



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. Resolution No. 2023-21 clarifying the action to appoint David Aranda as interim General Manager (Agenda #8)

**RESOLUTION NO. 2023-21**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE  
KENSINGTON POLICE PROTECTION AND COMMUNITY  
SERVICES DISTRICT TO CLARIFY THE FEBRUARY 9, 2023  
ACTION TO APPOINT DAVID ARANDA AS INTERIM  
GENERAL MANAGER**

**WHEREAS**, on February 9, 2023, the Board of Directors (“Board”) of the Kensington Police Protection and Community Services District (“District”) approved, pursuant to minute order, the interim appointment of David Aranda as interim General Manager effective February 13, 2023, pending the recruitment of a regular General Manager; and

**WHEREAS**, the action included the approval of a draft employment agreement, which included several items that, unbeknownst to the Board, staff, or Mr. Aranda, did not conform to the applicable working after retirement laws pursuant to Government Code sections 7522.56 and 21221(h); and

**WHEREAS**, the Board and David Aranda wish to amend and restate the employment agreement to eliminate the items that do not conform to Government Code sections 7522.56 and 21221(h); and

**WHEREAS**, although the intention of the Board was for the appointment to last until the District was able successfully recruit a regular General Manager in order to maintain stability in District operations, the draft employment agreement included a termination date of December 31, 2023 which is inconsistent with the intention of the Board; and

**WHEREAS**, a duration of the interim appointment tied to the successful recruitment and employment of a regular General Manager, rather than to a specific date, is critical as it ensures the continuity in leadership even if the recruitment process takes longer than anticipated; and

**WHEREAS**, the foregoing flexibility is critical to the District because of the challenges that it has experienced in maintaining continuity in the General Manager position given that the position is not a CalPERS-eligible position and requires less than full-time work schedule; and

**WHEREAS**, amending and restating the employment agreement to reflect the intention of the Board on the duration of Mr. Aranda’s appointment will give the District time to explore any necessary adjustments to its recruitment for the General Manager position to improve the likelihood of finding a suitable candidate or to pursue other options that will eliminate the ongoing challenges with filling the General Manager position on a regular basis; and

**WHEREAS**, the Board wishes to ratify its February 9, 2023 action to appoint David Aranda as interim General Manager effective February 13, 2023, but restate and amend the employment agreement as set forth above; and

**WHEREAS**, Government Code sections 7522.56 and 21221(h) permit the District to appoint a California Public Employees' Retirement System ("CalPERS") retired annuitant to a vacant position requiring specialized skills during recruitment for a regular appointment, and provides that such appointment will not subject the retired person to reinstatement from retirement or loss of benefits so long as it is a single appointment that does not exceed 960 hours in a fiscal year; and

**WHEREAS**, the Board of Directors appointed David Aranda, a CalPERS retiree, as interim General Manager effective February 13, 2023 at its regular meeting on February 9, 2023; and

**WHEREAS**, David Aranda has significant experience in managing, directing and overseeing the operation of a special district given his prior experience as the general manager of a number of special districts both before and after his retirement; and

**WHEREAS**, an appointment under Government Code section 21221(h) requires an active, publicly posted recruitment for a regular replacement; and

**WHEREAS**, the recruitment for a regular appointment, notice of which is posted at [www.kppcsd.org](http://www.kppcsd.org), is active; and

**WHEREAS**, given the challenges in the recruitment process to date, the District will be pursuing other efforts to address the challenges it has experienced in the continuity in the General Manager position; and

**WHEREAS**, this section 21221(h) appointment shall only be made once and, therefore, will end on the date immediately preceding the date on which the regular replacement for the vacant position of General Manager commences his or her employment or, if earlier, the date that this appointment is terminated by the District or David Aranda; and

**WHEREAS**, it is understood by the District and David Aranda that the combined total hours to be worked by David Aranda in any fiscal year, for all retired annuitant positions with any CalPERS employers, shall not exceed the 960-hour limitation set forth in Government Code sections 7522.56(d) and 21221(h), unless an exception applies; and

**WHEREAS**, the compensation paid to retired annuitants cannot be less than the minimum nor exceed the maximum hourly rate paid to other employees performing comparable duties; and

**WHEREAS**, the hourly rate for the General Manager position in effect on February 13, 2023 is \$105; and

**WHEREAS**, effective September 8, 2023, the minimum hourly rate for the General Manager position was increased to \$125.40 and a maximum hourly rate for this position of \$142.20 was added to align to both the prior increases, on a percentage basis, to the hourly rate

for the Chief of Police position and the use of a range for the hourly rate rather than a single value for the same position; and

**WHEREAS**, the hourly rate paid to David Aranda as of February 13, 2023 is \$105, and as of September 8, 2023 is \$142.20, subject to any cost of living adjustments as reflected in any publicly approved pay schedule; and

**WHEREAS**, although the reimbursements provided to David Aranda to offset the costs of traveling to and from his out of state residence to the District were deemed both reasonable and in the District's interest given the significant value of having someone with Mr. Aranda's experience and skillset serve as the interim General Manager in light of the challenges experienced by the District, it was recently brought to the District's attention that such reimbursements are not permitted by Government Code section 21221(h); and

**WHEREAS**, David Aranda has agreed to repay all such reimbursements to the District; and

**WHEREAS**, David Aranda will not receive benefits, incentives, compensation in lieu of benefit or any other form of compensation in addition to the hourly pay rate.

**NOW THEREFORE, THE BOARD OF DIRECTORS OF THE KENSINGTON POLICE PROTECTION AND COMMUNITY SERVICES DISTRICT RESOLVES AS FOLLOWS:**

**SECTION 1.** The Recitals set forth above are found to be true and correct and are incorporated herein by reference.

**SECTION 2.** The Board of Directors hereby ratifies the February 9, 2023 action taken by minute order to appoint David Aranda as interim General Manager pending the recruitment for a regular appointment to the General Manager position.

**SECTION 3.** The Board of Directors hereby rescinds the unintended December 31, 2023 termination of David Aranda's appointment and clarifies that its intent was, and is, for the appointment to continue pending the recruitment for, and commencement of the employment of, the regular General Manager.

**SECTION 4.** The Board of Directors hereby approves the amended and restated employment agreement between the District and David Aranda.

**SECTION 5.** The Board Chair is hereby authorized to execute the amended and restated employment agreement between the District and David Aranda on behalf of the District.

PASSED AND ADOPTED by the Board of Directors of the Kensington Police Protection and Community Services District upon motion by Director \_\_\_\_\_, seconded by Director \_\_\_\_\_, on Thursday, the 14th day of December, 2023, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTAINED:

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Alexandra Aquino-Fike  
President, Board of Directors

HEREBY CERTIFY the foregoing resolution was duly and regularly adopted by the Board of Directors of the Kensington Police Protection and Community Services District at the regular meeting of said Board held on Thursday, the 14<sup>th</sup> day of December, 2023.

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Lynelle M. Lewis  
Clerk of the Board

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David Aranda  
Interim General Manger