



Date: June 8, 2023
To: Board of Directors
From: David Aranda, Interim General Manager
Subject: Amendment No. 1 to Contract between Kensington Police Protection and Community Services District and Fernando Herrera

Recommendation

Approve Amendment No. 1 of the contract between Kensington Police Protection and Community Services District (owner) and Fernando Herrera (contractor) to increase his fees \$500 per month.

Background

The District has had a contract with Fernando for several years now and as noted in the contract, Fernando takes care of Kensington Park and The Nielsen Site. His fee is currently \$2,225 per month for the services noted in Exhibit A. This amendment will increase his monthly fee to \$2,775 per month with no increase in the hourly rate the district pays for “special tasks”.

Fiscal Impact

Exhibit(s)

- Contract Between Kensington Police Protection and Community Services District (owner) and Fernando Herrera (contractor)
- Owner Contractor Agreement, Property Management, 2021

**KENSINGTON POLICE PROTECTION AND
COMMUNITY SERVICES DISTRICT
AMENDMENT NO. 1 TO OWNER-CONTRACTOR AGREEMENT
FOR PROPERTY MANAGEMENT, 2023**

THIS AMENDMENT NO. 1 TO OWNER-CONTRACTOR AGREEMENT ("Amendment") is made and entered into this 9th day of June 2023 by and between the Kensington Police Protection and Community Services District, a California Community Services District ("Owner") and Fernando Herrera, ("Contractor").

WHEREAS, on January 10, 2021, the Owner’s Board of Directors (“Board”) approved a contract with Contractor for maintenance of Owner’s properties, retroactive to December 20, 2020 (“Property Management Agreement”); and

WHEREAS, the parties now wish to amend Exhibit A to the Property Management Agreement to increase Contractor’s compensation for regular, recurring work; and

WHEREAS, on June 8, 2023, the Board reviewed and approved this Amendment, and authorized the General Manager to execute this Amendment on behalf of Owner.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, Contractor and Owner hereby agree as follows:

1. Effective July 1, 2023, Exhibit A to the Property Management Agreement is hereby deleted and replaced by Exhibit A to this Amendment, which is attached hereto and incorporated herein by reference; and
2. Except as expressly amended herein, the Property Management Agreement shall remain in full force and effect.

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

Kensington Police Protection
Community Services District

Fernando Herrera

By: David Aranda
Its: Interim General Manager

Fernando Herrera

APPROVED AS TO FORM:

By _____
Ann R. Danforth
District General Counsel

Exhibit A
THE PROJECT

Site: Kensington Park, Nielsen Park and other property owned by the Kensington Police Protection and Community Services District.

Services and Compensation:

Regular, recurring work: General maintenance, including, without limitation, the following services on a weekly basis:

- Lawn mowing (frequency may be adjusted based on season and weather);
- Regular trash pickup;
- Blowing parking lots and around buildings;
- Trimming hedges and pruning low branches;
- Overseeing irrigation for proper operation;
- Blowing tennis courts;
- Weed abatement on all Park hills and open areas.
- Weed and litter abatement, and general clean-up, at the KPPCSD-owned lot at the intersection of Arlington Avenue and Coventry Road.

Compensation for regular, recurring work: flat rate of \$2,775/month

Special tasks: The General Manager may authorize Contractor to perform special tasks that are not included as regular, recurring work. Extra services that are not in the base contract include:

- Pruning branches over 12' high
- Specialized irrigation repairs;
- Maintenance of the sump pump behind the Community Center; and
- Sign installation.

Compensation for special tasks: Hours spent on special tasks are billed by Mr. Herrera at \$60 per hour, or may require a separate contract with a third party.

**KENSINGTON POLICE PROTECTION AND
COMMUNITY SERVICES DISTRICT**

OWNER-CONTRACTOR AGREEMENT

PROPERTY MANAGEMENT, 2021

THIS OWNER-CONTRACTOR AGREEMENT ("Agreement") is made and entered into this ___ day of January 2021 by and between the Kensington Police Protection and Community Services District, a California Community Services District ("Owner") and Fernando Herrera, ("Contractor").

In consideration of the mutual covenants and agreements set forth herein, Contractor and Owner hereby agree as follows:

**SECTION I
PROJECT**

Owner owns and maintains property that requires regular maintenance. Certain tasks are performed on a routine basis; other tasks are performed as assigned by the Owner's General Manager or his designee (collectively, "Projects"). Unless otherwise agreed by the District and Contractor, the Contractor shall do all work assigned under this Agreement and furnish all the labor, services and materials necessary to complete the Projects, in a good, workmanlike and substantial manner, to the satisfaction of Owner and in accordance with the terms of this Agreement.

