



Date: March 14, 2024
To: Board of Directors
Submitted by: David Aranda, Interim General Manager
Subject: Request from the City of El Cerrito an Extension to the Licensing Agreement to Allow the Police Building to Remain on City Property

Recommendation

The Interim General Manager is recommending that the Board of Directors request from the City of El Cerrito a five-year extension to the license agreement, with a 90-day op out after two years, that would allow the Police Building to remain on the City's property at 10940 San Pablo Ave. in El Cerrito.

Background

The KPPCSD entered into a licensing agreement with the City of El Cerrito in 2022 which provided the District the ability to have a place for the modular building to be utilized as the KPPCSD Police Headquarters.

The Board approved extending that agreement for 2023/2024, specifically through August 31, 2024. Considering that the pursuit of a new police building will take at the very least a few years, it would be prudent to request that the agreement be extended for at least one year but up to five years. In meeting with the City Manager of El Cerrito, the city is very pleased to have us as neighbors and she personally can renew the agreement for one to two years. Should the KPPCSD board desire a longer arrangement, I would convey that to the City Manager, and she would place it on the City Council Agenda for approval.

I have attached prior agreements to this ASI for reference.

Exhibit

- License Agreement Between the City of El Cerrito and the Kensington Police Protection and Community Services District Concerning 10940 San Pablo Avenue, El Cerrito, California

From: Chris Jones <CJones@ci.el-cerrito.ca.us>

Sent: Thursday, March 7, 2024 3:12 PM

To: David Aranda <DAranda@kppcsd.org>; Karen Pinkos <KPinkos@ci.el-cerrito.ca.us>

Subject: RE: Question

Hi David,

Our City Attorney is currently transitioning to a new firm, with a beginning date of March 15th, and we've agreed to slow down things down this month. I do not think that we can have an amendment ready for March 14th, especially with the advance posting requirements unfortunately. We also need KPPCSD's approval prior to taking it to the City Council.

For what it is worth from how the original agreement was approved, I remember that your board authorized Tony to sign the necessary agreements, etc. to occupy the portable according to the established timeline of when the PSB was going to go under construction. KPPCSD's legal counsel said that no further approvals were necessary and so the agreement was negotiated and then brought to the El Cerrito City Council for approval. Maybe on March 14th you could meet in closed or open session and the board can give you negotiation authority and authorization to sign the amendment once it is ready. We can spread the quarterly cost across 3 years to lower the license fees but if for some reason you need to leave early maybe we could agree to a termination fee that is equal to the balance of the payments. So one way or another the City will collect the fees necessary to remove the portable, cap off the utilities and pay for the sewer assessments.

Let me know what you think and we'll get going on this as soon as possible.

Take Care,
Chris



OFFICE OF THE CITY MANAGER
(510) 215-4300

May 17, 2023

David Aranda
Interim General Manager
Kensington Police Protection and Community Services District
10940 San Pablo Avenue
El Cerrito, CA 94530

Via Electronic Mail

Dear David,

This letter acknowledges and confirms your written communication of April 17, 2023, and our meeting on May 17, 2023, that the Kensington Police Protection and Community Services District (KPPCSD) has exercised its Option to Extend the License Agreement between the City and KPPCSD for the use of 10940 San Pablo Avenue, El Cerrito, CA. This Option is per the Agreement Section 3, "Option to Extend", and the action taken by the Board to approve this Option on April 13, 2023.

The License Agreement Term now extends through August 31, 2024.

It is a pleasure having KPPCSD as our neighbors, and we look forward to continuing this positive relationship between our agencies. Please feel free to contact me should you have any questions.

Very truly yours,

A handwritten signature in cursive script that reads "Karen Pinkos".

