2021. No formal contract was entered into at the time of his appointment, rather the Chief is been working under the terms of a letter of engagement.

It is in the best interest of both the District and the Chief to formalize the terms of his employment. Consequently, the former Interim Manager and the Chief have been in discussions regarding the potential agreement since April. The attached proposed agreement is the result of those discussions.

Discussion:

For some time, the Kensington police force struggled to become a high caliber department. Your Board and the former chief took dramatic steps and made significant improvements to the department. Upon his appointment in May 2021 Chief Gancasz took the reins and continued the progress. Continuing the trend set by his predecessor, under Chief Gancasz' leadership a different era of policing now exist in Kensington. The department maintains a record of service and claims against the District have virtually disappeared.

Having a BS degree in Criminal Justice Management and also possessing the highest level POST certifications available, Chief Gancasz is not only well qualified for this position but has the necessary background and experience desired by much larger departments.

This proposed agreement contains several provisions which are the industry standards. It includes protections for the District regarding the terms of the Chiefs employment and those grounds for possible dismissal. The agreement also contains provisions to protect the Chief as he serves in his professional capacity.

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The agreement offers the salary of \$16,300 per month which is in line with similarly sized departments in the Bay Area with increases in compensation scheduled for 2023 and 2024.

Financial Impact

The increase cost to the District in fiscal year 2022-23 is approximately \$25,000 which is included in the District's budget.

AGREEMENT EMPLOYING MICHAEL GANCASZ AS CHIEF
OF POLICE FOR THE KENSINGTON POLICE PROTECTION
& COMMUNITY SERVICES DISTRICT

This Agreement is by and between the Kensington Police Protection & Community Services District, a California special district (“District”) and Michael Gancasz (“Gancasz”).

WHEREAS District desires to continue to employ Mike Gancasz as its Police Chief, and

WHEREAS Gancasz desires to continue in that position on the terms and conditions contained herein; and

WHEREAS both parties wish to enter a written contract clearly stating their respective rights and responsibilities.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

- 1) Employment: District hereby offers, and Gancasz accepts, employment as Police Chief of the District on the terms and conditions set forth herein.
- 2) Effective Date: This Agreement’s effective date is July 1, 2022.
- 3) Duties: Gancasz shall perform those duties and have those responsibilities that are commonly assigned to a Police Chief of a City in California as described in Government Code Section 38630, 41601 through 41611 and any successor legislation. Gancasz shall, additionally, perform such other legally permissible and proper duties and functions consistent with the office of Police Chief, as the General Manager shall from time-to-time assign.
- 4) Devotion to District Business: During the term of this Agreement, Gancasz shall not accept any other employment and shall be exclusively employed by District, unless prior written authorization is received from the General Manager, which the General Manager may withhold in that person’s sole discretion. Gancasz shall not engage in any activity which is or may become a conflict of interest, or which may create an incompatibility of office as defined under California law, or which interferes with Gancasz's ability to effectively perform his duties under this Agreement. Gancasz must annually complete financial disclosure forms as required by law.

5) Termination of Employment and this Agreement; General Release; Severance:

A. At-Will Employee. Gancasz serves at the pleasure of the General Manager, and nothing herein shall be taken to prevent, limit or otherwise interfere with the right of the General Manager to terminate the services of Gancasz with or without cause. There is no express or implied promise made to Gancasz for any form of continued employment. This Agreement is the sole and exclusive basis for an employment relationship between Gancasz and the District.

B. Termination Not-For-Cause If General Manager terminates this Agreement (thereby terminating Gancasz's employment) without Cause, and if Gancasz signs, delivers to the District, and does not revoke, a General Release Agreement ("Release Agreement"), District shall pay Gancasz a lump sum payment equal to three (3) months of Chief's then Base Salary, less any applicable tax withholdings ("Severance").

C. Termination for Cause If General Manager terminates this Agreement (thereby terminating Gancasz's employment) for Cause, as defined in this section, Gancasz shall not be entitled to Severance or any additional compensation or payment but shall be entitled only to accrued Base Salary and vacation pay, and any other accrued and unused benefit allowances according to their terms ("Accrued Salary and Benefits"). Termination of Gancasz under this Section shall be conducted in compliance with California Government Code Section 3304(c), which reads as follows:

3304 (c) "No chief of police may be removed by a public agency, or appointing authority, without providing the chief of police with written notice and the reason or reasons therefor and an opportunity for administrative appeal.

