



Agenda

Board of Directors
Kensington Police Protection
and Community Service District

Special Meeting
Friday, May 27, 2022
Via Teleconference
12:00 p.m.

www.kppcsd.org/2022-05-27-kppcsd-board-special-meeting

The page at the URL above will have instructions on how to join the online meetings.

On September 16, 2021, the Governor signed into law AB 361. AB 361 added Section 54953(e) to the California Open Meetings Act, California Government Code 54950 et seq. (“The Brown Act”). Section 54953(e) allows District’s legislative body, the Board of Directors, to hold meetings by teleconferences during a proclaimed state of emergency subject to the Board making findings specified in Section 54953(e)(2). The Board may continue to hold teleconferenced meetings during the state of emergency so long as at least every 30 days, the Board reconsiders the state of emergency to determine if remote meetings are warranted under Section 54953(e)(3). When holding teleconferenced meetings, the Board must comply with the notice, access, public comment and other procedure requirements of Section 54953(e)(2).

Special Meeting

Call to Order

Roll Call

Discussion and Action

1. **Kensington Community Council (KCC) Agreement**

Recommended Action: Review, discuss, and provide feedback on the 2nd draft of the Agreement with KCC for the provision of recreational services and provide direction to staff; and consider whether the Board should appoint an *ad hoc* subcommittee to participate in negotiations with KCC.

Contact: Ann Danforth, General Counsel, adanforth8@outlook.com

Public Comments

Individuals wishing to address the Board of Directors concerning Special Meeting agenda items are invited to make oral comments of up to three minutes. Please raise your hand via Zoom. When you are called on by the Board President, you will be unmuted and you can address the Board of Directors. Please state your name clearly for the audio recording. You are requested to address your comments to the President and Board of Directors and not to staff and/or the audience. By state law, the Board is not permitted to undertake any action or discussion on any item not appearing on the posted agenda. If you have any documentation that you would like

distributed to the Board, please mail or email it to the Clerk of the Board at 917 Arlington Ave., Kensington, CA 94707 or llewis@kppcsd.org.

Adjournment

The next regular meeting will be held on June 9, 2022.

General Information

- All proceedings of the Open Session will be audio and video recorded if possible.
- Upon request, the Kensington Police Protection and Community Services District will provide written agenda materials in appropriate alternative formats or disability-related modification of disabilities to participate in public meeting. Please send written request, including your name, mailing address, phone number, and a brief description of the requested materials and preferred alternative format or auxiliary aid or service at least two days before the meeting. Requests should be sent to Kensington Police Protection & Community Service District, 217 Arlington Ave, Kensington, CA 94707.
- To be added to the Board Agenda Mailing List, complete and submit the form at <https://www.kppcsd.org/agenda-mailing-list> or by notifying the Clerk of the Board at *or* llewis@kppcsd.org

Posted Agenda

Public Safety Building – Colusa Food – Arlington Kiosk and at www.kppcsd.org. Complete agenda packets are available at the Public Safety Building at 217 Arlington Avenue, Kensington, CA 94707.

All public records that relate to an open session item of a meeting of the Kensington Police Protection & Community Service District that are distributed to a majority of the Board less than 72 hours before the meeting, excluding records that are exempt from disclosure pursuant to the California Public Records Act, will be available for inspection at the **District offices, 217 Arlington Ave, Kensington, CA 94707** at the same time that those records are distributed or made available to a majority of the Board.



Date: May 27, 2022
To: Board of Directors
From: Ann Danforth, General Counsel
Subject: Consider Draft KCC Recreation Services Agreement

Recommendation:

Review, discuss, and provide feedback on 2nd draft of the Agreement with KCC for the provision of recreational services. Consider whether the Board should appoint an *ad hoc* subcommittee to participate in negotiations with KCC.

Background

In January of 2017, the District and KCC entered into an agreement for the KCC to provide recreational services to the Kensington community on District-owned property. As posted on the District website, the agreement consists of three documents, titled as follows:

- “Agreement between the Kensington Police Protection and Community Services District and Kensington Community Council for Recreation and Education Program Services and Facilities Management,” signed by the parties on January 19 and 23, 2017
- “Exhibit A,” an unsigned document that the parties probably intended as an exhibit to the above Agreement, although the latter does not mention it
- “Annual Kensington Community Council Contribution from 2016 to 2020”

These documents are not well-integrated nor well-organized.

