

**RESOLUTION NO. 22-12**

**RESOLUTION OF MORAGA-ORINDA FIRE DISTRICT  
("DISTRICT") ADOPTING AMENDMENT-5 TO EMPLOYMENT AGREEMENT  
BETWEEN MORAGA-ORINDA FIRE DISTRICT AND DAVID WINNACKER**

WHEREAS, the Moraga-Orinda Fire District ("District") hired David Winnacker ("Employee") as Fire Chief effective December 20, 2017; and

WHEREAS, the District and the Employee agreed with respect to terms and conditions of employment of Employee as Fire Chief for the District; and

WHEREAS, the terms and conditions of employment are detailed in the Employment Agreement dated December 20, 2017 ("Employment Agreement"); and

WHEREAS, the terms and conditions of employment include future annual salary adjustments based on performance against mutually agreed upon objectives as determined by the Board following the annual written performance evaluation; and

WHEREAS, the Board has completed its performance review of Employee for Calendar Year 2021; and

WHEREAS, the parties now desire to amend the Employment Agreement to extend its expiration from December 31, 2022 to December 31, 2024, provide compensation increases for calendar years 2022, 2023 and 2024 and expand the opportunities for Winnacker to serve as an outside consultant as outlined and attached hereto as "Exhibit A" entitled Amendment-5 to Employment Agreement Between Moraga-Orinda Fire District and David Winnacker.

NOW THEREFORE BE IT RESOLVED, the District and Employee agree to voluntarily reopen the Employment Agreement to amend section 2.1 to read; and

The term of this Agreement shall commence on the Effective Date and shall continue until December 31, 2024. This term may be extended by up to 2 years prior to the expiration date by mutual agreement of the parties. In the event of non-renewal or non-extension there shall be no severance pay under Section 3; provided, however, that Employee shall remain eligible upon termination of employment for the one time-payment specified in Amendment 3, so long as he serves until at least December 31, 2024. The parties expressly agree that the employment of the Fire Chief is at will and this Agreement may be terminated at any time before the expiration of this term by either party with or without stated cause. Termination by the Board without stated cause will entitle Employee to payment of severance pay as provided more specifically in Section 3.; and,

BE IT FURTHER RESOLVED, the District and Employee voluntarily agree to amend section 5.1 Salary to read; and

Effective January 1, 2022, District agrees to increase Employee's annual base salary by 10%, from \$255,774 to \$281,351, payable in installments at the same time and in the same manner as other employees of the District are paid. Effective January 1, 2023 District agrees to increase Employee's annual base salary by 5% from \$281,351 to \$295,419. Effective January 1, 2024 District agrees to increase Employee's annual base salary by 5% from 295,419 to \$310,189.

A 414 (h) 2 provision will be added to this base salary (currently 3.91% of base salary) that is consistent with the District's 414 (h) 2 Program, subject to the Employee paying 100% of the employee retirement contribution (28% of pensionable compensation, or \$68,652). Unless otherwise specified herein, Employee shall receive all normal and customary health, welfare and retirement benefits provided to Battalion Chiefs of the District unless otherwise provided herein. Employee's future annual salary adjustments shall be largely based on performance against mutually agreed upon objectives as determined by the Board following the annual written performance evaluation.

BE IT FURTHER RESOLVED, the District and Employee voluntarily agree to amend section 6 Salary to read:

The Employee shall devote such time to the Fire Chief position as may be required and necessary to perform the duties and responsibilities of Fire Chief of the District. Employee shall attend all Board of Directors' meetings unless excused by the Board President. Employee is an exempt employee (not subject to overtime under the FLSA) and is expected to devote all of the necessary time outside normal office hours as is necessary for the performance of his duties.

Employee shall be permitted to engage in outside consulting or similar compensated arrangements with vendors or companies that do not do business with the district provided that such consulting or similar compensated arrangements do not interfere with Employee's performance of all duties within the scope of the job description.

BE IT FURTHER RESOLVED, except to the extent expressly provided herein, all other terms of the Employment Agreement between Moraga-Orinda Fire District and David Winnacker including amendments 1-4 shall remain unchanged.

PASSED, APPROVED and ADOPTED this 20th day of April 2022 at a regular meeting of the District Board of Directors held on April 20, 2022, via teleconference, on motion made by Director Danziger, seconded by Director Jorgens, and duly carried with the following roll call vote:

AYES: DIRECTORS DANZIGER, JEX, JORGENS, AND DONNER

NOES: NONE

ABSENT: DIRECTOR BAITX

ABSTAIN: NONE

Dated: April 20, 2022

*Michael Donner*

Michael Donner (Apr 21, 2022 18:00 PDT)

Michael Donner, President  
Board of Directors

ATTEST:

*Marcia Holbrook*  
\_\_\_\_\_  
Marcia Holbrook, District Clerk

**AMENDMENT- 5 TO  
EMPLOYMENT AGREEMENT BETWEEN  
MORAGA-ORINDA FIRE DISTRICT AND DAVID WINNACKER**

This Amendment to the Agreement is made and entered into on April 20th, 2022 ("Effective Date"), by and between the Moraga-Orinda Fire District ("District") and David Winnacker ("Employee" or "Fire Chief").

