

**AGREEMENT AMONG
THE EAST CONTRA COSTA FIRE PROTECTION DISTRICT, THE COUNTY OF
CONTRA COSTA, THE CITY OF OAKLEY, AND THE OAKLEY REDEVELOPMENT
AGENCY FOR THE OAKLEY FIRE STATION REPLACEMENT PROJECT**

The East Contra Costa Fire Protection District, a fire protection district existing under the laws of the State of California ("District"), the County of Contra Costa, a political subdivision of the State of California ("County"), the City of Oakley, a municipal corporation ("City"), and the Redevelopment Agency of the City of Oakley, a public body corporate and politic existing under the laws of the State of California ("Agency"), mutually agree and promise as follows:

RECITALS

- A. District Fire Station 93 is currently located at 215 Second Street (the "Second Street Property"; APN 035-131-002). The County owns the Second Street Property. The Second Street Property is approximately 0.62 acres in size. One above-ground petroleum product tank is located at the Second Street Property. The legal description of the Second Street Property is set forth in Exhibit A, which is attached and incorporated by reference.
- B. Fire Station 93 was built in the 1950s and is not large enough to adequately accommodate District staff and equipment. The City, Agency and District would like to replace the current Station 93 with a larger, modern fire station to better serve the City and the Agency redevelopment project area.
- C. The City owns property at 530 O'Hara Avenue (the "La Viña Property"; APN 034-300-013 and APN 034-300-019.) The La Viña Property is approximately 1.6 acres in size and is located about ¼-mile south of the existing Station 93. The legal description of the La Viña Property is set forth in Exhibit B, which is attached and incorporated by reference.
- D. The District owns property on Live Oak Avenue, north of Laurel Road and east of Neroly Road (the "Live Oak Avenue Property"; APN 041-021-014). The Live Oak Property is approximately 1.07 acres in size. Title to the Live Oak Avenue Property is held by the District as successor in interest to the Oakley Fire Protection District. The legal description of the Live Oak Avenue Property is set forth in Exhibit C, which is attached and incorporated by reference.
- E. The City and Agency intend to build a new fire station to District specifications at the La Viña Property and convey the station and the La Viña Property to the District following completion of construction.

- F. The District and County intend to convey the Second Street and Live Oak Avenue properties to the City or the Agency following the conveyance of the improved La Viña Property to the District.
- G. California redevelopment law (Health and Safety Code section 33445) authorizes redevelopment agencies to pay for fire district capital improvements, either within or outside the project area, if the buildings, facilities, structures or other improvements are of benefit to the redevelopment project area or the immediate neighborhood in which the project is located. The La Viña Property is located within the Agency redevelopment project area. The Agency's governing body has found, pursuant to Health and Safety Code section 33445, that the new Fire Station 93 will be of benefit to the Agency redevelopment project area.
- H. On July 10, 2007, \$1,600,225 in City fire facilities impact fees and related interest earnings, which were being held in the County Treasury, were returned to the City and placed into the City Fire Facilities Impact Fee Fund, where they must be used in accordance with the City's impact fee ordinance. The construction of a new Fire Station 93 at the La Viña Property is an eligible use of these funds.
- I. \$850,000 in District fire facilities fees are available for the construction of a new Fire Station 93 at the La Viña Property.

NOW, THEREFORE, the parties agree as follows:

AGREEMENT

1. Definition. As used in this Agreement, the term "Project" means the construction of a new Fire Station 93 at the La Viña Property. The Project is a turn-key fire station project, designed to meet the operational needs of the District and built to emergency operations center standards, that consists of an access court, three apparatus bays, a training room, an office, and three bathrooms. The Project includes all fixtures, furnishings and utilities necessary to operate the fire station, but does not include the provision of stand-alone fire-fighting equipment or apparatus, including fire-fighting vehicles.
2. Purpose. The purpose of this Agreement is to provide for the apportionment of responsibilities and costs among the parties for the construction of the Project and to provide for the exchange of properties.
3. Land Use.
 - (a) All transactions contemplated by this Agreement are contingent on and subject to appropriate review under the California Environmental Quality Act (CEQA).

