

KENSINGTON POLICE PROTECTION AND COMMUNITY SERVICES DISTRICT

AT-WILL INTERIM CHIEF OF POLICE

EMPLOYMENT AGREEMENT

This AT-WILL INTERIM CHIEF OF POLICE EMPLOYMENT AGREEMENT (“Agreement”) is made by and between the KENSINGTON POLICE PROTECTION AND COMMUNITY SERVICES DISTRICT (“KPPCSD”) and Walt Schuld (“Employee”). KPPCSD and Employee may be referred to individually as a “Party” or collectively as “the Parties.”

RECITALS

WHEREAS, Government Code subdivision 21221(h) permits retired annuitants under the California Public Employees’ Retirement System (“CalPERS”) to be employed without reinstatement from retirement upon appointment by a public agency to fill a vacant position on an interim basis during the recruitment to permanently fill the vacant position; and

WHEREAS, KPPCSD is currently conducting a recruitment for a permanent Chief of Police; and

WHEREAS, Employee is a CalPERS retired annuitant under Government Code subdivision 21221(h) whose services the District requires to ensure adequate staffing; and

WHEREAS, On March 18, 2020, CalPERS issued Circular 200-05-20, relaxing certain restrictions on the hiring of retire annuitants during the current Governor-ordered State of Emergency (“CalPERS Circular”); and

WHEREAS, Employee has extensive experience in police management and the specialized skill set to perform the required duties of Interim Chief of Police, desires to perform the duties of and assume responsibility for the position of Interim Chief of Police, and acknowledges that such employment is at-will and of a limited duration for a finite period of time, as described below; and

WHEREAS, KPPCSD desires to hire Employee as an at-will, limited duration employee for the position of Interim Chief of Police, which is a position that requires specialized skills, for a finite period of time, effective May 11, 2020; and

WHEREAS, the Parties wish to establish the terms and conditions of Employee’s services to KPPCSD, as described in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, KPPCSD and Employee hereby agree as follows:

AGREEMENT

Section 1: TERM

The term of this Agreement shall commence on May 11, 2020 ("Hire Date") and is terminable as set forth in shall terminated on as set forth in Section 4 or until required by applicable CalPERS regulations, whichever is earlier. KPPCSD anticipates that it will terminate this Agreement in accordance with Section 4 of this Agreement upon KPPCSD finding a permanent replacement for the position of Chief of Police. The contract term is subject to the restrictions of applicable law. Without limiting the foregoing, after such time as the CalPERS Circular expires, the Term will be subject to the 960-hour per fiscal year limit under Government Code subdivision 21221(h).

Section 2: DUTIES, RESPONSIBILITIES, AND WORK HOURS

A. Employee shall be appointed to the position of Interim Chief of Police for the KPPCSD's police department, the duties of which are described generally in Government Code sections 41601-41612 and are set forth fully in Exhibit "A" to this Agreement. Employee acknowledges the position of Interim Chief of Police requires specialized skills and expert professional services for a finite period of time, as described above in Section 1 of this Agreement.

B. It is recognized Employee is expected to engage in the hours of work that are necessary to fulfill the obligations of the position, must be available at all times, and may work irregular hours and, which necessary, be required to devote a great deal of time outside the normal office hours to the business of KPPCSD. Employee will be paid for (and only for) each hour actually worked. Furthermore, the Chief of Police position remains an "exempt" classification under the overtime provisions of the federal Fair Labor Standards Act ("FLSA") and Employee shall not be entitled to any compensation for overtime nor be subject to such overtime provisions of the FLSA.

C. All data, studies, reports, and other documents prepared and/or reviewed by Employee while performing his duties during the Term of this Agreement shall be furnished to and become the property of KPPCSD, without restriction or limitation on their use. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other materials either created by or provided to Employee in connection with the performance of this Agreement shall be held confidential by Employee to the extent permitted by applicable law. Such materials, without the prior written consent of KPPCSD or his designee, shall not be used by Employee for any purpose other than the performance of his duties. Nor shall such materials be disclosed to any person or entity not connected with the performance of services under this Agreement, except as required by law.

Section 3: COMPENSATION/ BENEFITS PROHIBITED

A. KPPCSD agrees to compensate Employee at the top step of the salary range for the Chief of Police position, which is currently \$11,299.88 per month for a full-time employee. As required by CalPERS for retired annuitants, Employee's actual compensation will be at the equivalent hourly rate of \$65.19 per hour. In the event that the Board of Directors adopts a new

salary range for the Chief of Police position that increases the compensation for the top step, Employee's compensation shall be increased to the hourly rate derived from that new full-time salary.

B. Employee shall not be eligible for any other benefits, incentives, compensation in lieu of benefits, or any other forms of compensation in addition to the hourly rate except for workers' compensation benefits.

Section 4: RESIGNATION/TERMINATION

A. Employee may resign at any time; provided, however, Employee shall make best efforts to provide the General Manager with at least two (2) weeks advance written notice.

B. Employee is an at-will employee and serves at the will and pleasure of the General Manager, who may terminate Employee at any time, with or without cause, and with or without notice.

C. In accordance with state law and the requirements of the California Public Employees Retirement Law, Employee may not be reappointed to this position following the expiration of this Agreement, nor may this Agreement be modified to extend the term of the Agreement.

D. After notice of resignation or termination, Employee shall cooperate with KPPCSD, as requested by the General Manager, to effect a transition of Employee's responsibilities and duties and to ensure that the General Manager is aware of all matters being handled by Employee.

E. Employee shall not be entitled to severance pay and Employee expressly waives any and all rights with respect to severance pay.