**Recitals**

- A. The District and David Winnacker are parties to an Employment Agreement dated December 20, 2017. That agreement was amended effective June 1, 2018 to clarify certain terms related to military service (Amendment 1). The Agreement was amended again effective January 1, 2019 to increase Winnacker's annual salary and clarify certain terms related to medical and dental insurance (Amendment 2). The Agreement was amended again effective January 1, 2020 to increase Winnacker's annual salary, provide a retention incentive and provide compensation for third party reimbursed participation in OES Master Mutual Aid (Amendment 3); The Agreement was amended again effective April 18, 2021 to increase Winnacker's annual base salary, increase management leave and modify provisions providing compensation during military leave. (Amendment 4);
- B. The Employment Agreement provides that Employee's annual salary adjustments shall be based on performance as measured against mutually agreed upon objectives as determined by the Board following the annual written performance evaluation;
- C. The Board has completed its performance review of Employee for Calendar Year 2021;
- D. The parties now desire to amend the Employment Agreement to extend its expiration from December 20, 2022 to December 31, 2024, provide compensation increases for calendar years 2022, 2023 and 2024 and expand the opportunities for Winnacker to serve as an outside consultant.

**AMENDMENT**

**Section 2.1 is hereby amended to read as follows:**

The term of this Agreement shall commence on the Effective Date and shall continue until December 31, 2024. This term may be extended by up to 2 years prior to the expiration date by mutual agreement of the parties. In the event of non-renewal or non-extension there shall be no severance pay under Section 3; provided, however, that Employee shall remain eligible upon termination of employment for the one time-payment specified in Amendment 3, so long as he serves until at least December 31, 2024. The parties expressly agree that the employment of the Fire Chief is at will and this Agreement may be terminated at any time before the expiration of this term by either party with or without stated cause. Termination by the Board without stated cause will entitle Employee to payment of severance pay as provided more specifically in Section 3.

**Section 5.1. Salary is hereby amended to read as follows:**

Effective January 1, 2022, District agrees to increase Employee's annual base salary by 10%, from \$255,774 to \$281,351, payable in installments at the same time and in the same manner as other employees of the District are paid. Effective January 1, 2023 District agrees to increase Employee's annual base salary by 5% from \$281,351 to \$295,419. Effective January 1, 2024 District agrees to increase Employee's annual base salary by 5% from 295,419 to \$310,189.

A 414 (h) 2 provision will be added to this base salary (currently 3.91% of base salary) that is consistent with the District's 414 (h) 2 Program, subject to the Employee paying 100% of the employee retirement contribution (28% of pensionable compensation, or \$68,652). Unless otherwise specified herein, Employee shall receive all normal and customary health, welfare and retirement benefits provided to Battalion Chiefs of the District unless otherwise provided herein. Employee's future annual salary adjustments shall be largely based on performance against mutually agreed upon objectives as determined by the Board following the annual written performance evaluation.

**Section 6. Is hereby amended to read as follows:**

The Employee shall devote such time to the Fire Chief position as may be required and necessary to perform the duties and responsibilities of Fire Chief of the District. Employee shall attend all Board of Directors' meetings unless excused by the Board President. Employee is an exempt employee (not subject to overtime under the FLSA) and is expected to devote all of the necessary time outside normal office hours as is necessary for the performance of his duties.

Employee shall be permitted to engage in outside consulting or similar compensated arrangements with vendors or companies that do not do business with the district provided that such consulting or similar compensated arrangements do not interfere with Employee's performance of all duties within the scope of the job description.

Except to the extent expressly provided herein, all other terms of the Employment Agreement between Moraga-Orinda Fire District and David Winnacker including amendments 1-4 shall remain unchanged.

“District”

Dated: Apr 21, 2022

Michael Donner  
Michael Donner (Apr 21, 2022 18:02 PDT)

Michael Donner, President

Approved as To Form:

Jonathan V. Holtzman  
Jonathan V. Holtzman (Apr 21, 2022 18:03 PDT)

Jonathan V. Holtzman  
District Counsel

“Employee”

Dated: Apr 21, 2022

Dave Winnacker  
Dave Winnacker (Apr 21, 2022 13:24 PDT)

David Winnacker