- (b) The City shall act as lead agency for the Project, obtain all permits, approvals, and entitlements necessary for the Project, and prepare environmental clearance for the Project pursuant to CEQA.

4. Project Construction.

- (a) The City shall hire an architectural firm to prepare and complete design and engineering plans, contract plans, specifications, and construction and bid documents for the Project. The final versions of all plans, specifications, and construction and bid documents must be approved in writing by the District Fire Chief. No later than 60 days after the District's written approval of all plans, specifications, and construction and bid documents, the City shall advertise the Project for construction bids and award a construction contract or contracts. Following award of the construction contract(s), the City shall perform contract administration and take all other necessary steps to construct the Project to the final Project plans and specifications.
- (b) As an alternative to the design-bid-build process described in Section 4(a), the City, with the written approval of the District Fire Chief, may elect to request design-build proposals for the Project pursuant to the procedure described in Public Contract Code Section 20175.2. In that case, the City shall advertise for design-build proposals and award a design-build contract no later than 60 days after the District's written approval of the City's documents requesting design-build proposals. In addition, the City shall obtain the written approval of the District Fire Chief before awarding the design-build contract and before approving the design documents (i.e., complete plans and specifications) prepared by the design-build entity. Following award of the design-build contract, the City shall perform design and contract administration and take all other necessary steps to design and construct the Project in compliance with the District's requirements and the design documents approved by the District.
- (c) The parties understand that the construction is a project of the City. The City will comply with California Labor Code Sections 1720-1861, and all other laws and regulations applicable to the construction of the Project.

5. Project Changes.

- (a) The City may not make or cause to be made any changes in the final plans or specifications without the prior written consent of the District Fire Chief.
- (b) The City shall administer all contract change orders for the Project.

- (c) Except as provided in subsection (d) of this section, the City shall send copies of all contract change orders to the District for the District's review. All contract change orders shall be approved in writing by the District Fire Chief prior to execution by the City. If the City does not receive written notice of the District's approval or disapproval of a contract change order within five working days of the City notifying the District of the change order, the contract change order will be deemed approved by the District. The District may not unreasonably withhold its decision.
- (d) The District may request change orders during the course of the Project. All contract change orders requested by the District must be in writing and delivered to the City Manager. Within five working days of the District's delivery of its requested change order, the City Manager shall notify District in writing of the City's approval or disapproval of the requested change order. The City may not unreasonably withhold its decision.
- (e) Payment of contract change orders will be made in accordance with subsections (b) and (c) of section 9.

6. Inspections.

- (a) The City will perform field inspections of the Project to determine conformance with Project plans and specifications and any change orders. In performing inspection and contract administration under this Agreement, the City shall utilize the services of a construction manager, construction inspector, architect, or engineer experienced with fire station construction projects and approved in writing by the District.
- (b) The City hereby grants to the District a right of entry upon the La Viña Property to gather data relevant to the Project, including testing, surveys, and studies, and to perform field inspections of the Project to determine conformance with Project plans and specifications. The District will notify the City of any change orders that are necessary to remedy design deficiencies or address nonconformance with Project plans and specifications.

7. Acceptance, Completion, and Assignment.

- (a) Upon completion of Project construction, the City and District will conduct a joint final inspection of the Project. After the City and District have determined that the work performed has been completed in accordance with the approved plans and specifications and to the City's and District's satisfaction, and after the District Fire Chief has provided written notice to the City Manager of the District's approval of the Project, the City shall accept the Project as complete and shall promptly record a notice of completion.