The District Board decided to terminate the current contract and negotiate a new one at its meeting of April 14, 2022. The Board discussed few specifics of a new contract, instead indicating that individual directors should transmit their suggestions to the District Counsel.

Board briefly considered the draft at its May 12, 2022, meeting. The draft attracted considerable public interest. However, the May 12th agenda was quite full, and the draft did not come up for discussion until late in the evening. Accordingly, the Board decided to continue the item to a special meeting. In the interim staff has made minor changes, shown in redline on the attached 2nd draft.

Discussion and Analysis

Every contract should clearly describe the parties' respective rights and responsibilities. Accordingly, the draft's descriptions of recreational services are more detailed than in the parties' prior agreements. Staff does not intend to propose significant changes to KCC current programming and operations. We expect that the KCC will request modifications to any provisions that would unduly burden its operations.

The draft's most significant new provisions are the following:

1. A description of expected programming, referenced in Section 1.2 and Exhibit B. The Board may wish to revise this description. I note that the draft does not address services for adults.
2. Section 1.5 provides that KCC may not use District property, or revenue derived from the use of District property, for any purposes other than those authorized by the draft. This would include political activities or publications not focused on KCC programming.
3. Section 2 adjusts the compensation structure. It also provides that the compensation amounts may be adjusted annually.
4. Section 3 contains a number of provisions to keep the Board informed of KCC's programs and use of District property.
5. Section 4 may contain the most extensive changes, including the following:
 - a. Section 4.4 shifts the responsibility of facility maintenance to the District.
 - b. Section 4.7 entitles KCC to continue to use Building E unless the District offers comparable alternate space.
 - c. Section 4.8 provides that KCC not will grant access to District property to other groups. Individuals and organizations wishing to use District facilities should approach the District directly.
 - d. Section 4.9 contains requirements for KCC's website intended to improve access and transparency.
 - e. Section 4.10 allows KCC to charge 10% more to non-residents.
 - f. Sections 4.13, 4.14 and 4.15 address class and program cancellation.
6. Section 5 contains what are often termed "boilerplate" provisions, i.e., general provisions governing the contract and the relationship of the parties.
 - a. Section 5.2 contains similar automatic renewal provisions as the existing agreement but also allows termination upon six months' notice, in case of breach or where necessary for health and safety reasons.
 - b. Section 5.4 and 5.5 contain updated indemnity and insurance provisions. These types of provisions are familiar to persons and organizations that regularly contract with public agencies. When a public agency retains another entity to provide services on its behalf, it does not have control over employment practices or daily operations. Indemnities reflect that these responsibilities lie with the contractor. The insurance requirements

are necessary to protect both parties in the event of a claim that would otherwise exhaust the contractor's resources.

Fiscal Impact:

Unknown but probably minimal

Exhibits

- 2017 KCC Agreement
- 2nd Draft Agreement (redlined to show changes from May 12, 2022, draft)

AGREEMENT BETWEEN KENSINGTON POLICE PROTECTION AND COMMUNITY SERVICES DISTRICT AND KENSINGTON COMMUNITY COUNCIL FOR RECREATION AND EDUCATION PROGRAM SERVICES AND FACILITIES MANAGEMENT

To enable the residents of Kensington to benefit from recreational and educational activities, the Kensington Community council (KCC) and the Kensington Police Protection and Community Services District (KPPCSD) enter into the following agreement:

I. KENSINGTON POLICE PROTECTION AND COMMUNITY SERVICES DISTRICT

A. KPPCSD agrees to maintain in good condition and repair the Kensington Community Center (aka. Youth Hut), tennis courts and such other recreation properties (i.e. Recreation Building and the annex), in and about these facilities, over which it exercises ownership or control.

KPPCSD's maintenance obligations shall include providing general maintenance of the recreational improvements, as well as providing janitorial and gardening services, building supplies, utilities and other items listed under Article 1 of the Objectives attached hereto as Exhibit 1 for the Community Center, tennis courts and the Kensington Park grounds and equipment. KPPCSD agrees to provide property insurance coverage on the improvements on the Park and Recreational property.

At this time, KPPCSD cannot provide liability insurance covering the KCC's recreational and educational programs for the reasons described in the letter from the Special Risk Management Authority, dated April 20, 1998.

