



# Kensington Police Protection and Community Services District

## **A G E N D A**

Thursday, September 12, 2019

**52 Arlington Avenue, Kensington, California**

1. **Regular Meeting – Call to Order/Roll Call 7:30 P.M.**
  
2. **Public Comments:** Members of the public may address the Board for up to **three-minutes** on items not listed on the agenda but that are within the jurisdiction of the District. Comments on matters that are listed on the agenda and requiring Board action may be made at the time the Board is considering each item. Please observe our **three-minute** per person limit and twenty-minute total limit, per Board Policy 4120.4.1.  
  
**Note:** Items that are informational only and that used to appear as part of the Consent Calendar have been moved to the agenda packet's addendum. Public comments about such items made be made at this time.
  
3. **Consent Calendar**
  - a. Minutes of August 13, meeting
  - b. Minutes of August 15, 2019 meeting
  - c. Minutes of September 5, 2019 meeting
  
4. **Board/Staff Comments**
  - a. General Manager Comments
  - b. Interim Chief of Police Comments
    - i. Acknowledgment of Officer Rodney Martinez
  
5. **New Business**
  - a. Public Safety Building Update (for discussion)
  - b. Expanded Bay View Service (for discussion)
  - c. Kelly Service Contract (for action)
  - d. Interim Chief of Police
    - i. Draft contract (for action)

## ADJOURNMENT

Our next meeting will be October 10.

## Rules of Decorum at Meetings

- Persons wishing to speak shall line up on the left side of the room. **Each speaker can speak for up to three minutes on any one item.** If there are several speakers, please try to be brief to give others the opportunity to speak.
- All persons wishing to speak shall do so at the podium and address their comments to the Board.
- Each member of the public attending the meeting has the right to speak during the public comments period. If the allotted time for public comments has been reached, we will begin the meeting and allow for additional public comment on items not on the agenda but within our jurisdiction after the business portion of our meeting.

- Each member of the public attending the meeting has the right to comment on each item on the agenda. However, the Board President may restrict the number of times that an individual may speak on the same agenda item as necessary to ensure that all persons wishing to comment on that item are heard and that the meeting proceeds in an orderly fashion.
- If any meeting is willfully interrupted so as to render the orderly conduct of the meeting unfeasible, the Board President may order the person or group of persons causing the disruption removed.
- If removal of the person or group of persons causing the disruption of the meeting does not restore order, the Board President may order the room cleared of all members of the public except members of the media and proceed to address the remaining items on the agenda.

#### General Information

- All proceedings of the Open Session will be audio recorded and, if the equipment works, video recorded.
- The District has devices for hearing assistance. Please contact GM Anthony Constantouros for information about the equipment.
- Arlington Church is Wi-Fi accessible.
- 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 Services District, 217 Arlington Ave, Kensington, CA 94707

POSTED: Public Safety Building – Colusa Food – Arlington Kiosk and at [www.kppcsd.org](http://www.kppcsd.org)  
Complete agenda packets are available at the Public Safety Building.

All public records that relate to an open session item of a meeting of the Kensington Police Protection & Community Services 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

Items formerly included under the Board Packet Addendum are now posted separately on the District's website, under the title "Monthly Reports."

Communications and information submitted by community members and others will be included in the Correspondence section of this report and available to the public.

## KENSINGTON POLICE PROTECTION AND COMMUNITY SERVICES DISTRICT

### DRAFT

### BOARD OF DIRECTORS MEETING MINUTES

**LOCATION:** 52 Arlington Avenue, Kensington

**DATE:** August 8, 2019

**Closed Session** President Nottoli opened the session at 7 PM. Directors Deppe, Nottoli and Sherris-Watt were present. There were no public comments and the Board adjourned to closed session. Directors Hacaj and Modavi joined during closed session.

**Regular Meeting** President Nottoli opened the meeting at 7:35 and reported that the Board gave direction to counsel. Directors Deppe, Hacaj, Modavi, Nottoli, and Sherris-Watt were present.

#### Consent Calendar.

*Motion to Adopt Consent Calendar.* Director Sherris-Watt moved to accept the consent calendar with the following changes: (1) on March 28, add “Sherris-Watt” to the first line on page 3; (2) on May 23, correct the date on page 1 to 2019, not 2018; (3) on June 13, correct the headings on the motion to approve for the Budget and Special Tax for Police, and correct the names of the Directors on the resolution to approve the Budget, and (4) correct the headings on the motion to approve the Auditor Contract and Police Officer Description. Vice-President Hacaj seconded the motion. Directors Deppe, Hacaj, Nottoli and Sherris-Watt voted in favor of and Director Modavi voted against the motion. The motion passed 4-1.

#### New Business

*Motion to Extend Contract for Interim Chief of Police.* Director Sherris-Watt moved and Vice-President Hacaj seconded approving the contract to extend the contract for Interim Chief of Police Rickey Hull. Directors Deppe, Hacaj, Nottoli and Sherris-Watt voted in favor of and Director Modavi voted against the motion. The motion passed 4-1.

