

KENSINGTON POLICE PROTECTION AND COMMUNITY SERVICES DISTRICT

**BOARD OF DIRECTORS MEETING**

**September 9, 2021**

**ITEM 3**

**PROPOSED CONTRACT WITH RICHARD BENSON TO SERVE AS INTERIM GENERAL MANAGER FOR KPPCSD**

**SUMMARY OF RECOMMENDATION**

Approve and authorize Board President Sylvia Hacaj to execute a contract with Richard Benson to provide services as Interim General Manager for the Kensington Police Protection and Community Services District.

**BACKGROUND AND DISCUSSION**

The Board of Directors unanimously approved the retention of Rick Benson as Interim General Manager at its meeting of August 12, 2021. The terms were the following:

- Salary: \$105/per hour – no other benefits, no severance clause
- Term: 8/23/21 – 2/25/22
- Start date: 8/23/21
- On-site: 2x per month for no less than two days
- Time-off: Employee has two-week vacation planned in November – already purchased
- The employment is “at-will” and may be terminated by the Board with or without cause.

At Mr. Benson’s request, I have incorporated the above terms in a written contract based on the District’s agreement with its previous Interim General Manager, Bill Lindsey.

**RECOMMENDATION**

Approve and authorize Board President Sylvia Hacaj to execute a contract with Richard Benson to provide services as Interim General Manager for the Kensington Police Protection and Community Services District.

**FISCAL IMPACT**

The adopted FY 2021-21 budget includes the cost of retaining the Interim General

**ATTACHMENTS**

Draft Employment Agreement

**SUBMITTED BY:**

Ann Danforth, General Counsel  
General Manager

**Kensington Police Protection and Community  
Services District – Interim General Manager  
Employment Agreement**

1. **Employment:**

This Interim General Manager Employment Agreement (Agreement) is entered between the Kensington Police Protection and Community Services District (“District”) and Richard J. Benson (“Manager”). Under this Agreement, the District offers, and Manager accepts, at-will employment as General Manager of the District. Manager acknowledges that he serves at the pleasure of the Board of Directors, and may be dismissed at any time without cause, subject to the provisions of section 6 of this agreement.

2. **Duties:**

Manager shall perform those duties and have those responsibilities that are commonly assigned to a general manager of a special district in California, and as may be further set forth in California Government Code Sections 61050 and 61051 and the Policies set forth in the District’s Policy and Procedures Manual . Manager shall perform such other legally permissible and proper duties and functions consistent with the office of General Manager, as the Board of Directors shall from time to time assign. Manager will spend no less than four business days per month in the District offices but may otherwise perform his duties remotely.

3. **Devotion to District Business:**

Manager shall not engage in any business, educational, professional, charitable, or other activities that would conflict or materially interfere with performance of his General Manager duties, except as may be specifically authorized by the Board of Directors.

4. **General Manager Authority:**

A. Except for the purpose of inquiry, the Board of Directors and its members shall not deal with all subordinate District employees, officers, contractors, and consultants solely through the Manager or the Manager’s designee, and neither the Board of Directors nor any member thereof shall give direction to any subordinate of the Manager, either publicly or privately. For purposes of this section, legal counsel is not subordinate to the Manager.

B. No member of the Board of Directors will order the appointment or removal of any person to any office or employment under the supervision and control of the Manager, provided that, nothing herein shall limit the Board's appellate responsibilities.

C. Neither the Board of Directors nor any of its members shall interfere with the execution of the powers and duties of the Manager, as specified in the District Policies No. 1015 and 3000 and this Agreement, or any other lawfully adopted and authorized document.

5. **Term:**

Manager's employment will commence August 23, 2021, and shall continue until February 25, 2022, or the date of earlier termination in accordance with provisions in this Agreement. This Agreement can be amended at any time consistent with Section 17 of this Agreement.

6. **Termination of Employment and this Agreement; General Release; Severance:**

A. If District terminates this Agreement (thereby terminating Manager's employment), by action of the affirmative votes of a majority of the members of the Board of Directors, Manager shall not be entitled to any additional compensation or payment, including Severance, but shall be entitled only to accrued Base Salary.

B. If, during the Term or any extended Term, Manager dies, Manager's estate shall receive Accrued Salary, but shall not be entitled to any additional compensation or payment, including Severance.

C. In the event Manager is permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, or mental incapacity for a period of three consecutive months, the District may terminate Manager's employment and this Agreement consistent with state law.

D. Manager may resign from his employment at any time, upon giving thirty (30) days written notice to the Board of Directors.

7. **Compensation, Place of Work and Annual Evaluation:**

A. Manager's initial annual Base Salary shall be One Hundred-Five Dollars per hour (\$105/hour). Said amount shall be payable in the same manner as other employees of the District

are paid. Increases in Manager's Base Salary may be effective at any time at the sole discretion of the Board of Directors. The Manager will telecommute to the extent it does not interfere with his performance in the organization and community. He will provide regular reporting on hours worked to ensure compliance with budget parameters.