In the event of damage to the Park and Recreation property which substantially interferes with the KCC recreational/educational programs or the continued operation of the Park and its buildings, either party may terminate this Agreement by giving written notice to the other party.

B. KPPCSD shall be entitled to set and retain any and all rental or use fees generated from the use of the Park and Recreational facilities.

II. KENSINGTON COMMUNITY COUNCIL

A. KCC's mission as stated in the Articles of Incorporation is to provide educational and recreational programs for community enrichment and to improve and administer such educational and recreational facilities designated as "community," solely, or in conjunction with the Kensington Police Protection and Community Service district, a public district and agency, or other facilitating public body or agency.

B. KCC, acting as the agent for the KPPCSD, agrees to maintain a program of recreational and educational activities, using the Community Center, the Recreation Building and the Kensington Park grounds. KPPCSD will provide water garbage service and general building maintenance.

KCC shall be entitled to set and retain all of the fees generated by the recreational and educational programs.

- C. KCC shall pay an annual contribution to the KPPCSD, payable in two equal installments on June 15th and December 15th of each year, for the use of the Community Center, tennis courts and the Park grounds and equipment.

Additionally, KCC shall contribute \$1.00 per year on June 15th for the use of the Recreation Building ("Building E") for educational programs only. Also, KCC agrees to be responsible for all interior and exterior maintenance and repair, janitorial services and supplies, excluding the Recreation Building roof. The maintenance and repair of the roof will be the responsibility of KPPCSD.

- D. KCC agrees to maintain a general liability insurance policy covering KCC's activities occurring at the Park, Community Center and the Recreation Building. This policy shall cover KCC, its employees, directors and such other persons as KCC shall determine and shall have a minimum bodily injury liability limits of \$1,000,000 per occurrence with a \$2,000,000 aggregate limit and a property damage liability limit of \$50,000.

KPPCSD shall be named as an additional insured on the policy and evidence of current coverage will be provided to KPPCSD upon request.

- E. KCC agrees to notify all K-Group Umbrella members of the need to carry liability insurance, in accordance with the KCC bylaws, in order to use the Community Center free of charge.

- F. KCC agrees to work with the KPPCSD under its status as a 501(c) (3) non-profit organization for the purposes of fund raising and grant application towards the goal of improving and enhancing the Park, Community Center and Recreation Building facilities.

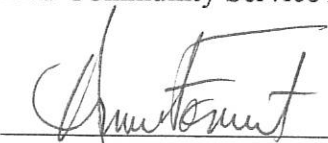
This Agreement shall commence on July 1 2016 and continue thereafter for each twelve (12)-month period unless either the KPPCSD or KCC gives written notice of intent to terminate said Agreement at least forty-five (45) days prior to the commencement of the next fiscal year. Without the notification of intent being received by either party within that designated 45-day period, the Agreement shall remain in force, as drafted, until the subsequent fiscal year begins.

Unless otherwise agreed, the Agreement shall be reviewed every three (3) years.



GM/COP, Kensington Police Protection
And Community Service District

1-19-17
Date



President, Kensington Community Council

1/23/17
Date

EXHIBIT A

OBJECTIVES OF KENSINGTON POLICE PROTECTION AND COMMUNITY SERVICES DISTRICT AND KENSINGTON COMMUNITY COUNCIL

The objectives of the Kensington Police Protection and Community Services District (KPPCSD) and the Kensington Community Council (KCC) are to furnish the citizens of Kensington with park facilities, recreation and educational programs to meet their needs. In the connection, the general responsibilities shall be as follows.

I. KENSINGTON POLICE PROTECTION AND COMMUNITY SERVICES DISTRICT

- A. To make available to KCC and Kensington residents the Kensington Park, Community Center, tennis courts, Recreation Building("Building E"), and such other recreation property as determined by the KPPCSD Board.
- B. To maintain these facilities and grounds in a safe, usable condition.
- C. To be responsible for inventory of property owned by KPPCSD on its grounds and facilities.
- D. To maintain its existing policy and financial commitment to recreation and education.
- E. To mitigate cost to the taxpayer in the operation and maintenance of the Park and its Building and recreational equipment.

(Note: all facilities and grounds maintenance by KPPCSD is based on budget and grant funds, which may vary with the amount of funds available)

II. KENSINGTON COMMUNITY COUNCIL

- A. To recommend, develop and implement recreational and educational programs which promote the general welfare of the community of Kensington.
- B. The KCC Recreation Administrator will supervise all programs provided by the KCC.
- C. To encourage volunteers from the community to work with the Recreation Administrator.

