

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT (“Agreement”) is made and entered into this 24th day of February 2020 between the Kensington Police Protection and Community Services District, a special district in Contra Costa County, California, (hereinafter "DISTRICT") and Nigro & Nigro, a Professional Accountancy Corporation, with its office located at 2121 N. California Blvd., Suite 290, Walnut Creek, CA 94596 (hereinafter "AUDITOR" or Nigro & Nigro) (collectively, "the Parties").

RECITALS

WHEREAS, the Kensington Police Protection and Community Services District (KPPCSD) is seeking a qualified firm to provide independent financial auditing services (hereinafter “Services”); and

WHEREAS, on August 20, 2020, KPPCSD issued a request for proposals (RFP) for qualified firms to provide these Services, which described the required scope of Services, the selection process, and the minimum information that must be included in the proposal; and

WHEREAS, Nigro & Nigro submitted a proposal prior to the deadline of September 14, 2020, which was responsive to the RFP; and

WHEREAS, at its regular meeting of October 8, 2020, the KPPCSD Board of Directors authorized the General Manager to enter into a contract with Nigro & Nigro to provide independent financial auditing services based on their proposal.

NOW, THEREFORE, BE IT RESOLVED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. DESCRIPTION OF SERVICES

- (a) Except as modified herein, AUDITOR’s Services will consist of the tasks, deliverables, schedule and other provisions set forth in their proposal dated as of the RFP due date of September 14, 2020 (“the Proposal).
- (b) The DISTRICT’s General Manager shall have the authority to amend or delete the tasks constituting the Services, or the timing thereof.
 - i. If the amendments cause an increase in the project cost, AUDITOR shall promptly notify the General Manager of the amount of said cost. If the increase exceeds the General Manager’s contract authority, the Board of Directors must approve the amendment.
 - ii. If an amendment or deletion decreases the project cost, District shall receive a credit for said diminution based on the rates set forth in the Proposal. Notwithstanding anything in the Proposal to the contrary, DISTRICT’s General Manager shall have the right to delete tasks from

this Agreement, receiving a credit against the project cost at the rates set forth in the Proposal.

- (c) This Agreement includes the following exhibits, which are attached hereto and incorporated herein by reference:
 - i. Exhibit A: DISTRICT's RFP.
 - ii. Exhibit B: AUDITOR Proposal.
- (d) In the event of a conflict between the body of this Agreement, Exhibit A and/or Exhibit B, the body of this Agreement shall prevail over the Exhibits and Exhibit A shall prevail over Exhibit B.
- (e) AUDITOR shall perform the Services in a skillful and professional manner compatible with the usual, customary standard of AUDITOR's profession, using its best efforts. AUDITOR will not commit any act generally considered illegal, immoral or unethical and AUDITOR makes no promises regarding the results of their Services.
- (f) AUDITOR will not disclose any information relating to the Services without prior written authorization from DISTRICT, the DISTRICT's general counsel or an order from a court of competent jurisdiction.

2. COMPENSATION

(a) DISTRICT will pay AUDITOR as full compensation for all services and duties performed, the fee compensation set forth in the Proposal, as follows:

Fiscal year ending June 30, 2020:	\$15,500
Fiscal year ending June 30, 2021:	\$15,500
Fiscal year ending June 30, 2022:	\$15,500
Fiscal year ending June 30, 2023:	\$15,500
Fiscal year ending June 30, 2024:	\$15,500

The total compensation to be paid under this Agreement shall not exceed \$77,500 without a written amendment to this Agreement.

(b) Once a month, AUDITOR shall render itemized invoices to DISTRICT for services performed during the prior month, which shall be paid upon its approval by DISTRICT.

3. MATERIALS AND SUPPLIES

DISTRICT will provide office space, supplies, equipment, and support services required to maintain all records and correspondence connected with the Services. No personal use of DISTRICT equipment, supplies or services is allowed and AUDITOR shall comply with all DISTRICT policies regarding use of DISTRICT resources.

4. BUSINESS LICENSE

AUDITOR shall obtain and maintain a Contra Costa business license for the duration of this Agreement.