For purposes of this subdivision, the removal of a chief of police by a public agency or appointing authority, for the purpose of implementing the goals or policies, or both, of the public agency or appointing authority, for reasons including, but not limited to, incompatibility of management styles or because of a change in administration, shall be sufficient to constitute "reason or reasons."

Nothing in this subdivision shall be construed to create a property interest, where one does not exist by rule or law, in the job of Chief of Police."

As used in this Agreement, Cause shall mean any of the following:

i. Conviction of, or plea of guilty or nolo contendere to, any crime or offense (other than minor traffic violations or similar offenses) which is likely to have a material adverse impact on the District or on Gancasz's reputation.

ii. Conviction of any crime involving an "abuse of office or position," as that term defined in Government Code Section 53243.4 (see Section 5. D., (below).

iii. Willful insubordination or failure to carry out a lawful directive or directives of the General Manager, and

iv. Any grossly negligent action or inaction by Gancasz that materially and adversely: (a) impedes or disrupts the operations of District or its organizational units; (b) is detrimental to employees or public safety; or (c) violates District's established rules or procedures.

D. Abuse of Office Notwithstanding any of the provisions in Sections 5. A. and 5. B. (above), in any circumstance in which Gancasz is convicted of a crime involving abuse of his or her office or position with the District as defined in California Government Code Section 53243.4, any paid administrative leave provided by the District pending an outcome of the investigation into such crime, any District funds expended for the legal criminal defense to such criminal allegation, and any cash settlement or severance provided to Gancasz upon termination shall be fully reimbursed by Gancasz to the District.

E. Termination of Agreement in the Event of Gancasz's Death This Agreement shall terminate upon the death of Gancasz. In the event of such termination, Gancasz's estate shall receive Accrued Salary and Benefits but shall not be entitled to any additional compensation or payment, including Severance.

F. Automatic Termination in Event Gancasz fails to meet Certification Requirements A failure to meet all certification requirements for a Chief of Police as required by the Commission on Peace Officer Standards and Training (POST) and other California laws and/or regulations shall result in an automatic termination of this Agreement. In the event of such termination, Gancasz shall not be entitled to additional compensation or payment, including Severance.

G. Disability Termination If Gancasz shall, for whatever reason, become incapable of performing any of the essential functions of Gancasz's position, even with reasonable accommodation by Employer, either (1) permanently, or (2) for a period exceeding the period of leave available to Gancasz under the Family Medical Leave Act or the California Family Rights Act, accrued sick leave or 180 days, whichever is longer, then Gancasz shall be deemed to have suffered a disability. As Gancasz's position requires Gancasz to devote a great deal of time both during and outside of normal office hours to the business of Employer, Gancasz recognizes that granting a leave longer than the time stated in this section may constitute an undue hardship on Employer. In accordance with applicable law, any request for leave that does constitute an undue hardship may be grounds for not-for-cause termination of this Contract under, and in accordance with, Paragraph 5.B of this Agreement.

Nothing in this Paragraph 5.G shall impact the right of the Employee in connection

with receipt of 4850 pay in the event of a qualifying occupational injury.

H. Resignation/Retirement of Gancasz Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of Gancasz to resign at any time from their position with the District. Gancasz may terminate the Agreement by submitting written notice of their resignation to the General Manager and shall provide not less than thirty (30) days written notice of their intention to resign or retire. If Gancasz resigns or retires from employment with the District, they shall not be entitled to any Severance. Gancasz shall be paid for all accrued vacation to the effective date of the termination.

6) Salary and Annual Performance Reviews:

A. Gancasz's initial annual salary, effective July 1, 2022, shall be One Hundred Ninety-Five Thousand Six Hundred Dollars (\$195,600.00) ("Base Salary") payable in equal installments at the same time and in the same manner as other employees of the District are paid.

i. Effective July 1, 2023, the Base Salary shall be Two Hundred Eleven Thousand Two Hundred Fifty Dollars (\$211,250.00)

ii. Effective July 1, 2024, the Base Salary shall be adjusted by the amount that reflects the increase in the cost of living for all urban consumers in the San Francisco-Oakland-Hayward, CA region as reported by the U.S Bureau of Labor Statistics, up to a maximum of five percent (5%).

B. Annual Performance Reviews At least annually, the General Manager and Gancasz shall set mutually agreed upon objectives for each year. These objectives shall coincide with the General Manager's completion of a public employee performance evaluation of Gancasz on or before the anniversary date of this Agreement ("Annual Evaluation"). Nothing in this section precludes the General Manager from completing an additional interim public employee performance evaluation of Gancasz at any other time.

