

FIRST AMENDMENT TO LICENSE AGREEMENT BETWEEN THE KENSINGTON POLICE PROTECTION AND COMMUNITY SERVICES DISTRICT AND THE CITY OF EL CERRITO CONCERNING 10940 SAN PABLO AVENUE, EL CERRITO, CALIFORNIA

THIS FIRST AMENDMENT TO LICENSE AGREEMENT BETWEEN THE KENSINGTON POLICE PROTECTION AND COMMUNITY SERVICES DISTRICT AND THE CITY OF EL CERRITO ("First Amendment") is hereby entered into this **1st day of September 2024** by and between the City of El Cerrito, a charter city ("CITY"), and the Kensington Police Protection and Community Services District, a public agency ("DISTRICT"). City and District are collectively referred to as "Parties".

RECITALS

CITY and DISTRICT are parties to a License Agreement concerning 10940 San Pablo Avenue, El Cerrito, California, dated July 26, 2022 ("the Agreement"). Since execution of the Agreement, DISTRICT has assumed certain leases for structures located on the CITY property subject to the Agreement.

The Parties desire to amend the Agreement to incorporate the terms and conditions set forth below.

NOW, THEREFORE, CITY and DISTRICT hereby agree as follows:

I. Amendments to Agreement. Various sections of the Agreement identified below shall be amended as follows:

Section 2. *Amendment to Initial Term and Renewal Term.*

Section 2 of the Agreement is amended to read as follows (with text in ~~strikethrough~~ indicating deletion and text in double underline indicating addition):

"2. Initial Term. The initial license term of this Agreement shall commence on ~~August~~ September 1, 2024 and shall extend through August 31, 2037 ("Initial Term")."

Section 3. *Amendment to Renewal Term.*

Section 3 of the Agreement is amended to read as follows (with text in ~~strikethrough~~ indicating deletion and text in double underline indicating addition):

"3. Option to Extend. The District shall have the right to extend ~~this the terms of the Agreement every two years after the expiration of the Initial Term~~ through August 31, 2024 with

the consent of City, which shall not be unreasonably withheld or delayed. ~~The Each~~ extension term is referred to as a “Renewal Term” on the terms and conditions set forth herein, provided the District is not in default of ~~this the~~ Agreement upon commencement of the succeeding Renewal Term. The Initial Term and the Renewal Term(s) are herein collectively referred to as the (“Term”).”

Section 4. *Amendment to District’s Covenant to Pay.*

Section 4 of the Agreement is amended to read as follows (with text in ~~strikethrough~~ indicating deletion and text in double underline indicating addition):

“4. District’s Covenant to Pay. As consideration for the license to use the Premises, the District shall pay a license fee to the City in the amount of ~~Three-Hundred and Fifty-Seven dollars (\$357)~~ One-Thousand dollar (\$1,000) per month, ~~or One-Thousand and Seventy-One dollars (\$1,071) per quarter during the Initial Term in Fiscal Year 2024-2025 (July 1, 2024 through June 30, 2025).~~ The license fee shall increase by Five Percent (5%) at the beginning of each subsequent fiscal year for the duration of the Agreement. ~~If the District is granted a Renewal Term, the District shall pay One-Thousand, Eight-Hundred and Fifty-Seven dollars (\$1,857) per month to the City during the Renewal Term.~~

City shall invoice District on a quarterly basis during the ~~Initial Term and monthly basis during the Renewal Term~~ of the Agreement. In any month where the Agreement has not been in effect for the entire month, then City shall invoice District on a pro rata basis for that month. All amounts due under this Agreement are due and payable net 30 days following the date of an invoice. Any portion of the invoice amount not paid within such 30-day period shall accrue interest at the annual rate of 2.5% above the prime rate (but not to exceed the maximum rate permitted by Law). All payments shall be made in U.S. dollars.”

Section 6. *Deletion of City Reservation of Use of Building A.*

Section 6 of the Agreement is deleted in its entirety.

~~“6. City Reservation of Use of Building A. The City retains all rights to use Building A for any purpose. If Building A is used by the City, District shall provide access to the restrooms in Building B to the City, its officers, officials, employees, tenants, agents, volunteers, and members of the public using Building A.”~~

Section 13. *Amendment to Removal or Relocation of Buildings*

Section 13 subsection (a) is deleted in its entirety.

~~“(a) If City determines it will remove Building A prior to the end of its lease term on May 31, 2023, then it shall provide ninety (90) days’ prior written notice to the District unless the Parties’ signatories hereto or his/her designee(s) mutually agree in writing to a shorter notice period and such agreement shall not require an amendment to the Agreement. If District is using Building B at the time it receives such notice, it shall take all steps necessary to prevent unreasonable disruption of or interference with and minimize any impact upon the City’s removal of Building A from the Premises.”~~

Section 13 subsection (b) of the Agreement is deleted in its entirety.

