



**KENSINGTON FIRE PROTECTION DISTRICT
AGREEMENT FOR EMPLOYMENT OF
INTERIM GENERAL MANAGER**

This agreement (the "Agreement") is made and effective as of the 21st day of February, 2024, between Tim Barry, an individual ("Employee"), and KENSINGTON FIRE PROTECTION DISTRICT, a California special district ("KFPD"), (collectively, the "Parties").

WHEREAS, KFPD will begin an active and open recruitment to fill its position of General Manager; and

WHEREAS, until such a permanent General Manager is hired, KFPD desires to employ Employee as an at-will employee for services as an Interim General Manager; and

WHEREAS, Employee desires to be employed as an at-will employee for services as an Interim General Manager; and

WHEREAS, Employee has previously served as a General Manager, Assistant General Manager, and other administrative leadership positions with other public agencies and therefore possesses the specialized skills necessary to perform the duties of Interim General Manager for a limited duration; and

WHEREAS, the Parties wish to set forth in writing the terms and conditions of Employee's employment as Interim General Manager; and

WHEREAS, it is the desire of KFPD to provide compensation on an hourly basis, and establish certain conditions of employment for the position of Interim General Manager.

NOW, THEREFORE, in consideration of the material advantages accruing to the parties and the mutual covenants contained herein, Employee and KFPD agree as follows:

Section 1. Appointment. The Board of Directors hereby appoints Employee to the position of Interim General Manager in and for the Kensington Fire Protection District. Employee hereby accepts such appointment under the terms and conditions of this Agreement.

Section 2. Term.

2.1 This Agreement will become effective upon the date it is executed by both Parties following approval by the Board of Directors. Employee's first day of employment shall be March 4, 2024. This Agreement will expire at the time KFPD hires a permanent General Manager, unless terminated earlier pursuant to the terms of this Agreement.

2.2 Notwithstanding the foregoing, the District may extend the term for a brief period after KFPD hires a permanent General Manager so that Employee can assist in the transition of the permanent appointment.

Section 3. At-Will Status.

3.1 Employee is an at-will employee who shall serve at the pleasure of the Board of Directors. Accordingly, the Board of Directors may terminate Employee's employment under this Agreement at any time, with or without cause.

3.2 Nothing in this Agreement is intended to, or does, confer upon Employee any right to any property interest in continued employment, or any due process right to a hearing before or after the decision to terminate their employment either for, or not for, good cause. Both parties agree that Employee is retained on a temporary, at-will basis.

3.3 Both parties agree that this relationship is governed solely by this Agreement, and not by any statutory provisions.

3.4 Employee shall be covered as Interim General Manager by KFPD's Workers Compensation coverage in the event of an accident or injury.

Section 4. Employee's Duties. Employee shall render their best professional services and skills for the benefit of KFPD, performing the duties of an Interim General Manager of KFPD. Their primary responsibilities are to temporarily perform all supervisory and administrative tasks generally required of an executive officer for a similarly situated public agency. These General Manager functions include, but are not limited to: supervising all KFPD administrative and financial activities; supervising financial functions; serving as the primary contact with the Board; supervising the preparation of the agendas and staff reports of the Board of Directors, including its subcommittees; pursuing goals and policies adopted by the Board of Directors; and overall responsibility for KFPD's functioning during this interim period. Employee shall be responsible for performing the work under this Agreement in a manner which is consistent with the generally accepted standards for a professional public agency administrator.

Section 5. Compensation, Benefits and Reimbursement.

5.1 Hourly Pay. Employee shall be paid at a rate of \$110.00 per hour for all approved hours worked, less all applicable Federal, State and local withholding, payable on the KFPD-established payroll cycle. Employee shall provide the Finance Committee with a report of hours worked by way of a twice-monthly timesheet. Compensation shall be paid twice per month in accordance with District policies or as established by the Board of Directors.

5.2 It is expected that the position of Interim General Manager will be a fifty-percent full-time equivalent (50% FTE) and that the duties and responsibilities of the Interim General Manager position will require twenty (20) hours per week. KFPD recognizes that the duties and responsibilities of the position may require Employee to work additional time during the initial transition and periodically thereafter due to specific events and tasks. Advance permission is hereby given to work up to forty (40) hours per week during the first thirty (30) days. Hours in excess of thirty (30) hours per week after the first thirty (30) days and through the end of the employment term must be approved in writing in advance by the KFPD Finance Committee. Employee shall have no right to compensation for hours worked in excess of the foregoing limits in this section unless such prior written approval was granted.

5.3 The Parties agree that the position of Interim General Manager is an exempt position under the terms of the federal Fair Labor Standards Act, and that therefore no overtime will be paid under this Agreement.