- D. To work with the KPPCSD in meeting the needs of programs for the citizens of Kensington.
- E. To maintain the interior and exterior of the Recreation Building in a good, safe and usable condition with the exception of the roof.
- F. To maintain recreation and educational supplies.
- G. Be responsible for setting up programs and hiring for all programs. The office hours of the Administrator shall be set by the KCC. The Recreation Administrator shall report regularly to the KPPCSD regarding the status of KCC programs.
- H. Report any damage, repairs or problems with the recreation facilities described in section I. item A to the General Manager of the District or to the Park and Facilities Administrator and assist and facilitate any necessary repair and maintenance.
- I. Coordinate with the Park and Facilities Administrator in scheduling events. The KPPCSD Park and Facilities Administrator shall be responsible for seeing that the facility users obtain and required insurance coverage, liquor licenses, and the like. Also, the Administrator will explain procedures and issue keys to facility users, as needed.
- J. Be responsible for inventory of KCC property and equipment on KPPCSD grounds and in KPPCSD facilities.
- K. Work with KPPCSD and KCC Boards of Directors in publicizing the available facilities and programs.
- L. Work with the KPPCSD General Manager and KCC in budget preparation and operate within the budget guidelines.
- M. KPPCSD will not be responsible for any costs related to the provision of recreational or educational programs to the community by KCC.

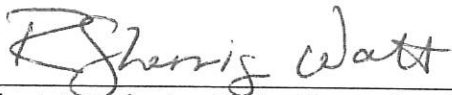
ANNUAL KENSINGTON COMMUNITY
COUNCIL CONTRIBUTION FROM
7/1/2016 - 6/30/2020

- For the fiscal year 2016/2017, KCC will contribute \$15,000 plus the 2016 San Francisco Bay Area Consumer Price Index, published annually to the KPPCSD to use exclusively towards the maintenance of the Kensington recreational facilities, payable in equal installments on December 15, 2016 and June 15, 2017.

NOTE: Due to significant changes in the Kensington Hilltop School schedule, affecting the operation of KASEP Kindergarten program, KCC will evaluate the operational costs of the 2016/2017 fiscal year.

- For every subsequent fiscal year, starting with 2017/2018 through fiscal year 2019/2020, KCC will contribute the compounded amount of the previous year plus the Bay Area Consumer Price Index, published annually to the KPPCSD to use exclusively towards the maintenance of the Kensington recreational facilities, payable in equal installments on December 15, and June 15.

Beyond 2020, KCC requests renegotiation of the base rate of the contribution in any future contracts and it is agreed that subsequent annual KCC contribution increases will be limited to the increase in the San Francisco Bay Area Consumer Price Index, published annually.



President, Kensington Police Protection & Community
Services District

1/23/17
Date



President, Kensington Community Council

1/23/17
Date

**AGREEMENT BETWEEN THE KENSINGTON POLICE
PROTECTION AND COMMUNITY SERVICES DISTRICT
REGARDING RECREATIONAL AND EDUCATIONAL
PROGRAM SERVICES**

This Agreement is by and between the Kensington Police Protection and Community Services District, a California special services district (“District”) and the Kensington Community Council, a non-profit 501(c)(3) corporation (“KCC”).

Recitals

- A. District provides police protection, parks and recreation and solid waste services to residents of Kensington, an unincorporated area located in the County of Contra Costa (“Kensington”).
- B. District owns the facilities listed below (collectively, “District Facilities”) that are or may be available for recreational services, all of which are located in Kensington. A map depicting the District Facilities is attached as Exhibit A.
 - i. The Community Center, a building located at 59 Arlington Avenue, which has one large multi-purpose room (“Main Room.”) Rooms 1 and, a kitchen, an outdoor lawn, ~~restrooms~~restrooms, and BBQ facilities. An electrical room and Room 3 are not covered by this Agreement and not included in this Agreement’s use of the term “Community Center.”
 - ii. The Annex located in Kensington Park.
 - iii. Building E, located in Kensington Park and the current site of KCC’s administrative offices.
 - iv. The Tennis Courts, located in Kensington Park.
 - v. Kensington Park: a park located on Kensington Park Road. For purposes of this Agreement, “Kensington Park” shall mean the outdoor areas of the park exclusive of the Annex, Building E and the Tennis Courts.
- C. The KCC’s mission is to provide educational and recreational programs for community enrichment and to improve and administer such educational and recreational facilities either solely or in conjunction with the District or other public agency.
- D. The KCC has provided recreational and educational programming to Kensington residents and school children under a series of contracts with the District since at least 2002. The parties entered into the most recent of these contracts on January 23, 2017 (“2017 Services Agreement”).
- E. The KCC’s programming and administrative offices are located on District property pursuant to the 2017 Services Agreement and prior contracts.