Karen Pinkos
City Manager
City of El Cerrito

cc: Recreation Director Chris Jones

Invoice



Invoice #: 215326
Invoice Date: 11/13/23
Household: 30555

City of El Cerrito
 Recreation Department
 7007 Moeser Lane
 El Cerrito CA 94530
 Phone: (510)559-7000
 Web: www.el-cerrito.org Tax ID: 94-6000325

Kensington Police Protection
 and Community Services District
 10940 San Pablo Ave., Bldg. B
 El Cerrito CA 94530
 anath@kppcsd.org

Transaction Date	Receipt	Description	Quantity	Amount										
10/24/2023	887260	10940 San Pablo Ave - License Agreement on 10/01/2023 at 12:00am to 12/31/2023 at 12:00am at El Cerrito Midtown Activity Center (Kensington Police Protection)	1	\$5,571.00										
		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;">Check Date</td> <td>11/15/2023</td> </tr> <tr> <td>Check No.</td> <td>30326</td> </tr> <tr> <td>Amount</td> <td>\$5,571</td> </tr> <tr> <td>GL Code</td> <td>597</td> </tr> <tr> <td>Approval</td> <td></td> </tr> </table>	Check Date	11/15/2023	Check No.	30326	Amount	\$5,571	GL Code	597	Approval			
Check Date	11/15/2023													
Check No.	30326													
Amount	\$5,571													
GL Code	597													
Approval														
			Total Fees	\$5,571.00										
			Total Taxes	\$0.00										
			Total Paid	\$0.00										
			Total Due	\$5,571.00										

License Fees for 10940 San Pablo Avenue, El Cerrito October-December 2023

1857/month

Please return the lower portion with your remittance

Household: 30555

Kensington Police Protection
 and Community Services District
 10940 San Pablo Ave., Bldg. B
 El Cerrito CA 94530

Invoice Date: 11/13/2023 Invoice #: 215326
 Due Date: 12/21/2023
 Amount Due: \$5,571.00

Facility Reservations
 Amount Paid: _____

Payment Type: _____ Check _____ Other (No Credit Cards)

Check Number Or Other Reference: _____

Remit To:
 City of El Cerrito
 Recreation Department
 7007 Moeser Lane
 El Cerrito CA 94530

8/24
would require
new document

8/31/23

5/31/23

written notice -
existing document

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

THIS LICENSE AGREEMENT ("**Agreement**"), is entered into as of this 26th day of July, 2022 ("**Effective Date**"), by and between the City of El Cerrito, a municipal corporation, ("**Licensor**" or "**City**") and the Kensington Police Protection and Community Services District ("**Licensee**" or "**District**") (individually "**Party**" and collectively "**Parties**") for the use of a certain portion of the real property located at 10940 San Pablo Avenue, El Cerrito, California ("**Premises**").

RECITALS

A. The City is the fee owner of certain real property located at 10940 San Pablo Avenue in the City of El Cerrito, County of Contra Costa, State of California, with Assessor's Parcel Number 502-411-023.

B. The Premises are improved with two vacant modular structures which are leased to the City by Mobile Modular, as well as structures utilized by the El Cerrito Police Department for storage. The structures on the Premises are represented in "**Exhibit A**" attached hereto and incorporated herein as "**Building A**" and "**Building B**" (collectively "**Buildings**") and "**El Cerrito Police Department Structures**". The leases for the Buildings are scheduled to terminate on May 31, 2023. - own buildings

C. Pursuant to the terms and conditions set forth in this Agreement, Licensee proposes to: 1) assume the lease for Building B on or before August 1, 2022 and, thereafter, temporarily use it for its operations; 2) maintain Building B and the Premises, including litter removal, graffiti abatement and landscape maintenance but not including Building A and the El Cerrito Police Structures; and 3) access fourteen (14) parking spaces within the parking lot on the Premises (collectively "**License Scope**"). Licensor has determined that it is in its best interest to permit Licensee to use the Premises for the License Scope.

D. Licensee desires to obtain from Licensor, and Licensor desires to grant to Licensee, a license for the License Scope and the Parties desire to enter into this Agreement to establish the terms and conditions upon which such license is granted.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Licensor and Licensee agree as follows:

1. Grant of License. City hereby grants to the District and its employees, customers, invitees, agents and contractors a non-exclusive, temporary license to use the Premises for the purpose of the License Scope and for no other purpose. The City reserves all other rights in the Premises that do not conflict with the terms of this Agreement or applicable law.