**SECTION II
CONTRACT SUM**

Owner shall compensate Contractor as set forth in Exhibit A, which is attached hereto and incorporated herein by reference.

**SECTION III
TIME FOR PERFORMANCE**

The effective date of this contract is as of December 1, 2020 and will remain in effect until terminated by either Owner or Contractor.

**SECTION IV
EXHIBITS**

This Contract includes the following Exhibits, which are attached hereto and incorporated herein by reference:

Exhibit A	The Project
Exhibit B	General Conditions

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

Kensington Police Protection
Community Services District

Fernando Herrera

By: William A. Lindsay
Its: Interim General Manager

Fernando Herrera

APPROVED AS TO FORM:

By Ann R. Danforth
District General Counsel

Exhibit A
THE PROJECT

Site: The Kensington Park and other property owned by the Kensington Police Protection and Community Services District.

Services and Compensation:

Regular, recurring work: General maintenance, including, without limitation, the following services on a weekly basis:

- Lawn mowing (frequency may be adjusted based on season and weather);
- Regular trash pickup;
- Blowing parking lots and around buildings;
- Trimming hedges and pruning low branches;
- Overseeing irrigation for proper operation;
- Blowing tennis courts;
- Weed abatement on all Park hills and open areas.
- Weed and litter abatement, and general clean-up, at the KPPCSD-owned lot at the intersection of Arlington Avenue and Coventry Road.

Compensation for regular, recurring work: flat rate of \$2,225/month

Special tasks: The General Manager may authorize Contractor to perform special tasks that are not included as regular, recurring work. Extra services that are not in the base contract include:

- Pruning branches over 12' high
- Specialized irrigation repairs;
- Maintenance of the sump pump behind the Community Center; and
- Sign installation.

Compensation for special tasks: Hours spent on special tasks are billed by Mr. Herrera at \$60 per hour, or may require a separate contract with a third party.

EXHIBIT B

GENERAL CONDITIONS

ARTICLE 1 IN GENERAL

1.1 INDEMNIFICATION

1.1.1 To the fullest extent permitted by law, the Contractor shall (1) immediately defend and (2) indemnify the District, and its officials, officers, and employees from and against all liabilities regardless of nature, type, or cause, arising out of or resulting from or in connection with the performance of the Contract. Liabilities subject to the duties to defend and indemnify include, without limitation, all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. The Contractor's obligation to indemnify applies regardless of whether a liability is a result of the negligence of any other person, unless it is adjudicated that the liability is caused by the sole active negligence or sole willful misconduct of an indemnified party.

1.1.2 The duty to defend is a separate and distinct obligation from the Contractor's duty to indemnify. The Contractor shall be obligated to defend, with counsel approved by the District, in all legal, equitable, administrative, or special proceedings, the District and its directors, officers, and employees, immediately upon submittal to the Contractor of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. A determination of comparative active negligence or willful misconduct by an indemnified party does not relieve the Contractor from its separate and distinct obligation to defend District. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if Contractor asserts that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of an indemnified party, Contractor may submit a claim to the District for reimbursement of reasonable attorneys' fees and defense costs.

1.1.3 The review, acceptance or approval of the Contractor's work or work product by any indemnified party shall not affect, relieve or reduce the Contractor's indemnification or defense obligations. This Section survives completion of the services or the termination of this contract. The provisions of this Section are not limited by and do not affect the provisions of this contract relating to insurance.

1.1.3 Liabilities subject to this Section include any claim of discrimination or harassment, including but not limited to sexual harassment, arising from the conduct of the Contractor or any of the Contractor's officers, employees, agents, licensees, or subcontractors. In the event of a discrimination or harassment complaint against any employee, agent, licensee or subcontractor of the Contractor or its subcontractors, the Contractor shall take immediate and appropriate action in

response to such complaint, including, but not limited to termination or appropriate discipline of any responsible employee, agent, licensee or subcontractor.

1.2 USE OF SUBCONTRACTS AND OTHER CONTRACTS FOR THE WORK

The parties do not anticipate that Contractor will employ subcontractors for the work.

ARTICLE 2 WORK MANAGEMENT RESPONSIBILITIES

2.1 SAFETY PRECAUTIONS AND PUBLIC CONVENIENCE

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. This duty shall extend, without limitation, to the safety of all employees and other persons who may be affected by the work; all the work and all materials and equipment to be incorporated therein; and other property at the site or adjacent thereto. Without limiting the foregoing, Contractor, not Owner, shall remain fully responsible for the disposition and the exposure to persons of materials, whether or not hazardous. The Contractor shall so conduct his operations as to offer the least possible obstruction and inconvenience to the public. The Contractor shall provide for the convenience of abutting owners along the right-of-way as far as practicable. No material or equipment shall be stored where it will interfere with the free and safe passage of public traffic.

