

**ROSS VALLEY FIRE DEPARTMENT
STAFF REPORT**

For the meeting of: February 10, 2016

To: Board of Directors

From: Garrett Toy, Debbie Stutsman, and Joe Chinn
Executive Management Committee

Subject: Approval of Fire Chief Amended and Restated Employee Agreement

RECOMMENDATION:

Authorize the Executive Officer to execute the Amended and Restated Employment Agreement with the Fire Chief.

BACKGROUND:

The Employment Agreement with the Fire Chief, Mark Mills, was effective February 24, 2014 for an initial two year period and is currently proposed to be extended for three years to February 24, 2019. The Chief has not received any salary adjustments during the initial two year contract period.

DISCUSSION:

Based on the Fire Chief's positive performance evaluation, the Executive Management Committee recommends the following revisions to the Fire Chief's agreement:

Terms:

- Three year extension to the agreement beginning February 24, 2016 and expiring February 24, 2019.

Effective 2/24/16:

- Salary increase from \$170,000 annually to \$187,770 which is the Marin County "trimmed average" for Fire Chiefs (the "trimmed average" excludes the lowest and highest salaries in computing the average).
- Sick leave accrual increased from 8 hours to 10 hours per month.

Effective 2/24/17

- Salary increased by the California Consumer Price Index for Urban Wage Earners and Clerical Workers as calculated by the Department of Industrial Relations (CPI). Legal counsel indicates that after January 1, 2012, any contract executed or renewed between a local agency and a local agency executive with an automatic increase in the level of compensation cannot exceed a cost-of-living adjustment. This "cost-of-living" adjustment means the California Consumer Price

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Index for Urban Wage Earners and Clerical Workers as calculated by the Department of Industrial Relations.

- Vacation accrual increased from three weeks to four weeks annually.

Effective 2/24/18

- Salary increased by CPI

The attached employee contract includes the above revisions in an Amended and Restated Employment Agreement. The Chief has agreed to the recommended revisions.

FISCAL IMPACT:

The new agreement will only be in effect for the remaining four months of fiscal year 2015/2016 at a total additional cost of approximately \$7,200 (approx. \$5,900 in salary and \$1,300 in benefit cost) which can be absorbed with the existing budget. The impact to the fiscal year 2016/17 budget will be approximately \$24,600 (approx. \$18,900 in salary and \$5,700 in benefit costs).

Attachment: Fire Chief's Employment Agreement

AMENDED AND RESTATED EMPLOYMENT AGREEMENT

This Amended and Restated Employment Agreement (“Agreement”) is made and entered into as of February 10, 2016, by and between the Ross Valley Fire Department, a California joint powers authority, established as a separate public entity pursuant to the Joint Exercise of Powers Act, commencing at California Government Code § 6500 (“Employer” or “Authority”) and Mark E. Mills, an individual (“Employee”).

RECITALS

- A. Following a recruitment and selection process, Authority’s Board of Directors (“Board”) selected and appointed Employee and Employee accepted appointment to serve as Fire Chief, effective February 24, 2014.
- B. In connection with the appointment, the parties entered into an employment agreement dated February 24, 2014 (“Prior Agreement”).
- C. Employer and Employee wish to amend and restate the Prior Agreement as set forth below with their mutual agreement as to the rights and obligations of the parties and superceding all prior negotiations, discussions or agreements.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, Employer and Employee agree as follows:

1. **COMMENCEMENT OF EMPLOYMENT.** Effective from the effective date of Employee’s appointment, as determined by Board action, Employer agrees to employ Employee as its Fire Chief, subject to the terms and conditions of this Agreement. The above notwithstanding, this Agreement will not be effective unless and until Employee satisfies all conditions and requirements specified in a conditional offer of appointment made by the Employer and provided Employee reports for work and actually assumes the duties of the Fire Chief on the date established by the Board or its designee. The initial term of this Agreement shall be one (1) year from the effective date of Employee’s appointment. The Agreement will automatically renew for successive one (1) year terms until February 23, 2019, unless either party gives at least six (6) months prior written notice of its election not to renew. Absent further action of the parties, this Agreement will terminate according to its terms on February 23, 2019.

2. **DUTIES AND AUTHORITY.** Employee shall exercise the full powers and perform the duties of the position of Fire Chief, as set forth in the Authority’s Joint Powers Agreement; applicable resolutions, rules, regulations, Department manuals and procedures; the applicable job description (if any) and under state or federal law, as each of them currently or may in the future exist. Employee shall exercise such other powers and perform such other duties as Board, through the Executive Officer, may from time to time assign.

