



KENSINGTON FIRE PROTECTION DISTRICT

DATE: September 14, 2022

TO: Board of Directors
Kensington Fire Protection District

RE: **Agenda Item 5f**
Sublet of KPPCSD Modular Located at 10940 San Pablo Ave,
El Cerrito CA 94530 for Administration Storage

SUBMITTED BY: Bill Hansell, General Manager

Recommended Action

Approve the lease as proposed.

Background

During the renovation of the Kensington Public Safety Building, the district is in need of secure and accessible storage space for its IT equipment, accounting records, and historical files. On July 26, 2022, the KPPCSD completed an agreement with the City of El Cerrito for a site-lease occupied by a modular building at 10940 San Pablo Avenue. The lease is available on the KPPCSD website at:

<https://www.kppcsd.org/files/521ed9e02/El+Cerrito+license+Ag+fully+exed.pdf>

On August 9, 2022, the KPPCSD assumed the lease of the modular building from Mobile Modular at a cost of \$5,488.80 per month. The KFPD and KPPCSD General Managers previously reported that they had negotiated a proposal for the KPPCSD to sublet some of its space to the KFPD during the PSB construction project. The attached sublease will cover the district's admin storage and allow access to staff as noted above. Based on monthly payments of \$2,438.55 by the KFPD, the modular rent for the KPPCSD will be \$3,050.25/month, equivalent to the current PSB rent paid by the Kensington Police Department.

The construction contract for the PSB renovation restricts the completion time to 18 months. Given the start date in October, it is anticipated that the sublease will be needed until March 2024.

Fiscal Impact

The lease fee for the sublet is \$2,438.55 per month. Over the eighteen-month construction period, the total cost will be \$43,893.90.

STORAGE AGREEMENT

THIS STORAGE AGREEMENT (“Agreement”) is made by and between the Kensington Police Protection & Community Services District (“KPPCSD”) and the Kensington Fire Protection District (“KFPD”), both California special services districts.

WHEREAS, KPPCSD has leased temporary office space located in the City of El Cerrito, which contain more space than required by KPPCSD; and

WHEREAS, KFPD wishes to store property owned or controlled by it at the KPPCSD temporary offices specified in this Agreement.

NOW, THEREFORE, the parties agree:

1. Definitions. As used in this Agreement, the following terms shall have the following meanings:
 - (a) “Property” means the items stored by KFPD on the Premises.
 - (b) “Premises” means the building that KPPCSD has leased for its temporary offices are located, at 10940 San Pablo, El Cerrito, California 94530.
 - (c) “Lease” means the lease between KPPCSD and the Landlord governing KPPCSD’s rights to the Temporary offices.
 - (d) “Landlord” means the owner or other person who has the right to lease the temporary offices to KPPCSD.
 - (e) “Storage Fees” means the fees set for in Section 4 of this Agreement
 - (f) “Storage Space” means the portion of the Premises that KPPCSD has designated for storing the Property.
2. Terms of Storage.
 - (a) KFPD’s Property shall be stored in the Storage Space specified. Additional space within the temporary offices may be contiguous or noncontiguous. Items stored will include a computer that operates as the KFPD’s server which will be plugged in and operational on a 24-hour basis.
 - (b) The Storage Fees specified in Section 3 below shall be due on the first day of each month, regardless of the amount the extent to which KFPD is actually using the Storage Space. whether or not all or only a portion of the Storage Space is used to store KFPD’s Property.

- (c) This Agreement may be amended at any time by written agreement of the parties. Unless the parties specify otherwise, any change in size or location of the Storage Space shall be effective on the first day of the month following the month in which the written consent is made.

3. Storage Fees.

KFPD shall pay to KPPCSD the monthly amount of \$2,438.55 (“Storage Fees”), and at the time set forth in Section 8. Any utility use, such as power for the district’s server, is included in the monthly amount.

4. Delivery and Removal of Property.

KFPD may deliver and remove its Property, or any portion thereof, at any time and from time to time during the term of this Agreement.

5. Inspection Rights.

KFPD, its employees, and its authorized representatives may enter the temporary offices at any time during normal business hours to inspect the Property.

