



KENSINGTON FIRE PROTECTION DISTRICT

CONSULTANT AGREEMENT

DATE: 15 October 2021

PARTIES: KFPD: **Kensington Fire Protection District**
217 Arlington Avenue
Kensington CA 94707

CONSULTANT: **NHA Advisors, LLC**
4040 Civic Center Dr, Suite 200
San Rafael CA 94903

The Parties agree as follows:

1. Priority of Documents:

Each of the items listed below is hereby incorporated into this Agreement by this reference. In the event of an inconsistency in this Agreement, the inconsistency shall be resolved by giving precedence in the following order:

a . Applicable Federal and State of California statutes and regulations, this Agreement and its exhibits.

2. Scope of Professional Services:

CONSULTANT agrees to provide Municipal Advisor services, per attached Exhibit A: Scope of Services ("Work").

3. Term of Agreement:

This Agreement shall commence on the date of execution by the KFPD General Manager and continue until June 30, 2022, unless this Agreement is terminated earlier as provided herein.

4. Compensation:

Compensation shall be invoiced monthly on a Time and Materials basis, but in no case shall exceed Thirty Thousand Dollars and No Cents (\$30,000) for services performed pursuant to this Agreement, unless modified in writing by both parties as a change order, based upon the hourly rates listed in Exhibit B: Compensation Schedule, attached. Payments shall be made within Thirty (30) days of receipt of invoices from CONSULTANT.

KENSINGTON FIRE PROTECTION DISTRICT

5. Expense Reimbursement:

KFPD shall reimbursement CONSULTANT for actual expenses incurred in the course of the Work, such as advertising, reasonable and necessary travel, sourcing, support services, background checks, and other related items, as well as costs specifically incurred for the performance of services, such as telecommunications, cellular phone, insurance, postage, and photocopying.

6. Standard of Performance:

CONSULTANT shall perform all Work in a first-class manner in conformance with the standards of quality normally observed by a person practicing in CONSULTANT's profession.

7. Inspection:

All Work performed and materials (if any) provided by CONSULTANT shall be subject to inspection and approval by KFPD.

8. Invoicing:

CONSULTANT shall submit one copy by email to ap@kensingtonfire.org and one copy by USPS mail of each invoice to: Kensington Fire Protection District, 217 Arlington Ave., Kensington, CA 94707. All invoices must reference this contract by the name of the parties and date executed, service performed.

9. Consultant's Status:

In the performance of work, duties and obligations imposed by this Agreement, the CONSULTANT is at all times acting as an Independent Contractor practicing his or her profession and not as an employee of the KFPD. CONSULTANT shall perform the CONSULTANT's work in accordance with currently approved methods and standards of practice in the CONSULTANT's professional specialty. A copy of CONSULTANT's current business license shall be provided to KFPD. The CONSULTANT shall not have any claim under this Agreement or otherwise against KFPD for vacation, sick leave, retirement benefits, social security or worker' s compensation benefits. The CONSULTANT shall be responsible for federal and state payroll taxes such as social security and unemployment. KFPD will issue a form 1099 at year-end for fees earned.

10. Assignments:

Inasmuch as this Agreement is intended to secure the specialized services of the CONSULTANT, CONSULTANT may not assign, transfer, delegate or subcontract their obligation herein without the prior written consent of KFPD. Any such assignment,

KENSINGTON FIRE PROTECTION DISTRICT

transfer, delegation or subcontract without the prior written consent shall be considered null and void.

11. Non-Exclusive Rights:

This Agreement does not grant to CONSULTANT any exclusive privileges or rights to provide services to KFPD. CONSULTANT may contract with other agencies, private companies or individuals for similar services.

12. Compliance:

CONSULTANT shall comply with all Federal, State and local laws, regulations and requirements necessary for the provision of contracted services. Furthermore, CONSULTANT shall comply with all laws applicable to wages and hours of employment, occupational safety, and to fire safety, health and sanitation. CONSULTANT represents and warrants that CONSULTANT possesses all licenses, permits, and qualifications legally required for the performance of the Work. CONSULTANT shall, at CONSULTANT's sole cost and expense, maintain all such licenses, permits and qualifications in full force and effect throughout the term of this Agreement.