3. **EMPLOYEE'S OBLIGATIONS.** Employee shall devote his full energies, interest, abilities and productive time to the performance of this Agreement, and utilize his best efforts to promote the Authority's interests. Employee shall not engage in any activity, consulting service or enterprise, for compensation or otherwise, which is actually or potentially in conflict with or inimical to, or which materially interferes with, his duties and responsibilities to Employer. Employee shall obtain prior authorization from the Board or designee for any outside employment, consulting, teaching or enterprise.

4. **SALARY AND BENEFITS.**

A. **Base Salary.** Employer shall pay Employee an initial annual salary of \$170,000.00 (One Hundred Seventy Thousand and No/100 Dollars), subject to legally permissible or required withholding, prorated and paid on Employer's normal paydays. Effective on February 24, 2016, Employee's annual salary shall increase to \$187,770 (One Hundred Eighty Seven Thousand Seven Hundred Seventy Dollars). Effective on February 24, 2017, the Employee's base salary shall be increased by the California Consumer Price Index for Urban Wage Earners and Clerical Workers ("CPI") as calculated by the Department of Industrial Relations. Effective on February 24, 2018, the Employee's base salary shall be increased by the CPI. Employee's salary is compensation for all hours worked. Employee shall be exempt from the overtime pay provisions of California law (if any) and federal law.

B. **Employment Benefits.** In addition to base salary, Employer shall provide to Employee the following benefits:

(1) **Holidays.** Employee shall be entitled to the recognized holidays listed in the Ross Valley Chief Officers Association Memorandum of Understanding ("Chief Officers MOU"). Employee's salary includes holiday pay. Accordingly, Employee shall not be entitled to any additional salary or compensation for working on a holiday or to any form of holiday pay (in addition to base salary) or holiday in-lieu pay.

(2) **Vacation.** Employee shall accrue vacation at the rate of three (3) weeks (120 hours) annually, pro-rated and credited on the same basis as other administrative employees. Effective February 24, 2017, Employee shall accrue vacation at the rate of four (4) weeks (160 hours) annually. Once each fiscal year, Employee may elect to receive cash payment for accrued and unused vacation in excess of 10 days (80 hours), not to exceed five (5) days (40 hours). Employee may accrue a maximum of one-and-one-half times the annual accrual. Use of Vacation Leave must be approved in advance by the Executive Officer. Once Employee reaches the maximum accrual, he will not accrue additional vacation time until the total accrual falls below the maximum. In the event unexpected circumstances prevent Employee from timely using vacation to remain below the maximum, Employee may request a temporary exception to the maximum accrual, which may be granted by the Board, in its discretion.

(3) **Sick Leave.** Employee will accrue sick leave at the rate of eight (8) hours per month. Effective February 24, 2016, the Employee shall accrue sick leave at the rate of 10 (ten)

hours per month to reflect his 10 hour workday. If the Employee changes to an eight (8) hour workday, the accrual rate for sick leave will be correspondingly reduced to eight (8) hours per month. Sick leave usage, accumulation and retirement payoff will be in accord with the terms and conditions provided in the Chief Officers MOU

(4) Administrative Leave. Employee will receive 10 days (80 hours) of administrative leave each fiscal year, credited at the start of the fiscal year and prorated for the partial fiscal year at the start of employment. Administrative leave is not accrued and may not be carried over to the next year. Use of Administrative leave must be approved in advance by the Executive Officer.

(5) Group Medical, Life and Dental Insurance. Employee (including his dependents, as applicable) will be eligible for the same health and welfare benefits and group insurance as provided to Chief Officers of the Authority, subject to the terms and conditions of the applicable plan documents and legal requirements. Group medical coverage is provided under the Public Employees' Medical and Hospital Care Act ("PEMHCA"), administered by the California Public Employees' Retirement System ("PERS"). Employer shall make the statutory Minimum Employer Contribution ("MEC") toward PEMHCA coverage. In addition, Employee may participate in a cafeteria plan established by Employer, as provided in the applicable plan document, with a maximum Employer cafeteria plan contribution equal to the family cost of the PEMHCA Kaiser Plan (Bay Area), less the MEC. Effective January 1, 2014, the full family cost of the Kaiser Plan is expected to be approximately \$1,931.07 per month and the MEC is expected to be \$119.00, subject to change by PERS. The Employer contribution may be used to pay for the balance of Employee's selected PEMHCA medical coverage and, if contributions remain, may be applied toward other eligible benefits (including dental, life and disability insurance) or cash. However, cash payment to Employee from the cafeteria plan may not exceed \$320.00 (Three Hundred Twenty Dollars) per month.