5. INDEPENDENT CONTRACTOR

In the performance of the services in this Agreement, AUDITOR is an independent contractor and is not an agent or employee of DISTRICT. AUDITOR, its officers, employees, agents, and subcontractors, if any, shall have no power to bind or commit DISTRICT to any decision or course of action, and shall not represent to any person or business that they have such power. AUDITOR has and shall retain the right to exercise full control of the supervision of the services and over the employment, direction, compensation, and discharge of all persons assisting AUDITOR in the performance of said service hereunder. AUDITOR shall be solely responsible for all matters relating to the payment of its employees, including compliance with social security and income tax withholding, workers' compensation insurance, and all other regulations governing such matters.

6. TERM OF AGREEMENT

The term of this Agreement shall be for the period encompassing the fiscal years ending June 30, 2020, 2021, 2022, 2023 and 2024, respectively. Either party may terminate this Agreement by giving a minimum of ten (10) day written notice to the other party of its intention to so terminate.

7. AMENDMENT

Except as otherwise stated herein, any and all obligations of DISTRICT and AUDITOR are fully set forth and described in this Agreement. Any changes in this Agreement, including any increase or decrease in the amount of compensation or any change in the term, which shall be mutually agreed upon by and between DISTRICT and AUDITOR, shall be set forth in written amendments to this Agreement.

8. NONDISCRIMINATION

(a) AUDITOR shall not discriminate in the conduct of the work under this Agreement against any employee, applicant for employment, or volunteer on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, sex, age, sexual orientation or other prohibited basis.

(b) Consistent with DISTRICT's policy that harassment and discrimination are unacceptable employer/employee conduct, AUDITOR agrees that harassment or discrimination directed toward a job applicant, a District employee, or a citizen by AUDITOR or AUDITOR's employee or subcontractor on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, sex, age, sexual orientation or other

prohibited basis will not be tolerated. AUDITOR agrees that any and all violation of this provision shall constitute a material breach of the Agreement.

9. STANDARD OF WORK; INDEMNIFICATION

(a) To the fullest extent permitted by law, AUDITOR shall defend, indemnify, and hold harmless, the DISTRICT, its officers, employees and agents from and against any and all claims, lawsuits, damage, injury and liability for damages, including attorney's fees and other costs of defense arising in the performance of AUDITOR's services under this Agreement. The DISTRICT shall not be responsible for claims, losses, damage, injury or liability for damages resulting from AUDITOR performance under this Agreement.

(b) Further, AUDITOR will indemnify DISTRICT, and hold it harmless, from an assertion that as a result of providing services to DISTRICT, AUDITOR or any of its employees or persons performing work pursuant to this Agreement is entitled to benefits from, or is covered by, the Social Security retirement system or the California Public Employees Retirement Systems. Notwithstanding the foregoing, however, AUDITOR's obligations for any payments to such claimant shall be limited to those payments that DISTRICT may be required to pay.

10. INSURANCE

(a) Required Coverage. Without limiting AUDITOR's indemnification, it is agreed that AUDITOR shall maintain in force at all times during the term of this Agreement the following types of insurance providing coverage on an "occurrence" basis. Said insurance, with the exception of Worker's Compensation and Errors & Omissions Liability, shall name the DISTRICT as additional insureds and evidence of said insurance shall be delivered to DISTRICT in certificate and endorsement forms acceptable to the DISTRICT prior to execution of this Agreement.

Automobile insurance for the vehicle(s) AUDITOR uses in connection with the performance of this Agreement. Coverage: \$1,000,000 per occurrence for bodily injury and property damage.

Commercial general liability and property damage insurance. Coverage: \$1,000,000 per occurrence. The general aggregate limit shall be twice the required occurrence limit.

Worker's Compensation insurance to cover its employees as required by the Labor Code of the State of California. AUDITOR's worker's compensation insurance shall include the following language: "All rights of subrogation are hereby waived against the DISTRICT, its officers and employees when acting within the scope of their appointment or employment." In the event any class of employees engaged in hazardous work under this Agreement is not protected under Workers' Compensation Statutes, the AUDITOR shall provide adequate and suitable insurance for the protection of its employees not otherwise protected.

E&O/ Professional's Liability, errors and omissions liability insurance appropriate to the AUDITOR's profession. Coverage: \$1,000,000 per Claim.

(b) General Provisions.