*Motion to Accept KFPD Invitation.* Director Sherris-Watt moved to accept the invitation from the Kensington Fire Protection District and participate in the KFPD’s meeting on the Public Safety Building with the understanding that no individual member of the KPPSD Board can speak for the Board unless there has been approval of an item that has been on an agenda. President Nottoli seconded the motion. Directors Deppe, Hacaj, Modavi, Nottoli, and Sherris-Watt voted in favor of the motion which passed 5-0.

The Board discussed where best to put information on emergency preparedness. Both the KPPCSD and the Kensington Fire Protection District have important rolls. Director Deppe volunteered to speak with KFPD Manager Brenda Navelier to explore where best to place information on our respective websites.

The District has received an unprecedented number of PRA requests that have been taking considerable staff and attorney time to respond. The District will be preparing a packet of these requests and will consider a budget amendment as appropriate.

Prepared by: Eileen Nottoli

Date approved by the Board:

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Tony Constantouros, General Manager

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Eileen Nottoli, Board President

KENSINGTON POLICE PROTECTION AND COMMUNITY SERVICES DISTRICT

**DRAFT**

**BOARD OF DIRECTORS MEETING MINUTES**

**LOCATION:** Arlington Community Church

**DATE:** August 13, 2019

President Nottoli opened the meeting at 9:33. Directors Hacaj and Modavi were present. There were no public comments and the Board went into Closed Session. Director Sherris-Watt joined just after closed session began.

The Board ended the closed session at 9:55 and reported that the Board gave direction to counsel.

Prepared by: Eileen Nottoli

Date approved by the Board:

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Tony Constantouros, General Manager

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Eileen Nottoli, Board President

KENSINGTON POLICE PROTECTION AND COMMUNITY SERVICES DISTRICT

**DRAFT**

**BOARD OF DIRECTORS MEETING MINUTES**

**LOCATION:** Arlington Community Church

**DATE:** September 5, 2019

President Nottoli opened the meeting at 9:02. Directors Deppe, Hacaj, Modav, and Sherris-Watti were present. There were no public comments and the Board went into Closed Session.

The Board ended the closed session at 10:19 and reported that the Board gave direction to counsel.

Prepared by: Eileen Nottoli

Date approved by the Board:

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Tony Constantouros, General Manager

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Eileen Nottoli, Board President

## ***General Manager Report***

September 9, 2019

### **Administrative Recruitments**

The recruitments should be completed this week. Interviews with the finalists are tentatively planned by the beginning of October.

### **Community Center Progress Report**

As construction started, the contractor, KCK, focused on work for the upper roof, including laying down new shear plywood and installing hardware associated with seismic requirements. They also started with demolition both inside the building and at the existing paving. They have also started the seismic bracing inside the building. Electrical work has also begun. The structural steel has been ordered and they await inspection before the cutting and welding work commences.

Best regards,

Tony Constantouros

## Ecological Stewardship and Solid Waste

### Food Composting and Household Hazardous Waste

The Board will be working with its solid waste hauler, Bay View Refuse and Recycling, on possible amendments to the existing contract to provide residents with food composting and providing more convenient disposal of household hazardous waste. A survey, conducted by the District in 2018, revealed strong support from residents to add food composting. At present, residents must take household hazardous waste to the Household Hazardous Waste Facility (HHWF) in Richmond and there is no option for community composting.

### Impact of Changes in Recycling and Draft State Requirements on Organics

There are two major factors that will influence future garbage rates. First, with Asian countries rejecting recyclables – both paper and plastic – there will be increased costs to process these materials and “contaminated” loads will be rejected. Recyclables can be contaminated by liquid residues from metal, plastic, or glass containers and rainwater. Some jurisdictions are refusing to collect or charging residential customers whose recyclables are contaminated. Second, CalRecycle, the state agency with authority to regulate solid waste, has draft regulations which will require substantial increases in diversion of organic matter from landfills. Currently, there is a shortage of composting facilities. New facilities must be brought into operation, with a resulting increase in cost to process green waste.

### Background on 2018 Food Composting Survey

Bay View sent out approximately 2,200 survey cards with the May 2018 invoice asking residents if they wanted expanded garbage service to include weekly pickups of food waste along with green waste. To control vermin, food waste must be picked up weekly. This means that Kensington would move from 24 to 52 pickups/year for green waste. A total of 779 responses were received with 507 wanting the service now, 249 wanting the service in 2012, and 23 either having no response or objected to implementing the service at all.

### Factors Affecting Rates

Rate are a combination of collection and post-collection handling and depend on three main factors:

- **Labor.** Labor and workers compensation costs are major factors for setting rates. Fully automatic haulers use trucks that pickup carts with a side arm and dumps the content into the top of the truck. These trucks can be operated by a single employee and only occasional need to get out of the truck. These haulers have lower workers compensation claims because there are reduced injuries to workers. Bay View uses a “semi-automatic” system where its employees transfer wastes from our containers into containers that can be lifted onto the back of their trucks. The system employed by Bay View is more labor intensive and physically demanding on its employees than the side arm system.

Piedmont uses a semi-automatic system like Bay View’s in which containers are brought by workers and lifted onto the back of the truck and emptied. According to the [Piedmont staff report](#), four bidders met with the city, but only their current provider responded with a proposal in 2017. Waste Management explained its decision not to bid was the requirement for backyard service because, “injury rates create significant personal and financial risk, generating a need for significant rate increases to potentially mitigate this risk.” Piedmont streets were described as narrow and winding

in hilly terrain. Piedmont accepted the bid from its current service company and garbage rates essentially doubled in 2018 with an additional charge of \$42/month for backyard service.