7) Non-Cash Compensation and Benefits:

A. CalPERS Retirement District will continue to enroll Gancasz as a member of the California Public Employees Retirement System (CalPERS) in the CalPERS "Public Safety" plan of 3% @ 50, consistent with the provisions of the California Public Employees' Pension Reform Act of 2013 (PEPRA). Pursuant to California Government Code Section 53244, a local public officer who is convicted by a state or federal trial court of any felony under state or federal law for conduct arising out of or in the performance of, his or her official duties shall forfeit any

contract right or other common law, constitutional or statutory claim against a public agency employer to retirement or pension rights or benefits.

B. Deferred Compensation Retirement Plan (IRS 457(b) or 401a) The District will continue to offer participation in a District-approved Deferred Compensation Plan.

C. Health Benefits District shall provide health benefits through the Public Employees' Retirement System Health Benefit Program. District will pay 90% of the Kaiser Northern California premium at each level of coverage. The premium shall be adjusted annually on or about January 1 of each year based on changes in Kaiser rates for that year.

D. Dental and Vision Benefit The District shall provide for a vision plan through VSP, and a dental plan through Delta Dental, maintaining the same benefit package as is provided through the then-current Memorandum of Understanding with the Kensington Police Officers Association ("MOU"). The current plans are VSP Group Vision Care Plan, effective October 1, 2013, and the District's Contract with Delta Dental, effective October 1, 2007, as amended. The District will pay the premiums for the employee and his eligible dependents

E. Employee Assistance Program Gancasz shall be enrolled in the Employee Assistance Program outlined in the Memorandum of Understanding with the Kensington Police Officers Association ("MOU").

F. Retirement Medical The District shall provide a retirement medical benefit in the amount equal to 90% of the then current Kaiser Northern California rate or \$125 per month, whichever is greater. Upon achieving Medicare eligibility, the District shall pay 90% of the then current Kaiser Northern California applicable Medicare rate at each level of coverage and Gancasz shall pay the remaining 10% or \$125 per month, whichever leads to a greater retiree contribution. This will continue for the life of the employee. This vesting agreement shall be subject to California law and any applicable PEMHCA rules.

G. Uniform and Equipment Reimbursement Gancasz is expected to regularly wear a police uniform. Gancasz shall be reimbursed up to a total of One Thousand Two Hundred Dollars (\$1,200.00) per year for the purchase, care, and cleaning of uniform and non-uniform business attire.

H. Life Insurance District will provide a \$100,000 life insurance policy. Gancasz shall be responsible for any income tax liability arising out of receipt of benefits provided under this Agreement that exceed the allowable tax-exempt amounts including, but not limited to excess life insurance, and agrees to hold District harmless and indemnify it for any liabilities, costs and expenses caused by

any tax authority relating to these benefits.

I. Hours of Work, Administrative Leave, Vacation Accrual Gancasz is an Exempt employee pursuant to the provisions of the Fair Labor Standards Act (FLSA), and that Gancasz is expected to work all hours/days necessary to perform the functions competently and fully as Police Chief. Gancasz will work a minimum of forty (40) hours per week. The work week may consist of 4 ten-hour days, 5 eight-hour days, or any combination of the two needed to perform the functions of the job.

J. Gancasz will be provided with ninety-six (96) hours of paid administrative leave each calendar year of employment. This administrative leave shall not accrue or carry over from one year to the next. Any unused balance of Administrative Leave available as of 12:00 midnight, June 30th, shall be forfeited. Accrued, unused administrative Leave shall have no cash value and shall not be subject to cash out during or upon separation from employment.

K. Vacation Accrual for Gancasz shall be twenty (22) calendar days per calendar year. This is based on a 10-hour per day, forty (40) hour work week schedule.

L. The times during the calendar year at which an employee may take vacation leave shall be determined by the General Manager, with due regard for the wishes of the employee and particular regard for the needs of the service.

- i.** Executive Management Employees, due to the needs of the service may be unable to utilize said accrued vacation; therefore, said employee shall be permitted to carry over any unused vacation. Vacation account accrual cannot exceed three hundred and twenty (320) hours. Vacation hours that exceed the designated limit will be forfeited.
- ii.** In the event one or more municipal holidays fall within an annual vacation leave, such holidays shall not be charged as vacation leave, and the vacation shall be extended accordingly. Employees who terminate employment shall be paid in a lump sum for all accrued vacation leave earned prior to the effective date of termination. An employee who becomes ill or injured during his/her vacation may request that the time be deducted from his/her earned sick leave and the vacation period be re-scheduled later or be extended.

