



## KENSINGTON FIRE PROTECTION DISTRICT

### CONSULTANT AGREEMENT

DATE: 21 September 2022

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

CONSULTANT: **Macks Craic, Inc. dba mack5**  
1000 Broadway  
Suite 260  
Oakland CA 94607

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 Construction Management 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 the completion of the Kensington Public Safety Building Renovation Project, unless this Agreement is terminated earlier as provided herein.

4. Compensation:

Compensation shall be invoiced monthly per the fee proposal listed in Exhibit A, attached. Payments shall be made within Thirty (30) days of receipt of invoice from CONSULTANT.

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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, per the fee proposal in Exhibit A.

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

## KENSINGTON FIRE PROTECTION DISTRICT

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

## KENSINGTON FIRE PROTECTION DISTRICT

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.

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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.

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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.

**Macks Craic, Inc. dba mack5**

Consultant Name


By:   
A7A3D655006B4E7...

Consultant Signature

**Kensington Fire Protection District,**

A Political subdivision of the State of

California

By:   
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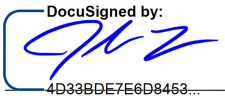
Bill Hansell

General Manager, KFPD

9/21/2022

Date: \_\_\_\_\_

Approved as to Form:

By:   
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District Counsel



**KENSINGTON FIRE PROTECTION DISTRICT**

**EXHIBIT A**

**mack5 Construction Management Services Fee Proposal  
For  
Kensington Public Safety Building Renovation Project**



September 12, 2022

Bill Hansell  
General Manager  
Kensington Fire Protection District  
217 Arlington Avenue  
Kensington, CA 94707

**Re: Construction Management Services Fee Proposal - Kensington Public Safety Building Renovation**

Dear Mr. Hansell:

Thank you for the opportunity to submit our fee proposal for Construction Management services for the Kensington Public Safety Building Renovation project.

Background

The Kensington Fire Protection District (District) is going to start the construction phase of the project in October 2022. The project Architect is MARJANG Architecture. The District has bid the project and selected CWS Construction to be the General Contractor.

District is anticipating 18 months for the construction phase including closeout.

mack5 has a long history of working with the District, having worked on 2 renovation projects in the station building. We are also assisting the District with the ongoing buildout of the temporary fire station facility.

Scope of Services

Our construction phase scope of services will include:

- Assist with procurement of testing & inspection consultants
- Review project documents including contractor’s contract
- Schedule, attend preconstruction meeting
- Represent District’s interest during construction
- Attend weekly construction meetings
- Review contractor’s construction schedules and look-ahead schedules
- Manage/track construction budgets
- Conduct weekly site visits, monitor work progress on site and contractor’s compliance with site management requirements
- Promptly report material defects in writing to District and design team; notify contractor of non-compliance and resolve issues
- Monitor RFI and submittal process; oversee contractor logs
- Monitor procurement of long lead items
- Coordinate third party testing and inspection, assist with resolving issues (contractor to schedule all inspections directly)
- Review and approve contractor’s progress payment requests
- Review, evaluate and negotiate contractor change orders
- Analyze and recommend action to District on claims (if any)

mack<sup>5</sup> Services:

Owner’s Representative

Project Management

Construction Management

Cost Management

Cost Planning

mack<sup>5</sup>

**Headquarters**

1000 Broadway  
Suite 260  
Oakland, CA 94607

**Richmond Office**

322 Harbour Way  
Suite 16  
Richmond, CA 94801

phone 510.595.3020

fax 510.595.1755



- Coordinate and supervise any work required by consultants outside the construction or design contracts
- Participate in the punch list process, work with design team and contractor to develop a punch list and issue Substantial Completion Letter
- Oversee timely completion of punch list
- Ensure completion and delivery to District of all required close-out documentation including O&M manuals, record drawings, project files and warranties
- Review final payment application and recommend retention release
- Assist with issuing Final Completion Letter
- Set up warranty process

Staffing

Our proposed construction manager, Grace Seferian will be taking the lead for providing our services under this proposal. She will be supported by other mack5 staff including myself as needed throughout construction. Her resume is attached with this proposal.

Fee

For the fee proposal, mack5 is assuming 1 month of preconstruction activities, 16 months for construction and 2 months for closeout.

For 1 month of preconstruction, we would like to propose a fee of \$12,600. For the 16 months of construction, we would like to propose a monthly fee of \$17,890. And for 2 months of closeout, a monthly fee of \$13,850.

