

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

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

Recitals

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

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

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

1. KCC Use of District Facilities for Recreational Programs

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

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

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

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

2. Compensation

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

3. Financial and Programming Oversight

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

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

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

4. Operations

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

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

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

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

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

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

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

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

- 4.8.** KCC shall not allow the use of or access to the District Facilities to any third party without District's prior written approval.
- 4.9.** KCC shall maintain a website accessible to individuals with disabilities as required by state and federal law. The website 's website shall contain the following information:
 - 4.9.1. The names of all KCC Board members with contact information for each. If KCC appoints a board, committee or other group to oversee the KASEP, the website will contain the names and contact information of the members of this committee.
 - 4.9.2. Any benefits received by Board members or other volunteers, including, without limitation, early enrollment or a reduction in fees.
 - 4.9.3. KCC's Articles of Incorporation and bylaws.
 - 4.9.4. The Recreation Program Administrator's name, office hours and contact information.
 - 4.9.5. 5 years of the most recent Form 990 and a yearly detailed financial report.
- 4.10.** The KCC Board shall set fees for camps and recreation programs before each session. KCC may charge higher fees for non-residents of Kensington, however the rate differential shall not exceed 10%.
- 4.11.** At least two days before the beginning of enrollment for each session, KCC will post its program guide for recreation activities on its website and make paper copies of the guide available at Kensington Hilltop School and the Kensington Library.
- 4.12.** KCC will offer electronic enrollment through its website.
- 4.13.** If KCC cancels multiple classes, programs or camps due to natural disaster, teacher illness or other unforeseen event, KCC staff will notify the Parks Administrator as soon as practicable.
- 4.14.** If classes are cancelled due to natural disaster or unforeseen event, KCC will pay its teachers and staff the same amount as if the classes had not been canceled.
- 4.15.** If programs or sessions are cancelled due to state, county, or school health orders or mandate, enrollees are entitled to a refund of no less than 95% of fees.

Teachers shall be given full pay for the current or upcoming session unless it is cancelled outright with a 21-day notice.

5. General Provisions

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

in proportion to the established comparative liability of the indemnified party.

5.4.2. KCC shall, with counsel approved by the District, defend District its directors, officers, and employees, against in all legal, equitable, administrative, or special proceedings immediately upon tender to KCC. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of an indemnified party, KCC may submit a claim to the District for reimbursement of reasonable attorneys' fees and defense costs.

5.5. KCC shall maintain insurance covering its activities in and on District Facilities, as required by Exhibit C.

5.6. Definitions: For purposes of this Agreement, the following definitions apply

5.6.1. "Enrollee" shall mean a child or adult participating in a KCC activity located in a District Facility.

5.6.2. "Parks Administrator" shall mean the District General Manager or that person's designee.

5.6.3. "Program" shall mean a series of classes or other activities, taking place on multiple days.

5.6.4. "Session" shall a period of at least eight weeks, during which KCC offers a program or programs.

5.7. The laws of the State of California shall govern the interpretation and application of this Agreement. In the event of a dispute, the County of Contra Costa shall be the venue for dispute resolution.

5.8. This Agreement represents the entire understanding of District and KCC as to those matters contained herein. This contract may not be modified, amended, or altered except in writing signed by District and KCC.

5.9. This Agreement includes the following Exhibits, which are attached hereto and incorporated herein by this reference:

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

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

Approved by District Board of Directors: _____, 2022

Kensington Police Protection
Community Services District

By: Sylvia Hacaj

President, Board of Directors
Kensington Community Council

By: _____
Its: _____

APPROVED AS TO FORM:

By _____
Ann R. Danforth
District General Counsel

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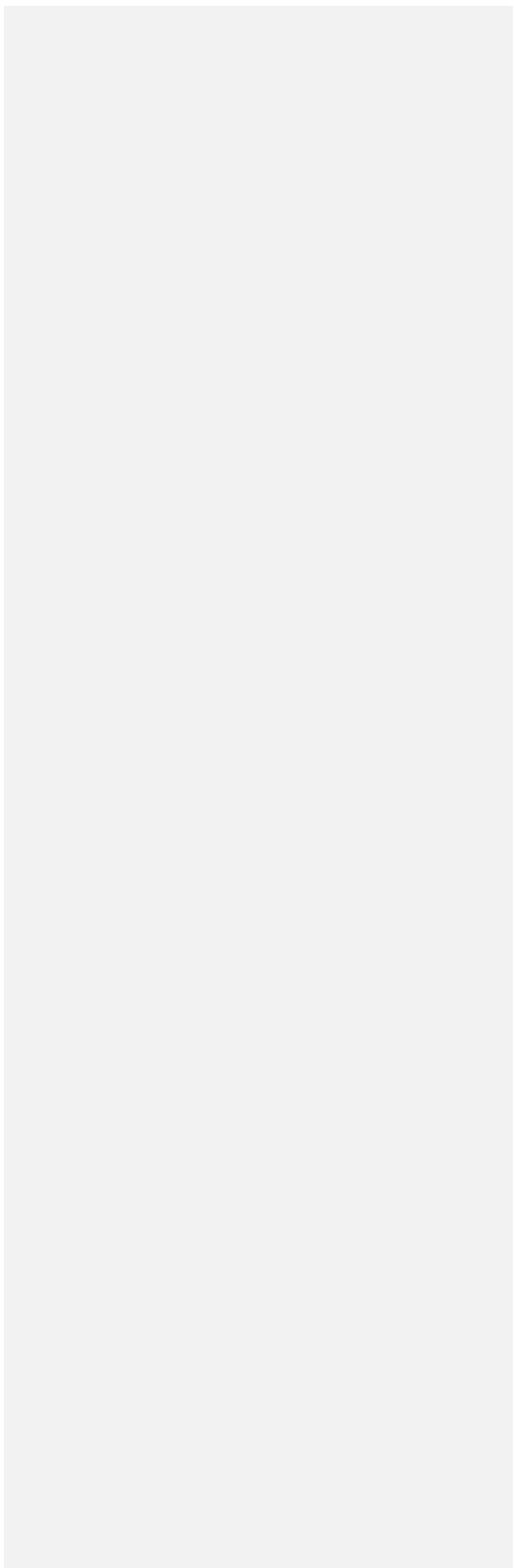


EXHIBIT A
DISTRICT FACILITIES

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EXHIBIT B
RECREATIONAL SERVICES

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

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EXHIBIT C
INSURANCE REQUIREMENTS

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

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

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