13. Indemnification, Hold Harmless and Defense:

CONSULTANT shall indemnify, defend with counsel acceptable to KFPD, and hold harmless KFPD and its officers, elected officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with CONSULTANT's performance of the services called for or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the sole negligence or willful misconduct of KFPD. Notwithstanding the forgoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code Section 2782, as may be amended from time to time, such duties of CONSULTANT to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782. CONSULTANT's obligation to defend and indemnify shall not be excused because of CONSULTANT's inability to evaluate Liability or because CONSULTANT evaluates Liability and determines that CONSULTANT is not liable to the claimant. CONSULTANT must respond within 30 days to the tender of any claim for defense and indemnity by the KFPD. If CONSULTANT fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due to CONSULTANT under and by virtue of this Agreement as shall reasonably be considered necessary by KFPD, may be retained by KFPD until disposition has been made of the claim or suit for damages, or until CONSULTANT accepts or rejects the tender of defense, whichever occurs first.

KENSINGTON FIRE PROTECTION DISTRICT

14. Discrimination:

CONSULTANT shall not discriminate in the provision of service or in the employment of persons engaged in the performance of this Agreement on account of race, color, national origin, ancestry, religion, gender, marital status, sexual orientation, age, physical or mental disability in violation of any applicable local, state or federal laws or regulations.

15. Notices:

Any notice required to be given pursuant to the terms and provisions hereof shall be in writing and shall be effected by personal delivery or by first class mail, registered or certified, postage prepaid, return receipt requested. Unless otherwise designated by either party in writing, such notices shall be mailed as shown on the first page of this Agreement.

16. Termination:

KFPD may cancel this Agreement at any time and without cause upon written notification to CONSULTANT. In the event of termination, CONSULTANT shall be entitled to compensation for undisputed services performed to the effective date of termination.

17. Conflict of Interest Statement:

CONSULTANT covenants that CONSULTANT, its officers or employees or their immediate family, presently has no interest, including, but not limited to, other projects or independent contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONSULTANT further covenants that in the performance of this Agreement no person having any such interest shall be employed or retained by CONSULTANT under this Agreement. CONSULTANT shall not hire KFPD's employees to perform any portion of the work or services provided for herein including secretarial, clerical and similar incidental services except upon the written approval of KFPD. Performance of services under this Agreement by associates or employees of CONSULTANT shall not relieve CONSULTANT from any responsibility under this Agreement.

18. Drug Free Workplace:

CONSULTANT shall comply with the provisions of Government Code Section 8350 et seq., otherwise known as the Drug-Free Workplace Act.

19. Force Majeure

It is agreed that neither party shall be responsible for delays in delivery or acceptance of delivery or failure to perform when such delay or failure is attributable to Acts of God, war, strikes, riots, lockouts, accidents, rules or regulations of any governmental agencies or other matters or conditions beyond the control of either the seller/contractor or the

KENSINGTON FIRE PROTECTION DISTRICT

purchaser.

20. Form Law:

The Laws of the State of California shall govern this Agreement. Venue is Contra Costa County. The provision of this paragraph shall survive expiration or other termination of this Agreement regardless of the cause of such termination.

21. Documents:

All drawings, specifications, documents and other memoranda or writings relating to the work and services hereunder, shall remain or become the property of the KFPD whether executed by or for the CONSULTANT for KFPD, or otherwise by or for the CONSULTANT, or by or for a subcontractor operating under the CONSULTANT'S supervision, or direction, and all such documents and copies thereof shall be returned or transmitted to KFPD forthwith upon termination or completion of the work under this Agreement.

22. Attorneys' Fees:

If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees **in** addition to any other relief to which such party may be entitled.

23. Waiver:

No waiver of any breach of any covenant or provision of this Agreement shall be deemed a waiver of any other covenant or provision hereof, and no waiver shall be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act, and no extension shall be valid unless in writing and executed by the waiving party.

24. No Third-Party Beneficiaries:

Nothing contained in this Agreement is intended to or shall be deemed to confer upon any person, other than the parties, any rights or remedies hereunder.

25. Headings:

The headings of the sections and exhibits of this Agreement are inserted for convenience only. They do not constitute part of this Agreement and are not to be used in its construction.

26. Non-Liability of Officials, Employees and Agents:

No officer, official, employee or agent of KFPD shall be personally liable to

KENSINGTON FIRE PROTECTION DISTRICT

CONSULTANT in the event of any default or breach by KFPD or for any amount which may become due to CONSULTANT pursuant to this Agreement.


27. Entire Agreement and Modification:

This Agreement supersedes all previous Agreements either oral or in writing and constitutes the entire understanding of the parties hereto. No changes, amendments or alterations shall be effective unless **in** writing and signed by both parties.

IN WITNESS WHEREOF, KFPD and CONSULTANT have executed this Agreement on the day and year written below.