- **Large Commercial Areas.** Areas with large commercial and/or industrial customers can use the income from those businesses to offset residential rates. Kensington has only two small commercial areas.
- **Hard to Serve Areas.** Servicing areas with winding, narrow, and hilly streets take more time. Most jurisdictions charge more for “hard-to-serve” areas, [defined](#) as areas in hilly terrain or narrow streets, descriptions that relate to much of Kensington.
- **Green Waste.** Most jurisdictions limit customers to the amount of green waste that will be picked up without additional charge.
- **Contaminated Recyclables.** Jurisdictions are starting to not pickup or to charge residents to dispose of recyclables that are contaminated with food residue or water.

### Comparison to 2019 Rates in Nearby Areas

Albany, El Cerrito, and Berkeley all use mechanized pickup of waste, with limitations or additional charges, for backyard service and green waste.

	Kensington	<a href="#">Albany</a>	<a href="#">El Cerrito</a>	<a href="#">Berkeley</a>	Oakland*	<a href="#">Piedmont**</a> 2018
Service	Semi-Automatic	Automatic	Automatic	Automatic	Semi-Automatic	Semi-Automatic
20 gallon	\$43.61	\$39.15	\$37.63	\$27.30	\$43.93	<b>\$79.84</b>
20 gallon with backyard	\$43.61	<b>\$55.02</b>	Only if requested and supported by a note from a doctor	Exemption for seniors and disabled	<b>\$88.39</b>	<b>\$112.17</b>
32/35 gallon	\$47.61	\$43.84	<b>\$49.63</b>	\$43.66	\$49.88	<b>\$84.60</b>
32 gallon with backyard	\$47.61	<b>\$59.71</b>	Only if requested and supported by a note from a doctor	Exemption for seniors and disabled	<b>\$94.34</b>	<b>\$126.93</b>
Additional 64-gall Yard Waste	\$0	\$54	N/A	Limited to one cart (additional containers are 20% less than the cost of comparable garbage container)	\$16.34	N/A

\*Note: Oakland will provide a warning for the first two incidents of compost or recycling contamination. A third incident within 6 months will result in a \$25 fine and a fourth incident will result in a \$50 fine.

\*\*Note: 2019 Piedmont rates were not available as of August 2019

### Comparison to Rates in Central Contra Costa County

Rates in several areas of Central Contra Costa County are posted on the [RecycleSmart](#) website with higher rates for areas of narrow and winding streets. Significantly, those other jurisdictions charge for additional green waste beyond the one 64- or 96-gallon wheeled cart that residents in those areas must use. Kensington is considered a High Fire Hazard area and it is beneficial to have green waste removed.

#### 2019 Rates for 20-Gallon Service

	Kensington	Danville	Lafayette	Moraga	Orinda	Walnut Creek
Service	Semi-Automatic	Automatic	Automatic	Automatic	Automatic	Automatic
20-gallon – hard-to serve areas	\$43.61	\$37.24	<b>\$44.60</b>	\$30.66	<b>\$60.57</b>	\$20.03
With backyard service	\$43.61	<b>\$48.18</b>	<b>\$55.54</b>	\$41.60	<b>\$71.51</b>	\$30.97
Additional 64-gall Yard Waste	\$0	<b>\$6.97</b>	<b>\$6.97</b>	<b>\$6.97</b>	<b>\$6.97</b>	<b>\$6.97</b>

#### 2019 Rates for 32-Gallon Service

	Kensington	Danville	Lafayette	Moraga	Orinda	Walnut Creek
32-gallon – hard to serve areas	\$47.61	\$39.91	<b>\$49.09</b>	\$35.40	<b>\$65.79</b>	\$23.64
With backyard service	\$47.61	<b>\$50.85</b>	<b>\$60.03</b>	\$46.34	<b>\$76.73</b>	\$34.58
Additional 64-gall Yard Waste	\$0	<b>\$6.97</b>	<b>\$6.97</b>	<b>\$6.97</b>	<b>\$6.97</b>	<b>\$6.97</b>

### Household Hazardous Waste

Kensington residents must transport household hazardous waste to the Household Hazardous Waste Facility (HHWF) located at 101 Pittsburg Avenue in Richmond (Open Wednesday through Saturday 9:00 am –12 pm and 12:30-4:00 pm). Kensington residents are asked to get a permit from Bay View, (510) 237-4614, before using the facility. The purpose of the permit is for Bay View to keep track of the number of residents bringing hazardous waste to the HHWF.