Section 5. NOTICES

Notices required to be served pursuant to this Agreement shall be served in person or by first-class U.S. mail addressed as follows:

KPPCSD

Bill Lindsay
General Manager
217 Arlington Ave
Kensington, CA 94707

Employee

Walt Schuld
Address on file with KPPCSD

Section 6: GENERAL TERMS AND CONDITIONS

The General Terms and Conditions of this Agreement are described as follows:

A. Indemnification. To the extent mandated by the California Government Code, KPPCSD shall defend, hold harmless, and indemnify Employee against any tort, professional liability, claim or demand, or other legal action arising out of an alleged act or omission occurring in the performance of Employee's services under this Agreement. This section shall not apply to any intentional tort or crime committed by Employee, to any action outside the course and scope of Employee's employment, or any other intentional or malicious conduct or gross negligence of Employee.

B. Entire Agreement. The text of this Agreement shall constitute the entire and exclusive agreement between the Parties regarding the subject matter hereof. All prior oral or written communications, understandings, or agreements between the Parties not set forth herein shall be superseded in total by this Agreement. No amendment or modification to this Agreement may be made except by a written agreement signed by the Employee and the General Manager and approved as to form by the KPPCSD General Counsel.

C. Assignment. This Agreement is not assignable by either KPPCSD or Employee.

D. Severability. In the event any provision of this Agreement is finally held or determined to be illegal or void by a court having jurisdiction over the Parties, the remainder of this Agreement shall remain in full force and effect unless the parts found to be illegal or void are wholly inseparable from the remaining portions of this Agreement.

E. Effect of Waiver. The failure of either Party to insist on strict compliance with any of the terms, covenants, or conditions in 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 time or times.

F. Governing Law and Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of California, which are in full force and effect as of the date of execution. Any action to interpret or enforce the terms of this Agreement shall be held exclusively in a state court in Contra Costa County, California. Employee expressly waives any right to remove any such action from Contra Costa County.

G. Effective Date. This Agreement shall not become effective until the later of the following to occur: i) May 11, 2020, or ii) the date on which the Agreement has been executed by both Employee and the General Manager.

H. Effect of Agreement on Employee's CalPERS Retirement Benefits. KPPCSD makes no representation on the impact, if any, this Agreement shall or may have upon his CalPERS retirement benefits, status, duties, and/or obligations. Employee acknowledges that in entering into this Agreement, he has not relied upon any such representations (none of which being in existence) in assessing the CalPERS-related impact of his employment. During the course of Employee's employment with the District, Employee and District will share

responsibility for compliance with CalPERS retirement rules as set forth in CalPERS Publication 33.

I. No Unemployment Insurance Benefits Received By Employee. Employee expressly certifies and warrants to KPPCSD that he has not received any unemployment insurance payments for retired annuitant work for any public employer within the 12 months prior to his appointment date.

J. Compliance With 960 Hours Per Fiscal Year Limit. As of the date of this Agreement, CalPERS has suspended the 960 hours per fiscal year limit pursuant to Government Code subdivision 21221(h) ("Hours Limit"). This suspension will end when the current state of emergency is lifted. Employee further certifies and warrants to KPPCSD his anticipated work schedule will not cause him to exceed the Hours Limit and will monitor his hours to be sure that, when the CalPERS Circular expires, Employee those hours are in compliance. KPPCSD staff will assist Employee in tracking his hours upon request. Employee will use his best efforts to advise KPPCSD thirty days before he is likely to exceed the Hours limit.

K. Conflicts Prohibited. During the term of this Agreement, Employee shall not engage in any business or transaction or maintain a financial interest which conflicts, or reasonably might be expected to conflict, with the proper discharge of Employee's duties under this Agreement. Employee shall comply with all requirements of law, including but not limited to, Sections 1090, 1125, and 87100 *et seq.* of the Government Code, and all other similar statutory and administrative rules.

L. Independent Legal Advice. KPPCSD and Employee represent and warrant to each other that each has carefully reviewed this entire Agreement, that each and every term thereof is understood, and that the terms of this Agreement are contractual and not a mere recital. Both parties has had the opportunity to receive legal advice from independent and separate legal counsel with respect to the legal effect of this Agreement or has had the opportunity to do so, that each has carefully reviewed this entire Agreement, that each and every term thereof is understood, and that the terms of this Agreement are contractual and not a mere recital. The Parties each waive any common law and statutory rule of construction that ambiguity should be construed against the drafter of this Agreement and agree that the language in all parts of this Agreement shall be in all cases be construed as a whole, according to its fair meaning.

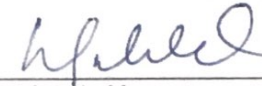
M. Government Code §§ 53243 - 53243.4. Government Code §§ 53243 - 53243.4 sought to provide greater transparency in local government and institute certain limitations on compensation paid to local government executives. Those statutes also require contracts between local agencies and its employees include provisions requiring an employee who is convicted of a crime involving an abuse of his office or position to provide reimbursement to the local agency of certain costs. Those statutes are incorporated herein by reference. Accordingly, the Parties agree it is their mutual intent to fully comply with the cited Government Code sections and all other applicable law as it exists as of the date of execution of this Agreement and as such laws may be amended from time to time thereafter. Employee represents Employee has reviewed, is familiar with, and agrees to comply fully with each of these provisions if any of these provisions are applicable to Employee.

KENSINGTON POLICE PROTECTION AND
COMMUNITY SERVICES DISTRICT

Dated: 5/11/20


BY: 
Bill Lindsay
General Manager

Dated: 5-11-20

BY: 
Walt Schuld
Employee

APPROVED AS TO FORM

Dated: 5/11/20


Ann Danforth
General Counsel