

KENSINGTON POLICE PROTECTION AND COMMUNITY SERVICES DISTRICT

AGENDA

A Special Meeting (Closed Session) of the Board of Directors of the Kensington Police Protection and Community Services District will be held Thursday, March 23, 2017, at 6:30 P.M. at the Kensington Community Center, 59 Arlington Avenue, Kensington, California. The Board will commence one of its two Regular Monthly Meetings in Open Session Thursday, March 23, 2017, at 7:30 P.M. at the Kensington Community Center, 59 Arlington Avenue, Kensington, California. If further Closed Session is required, the Board will return to Closed Session following the end of the Regular Meeting.

Note: All proceedings of the Open Session will be videotaped.

1. Call to Order / Roll Call 6:30 P. M.

2. Closed Session – Public Comments

- a. ANTICIPATED LITIGATION: The Board will be briefed on matters involving significant exposure to litigation pursuant to Government Code Section 54956.9(e).
- b. PUBLIC EMPLOYEE EMPLOYMENT, DISCIPLINE OR DISMISSAL: The Board will be briefed on personnel matters pursuant to Government Code Section 54957(b)(1).
- c. PUBLIC EMPLOYEE EMPLOYMENT pursuant to Government Code section 54957. Agency Representation: Bob Deis, Public Management Group. Title: Interim General Manager or General Manager.

3. Regular Meeting: Open Session – Call to Order / Roll Call 7:30 P.M.

The Board will return to Open Session at approximately 7:30 P.M. and will report out on the Closed Session if reportable action is taken.

4. Public Comments: Members of the public may address the Board on any matter listed on the agenda at the time the Board is considering the agenda item. Each speaker is allowed a maximum of five (5) minutes, pursuant to section 5030.41 of the District Policy and Procedures Manual.

5. Board/Staff Comments

6. Consent Calendar

None

7. Old Business

a. The Board will receive an update from the Interim GM/COP on ongoing discussions between the KPD and Albany and El Cerrito/Contra Costa County Sheriff to provide dispatch, RMS and records management services to the District. The Board may direct the Interim GM/COP to begin negotiation of a contract with an outside agency. Action Item. P-

Fiscal Impact: This is to be determined as it is based on ongoing negotiations.

8. New Business

a. The Board will review, discuss and possibly vote to accept the engagement letter from Ann Danforth, and appoint Ann Danforth as District Legal Counsel. Action Item. P-3

Fiscal Impact: For 12 months of legal services beginning April 2017 the cost is \$37,230 for 216 hours of legal work. Other legal services will be billed at \$180/hour until 2018, when the rate is \$190/hour.

ADJOURNMENT

General Information

Accessible Public Meetings

NOTE: UPON REQUEST THE KENSINGTON POLICE PROTECTION AND COMMUNITY SERVICES DISTRICT WILL PROVIDE WRITTEN AGENDA MATERIALS IN APPROPRIATE ALTERNATIVE FORMATS, OR DISABILITY-RELATED MODIFICATION OR DISABILITIES TO PARTICIPATE IN PUBLIC MEETINGS. PLEASE SEND A WRITTEN REQUEST, INCLUDING YOUR NAME, MAILING ADDRESS, PHONE NUMBER AND A BRIEF DESCRIPTION OF THE REQUESTED MATERIALS AND PREFERRED ALTERNATIVE FORMAT OR AUXILIARY AID OR SERVICE AT LEAST 2 DAYS BEFORE THE MEETING. REQUESTS SHOULD BE SENT TO:

District Administrator Lynn Wolter, Kensington Police Protection & Community Services District, 217 Arlington Ave, Kensington, CA 94707

POSTED: Public Safety Building-Colusa Food-Library-Arlington Kiosk- and at www.kensingtoncalifornia.org

Complete agenda packets are available at the Public Safety Building and the Library.