Kensington garbage rates include the costs that Bay View pays for residents disposing of household hazardous wastes brought to the HHWF in Richmond. The HHWF charges by carload, so before going to the HHWF, consider asking neighbors if they have any materials to bring to the HHWF to help lower garbage rates. In addition, consider alternate places which accept certain materials such as the following (as of September 2019,):

- 
- Home Depot accepts compact fluorescent bulbs (CFBs)
- Best Buy will accept electronic waste for recycling regardless of where you bought it, how old it is or who made it. It may even offer a discount on the purchase of new electronic equipment when old equipment is brought in for recycling.
- El Cerrito Recycling Center and Best Buy accept (certain) batteries and electronics.
- Kelly Moore on San Pablo in Albany accepts paint in original cans with labels

## **Joint Powers Agreement for Certain Areas of Contra Costa County for Managing Household Hazardous Waste**

In the early 1990's, several cities and the County on behalf of certain unincorporated areas, entered into a Joint Powers Agreement (JPA) for the post-collection management of garbage as well as hazardous waste. For reasons that have been lost by time, Kensington did not join. The voting members of the JPA are Richmond with three votes and El Cerrito, Hercules, Pinole, and San Pablo with one vote each. The County is a non-voting member representing certain unincorporated areas of West Contra Costa County (El Sobrante, North Richmond, Tara Hills, Rollingwood, East Richmond Heights, Bayview, and Montalvin Manor).

Both the JPA and Bay View Refuse have contracts with Republic Services which manages the transfer station for solid waste, the compost facility, and the HHWF in Richmond. The JPA also has a small satellite collection site for household hazardous waste at the El Cerrito Recycling Center, which is limited to residents of jurisdictions which are members of the JPA. In order for Kensington residents to use this facility, the Center would need to allocate more space for storage and all members of the JPA must agree.

The JPA offers a few household hazardous waste days in different locations within its member areas where JPA residents can drop off hazardous waste. Kensington could host its own event although the cost is estimated to be on the order of \$30,000-70,000. The JPA also offers senior citizens hazardous waste pickup at certain times. Bay View is exploring this option for *all* Kensington residents.

### **Producing Less Landfill**

Here are some suggestions to keep items out of the landfill:

- **Avoid Contaminating Recyclables**
  - Store recyclables in a closed container to prevent rain from entering the container
  - Rinse out glass, metal and plastic containers and let them dry before placing them with other recyclables
  
- **Refuse Plastic**
  - Don't put produce in plastic bags at stores
  - Reuse plastic bags when buying products in bulk
  - Buy products in bulk using refillable containers (check out Fillgood in Albany, 828 San Pablo Ave, Suite 106, Tue - Wed - Thu: 12pm - 5pm and Sat: 10am - 2pm)

KENSINGTON POLICE PROTECTION AND COMMUNITY SERVICES DISTRICT

**BOARD OF DIRECTORS MEETING  
SEPTEMBER 12, 2019  
ITEM 5c**

**KPPCSD: APPROVAL OF AGREEMENT WITH KELLY SERVICES TO PROVIDE  
TEMPORARY OFFICE ASSISTANCE**

**SUMMARY**

The District has signed an agreement with Kelly Services to provide interim office and clerical assistance until the new administrative positions have been filled. Recruitments are currently underway, and the positions should be filled in the next two months. In the interim, temporary employees will provide part-time office services as needed and a Kelly Services employee is currently filling in. This Agreement is being presented for Board approval in case the cost exceeds the \$5,000 approval limit of the General Manager. In the future, the arrangement with Kelly Services will be kept on file to allow the utilization of temporary assistance if there are special needs and unexpected situations.

**RECOMMENDATIONS:**

Approve Customer Services Agreement with Kelly Services

**FISCAL IMPACT:**

Temporary assistance from Kelly Services is estimated at \$5,000.

**ATTACHMENTS:**

Kelly Services Customer Services Agreement

**SUBMITTED BY:** Anthony Constantouros, General Manager

## CUSTOMER SERVICES AGREEMENT

This Agreement is between Kensington Police Protection and Community Services District ("Customer") and Kelly Services, Inc. ("Kelly") regarding the provision of its assigned employees ("Assigned Employees") and related staffing services by Kelly to Customer.

1. **Kelly Guarantee.** Kelly guarantees that Assigned Employees it places with Customer will satisfactorily perform the services ordered by Customer. If not, Kelly will, upon reasonable notice from Customer, cancel charges for unsatisfactory services and furnish a replacement as soon as possible.
2. **Placement of Assigned Employees.** Customer will place orders with Kelly describing type of work requested, specific duties to be performed, skills required, and any other requirements. Kelly will place Assigned Employees to perform services that Customer requests under Customer's operational supervision at the location(s) and at the rates in attached Exhibit A.
3. **Employment Relationship with Assigned Employees.** As the provider of staffing services, Kelly will be the employer of Assigned Employees, and will be responsible for the staffing services listed below. As the recipient of such staffing services, Customer will be responsible for controlling the environment in which Assigned Employees perform their work, the details of their work, and their work product, and for the business-related responsibilities below. Customer acknowledges that it is the responsibility of Kelly to attend to any disciplinary or performance management concerns affecting its Assigned Employees and Customer shall assume all liability in the event Customer takes actions that are Kelly responsibilities as defined in this Section 3.