(6) Deferred Compensation. Employee shall be eligible to participate in Employer's deferred compensation plan, to the extent and as provided by the applicable plan document and controlling law.

(7) Retirement Plan. Employee shall be enrolled in Employer's retirement plan with the California Public Employees' Retirement System ("PERS"), subject to the applicable benefit formula, terms and conditions provided in the contract between Employer and PERS and also subject to applicable law and regulations. Employee shall pay the entire employee contribution, anticipated to be 9%.

(8) Retiree Medical. Employee shall contribute to the Retiree Health Savings Plan (RHS), under the terms and conditions provided in Section 14 (Retirement) of the Chief Officers MOU for employees hired after March 31, 2013. Employee's contribution, in the form of a pay reduction to the base salary provided above, shall be equal to 2% of the Step E Salary for Firefighter/Engineer, as set forth in Section 2 of the Memorandum of Understanding between the Ross Valley Fire Department and the International Association of Firefighters, Local 1775. Employer shall make an equal matching contribution for a total of 4%. Any changes in the sections

or section numbers referenced in this paragraph will automatically be incorporated in this paragraph, as applicable, but will not change the contribution percentages, except as expressly provided by the Board.

(9) Benefit Changes and Schedules. Employer reserves the right to enhance, reduce, terminate, amend or to otherwise change its benefit plans and programs at any time, to the maximum extent permitted by law. Any such change to any benefit available to Employee under the terms of this Agreement shall apply to Employee, including any new or additional benefits, without the need to amend this Agreement.

5. EXPENSES AND VEHICLE

A. Relocation Expenses: Employer will reimburse Employee for the actual and reasonable cost, not to exceed \$10,000.00, of (i) moving Employee and his family and personal property from the Big Bear, California area to Northern California. Moving expenses include packing, moving, temporary storage costs (if necessary), travel, unpacking and insurance charges. To be eligible for reimbursement, expenses must be incurred and submitted within one year of appointment and supported by documentation meeting Employer's normal requirements.

B. Expenses. Employer recognizes that Employee may incur certain expenses of a non-personal and job related nature. Employer agrees to reimburse or to pay such business expenses, which are incurred and submitted according to Employer's normal expense approval and reimbursement procedures. To be eligible for reimbursement, all expenses must be supported by documentation meeting Employer's normal requirements and must be submitted within time limits established by Employer.

C. Bonding. Employer shall bear the full costs of any fidelity or other bonds required of Employee (if any) under any law, ordinance or resolution by virtue of his employment as Fire Chief.

D. Vehicle. Employee shall have use of an Authority vehicle for business purposes and reasonably direct commuting. Employee may also use the Department vehicle for reasonable personal use on days when circumstances require that Employee be available for immediate response from a location away from home but still within a reasonable response time of the Department's service area. The vehicle may only be driven by Employee and authorized Authority, service or valet personnel. Employee shall not permit others to drive or otherwise operate the Authority vehicle.

E. Continuing Education. Employee shall receive reimbursement of actual and necessary educational expenses of up to \$2,500 per fiscal year while pursuing his Masters in Public Administration degree with Columbia Southern University. Such expenses may include tuition, required fees, and required or recommended books and supplies. To be eligible for reimbursement, all eligible expenses must be supported by documentation meeting Employer's normal requirements and must be submitted within expense reimbursement time limits established by Employer. To be eligible for reimbursement, all expenses related to a specific class or independent study activity must be supported by a passing grade with the class or independent study activity completed while still

employed by the Authority. A passing grade for purposes of reimbursement will include any grade that results in credit toward degree requirements. The full reimbursement limit will become available on the first day of employment and at the start of each subsequent fiscal year for eligible expenses incurred during that fiscal year and timely submitted. Amounts not used in one fiscal year do not carry over to the next fiscal year.

F. **Uniform Allowance.** Employee shall receive the uniform allowance as outlined in the Chief Officers' Memorandum of Understanding, currently \$720 per year, payable at a rate of \$30 per pay period.

6. **EVALUATIONS.** Employee shall report to the Board through the Executive Officer and may be evaluated by the Board.

7. **INDEMNIFICATION.** Except as otherwise permitted, provided, limited or required by law, including without limitation California Government Code Sections 825, 995, and 995.2 through 995.8, the Employer will defend and pay any costs and judgments assessed against Employee arising out of an act or omission by Employee occurring in the course and scope of Employee's performance of his duties under this Agreement. In the event Authority provides funds for legal criminal defense pursuant to this sub-section and terms of the Government Code, Employee shall reimburse the Authority for such legal criminal defense funds if Employee is convicted of a crime involving an abuse of office or position, as provided by Government Code Sections 53243 – 53243.4.