All public records that relate to an open session item of a meeting of the Kensington Police Protection & Community Services District that are distributed to a majority of the Board less than 72 hours before the meeting, excluding records that are exempt from disclosure pursuant to the California Public Records Act, will be available for inspection at the District offices, 217 Arlington Ave, Kensington, CA 94707 at the same time that those records are distributed or made available to a majority of the Board.

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Law Offices of Ann R. Danforth

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March __, 2017

Ms. Rachelle Sherris-Watt
President, Board of Directors
Kensington Police Protection and Community Services District
217 Arlington Avenue,
Kensington, California 94707

Re: Proposed Retainer Agreement for General Counsel Services

Dear Ms. Sherris-Watt,

As we discussed, this is my proposal to provide General Counsel Services to the Kensington Police Protection and Community Services District ("District"). This letter is intended to set forth our relationship as required by state law. If the terms of this agreement are acceptable, please countersign one of the duplicate originals of this letter and return it to me. I cannot assist you with any legal matter until I receive this letter. Please do not hesitate to contact me if you have any questions regarding our relationship or the matters covered by this agreement.

1. *Scope of Services.* District retains the Offices of Ann R. Danforth ("Attorney") to act as District's General Counsel ("Services"). The Services include providing advisory assistance and attending monthly meetings of the District's Board. The Attorney will not provide any representation outside of Services expressly set forth in this section without a separate written agreement or written modification to this Agreement. The Attorney will not provide any representation of any directors, officers, employees, shareholders, or any other persons or

entities affiliated with District unless such representation is expressly included herein.

2. *Conditions of Relationship.* This Agreement shall not take effect, and Attorney shall have no obligation to provide Services, until signed by an authorized person and returned to Attorney ("Effective Date").
3. *Responsibilities of Attorney.* Attorney will endeavor to represent District competently in accordance with the highest legal and ethical standards, provide all services reasonably necessary in connection with the Services and take reasonable steps to keep District informed of progress and respond to District's inquiries.
4. *Responsibilities of District.* District will be cooperative, responsible and truthful in its relationship with Attorney, assist with providing relevant information and documents, keep Attorney apprised of District's contact information and whereabouts and pay all of Attorney's bills on time. District will also appear when necessary at legal proceedings.
5. *Disclosure Regarding Insurance.* Attorney maintains professional liability insurance and will provide details upon request.
6. *Legal Fees.* District shall pay Attorney's fees and costs for all Services rendered pursuant to this Agreement, including, without limitation, time spent on telephone calls with District, witnesses, consultants, opposing counsel or court personnel, waiting time in court and elsewhere and local and out of town travel time. Attorney will charge in increments of one-tenth of an hour.
 - A. Between the Effective Date, District shall pay Attorney a monthly retainer of \$3060 (three thousand sixty dollars), payable on the first business day of each month ("Monthly Retainer").
 - i. The Monthly Retainer shall constitute Attorney's fee for the following Services: fourteen hours of legal advice and representation (not including litigation and other matters that Attorney determines require Special Services as defined herein) ("Advisory Services") and four hours of attendance at two Board meetings per month.
 - ii. In the event that the Board request the Attorney to attend Board or other meetings that for a total period in excess of

- four hours per month, the overage shall be charged against District's allotment of Advisory Services for that month.
- iii. In the event that District requires less than four hours of Advisory Services in a particular month, the excess time shall be carried over to successive months ("Reserve Hours"). The Reserve Hours shall not exceed five hours.
 - iv. In the event that District requires Services in addition to those covered by the Monthly Retainer, District shall pay Attorney's normal hourly rate of \$180 ("Hourly Rate") for the uncovered Services.
 - v. For purposes of this Agreement, "Special Services" are legal services that customarily require an attorney with a specialized practice, including, without limitation, litigation, personnel and workers compensation.
- B. Beginning on January 1, 2018, Attorney's Monthly Retainer shall increase to \$3230 (three thousand two hundred thirty dollars) and her Hourly Rate shall increase to \$190 (one hundred ninety dollars).
 - C. Attorney's monthly retainer and hourly rate is subject to change on 30 days' written notice to District. If District declines to pay increased rates, Attorney will have the right to withdraw as attorney for District.
 - D. In the event that Attorney is unable to attend a regular Board meeting because of illness or schedule conflicts, Attorney will use her best efforts to so inform the Board President two weeks in advance. If as a result of Attorney's absence, Attorney does not provide with four hours of meeting time in any given month, District shall be entitled to a credit for the missed time of up to three hours against the next Monthly Retainer payment, calculated at the Attorney's then-current Hourly Rate. Notwithstanding the foregoing, Section 6.A(iii) shall govern in any such month where District does not require Attorney's presence for the full four hours of meeting time.
 - E. In the event that Attorney is to provide the Advisory Services in any given month, Attorney will so inform the Board President as soon as practicable and provide a credit against the next Monthly Retainer payment for the hours not provided, calculated at the Attorney's then-current Hourly Rate.