**A. Kelly's Responsibilities.** Kelly will:

1. Recruit, select, and hire Assigned Employees;
2. Place Assigned Employees according to Customer's requirements;
3. Pay Kelly Assigned Employees the wages and provide the benefits that Kelly offers to them as its employees;
4. Pay or withhold payroll taxes (e.g., FICA) and insurance premiums (e.g., Medicare) and fulfill its obligations for unemployment compensation (e.g., FUTA, SUTA);
5. Provide workers' compensation benefits and coverage for Assigned Employees;
6. Maintain Assigned Employees' personnel and payroll records related to their employment by Kelly;
7. Comply with laws, rules or regulations applicable to providers of staffing services;
8. Comply with the Patient Protection and Affordable Care Act ("Affordable Care Act") and its regulations, as applicable, and have established internal procedures for reviewing and maintaining its compliance with the Affordable Care Act;
9. Require Assigned Employees to agree in writing to protect confidentiality of Customer's proprietary information;
10. Require Assigned Employees to execute agreements that Customer requests with regard to intellectual property developed by them in performance of their work for Customer;
11. Require Assigned Employees to acknowledge in writing that they have no right to participate in Customer's employee benefit plans;
12. Require Assigned Employees to comply with all rules and policies of Customer (e.g., those relating to premises access and security);
13. Make legally required employment law disclosures to Assigned Employees; and
14. Provide Assigned Employees of diverse race, gender, ethnicity, and background.

**B. Customer's Responsibilities.** Customer will:

1. Provide Assigned Employees with a safe and suitable workplace that complies with all applicable safety and health standards, statutes, and ordinances, (including all site-specific training related to the chemical, physical, and biological hazards in the workplace), and provide all required information and safety equipment applicable to Assigned Employee's placement and prompt notice of:
  - a) any injury suffered by an Assigned Employee (and adhere to OSHA recordkeeping requirements);
  - b) when an Assigned Employee's assignment requires termination; and,
  - c) if Customer wishes to hire an Assigned Employee.
2. Use Assigned Employees only in assignments that match the job descriptions for which Kelly places them;
3. Provide adequate internal controls, supervision, and instructions for Assigned Employees, and be responsible for their conduct when they are required to handle cash, confidential or credit card information, trade secrets, valuables, or similar property;
4. Be responsible for use of any vehicle and their contents, powered mobile equipment or Customer issued property used by Assigned Employees in connection with an order, except for workers' compensation claims of Assigned Employees;
5. Provide a DD254 (Contract Security Classification Specification form) to Kelly for any orders in which a security clearance is required for Assigned Employees to perform job duties and a new DD254 in the event any job duties change or our Assigned Employee is required to work on a different project;

6. Upon request, provide Kelly with information in its possession relating to any Assigned Employee, including, but not limited to, Customer timekeeping systems or other records;
7. Be responsible for the conduct of its own officers, employees, and agents; and
8. Comply with duties imposed on the recipient of staffing services by law, rule, or regulation, including:
  - a) providing Assigned Employees with suitable seating where required by law;
  - b) providing Kelly with adequate information regarding work by any Assigned Employee that is subject to the Service Contract Act; and,
  - c) using a timekeeping system that (i) complies with applicable federal and state legal requirements and (ii) accurately records in and out times and unpaid breaks of the Assigned Employees.

**4. Insurance Including Workers' Compensation Coverage.** Kelly will maintain during the term of this Agreement at least the following types and limits of insurance or other coverage:

- A. Workers' compensation on the Assigned Employees, in amounts no less than required by law;
- B. Employer's liability insurance with a limit of \$1,000,000;
- C. Commercial automobile liability insurance with a \$1,000,000 combined single limit on vehicles owned, leased, or rented by Kelly;
- D. Commercial General Liability insurance, including bodily injury, contractual liability, and property damage, with a \$1,000,000 combined single limit per occurrence; and
- E. Commercial blanket bond/ (Crime/Fidelity bond) with limits of \$3,000,000 per occurrence.

Kelly will provide Customer with certificates of this insurance coverage, upon request.

**5. Billing.**

- A. **Invoices.** Kelly will invoice Customer each week for all "Hours Worked" (as defined by the Fair Labor Standards Act of 1938 and applicable state law) by Assigned Employees at agreed-upon hourly bill rates. Exhibit A lists the rates Kelly will invoice Customer (and any reimbursable expenses). If the Customer's rates are not set out in Exhibit A, Kelly and Customer will agree on rates at the time of an order, which Kelly will record electronically in its systems. Kelly will add to Customer's invoices as a separate line item: i) any sales or use taxes that apply; and, ii) all costs and administrative fees associated with required background and drug screening. The services billed may be provided by Kelly Services Global, LLC or Kelly Services USA, LLC, affiliates of Kelly, or third-party staffing providers (collectively "Staffing Providers"). Kelly is acting solely as a collection agent on behalf of the Staffing Providers in such cases and bears no liability, except as that of collection agent to the Staffing Providers or their customers. Client will be allowed to view related documents governed by third-party.
- B. **Adjustments.** Upon thirty (30) days' prior written notice, Customer agrees that pricing will be adjusted by Kelly annually and, additionally, to reflect increases in wage and related tax, benefit and other costs as the result of any legislative change, agency guidance or determination, order or action, by or under any applicable governmental authority, insurance or benefit program (including but not limited to, increases in costs for Kelly to comply with the provisions of recent laws or related guidance). Adjustments will be applied as of the effective date of the increased tax, benefit, or cost. Kelly will also adjust pricing for changes in sales, use, or gross receipts taxes. Such increases will be applied retroactively, if necessary. In addition, Customer agrees to be responsible for any adjustments to wages or benefits required relating to work performed subject to the Service Contract Act.
- C. **Overtime.** Assigned Employees are presumed to be "nonexempt" employees – Kelly will pay overtime premiums (and bill Customer accordingly) in accordance with federal and state law and for additional overtime premiums requested by Customer. Kelly will charge Customer overtime rates for all overtime hours Customer requires or permits the Assigned Employees to work. Unless listed in Exhibit A, overtime rates will be calculated by applying to Kelly's bill rate the same overtime multiple as Kelly is required to apply to the Assigned Employee's pay rate. Kelly only will classify Assigned Employees as "exempt" from overtime pay under the Fair Labor Standards Act of 1938 if: (1) the Customer requests that Kelly do so; (2) the Customer signs Kelly's Customer Exempt Request and Agreement; and, (3) Kelly determines that the exemption is valid under applicable law and regulations, subject to the Customer providing Kelly with complete and accurate information concerning the position.
- D. **Record Of Time Worked.** Customer agrees to review and approve (by signature or electronically) a record of time worked by Assigned Employees. If a Customer representative is unavailable, Kelly's representative responsible for the Customer placement (or other Kelly representative authorized by Customer) may approve the record on Customer's behalf.