- F. The 2017 Services Agreement provides for an automatic annual renewal of one year on July 1 unless either party gave notice of intent to terminate no later than forty-five (45) days before said date.
- G. On April 14, 2022, the District’s Board of Directors voted to direct staff to send a letter to the KCC advising it of the District’s intent to terminate the 2017 effective July 1, ~~2022~~2022, and enter into a new services contract that refines and more clearly sets forth the parties’ mutual responsibilities.
- H. On _____, April 14, 2022, Interim General Manager Richard Benson sent a letter to the KCC notifying the latter of the District’s intention to terminate.
- I. The District wishes the KCC to continue providing recreational and educational programming for Kensington residents and school children and the KCC wishes to continue to provide such programming as provided herein. This Agreement’s purpose is to provide for this continuation and to achieve the following additional goals:
 - (i) To improve District Board awareness of the recreational services that KCC provides to the community on the District’s behalf.
 - (ii) To increase transparency of KCC operations insofar as those operations utilize public resources.
 - (iii) To clearly state the parties’ respective obligations and expectations.

NOW, THEREFORE, the District and KCC hereby agree as follows:

1. KCC Use of District Facilities for Recreational Programs

- 1.1.** KCC shall provide recreational and educational programs on behalf of the District as provided in this Agreement, making such programs available to Kensington residents and students attending public schools in Kensington.
- 1.2.** KCC has historically offered three categories of programming on the District Facilities: Kensington After School Enrichment (“KASEP”), Children’s Summer Camp (“Camp”) and adult enrichment programs (“Adult Programs”). Exhibit B, which is attached hereto and incorporated herein by reference contains a more detailed description of the programs KCC typically offers on District Facilities (collectively, “Recreational Programs”).
- 1.3.** The parties contemplate that KCC will continue to offer the programming at substantially the same level as the Recreational Programs.
- 1.4.** District shall make the District Facilities listed in this section available to KCC for Recreational Programs pursuant to this Agreement from Monday – Friday, from 9am to 5pm during the course of program sessions.

- 1.4.1. The Community Center Main Room, Room 1, Room 2 exclusive of storage areas, Outdoor Lawn, Kitchen, Restrooms, BBQ facilities, the storage closet except for the area needed for janitorial supplies, the east side of the storage wall and kitchen cabinets
- 1.4.2. The Tennis Courts
- 1.4.3. Kensington Park. For purposes of this Agreement, the term “Kensington Park” shall refer to the outdoor areas of the park only

KCC may also use Building E for its administrative offices and recreational programs as provided in Section 4.7 of this Agreement.

- 1.5. KCC shall use District Facilities solely for providing Recreational Programs and for other uses expressly allowed in this Agreement. No District Facilities, or funds derived from the use of District Facilities, shall be used for any purpose other than providing Recreational Programs to Kensington residents and school children.
- 1.6. KCC may reserve the Community Center for up to two weekend days per calendar year for promoting Recreational Programs.

2. Compensation

- 2.1. KCC shall pay a yearly rate of \$30,000 or 75% fees collected from participants in activities in or on District Facilities, whichever is less (“Facilities Fee”). Board may adjust the \$30,000 component of the fee calculation to reflect increases in the cost of living at the meeting in which it considers the report mandated by Section 3.4.
- 2.2. The District Board will determine the 75% rate referenced in Section 2.1 at [the meeting required by Section 3.4.](#)
- 2.3. KCC shall pay the Facilities Fee in two installments, due June 30th and December 30th of each year.