7. *Other Costs and Charges.*

- A. Attorney will incur various costs and expenses in performing legal services under this Agreement. District shall pay for all costs,

disbursements and expenses in addition to the hourly fees. The costs and expenses commonly include: use of subscription legal tools such as Westlaw or Lexis, service of process charges, filing fees, court and deposition reporters' fees, jury fees, notary fees, deposition costs, messenger and other delivery fees, postage, photocopying and other reproduction costs, travel costs including parking, mileage, transportation, meals and hotel costs, investigation expenses, consultants' fees, expert witness, professional, mediator, arbitrator and/or special master fees, unavoidable administrative staff and secretarial overtime, and other similar items. Except for the items listed below, all costs and expenses will be charged at Attorney's cost.

In-office photocopying/ page:	\$.20
In-office color photocopying/ page	\$ 1.00
Facsimile charges/ page:	\$ 1.00
Mileage/ mile:	\$.575 (per IRS notices)

Notwithstanding the foregoing, Attorney shall not charge mileage costs for travel between Attorney's office and the District office.

B. Out-of-town travel. District agrees to pay transportation, meals, lodging and all other costs of any necessary out-of-town travel by Attorney's personnel. District will also be charged the hourly rates for the time legal personnel spend traveling.

C. Additionally, District understands that if any legal matter proceeds to court action or arbitration, District may be required to pay fees and/or costs to other parties in the action. Any such payment will be entirely the responsibility of District.

8. *Billing Statements.* Attorney will send District bi-monthly invoices for fees and costs incurred that are not covered by the monthly retainer. Each statement will be payable within 10 days of its mailing date. District may request a statement at intervals of less than 30 days. If District so requests, Attorney will provide one within 10 days. The statements shall include the amount, rate, basis of calculation or other method of determination of the fees and costs, which costs will be clearly identified by item and amount.

9. *Interest Charges.* If the Monthly Retainer or any billing statement is not paid by its due date, interest will be charged on the principal balance

(fees, costs, and disbursements) shown on the statement. Interest will be calculated by multiplying the unpaid balance by the periodic rate of .833% per month (TEN PERCENT [10%] ANNUAL PERCENTAGE RATE). The unpaid balance will bear interest from the date of the invoice until paid.

10. *Discharge and Withdrawal.* District may discharge Attorney at any time. Attorney may withdraw upon 30 days prior written notice (or sooner with the District's consent) or for good cause. Good cause includes District's breach of this Agreement, refusal to cooperate or to follow Attorney's advice on a material matter or any fact or circumstance that would render Attorney's continuing representation unlawful or unethical. When Attorney's services conclude, all unpaid charges will immediately become due and payable within 60 days of said conclusion. After services conclude, Attorney will, upon District's request, deliver District's file, and property in Attorney's possession, whether or not District has paid for all services.
11. *Document Retention Policy.* District is entitled to any files in Attorney's possession relating to the legal services performed by Attorney for District upon written request, excluding Attorney's internal accounting records and other documents not reasonably necessary to District's representation, subject to Attorney's right to make copies of any files withdrawn by District. Once a matter is concluded, Attorney will close the file, and District will receive notice thereof. District will be invited to request the return of all files and other District-owned materials within 45 days of receipt of said notice, at District's expense. If within 45 days of this notice District fails to retrieve the District materials or request Attorney to forward them, District authorizes Attorney to destroy the District materials.
12. *Disclaimer of Guarantee and Estimates.* Nothing in this Agreement and nothing in Attorney's statements to District will be construed as a promise or guarantee about the outcome of the matter. Attorney makes no such promises or guarantees. Attorney's comments about the outcome of the matter are expressions of opinion only. Any estimate of fees given by Attorney shall not be a guarantee. Actual fees may vary from estimates given.
13. *Mediation/Arbitration; Waiver of Jury Trial.* If a dispute arises out of or relating to any aspect of this Agreement between District and Attorney, or the breach thereof, and if the dispute cannot be settled