(i) AUDITOR shall obtain insurance acceptable to the DISTRICT in a company or companies admitted in California and with a Best rating of no less than A VII or as acceptable to the DISTRICT. The endorsements, naming the DISTRICT as an additional insured, are to be signed by a person authorized by AUDITOR's insurer to bind coverage on its behalf.

(ii) It shall be a requirement under this contract that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the broader coverage and maximum limits specified in this contract; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.

(iii) The limits of insurance required in the Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the DISTRICT (if agreed to in a written contract) before the DISTRICT's own insurance or self-insurance shall be called upon to protect it as a named insured.

(iv) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the DISTRICT, its elected or appointed officers, officials, employees, agents or volunteers.

(v) The insurance provided by these policies shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty days written notice has been received by the DISTRICT.

(c) Additional Insured. The DISTRICT will be named as an additional insured for all liability arising out of the operations by or on behalf of the named insured, and this policy protects the additional insured, its officers, agents and employees against liability for personal and bodily injuries, deaths or property damage or destruction arising in any respect, directly or indirectly, in the performance of the contract.

(i) Each such policy shall be endorsed with the following language:
The Kensington Police Protection and Community Services District, its elected or appointed officers, officials, employees and volunteers are included as insureds with regard to damages and defense of claims arising from: (a) activities performed by or on behalf of the Named Insured, including the insured's general supervision of the Named Insured, (b) products and completed operations of the Named Insured, or (c) premises

owned, leased or used by the Named Insured.

(ii) This policy shall be considered primary insurance as respects the DISTRICT, its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the DISTRICT, including any self-insured retention the District may have, shall be considered excess insurance only and shall not contribute with it.

(iii) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverages afforded shall apply as though separate policies had been issued to each insured.

(iv) The Additional Insured coverage under the AUDITOR's policy shall be primary and non-contributory and will not seek contribution from the DISTRICT's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

(d) Deductibles and Self-Insured Retentions. All self-insured retentions (SIR) must be disclosed to the DISTRICT's Risk Management for approval and shall not reduce the limits of liability. At the option of DISTRICT, either: the insurer shall reduce or eliminate such deductibles or self-insurance retention as respects the DISTRICT, its officers, officials, agents, employees and volunteers; or AUDITOR shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Policies containing any self-insured (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the DISTRICT. The DISTRICT reserves the right to obtain a full certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of the right to exercise later.

11. WORKERS' COMPENSATION

(a) Covenant to Provide. AUDITOR warrants that it is aware of the provisions of the California Labor Code that require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code. AUDITOR further agrees that it will comply with such provisions before commencing the performance of the work under this Agreement.

(b) Waiver of Subrogation. AUDITOR and AUDITOR's insurance company agree to waive all rights of subrogation against DISTRICT, its elected or appointed officials, agents, and employees for losses paid under AUDITOR's workers' compensation insurance policy which arise from the work performed by AUDITOR for DISTRICT.

12. NOTICES

Written communications and invoices under this agreement shall be addressed as follows:

To DISTRICT: General Manager
Kensington Police Protection and Community
Services District
217 Arlington Avenue
Kensington, CA 94707

To AUDITOR: Paul J. Paymark, CPA
Nigro & Nigro Professional Accountancy Corp.
2121 N. California Boulevard, Suite 290
Walnut Creek, CA 94596

13. The parties have entered into his Agreement in the County of Contra Costa, and State of California. The proper venue for resolving any disputes arising under this Agreement shall be the Superior Court of Contra Costa County. The laws of the State of California shall govern the interpretation and application of this Agreement.

IN WITNESS WHEREOF, the undersigned execute this Agreement on the date first written above.

AUDITOR

DocuSigned by:
Paul Kaymark
BY: 99ED9D4BA18E4F3...
Paul Kaymark
Title: Audit services Partner

KENSINGTON POLICE PROTECTION
AND COMMUNITY SERVICES DISTRICT
A California Special District
DocuSigned by:
Marti Brown
9BB47FC215F248A...
Marti Brown
GENERAL MANAGER
2/27/2021

APPROVED AS TO FORM:

DocuSigned by:
Ann Danforth
FCBB235BA50C42E...
Ann R. Danforth
DISTRICT GENERAL COUNSEL
2/26/2021