2.2 SITE MANAGEMENT AND CLEAN UP

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and this Contract, and shall not unreasonably encumber the Site with any materials or equipment. The Contractor shall keep the site free from accumulation of waste material or rubbish caused by his operations under the Contract. At completion of the work, the Contractor shall remove from and about the Project such waste and rubbish, and the Contractor's tools, construction machinery, equipment, surplus materials and other property.

ARTICLE 3 INSURANCE

3.1 CONTRACTOR'S LIABILITY INSURANCE

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

3.1.1. Insurance Requirement. Contractor shall procure and maintain during the period of performance of this Master Contract and for 24 months following completion, 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 Contractor's insurance. 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. 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. Contractor's

pollution legal liability and/or asbestos legal liability and/or errors and omission \$1 million per occurrence or claim. If the work involves lead-based paint or asbestos identification/remediation, the pollution liability policy must not contain lead-based paint or asbestos exclusions. If the work involves mold identification, the pollution liability policy must not contain a mold exclusion and a definition of "Pollution" in said policy shall include microbial matter including mold. 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.

3.1.2 Endorsements: The insurance policies shall be endorsed as follows:

For the commercial general liability insurance, the District (including its officers, employees, and agents) shall be named as additional insured, and the policy shall be endorsed with a form equivalent to ISO form CG 20 10 10 93, that contain the provisions required by this contract. Contractor's insurance is primary to any other insurance available to the District with respect to any claim arising out of this Contract. Any insurance maintained by the District shall be excess of the Contractor's insurance and shall not contribute with it. The Contractor's endorsement of insurance shall include a waiver of any rights of subrogation against the District, and its directors, officers, employees and agents. Contractor'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.

3.1.3 Qualifications of Insurer. The insurance shall be provided by an acceptable insurance provider, as determined by the District, which satisfies the following minimum requirements: An insurance carrier admitted to do business in California and maintaining an agent for process within the state. Such insurance carrier shall maintain a current A.M. Best rating classification of "A-" or better and a financial size of "\$10 million to \$24 million (Class V) or better", or A Lloyds of London program provided by syndicates of Lloyds of London and other London insurance carriers, providing all participants are qualified to do business in California and the policy provides for an agent for process in the state. Workers' Compensation and Employer's Liability shall be provided by an A-V rated carrier or by the California State Compensation Fund. If provided by a carrier other than California State Compensation Fund, Contractor shall provide proof of the carrier's A-V rating to District.

3.1.4 Provision of Insurance Prior to Commencement of Services. Before commencing any services, Contractor shall furnish certificates of insurance and endorsements affecting coverage on forms provided by District, or on equivalent ISO forms that contain provisions required by this contract.

3.2 Business Auto Coverage shall be written on ISO Business Auto Coverage from CA 00 01 06 92 including symbol 1 (Any Auto). Limits shall be no less than one million dollars per accident. This policy shall be scheduled as underlying insurance to any umbrella policy required above for a total limit of no less than five million dollars each accident.

3.3 Workers' Compensation/Employer's Liability shall provide workers compensation statutory benefits as required by law. Employer's liability limits shall be no less than one million dollars per accident or disease. Employer's liability coverage shall be scheduled under any umbrella policy

described above. Unless otherwise agreed, this policy shall be endorsed to waive any right of subrogation as respects the Owner.

3.4 Contractor and Owner further agree as follows:

3.4.1 All insurance coverage and limits provided pursuant to this Contract shall apply to the full extent of the policies involved, available or applicable. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. 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.

3.4.2 Contractor 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 Contract. Contractor shall make reasonable efforts to ensure that such coverage is provided as required here.

3.4.3 Contractor shall provide immediate notice to Owner of any claim or loss against Contractor that includes Owner as a defendant. Owner assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve Owner.

3.4.3 In the event of any loss that is not insured due to the failure of Contractor to comply with these requirements, Contractor shall be personally responsible for any and all losses, claims, suits, damages, defense obligations and liability of any kind attributed to Owner as a result of such failure.

3.4.5 Contractor shall not attempt to avoid its defense and indemnity obligations to Owner by using as a defense Contractor's statutory immunity under workers' compensation and similar statutes.

