



KENSINGTON FIRE PROTECTION DISTRICT

December 18, 2024

Board of Directors

Consulting Agreement with Tim Barry for EBRPD Project
Coordination

SUBMITTED BY: Mary A. Morris-Mayorga, General Manager

Recommended Action

Staff recommends that the Board consider approving a consulting agreement with Tim Barry for work on EBRPD partnership and the related budget amendment in the amount of \$40,320.

Background

On November 20, 2024, the Board expressed the desire to collaborate with East Bay Regional Parks District (EBRPD) on fuels reduction with a willingness to commit funds as appropriate. To establish a pilot program or memorandum of understanding, it is recommended to engage with Tim Barry as a consultant to facilitate development of that for Board approval.

A draft agreement has been attached which also encompasses some final work on decommissioning the temporary station with an estimated not-to-exceed provided by Tim.

Fiscal Impact

This consulting agreement would require a budget amendment of \$40,320.

Attachments: Consultant Agreement with Tim Barry



**KENSINGTON FIRE PROTECTION DISTRICT
CONSULTANT AGREEMENT
Contract Number: _____**

DATE: 12/19/2024
PARTIES: KFPD: Kensington Fire Protection District
217 Arlington Ave.
Kensington CA 94707
CONSULTANT: Tim Barry
[REDACTED]

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 operational assistance and related services on District programs: decommission of temporary station; work with East Bay Regional Parks District (EBRPD) to develop the scope and framework of an agreement between EBRPD and KFPD, for board review and approval, for ongoing annual maintenance work in Tilden Park to reduce fire risk to Kensington; and other administrative project management and services as requested. Contract administration and oversight will be done by the General Manager.
3. Term of Agreement:
This Agreement shall commence on December 19, 2024 and continue until June 30, 2025, unless this Agreement is terminated earlier as provided herein under paragraph 15.
4. Compensation:
The compensation shall be \$112 per hour for services performed pursuant to this Agreement with a total not-to-exceed amount of \$40,320. Payments shall be made within 30 days of receipt of invoice from CONSULTANT.
5. Expense Reimbursement:
KFPD shall reimburse 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 each invoice by email to ap@kensingtonfire.org. 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. 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, 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.

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 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 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 first written above.

Consultant

Kensington Fire Protection District

By: _____
Tim Barry
Consultant

By: _____
Daniel Levine
President, KFPD Board of Directors

Approved as to Form:

By: _____
General Counsel