NHA Advisors, LLC

Consultant Name


By:  _____
8BF28CE50A114FE...

Craig Hill

Managing Principal

Kensington Fire Protection District,

A Political subdivision of the State of
California

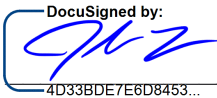
By:  _____
A57D4829EFB54E3...

Bill Hansell

General Manager, KFPD

Date: _____

Approved as to Form:

By:  _____
4D33BDE7E6D8453...

District Counsel



KENSINGTON FIRE PROTECTION DISTRICT

EXHIBIT A SCOPE OF SERVICES

The scope of work will generally include, but may not be limited to, the following services:

◆ **Due Diligence**

- Work with the KFPD General Manager to gather Project information, cash flow and total capital and maintenance needs.
- Identify existing funds or other resources available for the Project(s)

◆ **Educational Information**

- Draft presentation identifying financing options and process for executing different financing plans.
- Assist in the education of KFPD Management, Board of Directors, and community groups, as required, on process and financing options for project(s) including (1 presentation for Staff and 1 presentation for Board.)
- Develop financing methodology to fund project(s) for the KFPD.
- Review and provide comments and/or recommendations on reports or studies of other KFPD consultants.
- Other requests as deemed necessary by KFPD Management and Board of Directors.

◆ **Quantitative Analysis**

- Review and analyze data for the KFPD.
- Define financing options/alternatives for capital projects.
- Develop model to calculate tax impact on properties based on assessed value and parcel tax options.
- Generate reports on bonding capacity of the KFPD and tax burden.
- Develop initial financing model and debt service requirements based on Project cost and other base assumptions.



KENSINGTON FIRE PROTECTION DISTRICT

EXHIBIT B

COMPENSATION SCHEDULE

Cost

For work described in the Scope of Services, CONSULTANT will be compensated based on time and materials required at the hourly rate schedule shown below. The not-to-exceed budget for these services, without further approval from the KFPD, shall be \$30,000.

Staff Allocation	Hourly Rate
Principal	\$325
Director	\$300
Vice President	\$275
Senior Associate	\$250
Associate	\$225
Senior Analyst	\$200
Analyst	\$175
Administrative	\$ 75

Expenses (Out-of-Pocket)

All expenses will be billed directly at cost to the KFPD. Expenses will be limited to those necessary for completion of the project(s).



KENSINGTON FIRE PROTECTION DISTRICT

EXHIBIT C

MUNICIPAL ADVISOR DISCLOSURES

Fiduciary Duty

NHA Advisors, LLC ("CONSULTANT") is registered as a Municipal Advisor with the U. S. Securities and Exchange Commission ("SEC") and Municipal Securities Rulemaking Board ("MSRB"). As such, CONSULTANT has a fiduciary duty to the KFPD and must provide both a Duty of Care and a Duty of Loyalty that entail the following.

Duty of Care:

- a) exercise due care in performing its municipal advisory activities
- b) possess the degree of knowledge and expertise needed to provide the KFPD with informed advice
- c) make a reasonable inquiry as to the facts that are relevant to the KFPD's determination as to whether to proceed with a course of action or that form the basis for any advice provided to the KFPD; and
- d) undertake a reasonable investigation to determine that CONSULTANT is not forming any recommendation on materially inaccurate or incomplete information; CONSULTANT must have a reasonable basis for:
 - i. any advice provided to or on behalf of the KFPD;
 - ii. any representations made in a certificate that it signs that will be reasonably foreseeably relied upon by the KFPD, any other party involved in the municipal securities transaction or municipal financial product, or investors in the KFPD securities; and
 - iii. any information provided to the KFPD or other parties involved in the municipal securities transaction in connection with the preparation of an official statement.

Duty of Loyalty:

CONSULTANT must deal honestly and with the utmost good faith with the KFPD and act in the KFPD's best interests without regard to the financial or other interests of CONSULTANT. CONSULTANT will eliminate or provide full and fair disclosure (included herein) to the KFPD about each material conflict of interest (as applicable). CONSULTANT will not engage in municipal advisory activities with the KFPD as a municipal entity, if it cannot manage or mitigate its conflicts in a manner that will permit it to act in the KFPD's best interest.

Conflicts of Interest and Other Matters Requiring Disclosures

As of the commencement date of the Project, there are no actual or potential material conflicts of interest, other than those noted below, that CONSULTANT is aware of that might impair its ability to render unbiased and competent advice or to fulfill its fiduciary duty. If CONSULTANT becomes

KENSINGTON FIRE PROTECTION DISTRICT

aware of any material potential conflict of interest that arises after this disclosure, CONSULTANT will disclose the detailed information in writing to the KFPD in a timely manner.