3.4.5 Contractor shall ensure that coverage provided to meet these requirements is applicable separately to each insured and that there will be no cross liability exclusions that preclude coverage for suits between Contractor and Owner or between Owner and any other insured or Named Insured under the policy, or between Owner and any party associated with Owner.

ARTICLE 5

PREVAILING WAGE REQUIREMENTS

5.1 GENERAL REQUIREMENTS

5.1.1 This is a public works contract and is subject to all applicable provisions of State law, including, without limitation, Sections 1770 – 1780, inclusive, of the California Labor Code. These laws require Contractor to pay prevailing wages as set forth in this Article and further regulate matters including, without limitation, hours of work, employment of apprentices, holiday pay, and travel and subsistence payments.

5.1.2 Notwithstanding any other provision of this Contract, the general prevailing rate of wages in this locality for each craft, classification, or type of workman needed to execute this Contract (which rate includes employer payments for items of compensation listed in Section 1773.8 of the Labor Code

and apprenticeship or other training programs authorized by Section 3093 of the Labor Code and similar purposes) applicable to the Work is that ascertained by the Director of the Department of Industrial Relations of the State of California and determined by the Owner. Said rates are incorporated herein by reference as though fully set forth. The holiday wage rate listed shall be applicable to all holidays recognized in the collective bargaining agreement of the particular craft, classification or type of workman employed on the Project.

5.1.3 The Contractor shall forfeit as penalty to the Owner up to \$200.00 for each calendar day or portion thereof, for each workman paid less than the stipulated prevailing rates for such work or craft in which such workman is employed for any work done under the Contract by him or by any subcontractor under him, in violation of the provisions of the California Labor Code. The actual amount shall be determined in accordance with Section 1775 of the California Labor Code or its successor statute. The general rate of prevailing wages is on file in the Owner's offices.

5.1.4 The Contractor and each subcontractor shall keep an accurate payroll record showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by the Contractor or subcontractor in connection with the Work. The payroll records shall be kept in accordance with the provisions of Section 1776 of the California Labor Code and Contractor and each subcontractor shall otherwise comply with all requirements of such Section 1776.

5.2 HOURS OF LABOR

The Contractor shall forfeit to the Owner, as a penalty, the sum of Twenty-five Dollars (\$25.00) for each workman employed in the execution of the Contract for each calendar day during which such laborer, workman or mechanic is required or permitted to labor more than eight (8) hours in violation of the provisions of Sections 1810 to 1816, inclusive, of the Labor Code of the State of California.

ARTICLE 6 DISPUTE RESOLUTION - MEDIATION

Any claim arising out of or related to the Contract shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either party. Unless the parties mutually agree otherwise, mediation shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. The parties shall share the mediator's fee and other mediation costs equally. The mediation shall be held in the place where the Project is located, unless the parties mutually agree to another location. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

ARTICLE 7 MISCELLANEOUS PROVISIONS

7.1 GOVERNING LAW

The laws of the State of California shall govern this Contract. In the event that a dispute arises from this contract, the venue for resolving said dispute shall be the County of Contra Costa Superior Court. The Contractor shall conform to and abide by all local, state and federal building, sanitary, health and safety laws, rules, and regulations, including all Owner ordinances and regulations. All Contractors and

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Item 04.1 Herrera Contract_Park Maintenance January 2021

subcontractors employed upon the Work shall and will be required to conform to the provisions of the Labor Code of the State of California, and shall also comply with all rules, regulations and Labor Laws of the federal government and the various acts amendatory and supplementary thereto, and all other laws, ordinances and legal requirements.

7.2 SUCCESSORS AND ASSIGNS

The Owner and the Contractor, respectively, bind themselves, their partners, successors and assigns to this Contract. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other.

7.3 RIGHTS AND REMEDIES

The duties and obligations imposed by this Contract and the rights and remedies available thereunder shall be in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Owner shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

7.4 PENALTY FOR COLLUSION

If, at any time, it is determined by the Owner that the person, firm or corporation to whom the Contract has been awarded has, in presenting any bid or bids, colluded with any other party or parties, then the Contract shall be null and void, and the Contractor and his sureties shall be liable for loss or damage which the Owner may suffer thereby, and the Owner may advertise for new bids for said work.

7.5 EQUAL OPPORTUNITY

Contractor shall comply with the provisions of Section 1735 of the Labor Code of the State of California, which provides as follows:

"No discrimination shall be made in the employment of persons upon public works because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons except as provided in Section 12940 of the Government Code, and every contractor for public works violating this section is subject to all the penalties imposed for a violation of this chapter."

END OF GENERAL CONDITIONS