**6. Payment Terms.** Payment for services is due upon Customer's receipt of Kelly's invoice (Kelly acknowledges that Customer's processing of the invoice may take up to five (5) days).

**7. Conversion and Transition of Assigned Employees.** Customer acknowledges that Kelly incurs substantial expenses for recruiting, testing, training and retaining its Assigned Employees and Customer agrees to obtain the services of each Assigned Employee only through an order with Kelly. If Customer wishes to obtain the services of an Assigned Employee by hiring them (a "conversion"), or by placement, arrangement, or contract from another source (a "transition"), Customer will compensate Kelly at the conversion rates in Exhibit A.

**8. Issue Resolution and Indemnification.** Kelly and Customer expect to resolve any other issues that arise with respect to performance of this Agreement through business discussion and conciliation. In the unlikely event that resolution efforts are

unsuccessful, each party agrees to indemnify the other party (and its officers, directors, and employees) for claims, losses, penalties, and damages (and reasonable legal fees) to the extent they arise from the indemnifying party's violation of law, or material breach of this Agreement, including obligations listed in **Section 3**.

**9. Indemnification Process.** To obtain indemnification, a party must promptly notify the other party, cooperate in resolving the claim, and (when liability to third parties is involved) yield reasonable control of the claim's resolution to the other party. Neither party is obligated to provide or commit itself to indemnity while the underlying matter is still pending.

**10. LIMITATION OF LIABILITY.**

- A. **No Consequential or Indirect Damages.** IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES. THIS INCLUDES ANY DAMAGES FOR BUSINESS INTERRUPTION, LOSS OF USE, DATA, REVENUE OR PROFIT, WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE), REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER PARTY WAS ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.
- B. **Maximum Liability.** KELLY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) SHALL BE LIMITED TO PROVEN DIRECT DAMAGES UP TO A MAXIMUM OF \$10,000 PER OCCURRENCE.
- C. **Third Party Claims.** IN ADDITION TO THE LIMITATION OF LIABILITY IN SECTION 10(A), KELLY'S AGGREGATE LIABILITY TO THE CUSTOMER FOR THIRD PARTY CLAIMS, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) SHALL BE LIMITED TO THE EXTENT OF KELLY'S INDEMNIFICATION OBLIGATIONS IN SECTION 8.

**11. Term.** This Agreement will continue in force unless one party gives the other party at least fifteen (15) days' written notice of termination. Kelly may terminate this Agreement immediately for non-payment. Termination of this Agreement will end the staffing relationship, but this Agreement will continue to govern the parties' rights and obligations with respect to the business done before termination, including but not limited to conversion or transition of Assigned Employees.

**12. Notices.** Notices or communications required by this Agreement must be in writing and mailed (including electronic transmission) or, faxed to the person indicated in the signature block below.

**13. Independent Contractor.** Nothing in this Agreement makes Kelly an agent, partner or joint venturer of Customer.

**14. Governing Law.** The laws of the State of California will govern this Agreement, without regard to its conflicts of laws rules. In the event that a dispute arises from the interpretation or performance of this agreement, the venue for resolving this dispute shall be the Superior Court of Contra Costa County.

**15. Force Majeure.** Neither party will be responsible for failure or delay under this Agreement because of force majeure events or other causes beyond its control.

**16. Severability; Waiver.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement. Any delay or waiver by a party to declare a breach or seek any remedy available to it under this Agreement or by law will not constitute a waiver as to any past or future breaches or remedies.

**17. Entire Agreement.** This Agreement (including any attachments) contains all of the terms between Customer and Kelly on the subject of staffing services for the jobs and locations specified; it replaces all agreements and representations on the subject. Modifications to this Agreement must be in writing signed and dated by both parties. Forms that may be used by the parties in their staffing relationship such as purchase orders, time cards, and invoice recitals will not supersede, supplement, modify, or control this Agreement.