8) Use of District-Owned Vehicle The District agrees to provide a District vehicle for job-related and personal use, including travel to and from home, work, training, meetings, and incidental use.

9) Business and Professional Expenses

A. Dues and Subscriptions District agrees to budget and pay for the

professional membership dues and subscriptions for Gancasz's continued full participation in:

- Contra Costa County Police Chiefs Association (CCCPCA)
- California Police Chiefs Association (CPCA)
- International Association of Chiefs of Police (IACP)

B. Conferences The District will pay for Gancasz's necessary travel, lodging and meal costs when representing the District at conferences or meetings of national or state committees or commissions upon which Gancasz of Police serves as a member, subject to the approval of the General Manager; and for such other official meetings or travel as are reasonably necessary for the professional development and advancement of Gancasz as approved by the General Manager.

C. Professional Development and Training District also agrees to budget and pay for the travel, lodging and meals expenses of Gancasz incurred during his attendance at short educational courses, institutes and/or seminars that are necessary for his professional development or training and for the good of the District as approved by the General Manager.

10) Enforcement of this Agreement The prevailing party in any actions brought to enforce this Agreement or to resolve any dispute or controversy arising under its terms and conditions, shall be entitled to payment of his/her/its reasonable attorneys' fees and costs.

11) Indemnification Subject to any contrary provisions of the California Government Code or Section 5 (D) of this Agreement (above), District shall defend, hold harmless, and indemnify Gancasz using legal counsel of District's choosing, against expense or legal liability for acts or omissions by Gancasz occurring within the course and scope of Gancasz's employment under this Agreement, provided that such indemnity shall not extend to any judgment or damages arising out of any willful wrongdoing.

Legal representation, provided by District for Gancasz, shall extend until a final determination of the issues including all losses, damages, judgments, interest, settlements, fines, court costs, and the reasonable costs and expenses of legal proceedings, including appeals, and including attorneys' fees, and expert witness fees and all other trial and appellate costs, and other liabilities incurred, imposed upon, or suffered by Gancasz in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened.

In the event there is a conflict of interest between District and Gancasz such that independent counsel is required for Gancasz, Gancasz may engage their own legal counsel, in which event District shall indemnify Gancasz, including direct payment

of all such reasonable costs related thereto. The parties agree that this section shall survive termination of this Agreement and Gancasz's employment with the District. This section shall apply at the time any such claim, demand, action, loss, or change is made or occurs provided that the act or omission giving rise to the claim occurred during the time that Gancasz was employed by the District.

12) Notices Any notices to be given hereunder by either party to the other in writing may be affected either by personal delivery, mail, or email. Mailed notices shall be addressed to the parties as set forth below, but each party may change his/her/its address by written notice given in accordance with this Section. Notices delivered personally or by email will be deemed communicated as of actual receipt. Mailed notices will be deemed communicated and received as of three (3) calendar days following the date of mailing.

To District: General Manager
Kensington Police Protection and
Community Services District
217 Arlington Avenue
Kensington, CA 94707

To Gancasz: Michel Gancasz
Kensington Police Protection and
Community Services District
217 Arlington Avenue
Kensington, CA 94707

13) Conflict with District Municipal Code District personnel ordinances, resolutions, rules, and policies ("Personnel Rules") shall apply to Gancasz in the same manner as applied to other management employees, provided, however, in the event of a conflict between the provisions of this Agreement and the Personnel Rules, this Agreement shall prevail.

14) Entire Agreement This Agreement represents the entire agreement between the parties and supersedes all other agreements, either oral or in writing, between the parties with respect to District's employment of Gancasz and contains all the covenants and agreements between the parties with respect to that employment. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by either party, or by anyone acting on behalf of either party, which are not embodied herein, and that no other employment agreement, statement, or promise not contained in this Agreement shall be valid or binding upon either party.

15) Modifications Any modifications to this Agreement shall be effective only if in writing and signed by both parties hereto.

16) Effect of Waiver The failure of either party to insist upon strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

17) Partial Invalidity If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

18) Governing Law; venue The laws of the State of California shall govern this Agreement. In the event that a dispute arises from the performance of this Agreement, the Contra Costa County Civil Court shall be the venue for resolving said dispute.

Kensington Police Protection and Community Services District

By: _____

Anthony Constantouros, Interim General Manager

Michael Gancasz

Approved as to Form:

Ann Danforth, District General Counsel