6. Representations by KFPD.

KFPD represents and warrants that:

- (a) It is the owner of the Property, or otherwise has the right of control over the Property, including the right to store and use the Property as contemplated by this Agreement.
- (b) No Property or any part of any Property consists of, contains, or incorporates toxic, ignitable, reactive, or corrosive substances, or would otherwise cause harm to KPPCSD’s employees or damage to other property stored on the Premises. Notwithstanding any provision in this Agreement, KFPD shall indemnify, defend and hold KPPCSD its officers, directors, shareholders, agents, parents and subsidiaries harmless from any claims, damages or other costs or liabilities arising from storing any dangerous Property on the Premises. This indemnity includes attorneys’ fees and all other costs of defense arising from such claims, damages or other costs or liabilities

7. Insurance.

At all times during the term of this Agreement, KPPCSD shall maintain comprehensive general liability insurance in an amount no less than one million dollars (\$1,000,000) per occurrence.

8. Term and Termination.

This Agreement shall remain in effect until March 2024, unless the parties agree in writing to extend or shorten the term.

9. Removal of Property Following Termination.

KFPD shall remove all Property from the temporary offices upon termination. In the event that the Property remains on the Premises after the termination date, KPPCSD shall give the KFPD written notice to remove said property within a specified period (“Removal Notice”), which shall be a minimum of ten days. After the end of the specified period, the KPPCSD may dispose of it in any manner determined by KPPCSD General Manager in that person’s sole discretion. KFPD shall be liable for all Labor Fees and Transportation Fees connected with such disposition, as well as any out-of-pocket costs incurred by KPPCSD with respect to such disposition. The Removal Notice shall describe KPPCSD’s intended disposition.

10. Limitation on Liability.

KPPCSD’s liability to KFPD shall be limited to the following:

- (a) KPPCSD shall be liable for any damage to KFPD’s Property caused by KPPCSD or its employees. KPPCSD’s liability shall be limited to the lesser of (i) the reasonable replacement cost of the damaged Property, or (ii) the reasonable cost of repair; provided, however, that KPPCSD shall first have the right, as specified below, to repair the damaged Property at its expense.
- (b) Notwithstanding the foregoing, KPPCSD shall have no liability for any damage, nor any obligation to repair any such damage, unless KFPD gives written notice to KPPCSD within fifteen (15) days after discovery of the damage, and in no event later than thirty (30) days after the Removal Date. Such notice shall identify the Property that was damaged and shall describe the nature of the damage.
- (c) Upon receipt of such notice KPPCSD shall have the right to inspect the damaged Property. Within five (5) business days following such inspection, KPPCSD shall inform KFPD in writing of its election (i) to repair the damage or (ii) to pay KFPD the lesser of the amount specified in subsection (a) above. If KPPCSD fails to give any notice within such time, KPPCSD shall be deemed to have elected not to repair the damaged Property, and KFPD may proceed to either replace or repair the damaged Property.
- (d) KPPCSD shall not be liable for any damage to the Property caused by the acts of others, including actions by the Landlord under any Lease.

11. Indemnification.

Each party shall indemnify and hold the other party and its officers, directors, shareholders, agents, parents and subsidiaries (“Indemnified Parties”) harmless from and against any and all liabilities, claims, damages, or costs of any kind arising out of or caused by the actions or inactions of the Indemnifying Party. Such indemnification shall include reasonably attorneys’ fees incurred by the Indemnified Party in any action or proceeding in which such liability, claim, damage, or cost is asserted, provided the Indemnified Party timely tenders the defense of such action or proceeding to the Indemnifying Party, and the Indemnifying Party fails to timely provide such a defense.

12. Entire Agreement.

This Agreement represents the entire agreement of the parties with respect to the subject matter hereof. and supersedes any prior or contemporaneous written or oral agreement with respect to the same.

13. Attorneys’ Fees.

In the event of any action by either party to enforce arbitration, or to obtain injunctive relief, the prevailing party in such action shall be entitled to its reasonable attorneys’ fees and costs.

14. Notice.

Any notice required hereunder shall be deemed satisfactory if hand-delivered or sent by first class mail to the parties at the respective addresses set forth below.

15. No Waiver.

No waiver by either party of any breach by the other shall be deemed a waiver of any subsequent breach.

16. Interpretation and Venue.

The laws of the State of California shall govern this Agreement. The Superior Court of the County of Contra Costa shall be the venue for resolving any dispute between the parties hereof.

AGREED:

KPPCSD:

KFPD:

By:

By:

Print & Title: Anthony Constantouros /
Interim General Manager

Print & Title:

Date: _____

Date: _____

APPROVED AS TO FORM

Counsel for KPPCSD

Counsel for KFPD