

**Funding Agreement Between the Kensington Police Protection  
and Community Services District and the Kensington  
Community Council**

**THIS AGREEMENT ("Agreement")** is made and entered into as of this November \_\_\_\_, 2018, by and between the Kensington Police Protection and Community Services District ("District"), a California special district, and the Kensington Community Council ("KCC"), a non-profit corporation formed to provide educational, recreational and physical fitness programs for the community of Kensington.

**RECITALS**

**WHEREAS**, District owns and maintains the Kensington Community Center and is planning significant renovations and seismic upgrades to that property ("Project"); and

**WHEREAS**, KCC has offered to provide funding for the Project in the amount of Four Hundred Sixty-five Thousand Dollars (\$465,000.00) (the "KCC Funds"). This amount is comprised of \$255,000 in unrestricted funds, which includes KCC's matching contribution of community donations of \$35,540, and \$210,000 the use of which is restricted to the Conditional Improvements (as defined below); and

**WHEREAS**, on January 11, 2018, the District Board of Directors approved a base scope of work that included a bifold door and operable glass wall system and heating system upgrade that satisfy improvements to KCC's satisfaction (the "Conditional Improvements"); and

**WHEREAS**, the parties now wish to memorialize their respective commitments as set forth herein.

**TERMS**

**NOW, THEREFORE, IT IS AGREED BY THE DISTRICT AND KCC** as follows:

1. **FUNDING**. Within five days of the District Board approving bid documents including the Conditional Improvements or five days of the District publishing a Notice to Bidders that includes the Conditional Improvements, whichever is earlier, the KCC will deliver the KCC Funds to the District.
2. **SCOPE OF WORK**. The District intends to award a construction contract ("Final Contract") whose scope of work includes the Conditional Improvements. However, the District reserves the right to modify the scope of work for the Project in its discretion based on proposals received, estimated costs and changes

resulting from additional information and negotiations. In the event that the Final Contract, as awarded, does not include the Conditional Improvements, the District will return \$210,000 to the KCC within 10 days of executing said contract.

3. **FINAL ACCEPTANCE.** The final acceptance of the Scope of Work and all Deliverables required to complete performance shall be in the District's sole discretion.
4. **TERM.** The term of this Agreement shall commence on the date first above written and shall expire at the completion of the Project. This Agreement may be terminated only as follows:
  - a. At any time by mutual agreement of the Parties upon such terms and conditions as may be agreed upon, or
  - b. By either party in its sole discretion at any time not less than 30 days prior to the publishing of the Notice to Bidders.
  - c. If the Agreement is terminated pursuant to this Section, neither party may nullify obligations already incurred for performance of services prior to the date of notice or required to be performed through the effective date of termination. Any notice of termination will incorporate necessary transition arrangements, and the parties will comply with all such arrangements. This provision shall survive the termination of this Agreement.
  - d. Paragraph 7 (Indemnification) shall continue in full force and effect notwithstanding any termination of this Agreement.
5. **AMENDMENT.** Except as noted herein, any modification or amendment of this Agreement shall be effective only if mutually approved in writing by the governing boards of the District and KCC.
6. **INDEPENDENT CONTRACTOR; THIRD PARTY BENEFICIARIES.** Each party is an independent contractor in performing services under this agreement and the officers, agents and employees of either party are not, and shall not be deemed, employees for any purpose, including workers' compensation or employee benefits. Each party shall determine, in its sole discretion and at its own risk and expense, the method and manner by which duties imposed on it under this Agreement shall be performed. There are no third party beneficiaries to this Agreement.
7. **INDEMNIFICATION.**
  - a. To the fullest extent permitted by law, District shall defend, indemnify and hold harmless KCC and its officers, agents and employees from any and all liability, claims, loss, damage, expense, and costs of every nature including without limitation personal injury (including death) and damage to property (collectively "Loss") arising out of or connected with the Project or out of any aspect of the performance by District or its officers,

agents, or employees, of activities or obligations required of District under this Agreement. The District's indemnity obligation pursuant to this Paragraph 7(a) shall not include Loss proximately caused by the negligent or reckless acts or omissions of KCC and/or its officers, agents and employees.

- b. To the fullest extent permitted by law, KCC shall defend indemnify and hold harmless District and its elected and appointed officials, officers, attorneys, agents and employees from and against any and all Loss caused by KCC's failure to perform its obligations under this Agreement or by the negligent or reckless acts or omissions of KCC and/or its officers, agents and employees. KCC's indemnity obligation pursuant to this Paragraph 7(b) shall not include Loss proximately caused by the negligent or reckless acts or omissions of District and/or its officers, agents and employees.

- 8. **NO WAIVER.** The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.
- 9. **NOTICES.** All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or communication that either party desires to give the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

**District**  
General Manager, KPPCSD  
217 Arlington Avenue  
Kensington, CA 94707

**KCC**  
Anne Forrest, President  
59 Arlington Avenue  
Kensington, CA 94707

- 10. **INTERPRETATION.** The headings used herein are for reference. The terms of the Agreement are set out in the text under the headings. Each party to this Agreement has had an opportunity to review the Agreement, confer with legal counsel regarding the meaning of the Agreement, and negotiate revisions to the Agreement. Accordingly, neither party shall rely upon Civil Code section 1654 in order to interpret any uncertainty in the meaning of the Agreement.

11. **GOVERNING LAW AND VENUE.** The laws of the State of California shall govern this agreement. The venue for any legal action filed by either side in state court to enforce any provision of this Agreement shall be Contra Costa, California. The venue for any legal action filed by either side in federal court to enforce any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California.
  
12. **SEVERABILITY.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement unless removal of such provision makes the remaining Agreement illusory or makes impractical the enforcement of any remaining major provision of the Agreement, in which case this Agreement shall terminate.
  
13. **AUTHORITY TO CONTRACT.** The parties each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.
  
14. **ATTORNEY'S FEES.** In the event that either party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.
  
15. **ENTIRETY OF CONTRACT.** This Agreement constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

**IN WITNESS WHEREOF**, the District and the KCC have executed this Agreement as of the date first above written.

\_\_\_\_\_  
 By: \_\_\_\_\_  
 (Signature) (Signature)

By: \_\_\_\_\_

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
 (Signature) (Signature)

\_\_\_\_\_

Attorney \_\_\_\_\_ Attorney \_\_\_\_\_  
 (Type name and title) (Type name and title)