- (b) At the time the City records the notice of completion specified in subsection (a) of this section, the City shall assign to the District its rights under all contracts pertaining to the Project, including but not limited to all rights to proceed against any contractors, persons, or entities connected with the design, construction and management of the Project, and shall assign to the District all express warranties and all warranties existing at law.
- (c) The Project will be considered complete when all of the following have occurred:
 - (A) The Project is a fully completed and operational fire station in turn-key condition that includes all fixtures, furnishings and utilities necessary to operate the fire station. The City shall purchase all fixtures and furnishings necessary to operate the fire station. The District Fire Chief and City Manager shall review and authorize the purchase of all fixtures and furnishings.
 - (B) The City has recorded a notice of completion pursuant to subsection (a) of this section.
 - (C) All rights under all contracts pertaining to the Project have been assigned to the District pursuant to subsection (b) of this section.

8. Conveyance of Property and Improvements.

- (a) Once the Project is complete pursuant to subsection (c) of section 7, and in consideration of the agreements contained herein, the City shall convey to the District title in fee simple to the La Viña Property, including title to all of the improvements in the Project.
- (b) Promptly following the City's conveyance of the La Viña Property to the District, and in consideration of the agreements contained herein, the District shall convey to the City or the Agency title in fee simple to the Live Oak Avenue Property. The Live Oak Property will be conveyed in an "as is" physical condition with no warranty express or implied as to any matter. Neither the City nor the Agency, nor their respective heirs, successors or assigns, shall ever have any claim, or assert any right or action, against the District for any loss, damage or other matter arising out of or resulting from the condition of the Live Oak Avenue Property.
- (c) Promptly following the City's conveyance of the La Viña Property to the District, and in consideration of the agreements contained herein, the County or District shall convey to the City or the Agency title in fee simple to the Second Street Property, including title to all improvements on the Second Street Property. Before it conveys the Second Street Property, the County or District will remove the one above-ground

petroleum product tank from the Second Street Property. The Second Street Property and all remaining improvements will be conveyed in an "as is" physical condition with no warranty express or implied as to any matter. Neither the City nor the Agency, nor their respective heirs, successors or assigns, shall ever have any claim, or assert any right or action, against the County or District for any loss, damage or other matter arising out of or resulting from the condition of the Second Street Property and the remaining improvements conveyed to the City.

9. Payment of Project Costs.

- (a) Within seven days after the execution of this Agreement, the District shall transfer to the City \$850,000 in District fire facilities impact fees (District Fees) for deposit into the City's Fire Facilities Impact Fee Fund. Upon the City's receipt of the \$850,000 in District Fees, the City shall appropriate the total of \$2,450,225 (the \$1,600,225 in City Fire Facilities Impact Fees and the \$850,000 in District Fees), plus interest, to the Project.
- (b) The City and Agency shall pay all costs connected with the development and construction of the Project, including but not limited to the preparation of final design and engineering plans, final contract plans, final specifications, all bidding-phase and construction-phase architectural services, all applicable fees, all change order costs, all utility improvements and utility hookup costs, and all road improvement costs, except as otherwise provided in subsections (c) and (d) of this section. The City and Agency may pay Project costs from the City's Fire Facilities Impact Fee Fund or from any other funding source they deem appropriate. Depletion of the City's Fire Facilities Impact Fee Fund does not relieve the City or Agency of the responsibility set forth in this subsection.
- (c) The District shall pay all costs connected with contract change orders that are requested by the District and approved by the City, except for change orders requested by the District that are necessary to address nonconformance with Project plans and specifications.
- (d) The City and Agency are not responsible for payment of any stand-alone fire-fighting equipment or apparatus costs, including fire-fighting vehicles.
- (e) The total cost of the Project is estimated not to exceed \$3 million. If it appears the total Project cost will exceed \$3 million, the District and City will meet to review Project costs and schedules and evaluate together how best to bring the Project to completion. Once the \$850,000 in District Fees have been transferred to the City, however, nothing in this section shall obligate the District to pay any Project costs other than those specified in subsection (c) of this section.