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2. **Initial Term.** The initial license term of this Agreement shall commence on August 1, 2022 and shall extend through August 31, 2023 ("Initial Term").

3. **Option to Extend.** The District shall have the right to extend this term through August 31, 2024 with the consent of City, which shall not be unreasonably withheld or delayed. The 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 Agreement upon commencement of the succeeding Renewal Term. The Initial Term and the Renewal Term are herein collectively referred to as the ("Term").

4. **District's Covenant to Pay.** As consideration for the license to use the Premises, the District shall pay to the City Three-Hundred and Fifty-Seven dollars (\$357) per month, or One-Thousand and Seventy-One dollars (\$1,071) per quarter during the Initial Term. 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.

1/2 Fire Bldg Ins Sewer Assessment

City shall invoice District on a quarterly basis during the Initial Term and monthly basis during the Renewal Term. 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:

5. **District Building B Lease Assumption.**

(a) The District shall, at its sole cost and expense, negotiate directly with Mobile Modular to assume the City's lease of Building B. The District shall provide the proposed lease assumption to the City for its prior written approval at least fifteen (15) days prior to the proposed effective date. Upon the City's written approval, the District shall assume the Building B lease on or before August 1, 2022 ("Lease Assumption").

(b) The District shall not sublet Building B or any portion thereof without the City's prior written approval.

(c) The District may modify Building B provided that any improvements shall be performed:

(1) in accordance with the terms of the Lease Assumption;

(2) with due diligence and care so as to prevent unreasonable disruption of or interference with the use, occupancy or conduct of business operations by City on the Premises and to minimize any disturbance of or impact upon the City and its tenants, licensees, contractors, employees and invitees;

(3) in compliance with all applicable laws, ordinances, regulations and orders of the City and all federal, state, county or local governmental agencies or entities having jurisdiction (collectively, "Governmental Authorities");

- and
- (4) in a good and workmanlike manner and only with materials of good quality;
 - (5) in the interior of Building B (collectively "**Building B Improvements**").

(d) The District shall keep the Premises free and clear of all mechanics liens or other encumbrances arising from the Building B Improvements done by or on behalf of District.

(e) During construction of the Building B Improvements, the District shall implement such measures (including such fencing and access barriers) as may be reasonably necessary to ensure the safety of all persons and properties in and around the area in which such work is being performed. During the course of the Building B Improvements, District and District's agents, contractors and employees shall abide by all safety and health laws and regulations of Governmental Authorities and any reasonable safety and security requirements reasonably requested by City.

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.

7. District Use of Parking Lot. The District shall have access to fourteen (14) parking spaces within the parking lot on the Premises ("**Spaces**"). Additionally, two (2) spaces within the parking lot are designated for eligible disabled individuals conducting either District or City business. If the District desires the Spaces be particularly assigned to it or specific District employees, it shall request such assignment from the City in writing and the City shall work with the District to create such assignment.

The City retains the right to use all parking spaces on the Premises other than the Spaces for the City, its officers, officials, tenants, employees, agents and volunteers' use.

8. District Access to the Premises. The District shall ensure that its officers, officials, employees, agents, volunteers and anyone conducting business with the District does not park their vehicles on Kearney Street behind the El Cerrito Public Safety Building. The District its officers, officials, employees, agents, volunteers and anyone conducting business with the District shall enter and exit the Premises from San Pablo Avenue only. Notwithstanding the foregoing limitations, in a verified emergency, only District public safety personnel may enter the Premises from the Kearney Street entrance, but these personnel shall be required to exit the Premises from San Pablo Avenue.

9. Utilities.

(a) On or before the Effective Date, the District shall establish the following utility services to the Premises and, thereafter, be responsible for all costs associated with such services:

- (1) Water service with the East Bay Municipal Utility District;
- (2) Electric and/or gas service with Pacific Gas and Electric or MCE; and
- (3) Internet and phone services.

(b) The City shall be responsible for providing the following services to the Premises and for all costs associated with such services:

(1) Solid waste services; and

(2) Alarm services through May 31, 2023 resulting from the City's existing contract with Security Signal Devices for such services.