5.4 Taxes and other legally required deductions will be deducted from Employee's compensation under this Agreement.

5.5 Medical or Other Unavailability. In accordance with state law, Employee shall accrue one hour of paid sick leave for every thirty hours worked. Employee may use such paid sick leave on or after their ninetieth (90th) day of employment. Accrued paid sick leave shall have no cash value, and Employee shall not be paid for available paid sick leave upon termination of this Agreement. Use of paid sick leave shall be subject to any applicable policy adopted by the Board of Directors. Except as set forth in this Agreement, Employee shall not accrue any other type of leave, including personal leave, during the term of this Agreement.

5.6 Expense Reimbursement.

- (i) Employee shall provide their own automobile for use in conducting normal KFPD business.
- (ii) KFPD agrees to pay the travel, including mileage, for trips outside the service area, and subsistence expenses of Employee for that official travel, meetings and occasions which are reasonably necessary to enable Employee to pursue official or other functions for KFPD, provided such travel is consistent with employee activities directed or authorized by the Board of Directors. KFPD will not reimburse expenses related to commuting.

Section 6. Schedule.

6.1 While it is anticipated that Employee will normally work a 20-hour work week, it is expected, due to the nature of the job, that from time to time the 20 hours per week will be exceeded, subject to Section 5, above.

6.2 Manager represents that their current additional activities will not interfere with his/her duties as Interim General Manager.

6.3 Manager shall not engage in any activity which is or may become a conflict of interest, prohibited contract, or which may create an incompatibility of office as defined under California law. Manager shall complete all disclosure forms required by law.

Section 7. Possession and Ownership of Property. Employee may use such KFPD property and materials without charge as is necessary and appropriate to carry out Employee's responsibilities hereunder. Upon termination of this Agreement, regardless of how termination may be effected, or whenever requested by KFPD, Employee shall immediately turn over to KFPD all of KFPD's property, including all items used by Employee in rendering services for KFPD hereunder or otherwise, that may be in Employee's possession, or under their control. All rights, title, royalties and interest to all work product of Employee resulting from their performance under this Agreement, including software, systems, specifications, data, reports, opinions and any other such information and materials as may be accumulated by Employee in performance of work under this Agreement, whether complete or in progress, shall be vested in KFPD.

Section 8. Termination.

8.1 Either Party may this Agreement at any time, with or without cause, upon giving the other party thirty (30) days' prior written notice. Neither party's right to terminate this Agreement shall be limited by an implied covenant or oral agreement. In the event of termination of this Agreement for any reason, Employee shall be entitled to payment prorated to the date of termination.

8.2 Notwithstanding subsection (i) of this section, KFPD may terminate Employee for cause without prior written notice. A termination "for cause" may include, but shall not be limited to, the following:

- (i) Violation of administrative policies and procedures;
- (ii) Failure to properly perform assigned duties;
- (iii) Theft of KFPD property;
- (iv) Insubordination;
- (v) Conviction of a felony or misdemeanor relating to Manager's fitness to perform assigned duties;
- (vi) Unauthorized absence from employment;
- (vii) Failure to maintain satisfactory working relationships with other employees, agents, or the public;
- (viii) Improper use of KFPD funds;
- (ix) Unauthorized use of KFPD property;
- (x) Willful misconduct or malfeasance;
- (xi) Any act of moral turpitude or dishonesty; and
- (xii) Other failure of good behavior either during or outside of employment such that Employee's conduct causes discredit to KFPD.
- (xiii) Following any notice of termination, Employee shall fully cooperate with KFPD in all matters relating to the winding up of their pending duties on behalf of KFPD and the orderly transfer of any such pending work to such other employee(s) of KFPD or the permanent General Manager.

Section 9. Indemnification & Professional Liability. KFPD shall defend, hold harmless and indemnify Employee against any tort, civil rights, personnel, discrimination, or professional liability claim, demand, suit, or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties in accordance with the provisions of Government Code section 825. KFPD shall provide a defense in accordance with Government Code section 995 through 999.6. KFPD may decline to defend and/or indemnify Employee only as permitted by the Government Code. KFPD may compromise and settle any such claim or suit and pay the amount of any settlement or judgment therefrom.

Section 10. Waiver and Release Concerning Additional Compensation.

10.1 The Parties understand and agree that the consideration specified in Section 5, above, is the sole compensation to which Employee will be entitled for work performed pursuant to this Agreement. By signing this Agreement, to the maximum extent allowed by law, Employee, on behalf of themselves and their heirs, estate, executors, managers, successors and assigns waives, releases and discharges KFPD and its elected officials, officers, employees, agents, volunteers, attorneys, affiliated entities, successors, assigns and insurers from any and all compensation or consideration in addition (“Additional Compensation”) to that specified in Section 5, above, concerning Employee’s performance as Interim General Manager.

10.2 Except as may otherwise be required by law, the “Additional Compensation” waived, released and discharged pursuant to this provision includes, but is not limited to, compensation in the form of benefits pursuant to the Public Employees Retirement System (“PERS”) concerning work performed for KFPD, and any and all other compensation or benefits that may otherwise be due Employee under KFPD policies .