B. District, by the Board of Directors, and Manager may set mutually-agreed-upon objectives for each year under this Agreement. The Board of Directors shall evaluate Manager's performance after the first six months at least once a year thereafter ("Annual Evaluation").

C. Manager's Base Salary increases approved by the Board of Directors from time to time pursuant to this Agreement shall be approved in open session of the Board, but shall not require an amendment to this Agreement to be effective. Such increases may be set forth in an annual salary resolution or minute action approved by the Board of Directors by resolution.

D. If the District reduces the Base Salary or any other financial benefit of the Manager in a percentage that is greater than the average reduction of all District employees, such action shall, at the Manager's option, constitute a termination of this Agreement without Cause under Section 6.A. of this Agreement, and Manager shall be entitled to Severance.

E. The District's employment and labor law counsel believe that Manager is not subject to the retiree annuitant employment limitations under the Public Employees' Pension Reform Act (PEPRA) and the Public Employees' Retirement Law (PERL). However, out of an abundance of caution, the District has formally asked that CalPERS provide a written response on this issue.

8. **Other Benefits:**

Other than the hourly salary set forth in this agreement, recognizing the part-time status of the new General Manager position, the District will not be responsible for any additional employee benefits. Notwithstanding the foregoing, Manager shall be entitled to any paid sick leave to which he is entitled under the federal Families First Coronavirus Response Act.

9. **Business and Professional Expenses:**

A. District recognizes that Manager may incur expenses of a non-personal, job-related

nature that are reasonably necessary to Manager's service to District. District agrees to either pay such expenses in advance or to reimburse the expenses, so long as the expenses are incurred and submitted according to District's normal expense reimbursement procedures or such other procedure as may be designated by the Board of Directors. To be eligible for reimbursement, all expenses must be supported by documentation meeting District's normal requirements and must be submitted within time limits established by District.

B. District agrees to pay Manager's travel and subsistence expenses for official travel, meetings, and occasions for Manager's reasonable participation in necessary official and other functions for the District; including, but not limited to, regional, state, and local conferences, and governmental groups and committees on which Manager serves as a member. It is understood that travel to/from his residence and the District is not business related or reimbursable. Notwithstanding the above, the number and allowable cost of conferences or meetings District will pay for each year, shall be at the discretion of the Board of Directors as set forth in the District's budget.

**10. Abuse of Office or Position:**

If Manager is convicted of a crime involving an abuse of his office or position, all of the following shall apply: (a) if Manager is provided with administrative leave pay pending an investigation, Manager shall be required to fully reimburse District such administrative leave amounts paid; (b) if District pays for the criminal legal defense of Manager (which would be in its sole discretion, as it is generally not obligated to pay for a criminal defense), Manager shall be required to fully reimburse District such amounts paid; and (c) if this Agreement is terminated, any Severance Pay and Severance related to the termination that Manager may receive from District shall be fully reimbursed to District or shall be void if not yet paid to Manager. For purposes of this Section, abuse of office or position means either: (x) an abuse of public authority, including waste, fraud, and violation of the law under color of authority; or (y) a crime against public justice.

**11. Communications Upon Manager's Separation:**

In the event the District terminates the Manager for any reason or no reason, the District and the Manager agree that, other than dates of hire, notice and separation, no member of the

Board of Directors, the District Management staff, nor the Manager, shall make any written, oral or electronic statement to any member of the public, the press, or any District employee concerning the Manager's termination except in the form of a joint press release or statement, the content of which is mutually agreeable to the District and the Manager. The joint press release or statement shall not contain any text or information that is disparaging to either party. Either party may verbally repeat the substance of the joint press release or statement in response to any inquiry.

**12. Indemnification:**

Consistent with the California Government Code, District shall defend, hold harmless, and indemnify Manager using legal counsel of District's choosing, against expense or legal liability for acts or omissions by Manager occurring within the course and scope of Manager's employment under this Agreement. Legal representation, provided by District for Manager, shall extend until a final determination of the issues including any and 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 Manager 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 Manager such that independent counsel is required for Manager, Manager may engage his own legal counsel, in which event District shall indemnify Manager, including direct payment of all such reasonable costs related thereto.

**13. Notices:**

Any notices to be given hereunder by either party to the other in writing may be effected 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.

DISTRICT: Kensington Police Protection and Community Services District Attention:  
President of the Board

217 Arlington Avenue  
Kensington, CA 94707

MANAGER: Richard J. Benson, Interim General Manager  
9103 Oak Hills Avenue  
Bakersfield, CA 93312

**14. Conflict District Policies and Practices:**

The District's personnel ordinances, resolutions, rules and policies shall apply to Manager 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 District policies and procedures, this Agreement shall prevail over District policies and procedures.