10. **Signage.** If District desires to add signage to Premises to identify the temporary location of its operations, it shall first consult with the City's Zoning Administrator in order to determine whether its proposed signage requires City approval under applicable local regulations. If such proposed signage requires City approval, District shall obtain such approval prior to installing any signage on the Premises.

11. **District Maintenance and Repairs.**

(a) The District shall, at its sole cost and expense, repair any damage to the Premises caused exclusively by the District and/or its employees, invitees, agents and contractors. In the event that part of the damage to the Premises is caused by another party or parties, the District shall repair the pro rata share of any damage to the Premises caused by the District and/or its employees, invitees, agents and contractors. The District shall ensure that all construction or repair conducted on the Premises are screened with appropriate fencing, landscaping and other screening material, that the portion of the Premises used by District or its employees, invitees, agents and contractors for construction of the Building B Improvements is kept in neat and clean condition, and that graffiti and litter are promptly removed. During the Term of this Agreement, to the extent that the District installs any improvements on the Premises other than the Building B Improvements, in order to use the Premises for the District's intended use, the District shall be responsible for costs associated with such improvements as are necessary, including fencing, landscaping and paving, provided that any such improvements shall be subject to the prior written approval of City.

(b) The District represents and acknowledges that it has inspected and examined the Premises, including Building B, for purposes of this Agreement and determined such to be suitable for its intended use. The District further acknowledges that the City has disclosed to it that AT&T cannot provide service to the Premises, including Building B.

(c) Except for Building A and the El Cerrito Police Department Structures ("City Structures"), the District shall, at its own expense and cost, keep and maintain the Premises which shall include Building B, in a clean and sanitary condition including, but limited to, litter removal, graffiti abatement and landscape maintenance and free from any hazardous or dangerous conditions caused by District. In particular, the District shall be responsible for:

(1) maintaining Building B's interior and exterior, including, but not limited to, window coverings, furnishings, floors, carpets and paint;

(2) routine repair of the Premises which must be performed using licensed contractors, subject to City approval;

(3) regular janitorial service sufficient to maintain the Premises in a clean and sanitary condition;

- (4) supplies as required for District's use of the Premises, including, but not limited to, janitorial supplies;
- (5) furnishings and materials as required for District use of the Premises;
- (6) Maintaining all phone, computers and computer support equipment used by the District. Prior approval of the City is required for alterations or additions to the Premises' electrical system to support District's computer systems or other District equipment.
- (7) Recycling, litter, garbage, and debris collection and deposit in appropriate receptacles in accordance with the City's provision of solid waste services to the Premises.

12. City Maintenance and Repairs.

The City shall be responsible for maintenance of Building A and the City Structures which shall include graffiti abatement.

13. Removal or Relocation of Buildings

(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.

(b) 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.

(c) If District intends to extend its lease of Building B beyond May 31, 2023, then it shall provide ninety (90) days' prior written notice to the City along with the proposed 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. 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 increased removal fees or costs imposed by Mobile Modular as a result of the Lease Extension.

(d) If District intends to remove Building B from the Premises and relocate it to another property prior to the Lease Assumption termination, vacate the Premises and terminate this Agreement, then it shall be responsible for any and all relocation costs associated with relocating Building B. If the relocation results in reduced removal fees under the Lease Assumption, then such savings shall be passed on to the City.

14. Prohibited Use of Premises.

(a) District shall not do or permit anything to be done in or about the Premises, including Building B, nor bring or keep anything therein, that will in any way increase the existing rate of or affect any fire or other insurance upon the Premises or any of its contents, or cause cancellation of any insurance policy covering said premises or any part thereof or any of its contents. Nor may District cause a cancellation of any insurance policy covering the Premises or any part thereof or permit to be kept or used in or about the Premises any article, which may be prohibited by standard form fire insurance policies or by any El Cerrito City Codes or any other applicable laws.