3. Financial and Programming Oversight

- 3.1. The program guide for each upcoming session shall be submitted to the District General Manager by May 15th, August 15th, November 15th, February 15th for inclusion in the General Manager’s Report at the next regular District Board meeting.
- 3.2. On or about one month after the end of each fiscal quarter, KCC shall provide the District General Manager with a report regarding the previous quarter’s KASEP. This report shall, at a minimum, include number of students attending classes, numbers of classes, a listing of KASEP staff, a listing of KCC Board members and a description of the enrollment system.

3.3. On or about May 30 and November 30, KCC administrative staff will provide the District General Manager with financial records for the previous two sessions, including all revenues, listed by source and including donations, and all expenses.

3.4. At least once annually, KCC shall present the Board with a report regarding the prior year's programming, revenues and expenses. This will appear on the agenda for the first meeting after the May 30th report required by Section 3.3 of this Agreement or as soon thereafter as the District General Manager finds it practicable to agendaize.

4. Operations

4.1. KCC shall operate all programs in compliance with applicable federal, state and local laws. This will include, without limitation, employment requirements in Section 18975 of the California Business and Professions Code and fair employment requirements in Title 2, Division 3, Part 2.8 Chapter 6 of the California Government Code.

4.2. KCC activities under this Agreement shall comply with all Contra Costa County health and safety recommendations and notices, including, without limitation, those relating to indoor masking, group gathering size and vaccination.

4.3. KCC will work with the Parks Administrator to coordinate use of District Facilities. District may rent or otherwise use any facilities that KCC does not use for scheduled programs.

4.4. District shall maintain in good condition and repair the District Facilities listed in Paragraph 4. In addition, District will provide weekly janitorial services, regular gardening and plant maintenance, and utilities for all spaces used by KCC under this Agreement.

4.5. KCC is responsible for the use of District property and any damage thereto beyond ordinary wear and tear. KCC will promptly report to the Parks Administrator any damage or need for repairs.

4.6. District reserves the right to reallocate all or part of the District Facilities listed in Paragraph 1.4 to other District purposes. However, District shall give KCC at least 90 days prior written notice of any such changes. During the 90-day notice period, the parties will negotiate in good faith either for substitute space for KCC on District property, a reduction in KCC's duties under this Agreement or a combination of both of these options.

4.7. KCC's administrative offices are located in Building E, a _____ square foot facility. During the term of this Agreement, District will continue to make

Building E available for KCC's offices unless the District provides alternate premises of comparable size, amenities and location (i.e., in or adjacent to the Kensington Park). District will provide KCC of at least 120 days written notice of before KCC moves into the alternative premises.

- 4.8.** KCC shall not allow the use of or access to the District Facilities to any third party without District's prior written approval.
- 4.9.** KCC shall maintain a website accessible to individuals with disabilities as required by state and federal law. The website 's website shall contain the following information:
 - 4.9.1. The names of all KCC Board members with contact information for each. If KCC appoints a board, committee or other group to oversee the KASEP, the website will contain the names and contact information of the members of this committee.
 - 4.9.2. Any benefits received by Board members or other volunteers, including, without limitation, early enrollment or a reduction in fees.
 - 4.9.3. KCC's Articles of Incorporation and bylaws.
 - 4.9.4. The Recreation Program Administrator's name, office hours and contact information.
- 4.10.** The KCC Board shall set fees for camps and recreation programs before each session. KCC may charge higher fees for non-residents of Kensington, however the rate differential shall not exceed 10%.
- 4.11.** At least two days before the beginning of enrollment for each session, KCC will post its program guide for recreation activities on its website and make paper copies of the guide available at Kensington Hilltop School and the Kensington Library.
- 4.12.** KCC will offer electronic enrollment through its website.
- 4.13.** If KCC cancels multiple classes, programs or camps due to natural disaster, teacher illness or other unforeseen event, KCC staff will notify the Parks Administrator as soon as practicable.
- 4.14.** If classes are cancelled due to natural disaster or unforeseen event, KCC will pay its teachers and staff the same amount as if the classes had not been canceled.
- 4.15.** If programs or sessions are cancelled due to state, county, or school health orders or mandate, enrollees are entitled to a refund of no less than 95% of fees. Teachers shall be given full pay for the current or upcoming session unless it is cancelled outright with a 21-day notice.