Our proposed fee summary is as below:

• Preconstruction, 1 month	\$ 12,600
• Construction, 16 months	\$ 286,240
• Closeout, 2 months	\$ 27,700
Proposed Total Fee:	\$ 326,540

Reimbursable Expenses:

The cost of reproductions, deliveries and travel expenses (for travel outside the San Francisco Bay Area) will be charged at cost plus ten percent (10%). We recommend that the District carry a reimbursable allowance of \$2,500.

Please note that material increases in duration or scope of services for reasons that are outside our control would require additional fees, to be mutually agreed with the District.

We are excited about this opportunity, ready to commence work immediately, and look forward to working with the District again.

Kind regards,



Manil Bajracharya  
Principal



## education

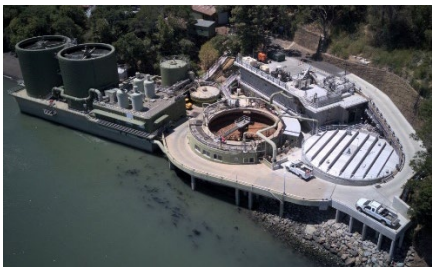
## licenses/certifications/accreditations



## representative project experience



corte madera town hall

sausalito-marín city  
sanitary sewer treatment plant**Grace Seferian, P.E.**

Construction Manager

- Master of Engineering Management, American University, Beirut, Lebanon
- Bachelor of Engineering, American University, Beirut, Lebanon

- Licensed Professional Civil Engineer (P.E.), #C68317
- Licensed General Contractor #832525
- Project Management Professional (PMP)
- LEED Accredited Professional (LEED® AP)
- Qualified Storm Water Pollution Prevention Plan (SWPPP) Developer (QSD) and Practitioner (QSP)

Ms. Seferian is a Project/Construction Management professional and Professional Mediator with over 25 years of construction experience in both the public and private sectors. She has managed all aspects of multi-million dollar projects, from Programming & Planning, to Design, Bid & Award, to Construction and Closeout, maintaining scope, schedule and budget as well as compliance with applicable state and agency criteria and safety standards. In her capacity as both a CM and mediator, Grace has helped resolve hundreds of construction disputes and potential claims.

The combination of her engineering and construction experience gives Grace a complete and well-balanced understanding of the building process. As an expert in the field of construction, she has a deep understanding of technical terms, engineering and claims analysis principles.

**Sausalito-Marín City Sanitary District (CA Health & Safety Code District)**

- Treatment and Wet Weather Flow Upgrade, Sausalito CA  
Construction management services for major sanitary sewer treatment plant upgrade.

**City of Richmond Wastewater Recovery Projects (Richmond CA)**

- Wastewater Treatment Plant Critical Improvements  
Construction oversight assistance and advisory services.
- Wastewater Treatment Plant Cogeneration  
Design-Phase assistance services.
- Wastewater Treatment Plant Sludge Thickening  
Design-Phase assistance services.
- Ferry Point Lift Station  
Design-Phase assistance services.

**Chabot-Las Positas Community College District**

- Chabot Community College, Hayward CA  
Project management/ construction management services for several on campus upgrade projects.

**Los Angeles Unified School District**

- Panorama High School, Los Angeles CA  
Construction management services for a new high school construction.

**Burbank Unified School District**

- John Burroughs High School, Burbank CA  
Construction management services for reconstruction and modernization of an existing high school.

**William S. Hart Union High School District**

- West Ranch High School, Stevenson Ranch CA  
Construction management services for a new high school construction.

**Town of Corte Madera**

- Corte Madera Town Hall, Corte Madera CA  
Schedule review services for a replacement Town Hall.

## 2022 Schedule of Fees

### Hourly Rates

Principal	\$250.00
Senior Project Managers	\$215.00
Senior Cost Managers	\$195.00
Project and Cost Engineers	\$175.00
Jr. Project and Cost Engineers	\$150.00
Administrative Support	\$ 90.00

### Expert Witness Trials and Depositions

Billed at 1.5 times normal billing rate.

### Reimbursable Expenses

Billed at 1.1 times cost.

- Expense of reproductions, postage and handling of drawings, specifications and other documents.
- Expense of data processing and photographic production for presentation purposes.

Billing rate increases are 3-4% annually.