(b) District shall not commit, suffer, or permit the commission by others of:

- (1) any waste or nuisance of the Premises;
- (2) any action or use on the Premises which interferes or conflicts with the use of the Premises by City or any authorized person; or
- (3) any action on the Premises in violation of any laws, regulations, or ordinances.

(c) No goods, merchandise, or material shall be kept, stored, generated, produced, disposed or transported to or from, used or sold in or on the Premises which constitute Hazardous Materials, and no offensive or dangerous trade, business, or occupation shall be carried on therein or thereon. No machinery or apparatus shall be used or operated on the Premises which will in any way injure said Premises, or improvements thereon. For purposes of this Agreement, "Hazardous Materials" are defined as, but shall not be limited to: flammable explosives, asbestos, radioactive materials, hazardous waste, toxic substances or related injurious materials, whether injurious by themselves or in combination with other materials, substances defined as "hazardous substances," "hazardous materials," or "toxic substances," in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*; and those substances defined as "hazardous waste" in Section 25316 of the California Health and Safety Code; and in the regulations adopted and publications promulgated pursuant to said laws. District acknowledges that District is not looking to or relying upon City to disclose any matters which City might be required to disclose under California Health & Safety Code Section 25359.7 and that all such matters have been investigated by District to District's satisfaction.

15. Alterations. Except as to Building B Improvements made in accordance with Section 5 and signage made in accordance with Section 10, District shall not allow or cause any alterations, additions or improvements to or of the Premises, or any part thereof, without the prior written consent of the City Manager.

16. District Volunteers. For any work performed by District volunteers on the Premises which shall include Building B, all volunteers shall sign hold-harmless forms approved by the City and return those forms to the City prior to the commencement of such volunteer work.

17. Termination.

(a) Either Party may terminate this Agreement upon 90 days' prior written notice to the other Party.

(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 Renewal Term pursuant to Section 3, then this Agreement shall terminate upon the expiration of the Initial Term.

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

(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.

18. Possessory Interest. District expressly recognizes and understands that this Agreement may create a possessory interest subject to property taxation and that District may be subject to the payment of property taxes levied on such interest. District is responsible for determining whether this possessory interest is subject to property taxation.

19. Compliance with Laws. District has represented to the City and hereby warrants that District has complied with all laws applicable to the acceptance and use of the License herein granted. District shall observe and comply at all times with all applicable federal, state, county and city statutes and ordinances, rules, regulations, directives, and orders of Governmental Authorities now in force or which may hereinafter be in force relating to or affecting the use of the License herein granted.

20. Insurance. As of the Effective Date and thereafter throughout the Term, District and the District's contractors shall, at its sole cost and expense, procure, carry and maintain in full force and effect in a form acceptable to City and with insurance companies authorized to transact business in the State of California, insurance coverage by the following policies of insurance:

(a) Commercial General Liability insurance with liability coverage not less than Four Million Dollars (\$4,000,000) per each occurrence for each of bodily injury liability, personal injury liability, property damage liability, products and completed operations liability and advertising injury liability that may arise out of or result from District's use of the Premises or

operations or contractor's operations under its contract with District, and for costs and expenses (including attorneys' fees and court costs) incurred in connection therewith.

(b) Workers Compensation Insurance for all District employees as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than One Million Dollars (\$1,000,000) per accident for bodily injury or disease.

(c) Property insurance against all risks of loss to any tenant improvements or betterments which shall include Building B, at full replacement cost with no coinsurance penalty provision. Property insurance is to be endorsed to include Legal Liability Coverage (ISO Form CP 00 40 04 02 or equivalent) with a limit equal to 100% of the replacement value of the Buildings, with deductible, if any, acceptable to City.

(d) Pollution Legal Liability and Remediation applicable to District operations with a limit no less than Two Million Dollars (\$2,000,000) per claim or occurrence and Two Million Dollars (\$2,000,000) aggregate per policy period of one year. This policy shall include coverage for bodily injury, property damage personal injury and environmental site restoration, including fines and penalties in accordance with applicable EPA or state regulations.

(e) With respect to Workers' Compensation and Employer's Liability Coverage, the insurer shall agree to waive all rights of subrogation against City, its officers, officials, employees and volunteers for losses arising from injuries to District employees resulting from work for the District or use of the Premises.