5. General Provisions

- 5.1. KCC shall not assign or transfer voluntarily or involuntarily any of its rights, duties, or obligations under this contract without the express written consent of District in each instance. This includes, without limitation, allowing other non-KCC individuals or groups to use the District Facilities.
- 5.2. Term: This Agreement take effect on ~~July 1, 2022, and~~ July 1, 2022 and have an initial Term of one year. Each July 1st thereafter, this Agreement shall renew automatically for a term of one year unless either party gives 45 days prior written notice of intent not to renew. This Agreement may be terminated as follows:
- 5.2.1. By either party, by giving six months prior written notice to the other party.
 - 5.2.2. By District, in the event of a breach of this Agreement, after giving KCC 30 days written notice during which time KCC fails to cure said breach.
 - 5.2.3. By District, where the health and safety of program participants so require, upon giving written notice to KCC.
- 5.3. In conducting activities under this Agreement, KCC acts as an independent contractor to District. Neither KCC nor any of KCC's officers, employees, agents or subcontractors, if any, is an employee of District by virtue of this contract or performance of any work under this contract.
- 5.4. Indemnification.
- 5.4.1. KCC shall defend, indemnify, and hold District and its directors, officers, and employees from and against all liabilities regardless of nature or type arising out of or resulting from KCC's performance of services under this contract, or any negligent or wrongful act or omission of KCC or KCC's officers, employees, agents, or subcontractors. Liabilities subject to the duties to defend and indemnify include, without limitation all claims, losses, damages, penalties, associated investigation, and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. KCC's obligation to indemnify applies unless it is adjudicated that its liability was caused by the sole active negligence or sole willful misconduct of an indemnified party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an indemnified party, KCC's indemnification obligation shall be reduced in proportion to the established comparative liability of the indemnified party.

- 5.4.2. KCC shall, with counsel approved by the District, defend District its directors, officers, and employees, against in all legal, equitable, administrative, or special proceedings immediately upon tender to KCC. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of an indemnified party, KCC may submit a claim to the District for reimbursement of reasonable attorneys' fees and defense costs.
- 5.5. KCC shall maintain insurance covering its activities in and on District Facilities, as required by Exhibit C.
- 5.6. Definitions: For purposes of this Agreement, the following definitions apply
 - 5.6.1. "Enrollee" shall mean a child or adult participating in a KCC activity located in a District Facility.
 - 5.6.2. "Parks Administrator" shall mean the District General Manager or that person's designee.
 - 5.6.3. "Program" shall mean a series of classes or other activities, taking place on multiple days.
 - 5.6.4. "Session" shall a period of at least eight weeks, during which KCC offers a program or programs.
- 5.7. The laws of the State of California shall govern the interpretation and application of this Agreement. In the event of a dispute, the County of Contra Costa shall be the venue for dispute resolution.
- 5.8. This Agreement represents the entire understanding of District and KCC as to those matters contained herein. This contract may not be modified, amended, or altered except in writing signed by District and KCC.
- 5.9. This Agreement includes the following Exhibits, which are attached hereto and incorporated herein by this reference:

- Exhibit A: District Facilities
- Exhibit B: Recreational Services
- Exhibit C: Insurance Requirements

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands the day and year first herein above written.

Approved by District Board of Directors: _____, 2022

Kensington Police Protection
Community Services District

By: Sylvia Hacaj
President, Board of Directors

Kensington Community Council

Its: _____

By: _____

APPROVED AS TO FORM:

By _____
Ann R. Danforth
District General Counsel

DRAFT

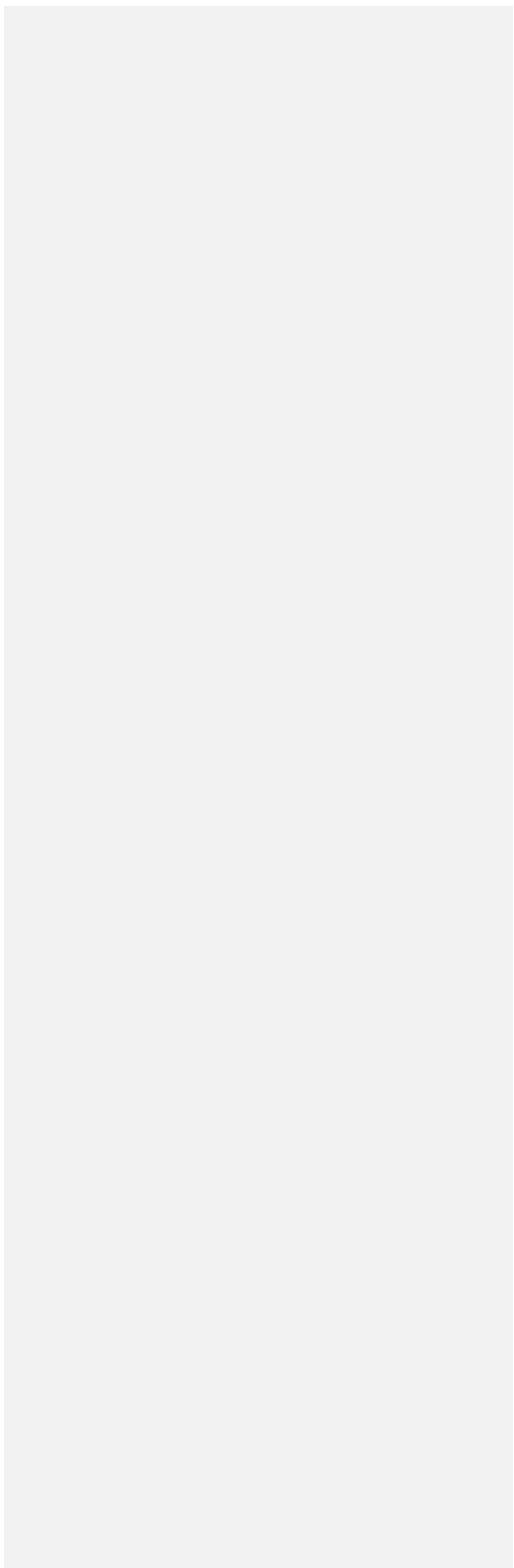


EXHIBIT A
DISTRICT FACILITIES

DRAFT

EXHIBIT B
RECREATIONAL SERVICES

- A. KCC will run quarterly KASEP sessions. Each session shall last a minimum of eight weeks.
- B. Each session will feature at least 5 (five) classes for those 12 and up, 10 (ten) classes or a 4-5 day/a week, 1 day camp for those 12 and under.
- C. KCC will maintain appropriate levels of staffing and supplies for its programs.

~~D.~~

DRAFT

EXHIBIT C
INSURANCE REQUIREMENTS

KCC shall provide and maintain insurance as set forth in this Article on behalf of the Owner.

- A. **Insurance Requirement.** KCC shall procure and maintain during the period of performance of this Agreement insurance from insurance companies authorized to do business in the State of California, as set forth in this section. These policies shall be primary insurance as to the District so that any other coverage held by the District shall not contribute to any loss under KCC's insurance.
1. General liability: (with coverage at least as broad as ISO form CG 00 01 10 01) coverage in an amount not less than \$2,000,000 general aggregate and \$3,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.
 2. Automobile liability: (with coverage at least as broad as ISO form CA 00 01 10 01, for "any auto") coverage in an amount not less than \$3,000,000 per accident for personal injury, including death, and property damage.
 3. Workers' compensation and employer's liability: coverage shall comply with the laws of the State of California, but not less than an employer's liability limit of \$1,000,000. A deductible or retention may be utilized, subject to approval by the District.
- B. **Endorsements:** The insurance policies shall be endorsed as follows:
1. For the commercial general liability and automobile insurance, KCC shall obtain an endorsement adding District (including its officers, employees, and agents) as named additional insured, with primary and non-contributory coverage.
 2. KCC insurance endorsement shall include a waiver of any rights of subrogation against the District, and its directors, officers, employees and agents.
 3. KCC's insurance will not be canceled, limited, amended, reduced in coverage amount, or allowed to expire without renewal until after 30 days' written notice has been given to the District, or after 10 days' written notice in the case of cancellation for non-payment of premium.
- C. **Insurance Documents:** At least 10 days prior to the beginning of each fiscal year, KCC shall KCC shall furnish certificates of insurance and endorsements affecting coverage demonstrating compliance with this Agreement's insurance requirements. These documents will be subject to the District General Counsel's review and approval.
- D. All insurance coverage and limits provided pursuant to this Contract shall apply to the full extent of the policies involved, available or applicable. Specific reference to a given coverage feature is for purposes of clarification only and is not intended by any party to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.
- E. KCC shall require all subcontractors or other parties hired for this project to purchase and maintain insurance of the type specified above naming as additional insureds all parties to this Agreement. KCC will provide District with certificates and endorsements evincing the required coverage.

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