through negotiation, Attorney and District agree to discuss in good faith the use of mediation before resorting to arbitration, litigation, or any other dispute resolution procedure. However, should discussions, mediation or the non-binding arbitration provided through a local bar association program not resolve the dispute, the dispute shall be determined by binding arbitration before the American Arbitration Association under its then prevailing commercial arbitration rules, except that discovery may be taken in that arbitration pursuant to the California Code of Civil Procedure. The claims or controversies subject to this provision shall include, without limitation, any claim of professional negligence or malpractice. The arbitration shall be held in Berkeley, California, unless the parties mutually select another venue, and judgment may be entered upon the arbitrator's award by any court having jurisdiction. Should the District refuse or neglect to appear or participate in the arbitration proceedings, the arbitrator is empowered to decide the claim or controversy in accordance with the evidence presented. You should realize that by accepting the arbitration provision, **YOU WILL WAIVE YOUR RIGHT TO A JURY TRIAL AND THE RIGHT, EXCEPT UNDER LIMITED CIRCUMSTANCES, TO APPEAL THE ARBITRATOR'S DECISION.**

_____(District Initial Here) _____(Attorney Initial Here)

14. *Fee Arbitration.* Notwithstanding Paragraph 14, above, District has the right under Sections 6200-6206 of the California Business and Professions Code to request arbitration of any fee dispute by an independent, impartial arbitrator or panel of arbitrators through a bar association program created solely to resolve fee disputes between lawyers and Districts.
15. *Attorneys' Fees Clause.* The prevailing party in any action or proceeding arising out of or to enforce any provision of this Agreement, with the exception of a fee arbitration or mediation under Business and Professions Code Sections 6200-6206, will be awarded reasonable attorneys' fees and costs incurred in that action or proceeding, or in the enforcement of any judgment or award rendered.
16. *Entire Agreement.* This Agreement contains the entire agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this Agreement will be binding on the parties.

17. *Severability in Event of Partial Invalidity.* If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.
18. *Modification By Subsequent Agreement.* This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by both of them, or an oral agreement only to the extent that the parties carry it out.
19. *Effective Date.* This Agreement will govern all legal services performed by Attorney on behalf of District commencing with the date Attorney first performed services. The date at the beginning of this Agreement is for reference only. Even if this Agreement does not take effect, District will be obligated to pay Attorney the reasonable value of any services Attorney may have performed for District.

THE PARTIES HAVE READ AND UNDERSTOOD THE FOREGOING TERMS AND AGREE TO THEM AS OF THE DATE ATTORNEY FIRST PROVIDED SERVICES. IF MORE THAN ONE DISTRICT SIGNS BELOW, EACH AGREES TO BE LIABLE, JOINTLY AND SEVERALLY, FOR ALL OBLIGATIONS UNDER THIS AGREEMENT. DISTRICT SHALL RECEIVE A FULLY EXECUTED DUPLICATE OF THIS AGREEMENT.

DATED: _____

DISTRICT

By: _____

Interim District General
Manager/Chief of Police

Approved as to Form by District
Counsel _____

DATED: _____

ATTORNEY

By: _____
Ann R. Danforth

DRAFT