**15. Entire Agreement:**

This Agreement represents the entire agreement between the parties and supersedes any and all other agreements, either oral or in writing, between the parties with respect to the employment of Manager by District, and contains all of 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.

**16. Modifications:**

Any modifications to this Agreement shall be effective only if in writing and signed by both of the parties hereto.

**17. 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.

**18. 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.

**19. Governing Law:**

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

This Agreement is entered into this\_day of \_\_\_\_\_, 2021, pursuant to Board authorization on September 9, 2021. The Board approved the terms of this Agreement on August 12, 2021.

Kensington Police Protection and Community Services District

By: \_\_\_\_\_  
Sylvia Hacaj, President

\_\_\_\_\_  
Ellen Nottoli, Vice President

Manager

\_\_\_\_\_  
Richard J. Benson, Interim General Manager

Attest:

\\\_\_\_\_\_  
Lynelle Lewis, Clerk of the Board

Approved as to Form:

\_\_\_\_\_  
Ann Danforth, District General Counsel



**GENERAL RELEASE AGREEMENT**

This General Release Agreement (“Release Agreement”) is entered into by and between \_\_\_\_\_ (“Manager”) and Kensington Police Protection and Community Services District (“District”), in light of the following facts:

- A. Manager’s employment with District concluded on\_\_\_\_\_.
- B. Certain disputes have arisen between District and Manager.
- C. District and Manager each deny any liability whatsoever to the other.

D. District and Manager wish to fully and finally resolve any and all disputes they may have with each other.

E. Manager is hereby informed that he has twenty-one (21) days from receipt of this Agreement to consider it. District hereby advises Manager to consult with his legal counsel before signing this Agreement.

F. Manager acknowledges that for a period of seven (7) days following the signing of this Agreement (“Revocation Period”), he may revoke the Agreement. This Agreement shall not become effective or enforceable until the day the Revocation Period has expired.

G. Manager acknowledges that the Salary Payment referenced in paragraph 1 of this Agreement represents all compensation, including salary, and reimbursed expenses, due and payable to him through the date of employment termination. Manager also acknowledges that District has made this Salary Payment without regard to whether he signs this Agreement. The Salary Payment does not constitute consideration for this Agreement.

1. Receipt of Salary Payment. Manager hereby acknowledges receipt of a check or checks for all compensation owing to him, including salary, and reimbursed expenses (“Salary Payment”) from District.

2. Severance. Within seven (7) days following Manager’s signing, delivering to the District, and not revoking this Agreement, District shall pay Manager the gross amount provided for in Section 6A. of the attached Employment Agreement, less applicable deductions. Manager acknowledges that the Severance is in excess of all amounts due and owing him as a result of his employment by District.

3. General Release. In consideration of the Severance to be paid and provided to Manager, and other good and valuable consideration, Manager hereby releases and discharges District and its past and present Board of Director Members, employees, representatives and agents, from all rights, claims, causes of action, and damages, both known and unknown, in law or in equity, concerning and/or arising out of his employment by District which he now has, or ever had, including but not limited to any rights, claims, causes of action or damages arising under Title VII of the Civil Rights Act of 1964, the Vocational Rehabilitation Act of 1973, the Employee Retirement Income Security Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Older Workers Benefits Protection Act, the Family and Medical Leave Act of 1993, the Domestic Partners Act of 2003, the California Labor Code, the Private Attorneys General Act of 2004, the California Moore-Brown-Roberti Family Rights Act, the California Unruh Civil Rights Act, the California Fair Employment and Housing Act, any other federal, state, or local employment practice legislation, or any federal or state common law, including wrongful discharge, breach of express or implied contract, or breach of public policy.

Manager hereby waives and relinquishes all rights and benefits afforded by Section 1542 of the Civil Code of California. Manager understands and acknowledges the significance and consequences of this specific waiver of Section 1542. Section 1542 of the Civil Code of California states as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of District and its past and present Board of Director Members, employees, representatives and agents, Manager expressly acknowledges that this General Release is intended to include in its effect, without limitation, all claims which he does not know or suspect to exist in his/her favor.

Manager's Initials: \_\_\_\_\_

Manager further acknowledges that he has read this General Release and that he/she understands that this is a general release, and that he intends to be legally bound by the same.

4. Fees and Costs. Manager and District agree that in the event of litigation relating to this Release Agreement, the prevailing party shall be entitled to recover his/it's reasonable attorneys' fees and costs.

Dated \_\_\_\_\_, 20\_\_

Kensington Police Protection and Community  
Services District

By: \_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
GENERAL MANAGER

**APPROVED AS TO FORM:**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_

Clerk of the Board

Date: \_\_\_\_\_