



Date: December 14, 2023

To: Board of Directors

From: Isabel Safie, Best Best & Krieger

Presented by: Ann Siprelle, General Counsel

Subject: Retired Annuitant Appointment Resolution and Restated Employment Agreement for Interim General Manager

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### **Recommendation**

Discussion, and ultimately, the approval of the retired annuitant appointment Resolution and restated employment agreement for the interim General Manager.

### **Background**

The Board appointed David Aranda, a retired annuitant, as the interim General Manager, effective February 13, 2023, with an employment agreement inadvertently identifying a specific termination date rather than a termination based on an event. CalPERS' working after retirement laws only allow for a retiree to be appointed to a specific position once. Since the Board intended for Mr. Aranda to serve as the interim General Manager until such a time that regular General Manager has been appointed, and given that the District's recruitment efforts have yet to result in an interested and qualified candidate, the specific termination date specified in the employment agreement is inconsistent with the Board's intent.

After consultation with CalPERS, and in light of the Board's intention on the duration of Mr. Aranda's appointment, the District's legal counsel has prepared a resolution clarifying the Board's intention and ratifying the prior appointment of Mr. Aranda in compliance with the CalPERS' working after retirement rules. In addition, legal counsel has prepared a restated and amended agreement for interim General Manager services that reflects a termination date that is consistent with the Board's intention and removes any provisions in the original agreement that are inconsistent with the working after retirement rules. In addition, the agreement adjusts the hourly rate for Mr. Aranda to \$142.20 consistent with the adjustment to the pay rate to the General Manager position to align with the increases provided to other District positions as of July 1, 2023. However, the effective date for Mr. Aranda cannot date back to July 1, 2023. Rather, it will only date back to September 8, 2023 when it was brought to the Board's attention that the pay rate for the General Manager position had not been adjusted consistent with the adjustment to other positions.

While the new hourly rate represents a substantial increase, this is parity adjustment commensurate with the rate of increase provided to other District staff. The increased hourly rate will also improve the District's chances of finding a candidate to take over the General Manager role on a regular basis.

**Fiscal Impact**

The additional pay that will be provided to Mr. Aranda as a result of the increased pay rate of \$142.20 as of 9/8/23 will be a maximum of \$31,000 for this fiscal year. On a prospective basis, for every hour worked by Mr. Aranda, the District will pay an additional \$37.20. However, as a CalPERS retired annuitant, Mr. Aranda's hours are limited.

**Exhibits**

1. Interim General Manager Amended and Restated Employment Agreement

**INTERIM GENERAL MANAGER  
AMENDED AND RESTATED EMPLOYMENT AGREEMENT**

This AMENDED AND RESTATED AGREEMENT is between the KENSINGTON POLICE PROTECTION AND COMMUNITY SERVICES DISTRICT, a special district (hereinafter referred to as “District”), and DAVID ARANDA, an individual (hereinafter referred to as “Manager”).

**RECITALS**

**WHEREAS**, the District Board of Directors appointed Manager as Interim General Manager effective February 13, 2023, at its regular meeting on February 9, 2023, pursuant to Government Code sections 7522.56 and 21221(h).

**WHEREAS**, an employment agreement between the District and Manager was entered into effective February 13, 2023 (“Agreement”).

**WHEREAS**, the Board of Directors now wishes to amend and restate the Agreement (“Restated Agreement”) to comply with Government Code sections 7522.56 and 21221(h) and to clarify the intended duration of the appointment.

**AGREEMENT**

**1. Employment:**

Under this Restated Agreement, the District offers, and Manager accepts, at-will employment as Interim 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 Restated Agreement.

The parties acknowledge that this is a temporary position, intended to provide for District management while the District recruits for a permanent General Manager.

**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. The parties anticipate that Manager will devote approximately 20-25 hours per week performing the duties of the General Manager for the District. Unless previously arranged with the Board President, Manager will spend no less than two days per week in the District offices. Except as provided herein, Manager 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 deal with all subordinate District employees (including, without limitation, the Chief of Police), 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 Restated Agreement, or any other lawfully adopted and authorized document.

**5. Term:**

The Manager's appointment as interim General Manager shall be effective on February 13, 2023 ("Effective Date"). This appointment shall end as of the first of the following to occur: (i)

upon the employment commencement date of a permanent General Manager employed by District; or (ii) upon termination of this Restated Agreement by either Manager or District as provided in Section 6 of this Restated Agreement. Employment is temporary, at-will and may be terminated with or without cause and with or without notice at any time by the Manager or the District. Manager is not eligible for any severance payment or benefit relating to or arising out of the termination of this Restated Agreement. The parties may amend this Restated Agreement in writing pursuant to Section 16.

**6. Termination of Employment and this Restated Agreement:**

A. If District terminates this Restated 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 but shall be entitled only for hours worked but unpaid ("Accrued Pay").

B. If the Manager dies during his appointment as interim General Manager, Manager's estate shall receive the Accrued Pay, but shall not be entitled to any additional compensation or payment.

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 Restated 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 shall be compensated at the rate of One Hundred-Five Dollars (\$105) per hour of work performed. Said amount shall be payable in the same manner as other employees of the District are paid. Effective September 8, 2023, and consistent with the District's publicly available pay schedule effective on such date, Manager shall be compensated at the rate of One Hundred Forty-Two Dollars and Twenty Cents (\$142.20) per hour of work performed. 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. Within 30 days of commencing employment with the District, Manager will submit goals and objectives for his tenure for approval by the Board of Directors.

C. Manager is a retired annuitant under the California Public Employees Retirement System and subject to the Public Employees' Pension Reform Act (PEPRA) and the Public Employees' Retirement Law (PERL). Manager shall be responsible for regulating his work for District so as to comply with the aforesaid statutes and any implementing regulations.

**8. Other Benefits:**

Other than the compensation described above in Section 7, Manager will receive no other benefits, incentives, compensation in lieu of benefits, or any other form of compensation. Manager understands and agrees that he is not, and will not be, eligible to receive any benefits from the District, including any District group plan for hospital, surgical, or medical insurance, any District retirement program, or any paid holidays, vacation, sick leave, or other leave, with or without pay, or any other job benefits available to an employee in the regular service of the District, except as required by state or federal law.

**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. 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. 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.

**11. 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 Restated 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.

**12. 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 their 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: David A. Aranda  
[Address on File]

**13. 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 Restated Agreement and the District policies and procedures, this Restated Agreement shall prevail over District policies and procedures.

**14. Entire Agreement:**

This Restated 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 Restated 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 Restated Agreement shall be valid or binding upon either party.

**15. Modifications:**

Any modifications to this Restated Agreement shall be effective only if in writing and signed by both of the 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 Restated 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 Restated 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:**

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

MANAGER:

Dated: \_\_\_\_\_

\_\_\_\_\_  
DAVID ARANDA

DISTRICT:

Dated: \_\_\_\_\_

\_\_\_\_\_  
ALEXANDRA AQUINO-FIKE,  
Board President