(f) All policies of liability insurance obtained and maintained by the District in accordance with this Section shall name City, its officers, officials, employees, and volunteers as additional insureds and shall further provide that the insurance policy so endorsed will be the primary insurance providing coverage for City.

(g) District's insurance coverage shall be primary and non-contributory and at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the District's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies.

(h) The insurance required by this Section shall be provided under an occurrence form, and the District shall maintain such coverage continuously throughout the Term of this Agreement. Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit, such annual aggregate limit shall be three times the occurrence limits specified above. All insurance required hereunder shall be effected under valid and enforceable policies issued by responsible insurers authorized to do business in the State of California and to issue policies of the nature and in the liability amounts required above, and with an A.M. Best rating of at least "A-VIII."

(i) The District shall furnish to City copies of the Certificates of Insurance. The Certificate of Insurance shall provide that the insurance company shall endeavor to notify City

by written notice at least thirty (30) days prior to any cancellation, reduction or modification of coverage. The District shall furnish City with copies of any and all policies of insurance required hereunder, if so requested by City. In the event the District does not comply with the requirements of this Section, the City may at its option purchase insurance coverage to protect itself and the Premises and the District shall be responsible for paying the costs of such insurance.

21. **Indemnity and Hold Harmless.** District agrees to and shall indemnify, defend (with counsel acceptable to City) and hold harmless City and City's officers, officials, employees, agents and volunteers (collectively, the "**City Indemnitees**") from and against any and all Claims, which any of the City Indemnitees may suffer arising out of or in connection with District access and use of the Premises, which shall include Building B, and any activities conducted on the Premises by District and District's agents, contractors, subcontractors and employees pursuant to this Agreement which shall include, but is not limited to, the release or threatened release of Hazardous Materials, District's failure to comply with all governmental laws, regulations and permits, including, but not limited to, full compliance with the Americans with Disabilities Act; and any default by District in the performance of its obligations under this Agreement (collectively "**Liability**") except such Liability caused by the sole negligence or willful misconduct of the City. For purposes of this Agreement, the term "**Claims**" shall mean any and all actions, suits, causes of actions, claims, demands, liabilities, judgments, penalties, losses, damages and/or claims for bodily injury and/or property damage, costs and expenses of every nature, including reasonable attorney's and expert's fees and costs. Notwithstanding the foregoing, this Section 21 shall not apply to claims arising from (a) the City's exercise of its rights under Section 6 of this Agreement; or (b) the use or condition of the El Cerrito Police Department Structures.

22. **Default.** A Party shall be in default under this Agreement if such Party breaches any obligation to be performed by such Party under this Agreement and fails to cure such breach within ten (10) business days after receipt of written notice from the other Party specifying in reasonable detail the nature of such default; provided, however, that with respect to non-monetary defaults only, if such non-monetary default is of such nature as is capable of being cured but not within said ten (10) business day period, a Party shall not be deemed in default hereunder if, and so long as, such Party commences to cure such default within said ten (10) business day period and proceeds diligently and continuously to complete the cure of such default within said reasonable additional time as is necessary to cure such default.

23. **Inspection by City.** City shall be permitted to enter and inspect the Premises which shall include Building B at any and all times. City is not required to provide District with advanced notice of said inspection.

24. **Extent of Grant of License.** This Agreement and the License herein granted are valid only to the extent of City's jurisdiction as a landowner of the Premises. Acquisition of any other necessary permits or entitlements for use are the responsibility of District. Nothing contained in this Agreement shall be construed as a relinquishment of any rights now held by the City.