The following are potential conflicts of interest to be considered.

- CONSULTANT' fees under this Project are based on hourly fees of CONSULTANT' personnel, with the aggregate amount equaling the number of hours worked by such personnel times an agreed-upon hourly billing rate. This form of compensation presents a potential conflict of interest because it could create an incentive for CONSULTANT to recommend alternatives that would result in more hours worked. This conflict of interest will not impair CONSULTANT' ability to render unbiased and competent advice or to fulfill its fiduciary duty to the KFPD.
- CONSULTANT serves a wide variety of other clients that may, from time to time, have interests that could have a direct or indirect impact on the interests of another CONSULTANT client. For example, CONSULTANT serves as municipal advisor to other municipal advisory clients and, in such cases, owes a regulatory duty to such other clients just as it does to the KFPD. These other clients may, from time to time and depending on the specific circumstances, have competing interests. In acting in the interests of its various clients, CONSULTANT could potentially face a conflict of interest arising from these competing client interests. CONSULTANT fulfills its regulatory duty and mitigates such conflicts through dealing honestly and with the utmost good faith with the KFPD.
- CONSULTANT does not have any affiliate that provides any advice, service, or product to or on behalf of the KFPD that is directly or indirectly related to the municipal advisory activities to be performed by CONSULTANT.
- CONSULTANT has not made any payments directly or indirectly to obtain or retain CONSULTANT' municipal advisory business.
- CONSULTANT has not received any payments from third parties to enlist CONSULTANT' recommendation to the KFPD of its services, any municipal securities transaction, or any municipal finance product.
- CONSULTANT has not engaged in any fee-splitting arrangements involving CONSULTANT and any provider of investments or services to the KFPD.
- CONSULTANT does not have any legal or disciplinary event that is material to the KFPD's evaluation of the municipal advisory or the integrity of its management or advisory personnel.
- CONSULTANT does not act as principal in any of the transaction(s) related to this Project.
- During the term of the municipal advisory relationship, this disclosure will be promptly amended or supplemented to reflect any material changes in or additions to the terms or information within this disclosure and the revised writing will be promptly delivered to the KFPD.

Pursuant to MSRB Rule G-10, on Investor and Municipal Advisory Client Education and Protection, Municipal Advisors are required to provide certain written information to their municipal entity and obligated person clients which include the following:

- CONSULTANT is currently registered as a Municipal Advisor with the SEC and the MSRB.

KENSINGTON FIRE PROTECTION DISTRICT

- Within the MSRB website at www.msrb.org, KFPD may obtain the Municipal Advisory client brochure that is posted on the MSRB website. The brochure describes the protections that may be provided by the MSRB Rules along with how to file a complaint with financial regulatory authorities.

Legal Events and Disciplinary History

CONSULTANT does not have any legal events and disciplinary history on its Form MA and Form MA-I, which includes information about any criminal actions, regulatory actions, investigations, terminations, judgments, liens, civil judicial actions, customer complaints, arbitrations and civil litigation. The KFPD may electronically access CONSULTANT' most recent Form MA and each most recent Form MA-I filed with the Commission at the following website:

www.sec.gov/edgar/searchedgar/companysearch.html

There have been no material changes to a legal or disciplinary event disclosure on any Form MA or Form MA-I filed with the SEC.

Recommendations

If CONSULTANT makes a recommendation of a municipal securities transaction or municipal financial product or if the review of a recommendation of another party is requested in writing by the KFPD and is within the scope of the engagement, CONSULTANT will determine, based on the information obtained through reasonable diligence of CONSULTANT whether a municipal securities transaction or municipal financial product is suitable for the KFPD. In addition, CONSULTANT will inform the KFPD of:

- the evaluation of the material risks, potential benefits, structure, and other characteristics of the recommendation
- the basis upon which CONSULTANT reasonably believes that the recommended municipal securities transaction or municipal financial product is, or is not, suitable for the KFPD; and
- whether CONSULTANT has investigated or considered other reasonably feasible alternatives to the recommendation that might also or alternatively serve the KFPD objectives.

If the KFPD elects a course of action that is independent of or contrary to the advice provided by CONSULTANT, CONSULTANT is not required on that basis to disengage from the KFPD.

Record Retention

Effective July 1, 2014, pursuant to the SEC record retention regulations, CONSULTANT is required to maintain in writing, all communication and created documents between CONSULTANT and the KFPD for five (5) years.