Kensington Police Protection and Community Services  
District  
217 Arlington Ave, Kensington, CA 94707  
tconstantouros@kppcsd.org

  
Signature

ANTHONY CONSTANTOUIROS  
Printed Name

General Manager  
Title

8/18/2019  
Date Signed

**KELLY SERVICES, INC.**

**Address for Notices:**  
999 W. Big Beaver Road  
Troy, MI 48084  
Attn: General Counsel

*Lisa Norton*

Signature

Lisa Norton

Printed Name

Recruiting Lead

Title

8/15/2019

Date Signed

KENSINGTON POLICE PROTECTION AND COMMUNITY SERVICES DISTRICT

**BOARD OF DIRECTORS MEETING  
SEPTEMBER 12, 2019  
ITEM 5d**

**KPPCSD: APPROVAL OF DRAFT EMPLOYMENT AGREEMENT – AT WILL INTERIM  
CHIEF OF POLICE**

**SUMMARY**

An Interim Chief of Police candidate has been in the process of completing the background investigation. The process is nearly complete but will not be finalized until later in September. The next regular meeting of the Board of Directors is scheduled for October 10, 2019.

A draft employment agreement is presented for the Board's consideration and approval. After the background process has been completed, the details of the agreement will be completed and presented to the Board for final approval by resolution.

**RECOMMENDATION**

1. Approve Draft Employment Agreement for At-Will Interim Chief of Police.
2. Set October 10, 2019 for consideration of a resolution approving the final agreement.

**FISCAL IMPACT:**

Funding for the Interim Chief of Police has been included in the Fiscal Year 2019/20 budget.

**ATTACHMENTS:**

Draft Employment Agreement

**SUBMITTED BY:** Anthony Constantouros, General Manager

**KENSINGTON POLICE PROTECTION AND COMMUNITY SERVICES DISTRICT**

**AT-WILL INTERIM CHIEF OF POLICE**

**EMPLOYMENT AGREEMENT**

This AT-WILL INTERIM CHIEF OF POLICE EMPLOYMENT AGREEMENT (“Agreement”) is made by and between the KENSINGTON POLICE PROTECTION AND COMMUNITY SERVICES DISTRICT (“KPPCSD”) and [REDACTED] (“Employee”). KPPCSD and Employee may be referred to individually as a “Party” or collectively as “the Parties.”

**RECITALS**

WHEREAS, Government Code subdivision 21221(h) permits retired annuitants under the California Public Employees’ Retirement System (“CalPERS”) to be employed without reinstatement from retirement upon appointment by a public agency to fill a vacant position on an interim basis during the recruitment to permanently fill the vacant position; and

WHEREAS, KPPCSD is currently conducting a recruitment for a permanent Chief of Police; and

WHEREAS, the KPPCSD General Manager has the duty to appoint the Chief of Police, subject to prior approval by the KPPCSD Board of Directors; and

WHEREAS, Employee will be a CalPERS retired annuitant under Government Code subdivision 21221(h). Employee is a retired peace officer who most recently worked as the Deputy Police Chief of the [REDACTED]; and

WHEREAS, Employee has extensive experience in police management and the specialized skill set to perform the required duties of Interim Chief of Police, desires to perform the duties of and assume responsibility for the position of Interim Chief of Police, and acknowledges that such employment is at-will and of a limited duration for a finite period of time, as described below; and

WHEREAS, KPPCSD desires to hire Employee as an at-will, limited duration employee for the position of Interim Chief of Police, which is a position that requires specialized skills, for a finite period of time, effective [REDACTED], 2019; and

WHEREAS, the Parties wish to establish the terms and conditions of Employee’s services to KPPCSD, as described in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, KPPCSD and Employee hereby agree as follows:

**AGREEMENT**

**Section 1: TERM**



**Section 4: RESIGNATION/TERMINATION**

A. Employee may resign at any time; provided, however, Employee shall make best efforts to provide the General Manager with at least two (2) weeks advance written notice.

B. Employee is an at-will employee and serves at the will and pleasure of the General Manager, who may terminate Employee at any time, with or without cause, and with or without notice.

C. In accordance with state law and the requirements of the California Public Employees Retirement Law, Employee may not be reappointed to this position following the expiration of this Agreement, nor may this Agreement be modified to extend the term of the Agreement.

D. After notice of resignation or termination, Employee shall cooperate with KPPCSD, as requested by KPPCSD, to effect a transition of Employee’s responsibilities and duties and to ensure that KPPCSD is aware of all matters being handled by Employee.

E. Employee shall not be entitled to severance pay and Employee expressly waives any and all rights with respect to severance pay.

**Section 5. NOTICES**

Notices required to be served pursuant to this Agreement shall be served in person or by first-class U.S. mail addressed as follows:

**KPPCSD**

Tony Constantouros  
General Manager  
217 Arlington Ave  
Kensington, CA 94707

**Employee**

[Redacted]

Address on file with KPPCSD

**Section 6: GENERAL TERMS AND CONDITIONS**

The General Terms and Conditions of this Agreement are described as follows:

A. Indemnification. To the extent mandated by the California Government Code, KPPCSD shall defend, hold harmless, and indemnify Employee against any tort, professional liability, claim or demand, or other legal action arising out of an alleged act or omission occurring in the performance of Employee’s services under this Agreement. This section shall not apply to any intentional tort or crime committed by Employee, to any action outside the

course and scope of Employee's employment, or any other intentional or malicious conduct or gross negligence of Employee.