8. **AT-WILL EMPLOYMENT RELATIONSHIP.** Employee is appointed by and serves at the pleasure of the Board. Except as otherwise provided by law and subject to Section 9, below, Employer may terminate this Agreement and the employment relationship at any time, without cause or prior notice. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Authority, through the Board, to terminate this Agreement and the employment of Employee. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign from his employment with Employer, subject only to Employee providing 60 (sixty) calendar days prior written notice to Employer.

9. **SEVERANCE.** Employer shall pay Employee for all services through the effective date of termination.

A. If Employer terminates this Agreement (thereby terminating Employee's Employment) without cause, Employer shall pay Employee a lump sum severance benefit equal to six (6) months of his then applicable base salary.

B. If Employer terminates this Agreement (thereby terminating Employee's Employment) with cause, Employee shall not be entitled to any severance. As used in this Agreement, cause shall mean termination due to:

(1) A conviction, plea bargain, judgment or adverse determination by any court, the State Attorney General, a grand jury, or the California Fair Political Practices Commission

involving any felony, intentional tort, crime of moral turpitude or violation of any statute or law constituting misconduct in office, misuse of public funds or conflict of interest;

(2) Conviction of a felony;

(3) Conviction of a misdemeanor arising out of Employee's duties under this Agreement and involving a willful or intentional violation of law;

(4) Willful abandonment of duties;

(5) A pattern of repeated, willful and intentional failure to carry out materially significant and legally constituted policy decisions of the Board made by the Board as a body or persistent and willful violation of properly established rules and procedures; and

(6) Any other action or inaction by Employee that materially and substantially harms Authority's interests, materially and substantially impedes or disrupts the performance of Authority or that is detrimental to employee safety or public safety.

C. If Employee terminates this Agreement (thereby terminating Employee's Employment), Employee shall not be entitled to any severance.

D. Upon any separation from employment, Employee will be compensated for all accrued but unused vacation leave and any other leave time that is eligible for payment upon separate under Authority's rules and procedures. In the event this Agreement is terminated, Employee may elect to retire from the Authority, provided he is eligible for and accepts a PERS retirement coincident with his separation.

E. Any other term of this Agreement notwithstanding, the maximum severance that Employee may receive under this Agreement shall not exceed the limitations provided in Government Code Sections 53260 – 53264, or other applicable law. Further, in the event Employee is convicted of a crime involving an abuse of office or position, Employee shall reimburse the Authority for any paid leave or cash settlement (including severance), as provided by Government Code Sections 53243 – 53243.4.

10. METHOD OF AMENDMENT. No amendments to this Agreement may be made except by a writing signed and dated by Employer and Employee.

11. NOTICES. Any notice to Employer under this Agreement shall be given in writing to Employer, either by personal service or by registered or certified mail, postage prepaid, addressed to the Board Chair at Authority's then principal place of business. A courtesy copy shall be given to the Executive Officer in a like manner. Any such notice to Employee shall be given in a like manner and, if mailed, shall be addressed to Employee at his home address then shown in Employer's files. For the purpose of determining compliance with any time limit in this Agreement, a notice shall be deemed to have been duly given (a) on the date of delivery, if served personally on the party to whom notice is to be given, or (b) on the third calendar day after mailing, if mailed to the party to whom the notice is to be given in the manner provided in this section.

12. GENERAL PROVISIONS.

A. If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect. If any provision is held invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.

B. This Agreement sets forth the final, complete and exclusive agreement between Employer and Employee relating to the employment of Employee by Employer. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The foregoing notwithstanding, Employee acknowledges that, except as expressly provided in this Agreement, his employment is subject to Employer's generally applicable rules, policies and regulations, including those pertaining to employment matters, such as rules and regulations addressing equal employment opportunity, sexual harassment and violence in the workplace.

C. This Agreement shall be interpreted and construed pursuant to and in accordance with the local laws of the State of California and all applicable Codes, Ordinances and Resolutions.

D. Employee acknowledges that he has had the opportunity and has conducted an independent review of the financial and legal effects of this Agreement. Employee acknowledges that he has made an independent judgment upon the financial and legal effects of this Agreement and has not relied upon any representation of Employer, its officers, agents or employees other than those expressly set forth in this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed and executed personally or on its behalf by its duly authorized representative.

EMPLOYEE

MARK E. MILLS

EMPLOYER/AUTHORITY

ROSS VALLEY FIRE DEPARTMENT

By: _____

Name: _____

Title: _____

ATTEST:

_____(Seal)
Secretary