Section 11. Waiver and Release of Rights Concerning Termination or Expiration of this Agreement. By signing this Agreement, to the maximum extent allowed by law, Employee, on behalf of themselves and their heirs, estate, executors, successors and assigns waives, releases and discharges KFPD and its elected officials, officers, employees, agents, volunteers, attorneys, affiliated entities, successors, assigns and insurers from any and all rights Employee may otherwise have concerning notice, hearing or other procedural rights (“Procedural Rights”) under the KFPD policies, or other applicable law, regulation or rule, concerning termination or expiration of this Agreement, so long as such termination or expiration is in accordance with the terms of this Agreement.

Section 12. Waiver and Release of Unknown Claims. By signing this Agreement Employee understands and agrees that the waivers and releases specified in Section 10 and Section 11, above, waive, to the maximum extent allowable by law, any and all existing rights and claims against KFPD arising from the performance of the Services concerning Additional Compensation and Procedural Rights, including those which Employee does not know or suspect to exist in Employee’s favor at the time of executing this Agreement which, if known by Employee would have materially affected this Agreement. Employee specifically waives their rights under Section 1542 of the California Civil Code, which provides that:

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

Section 13. Indemnification for PERS Benefits and Liability. In the event a court of competent jurisdiction or an authorized PERS representative determines Employee to be eligible for enrollment in PERS as an employee of KFPD, or determines Employee and/or KFPD to be liable for costs, expenses, penalties or other PERS-related liability arising from or related to Employee’s performance as Interim General Manager pursuant to this Agreement, Employee shall indemnify, defend and hold KFPD harmless for payment of any employee and/or employer contributions for PERS benefits on behalf of Employee, as well as for the payment of any penalties or interest or other liability concerning such contributions or other PERS-related liability that would otherwise be the responsibility of KFPD.

Section 14. Entire Agreement. This Agreement constitutes the entire agreement between the parties and contains all the agreements between them with respect to the subject matter hereof. It also supersedes any and all other agreements (including but not limited to employment or letter agreements) or contracts, either oral or written, between the parties with respect to the subject matter hereof. No party has made or relied upon any representations, warranties or commitments with respect to the subject matter of this Agreement except those specifically set forth herein. This Agreement shall be modified only with a written instrument duly executed by each of the parties.

Section 15. Confidentiality. The Employee agrees that in addition to any other limitation, regardless of the circumstances of the termination of retention, she will not communicate to any person, firm or corporation any confidential information relating to KFPD which she might from time to time acquire in the course of carrying out their responsibilities under this Agreement.

Section 16. Waiver. Failure of either party to require the performance of any term or condition of this Agreement, or the waiver by either party of any breach of this Agreement, shall not prevent subsequent enforcement of any such term or any other term, nor be deemed to be a waiver of any subsequent breach.

Section 17. Notices. Any and all notices or communications required or permitted to be given under this Agreement shall be delivered in writing by registered or certified mail, postage prepaid, and addressed, in the case of Employee, to:

[REDACTED],

and, in the case of the KFPD, to 217 Arlington Avenue, Kensington, CA, 94707, or to such other address as either party hereto shall hereafter designate by written notice to the other party. Mailed notices or communications shall be delivered upon deposit thereof in the mail in accordance with this paragraph.

Section 18. Miscellaneous.

18.1 Amendments. Except as otherwise specifically provided, the terms and conditions of this Agreement may be amended by mutual agreement, provided that before any amendment shall be valid or effective, it must be reduced to writing and signed by both parties. This Agreement may be extended past its termination date by direction of the Board and written consent of Employee.

18.2 Binding on Heirs, Successors and Assigns. The employee retention provisions of this Agreement are personal to Employee, but the administrative provisions of this Agreement shall be binding upon and inure to the benefit of and shall be enforceable by the heirs, administrators, executors, successors and assigns of the parties hereto.

18.3 Arbitration and Attorney's Fees. If any dispute arises concerning the rights of either party regarding the terms of this Agreement, the parties shall submit that dispute to arbitration and shall accept as final and binding the decision of the duly selected arbitrator. The dispute shall be arbitrated pursuant to the California Employment Dispute Resolution Rules developed by the American Arbitration Association.

18.4 Headings and Severability. The paragraph headings contained in this Agreement are for reference purposes only and do not constitute substantive matter to be considered in construing the terms and provisions of this Agreement. The invalidity or

unenforceability of any particular provision of this Agreement shall not affect its other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision had been omitted.

18.5 Drafting of Agreement. This Agreement was negotiated between the parties and shall be read as if it was prepared jointly by the parties.

18.6 Review. Each party to this Agreement has had the opportunity to adequately review this Agreement, and failure to do so and any consequences thereof shall not be charged to the other party.

18.7 Choice of Law. This Agreement shall be construed and enforced under the laws of the state of California.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement.

_____ Date
Tim Barry

_____ Date
Daniel Levine, Board President

ATTEST:

_____ Date
Jim Watt, Board Secretary

APPROVED AS TO FORM:

_____ Date
John Bakker, General Counsel

5250019.2