B. Entire Agreement. The text of this Agreement shall constitute the entire and exclusive agreement between the Parties regarding the subject matter hereof. All prior oral or written communications, understandings, or agreements between the Parties not set forth herein shall be superseded in total by this Agreement. No amendment or modification to this Agreement may be made except by a written agreement signed by the Employee and the General Manager and approved as to form by the KPPCSD General Counsel.

C. Assignment. This Agreement is not assignable by either KPPCSD or Employee.

D. Severability. In the event any provision of this Agreement is finally held or determined to be illegal or void by a court having jurisdiction over the Parties, the remainder of this Agreement shall remain in full force and effect unless the parts found to be illegal or void are wholly inseparable from the remaining portions of this Agreement.

E. Effect of Waiver. The failure of either Party to insist on strict compliance with any of the terms, covenants, or conditions in this Agreement by the other Party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other time or times.

F. Governing Law and Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of California, which are in full force and effect as of the date of execution. Any action to interpret or enforce the terms of this Agreement shall be held exclusively in a state court in Contra Costa County, California. Employee expressly waives any right to remove any such action from Contra Costa County.

G. Effective Date. This Agreement shall not become effective until the later of the following to occur: i) September \_\_, 2019, or ii) the date on which the Agreement has been executed by both Employee and the General Manager.

H. Effect of Agreement on Employee's CalPERS Retirement Benefits. KPPCSD makes no representation on the impact, if any, this Agreement shall or may have upon his CalPERS retirement benefits, status, duties, and/or obligations. Employee acknowledges that in entering into this Agreement, he has not relied upon any such representations (none of which being in existence) in assessing the CalPERS-related impact of his employment. Therefore, Employee releases KPPCSD from any and all CalPERS-related claims or liabilities that may arise in connection with his employment pursuant to this Agreement.

I. No Unemployment Insurance Benefits Received By Employee. Employee expressly certifies and warrants to KPPCSD that he has not received any unemployment insurance payments for retired annuitant work for any public employer within the 12 months prior to his appointment date.

J. Compliance With 960 Hours Per Fiscal Year Limit. Employee further certifies and warrants to KPPCSD his anticipated work schedule will not cause him to exceed the 960

hours per fiscal year limit pursuant to Government Code subdivision 21221(h), including work for any other CalPERS employer during the current fiscal year. Employee acknowledges that it is Employee's responsibility to monitor the number of hours he works as a retired annuitant for KPPCSD and other CalPERS (or reciprocal agency) employers to ensure he does not work more than 960 hours in a fiscal year. Employee is responsible for promptly notifying KPPCSD if he is nearing the 960-hour limit.

K. Conflicts Prohibited. During the term of this Agreement, Employee shall not engage in any business or transaction or maintain a financial interest which conflicts, or reasonably might be expected to conflict, with the proper discharge of Employee's duties under this Agreement. Employee shall comply with all requirements of law, including but not limited to, Sections 1090, 1125, and 87100 *et seq.* of the Government Code, and all other similar statutory and administrative rules.

L. Independent Legal Advice. KPPCSD and Employee represent and warrant to each other that each has received legal advice from independent and separate legal counsel with respect to the legal effect of this Agreement or has had the opportunity to do so, that each has carefully reviewed this entire Agreement, that each and every term thereof is understood, and that the terms of this Agreement are contractual and not a mere recital.

M. Joint Drafting. This Agreement has been reviewed by the Parties and their respective attorneys, and each has had full opportunity to negotiate the contents of this Agreement. The Parties each waive any common law and statutory rule of construction that ambiguity should be construed against the drafter of this Agreement and agree that the language in all parts of this Agreement shall be in all cases be construed as a whole, according to its fair meaning.

N. Government Code §§ 53243 - 53243.4. Government Code §§ 53243 - 53243.4 sought to provide greater transparency in local government and institute certain limitations on compensation paid to local government executives. Those statutes also require contracts between local agencies and its employees include provisions requiring an employee who is convicted of a crime involving an abuse of his office or position to provide reimbursement to the local agency of certain costs. Those statutes are incorporated herein by reference. Accordingly, the Parties agree it is their mutual intent to fully comply with the cited Government Code sections and all other applicable law as it exists as of the date of execution of this Agreement and as such laws may be amended from time to time thereafter. Employee represents Employee has reviewed, is familiar with, and agrees to comply fully with each of these provisions if any of these provisions are applicable to Employee.

KENSINGTON POLICE PROTECTION AND  
COMMUNITY SERVICES DISTRICT

Dated: \_\_\_\_\_

BY: \_\_\_\_\_

Tony Constantouros  
General Manager

Dated: \_\_\_\_\_

BY: \_\_\_\_\_

  
Employee

APPROVED AS TO FORM

Dated: \_\_\_\_\_

\_\_\_\_\_  
Ann Danforth  
General Counsel