

Funding Agreement Between the Kensington Police Protection and Community Services District and the Kensington Improvement Club

THIS AGREEMENT ("Agreement") is made and entered into as of this December __, 2018, by and between the Kensington Police Protection and Community Services District ("District"), a California special district, and the Kensington Improvement Club ("KIC"), an unincorporated association formed to promote and foster the general welfare of the community of Kensington, and to cooperate with county and local authorities to attain needed community improvements.

RECITALS

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

WHEREAS, KIC has offered to donate funding for the Project in the amount of Ten Thousand Dollars (\$10,000.00) (the "KIC Funds"); and

WHEREAS, on November 15, 2018, the District Board of Directors approved a base scope of work for the Project; 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 KIC as follows:

1. **FUNDING**. Within five days of the adoption of this Agreement by the District Board or five days of the District's publishing a Notice to Bidders, whichever is earlier, the KIC will deliver the KIC Funds to the District.
2. **SCOPE OF WORK**. The District intends to award a construction contract ("Final Contract") for the Project based on the construction documents that the Board approved on November 15, 2018. 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.
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. The Parties agree that the KIC Funds are being donated to the District solely for the purpose of the Project, and not for any other use by the District. Accordingly, should the Project (as described, or as may in future be amended) be abandoned, or not completed, the District will restore the KIC Funds to the KIC.
 - e. 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 KIC.

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 KIC 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, contractors, subcontractors 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 KIC and/or its officers, agents and employees.

- b. To the fullest extent permitted by law, KIC 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 KIC's failure to perform its obligations under this Agreement or by the negligent or reckless acts or omissions of KIC and/or its officers, agents and employees. KIC'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

KIC

Linda Lipscomb, President
P. O. Box 8165
Berkeley, CA 94707-0165

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 KIC have executed this Agreement as of the date first above written.

District

KIC

By: _____
Its: **General Manager**

By: _____
Its: _____

APPROVED AS TO FORM:
District

KIC

By: _____
Its: **General Counsel**

By: _____
Attorney for KIC