25. **Assignment.** The License herein granted is personal to District and shall not be assigned, sublet, or otherwise transferred in whole or in part without the prior written consent of City, and any attempt to assign, sublet or transfer shall be of no force or effect whatsoever unless and until City shall have given its written consent thereto. City may withhold its consent for any reason.
26. **Provisions are Condition of Use/Occupancy.** Each provision of this Agreement shall be deemed a condition of the right of District to use or continue to occupy the Premises. Notwithstanding anything stated to the contrary herein, if District fails to perform any provision of this Agreement at the time and in the manner herein provided, City may, at its own option, immediately terminate this Agreement. The City's right to terminate shall be cumulative to any other legal right or remedy available to City.
27. **District No Agent.** District, its officers, agents, employees, and volunteers shall act in an independent capacity and shall not represent themselves whatsoever as an agent of the City. District shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.
28. **License Not a Lease.** This Agreement does not constitute a lease, but constitutes a revocable License and District is limited to the use of the Premises expressly and specifically described above. District shall have no right or privilege in any respect whatsoever to use any other part of Premises for any purpose whatsoever. District does not claim any interest that, when coupled with the License herein granted, would render it irrevocable.
29. **No Waiver of Enforcement.** The City's failure to enforce any Section of this Agreement or the waiver thereof in a particular instance shall not be construed as a general waiver of any part of such Section. The Section shall remain in full force and effect.
30. **Relationship.** The Parties intend by this Agreement to establish the relationship of licensor and licensee only, and do not intend to create a partnership, joint venture, joint enterprise, or any business relationship other than that of licensor and licensee.
31. **Miscellaneous.**
- (a) If either Party shall bring an action to enforce its rights hereunder, the prevailing Party in such action shall be entitled to its reasonable attorney's fees and costs from the non-prevailing Party.
 - (b) This Agreement shall not be amended or modified except by written instrument signed by the Parties. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes by all prior agreements or understandings, oral or written, between the Parties in this regard.
 - (c) This Agreement shall be construed in accordance with the laws of the State of California and the City of El Cerrito.
 - (d) Any action arising from or brought in connection with this Agreement shall be venued in a court of competent jurisdiction in the County of Contra Costa, State of California.
 - (e) If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

32. **Notices.** All notices to be given hereunder shall be in writing and shall be mailed, by certified or registered United States mail, postage prepaid, or delivered (either personal delivery or delivery by private courier service). Notices may also be given by email or fax, provided that the notice is concurrently given by one of the methods described in the preceding sentence (with deposit in the mail or delivery to the courier to be made no later than the next business day following fax transmission) and that confirmation of completed transmission is obtained. The address for notices shall be:

The City: City of El Cerrito
7007 Moeser Lane
El Cerrito, CA 94530
Attn: Recreation Director
Email: cjones@ci.el-cerrito.ca.us
FAX: (510) 528-9413

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

The person and the place to which notices are to be mailed or delivered may be changed by either Party by written notice to the other Party given in accordance with the provisions of this Section.

33. **Binding Effect.** Subject to Section 25, each and all of the covenants, terms, agreements and obligations of this Agreement shall extend to and bind and inure to the benefit of the respective successors and assigns of the Parties hereto.

34. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

[Signatures on Following Page]

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement as of the date first written above.

Licensee:

**Kensington Police Protection
and Community Services District**

By: Tony Constantouros
Tony Constantouros (Jul 26, 2022 17:18 PDT)
Tony Constantouros
Interim General Manager

Licensor:

City of El Cerrito

By: Karen Pinkos
Karen Pinkos
City Manager

ATTEST:

Lynelle M Lewis
Lynelle Lewis, District Clerk of the Board

Holly Charley
Holly Charley, City Clerk

APPROVED AS TO FORM:

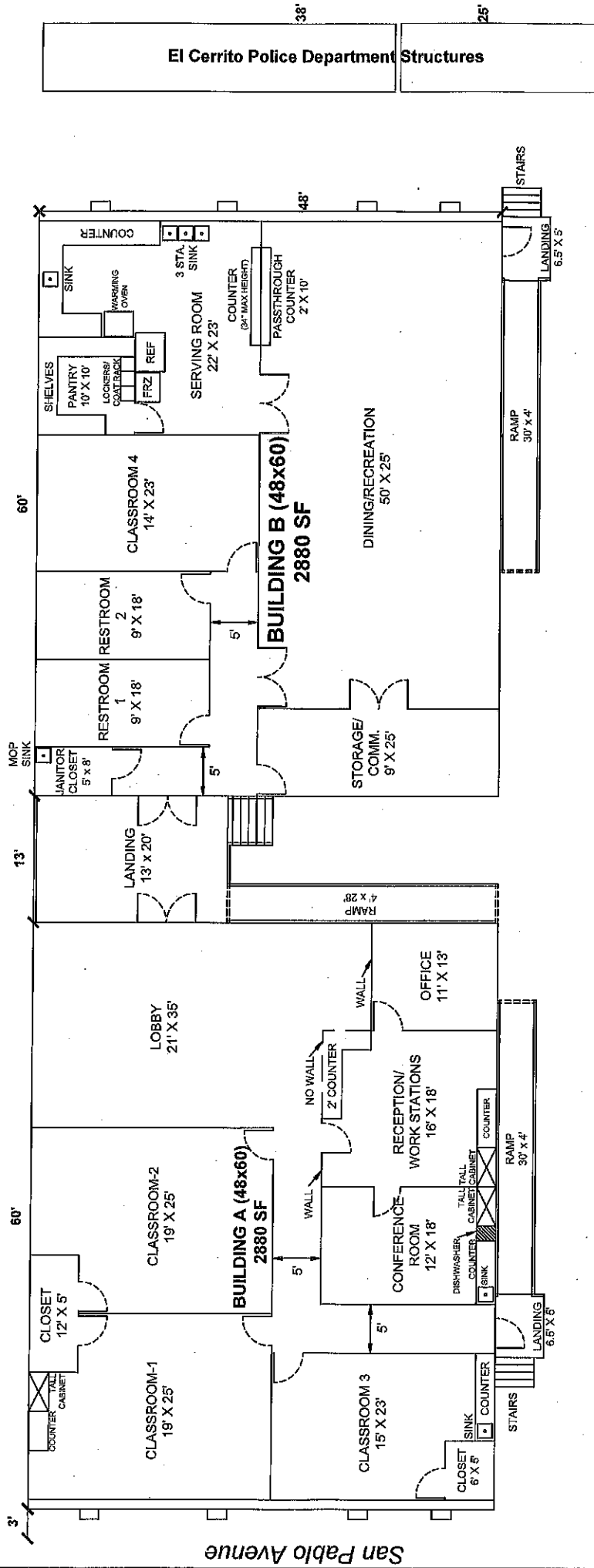
Ann R. Danforth
Ann R. Danforth (Aug 1, 2022 10:11 PDT)
Ann Danforth, District General Counsel

Sky Woodruff
Sky Woodruff (Jul 27, 2022 09:49 PDT)
Sky Woodruff, City Attorney

5132911.3

10940 San Pablo Avenue
El Cerrito, CA 94530

Exhibit A



Parking Lot (28 spaces, including 2 ADA)

Kearney Street Entrance







El Cerrito - Kensington license agreement for 10940 San Pablo

Final Audit Report

2022-07-27

Created:	2022-07-27
By:	Sky Woodruff (sky@meyersnave.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAC3ynz9XHjd_VCy5IFDPQ6jmt3dffBz-

"El Cerrito - Kensington license agreement for 10940 San Pablo" History

-  Document created by Sky Woodruff (sky@meyersnave.com)
2022-07-27 - 4:35:43 PM GMT - IP address: 206.169.145.130
-  Document emailed to swoodruff@meyersnave.com for signature
2022-07-27 - 4:40:47 PM GMT
-  Email viewed by swoodruff@meyersnave.com
2022-07-27 - 4:48:54 PM GMT - IP address: 161.129.162.63
-  Signer swoodruff@meyersnave.com entered name at signing as Sky Woodruff
2022-07-27 - 4:49:47 PM GMT - IP address: 206.169.145.130
-  Document e-signed by Sky Woodruff (swoodruff@meyersnave.com)
Signature Date: 2022-07-27 - 4:49:49 PM GMT - Time Source: server - IP address: 206.169.145.130
-  Agreement completed.
2022-07-27 - 4:49:49 PM GMT