~~If District intends to vacate Building B and the Premises and terminate this Agreement prior to the Lease Assumption termination or May 31, 2023, it shall provide ninety (90) days’ prior written notice to the City. In such event, City shall be responsible for any and all removal costs associated with removing Building B from the Premises pursuant to the Lease Assumption.~~

Section 13 subsection (c) of the Agreement is amended to read as follows (with text in ~~strikethrough~~ indicating deletion and text in double underline indicating addition):

If District intends to vacate Building B and the Premises, or extend its lease of Building B ~~beyond May 31, 2023~~ pursuant to its lease of Building B, then it shall provide ninety (90) days’ prior written notice to the City along with the proposed lease termination or lease extension unless the Parties’ signatories hereto or his/her designee(s) mutually agree in writing to a shorter notice period and such agreement shall not require an amendment to the Agreement. For a proposed lease extension and ~~Upon~~ City’s written approval of such lease extension, District may extend the lease of Building B (“Lease Extension”). District shall be solely responsible for any costs associated with relocation or vacating the lease and any increased removal fees or costs imposed by Mobile Modular as a result of the Lease Extension.

Section 17. Amendment to Termination

(a) Either Party may terminate this Agreement upon ~~90~~ 180 days’ ~~prior~~ written notice prior to the Initial Term or any Renewal Term to the other Party, except that the Parties may agree to terminate this Agreement by mutual agreement notwithstanding the required notice period herein.

(b) If District removes or relocates Building B in accordance with Section 13 and vacates the Premises, then this Agreement shall terminate upon such removal/relocation and vacation.

(c) If the Parties do not agree to extend the Agreement for ~~the~~ a Renewal Term pursuant to Section 3 prior to the end of the Initial Term or the then-in-effect Renewal, then this

Agreement shall terminate upon the expiration of the Initial Term or the then-in-effect Renewal Term.

(d) If the Parties extend the Agreement for ~~the~~ a Renewal Term pursuant to Section 3, then it shall terminate upon the expiration of the Renewal Term unless otherwise extended pursuant to Section 3.

(e) Upon termination of this Agreement, except for the Buildings, all improvements constructed on the Premises by the District shall be the exclusive property of City, and City shall be solely responsible for the ongoing maintenance and security of such improvements.

(f) Upon termination of this Agreement, the District shall be responsible, at its sole cost and expense, for restoring the Premises to its original condition including removing property, equipment, and structures placed on the Premises by the District excluding the Buildings. The District shall also be responsible for any and all costs and fees required by or associated with the lease of Building B, except that the City shall be responsible for removal fees in the amount of \$17,099.56 pursuant to the original El Cerrito Mobile Modular Lease for Building B between the City and Mobile Modular. The City shall have no other obligations with respect to the lease.

Section 32. Amendment to Notices

Section 32 of the Agreement is amended to read as follows (with text in ~~strikethrough~~ indicating deletion and text in double underline indicating addition):

...

The District: Kensington Police Protection and Community Services District
10940 San Pablo Avenue
El Cerrito, CA 94530
Attn: General Manager
Email: teconstantouros@kppcsd.org ~~daranda@kppcsd.org~~

II. Other Provisions.

All other terms, conditions, provisions and texts of the Agreement not modified by this First Amendment are not shown above and shall remain in effect. In the case of a conflict between the Agreement and this First Amendment, the terms of the Agreement shall govern unless specifically modified by this First Amendment.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date and year first above written.

LICENSEE:

KENSINGTON POLICE PROTECTION
AND COMMUNITY SERVICES DISTRICT

Signed by:
David Aranda
By: _____
421D2B6E4BCC4FD...
David Aranda
Interim General Manager

LICENSOR:

CITY OF EL CERRITO

DocuSigned by:
Karen Pinkos
By: _____
201F0EAAF6634BB...
Karen Pinkos
City Manager

ATTEST:

Signed by:
Lynelle Lewis
By: _____
8483B79934AA4FC...
Lynelle Lewis, District Clerk of the Board

DocuSigned by:
HCharlety
By: _____
E741004CB417415...
Holly Chartéy, City Clerk

APPROVED AS TO FORM:

Signed by:
Ann M. Spirelle
By: _____
0B509E1D055848E...
Ann M. Spirelle, District General Counsel

Signed by:
Schuyler Schwartz
By: _____
59F26B5A4E7F4C4...
Sky Woodruff, City Attorney