10. Insurance.

- (a) The City and the Agency are insured as members of the Municipal Pooling Authority of Northern California, and the County and the District are self-insured. Each shall provide the others with a letter of insurance within 30 days of the effective date of this Agreement.
- (b) The City shall ensure that the following insurance requirements are incorporated into all contracts entered into by the City, or their contractors, subcontractors or assigns, in connection with this Agreement: (1) contractors shall maintain workers' compensation insurance pursuant to state law; (2) contractors shall maintain commercial general liability insurance, including contractual liability (or blanket contractual) coverage, owners' and contractors' protective coverage, and broad form property damage coverage, with a minimum of \$2 million per occurrence; (3) contractors shall maintain builders' risk insurance in an amount equal to the construction contract amount, with a waiver of subrogation for the City, Agency, District and County, and naming the City, Agency, County and District as loss payees; and (4) contractors shall maintain vehicle liability insurance with a minimum combined single-limit coverage of \$500,000 per occurrence. Contractors shall provide certificates of insurance, copies of policies, or endorsements evidencing the above insurance coverage and requiring at least 30 days' written notice to the City, Agency, County and District of policy lapse, cancellation, or material change in coverage. The commercial general liability insurance and vehicle liability insurance shall include endorsements naming the District, County, City and Agency, and their governing bodies, officers, agents and employees, as additional insureds. The aforementioned insurance policies shall contain a provision that the insurance afforded thereby to the additional insureds shall be primary insurance to the full limits of the policy and that, if any of the additional insureds has other insurance or self-insurance against a loss covered by such policy, such insurance or self-insurance shall be excess insurance only.
- (c) The City shall ensure that the following insurance requirements are incorporated into all contracts for consulting services entered into by the City in connection with this Agreement: (1) consultants shall maintain professional liability insurance in an amount of at least \$1 million with a deductible of no more than \$25,000; (2) consultants shall maintain workers' compensation insurance pursuant to state law; (3) consultants shall maintain commercial general liability insurance, including contractual liability (or blanket contractual) coverage, owners' and contractors' protective coverage, and broad form property damage coverage, with a minimum of \$1 million per occurrence; and (4) consultants shall maintain vehicle liability insurance with a minimum combined single-limit coverage of \$500,000 per occurrence. Consultants shall provide certificates of insurance, copies of policies, or endorsements evidencing the above insurance coverage and requiring at least 30 days'

written notice to the District, County, City, and Agency of policy lapse, cancellation, or material change in coverage. The commercial general liability insurance and vehicle liability insurance shall include endorsements naming the District, County, City, and Agency, and their governing bodies, officers, agents and employees, as additional insureds.

11. Contractor Obligations. The City shall ensure that the contract documents for the Project include provisions requiring the successful bidder to provide indemnity, warranties and bonds in the amounts and manner set forth below.
 - (a) Indemnity. The Contractor will be required to defend, indemnify and hold harmless the District, County, City, and Agency, and their governing bodies, officers, agents and employees, from and against any and all liability, claims, actions, cause of action or demands whatsoever against any of them, including related attorneys' fees, arising out of or connected with any injury or death of any person or damage to property or other liability of any nature arising out of or in any way connected with the Project.
 - (b) Warranties. In addition to all warranties existing at law, the Contractor will be required to provide an express warranty for the benefit of the District, County, City and Agency, in form and for a time period satisfactory to the District, County, City and Agency, containing, at a minimum, the Contractor's guarantee that the work has been performed in accordance with the plans and specifications, and the Contractor's agreement to repair or replace all work that fails to conform to the plans and specifications or proves to be defective in workmanship or materials during the stated time period.
 - (c) Bonds. The Contractor will be required to present two good and sufficient surety bonds, one for payment and one for performance, each in an amount equal to 100 percent of the contract price, issued by a surety admitted in the State of California in a form satisfactory to the District, County, City and Agency, naming the District, County, City and Agency as obligees on the bonds.
12. Accountability. The City will be strictly accountable for all funds and will report all receipts and disbursements for the Project to the District on a monthly basis and when requested by the District.
13. Termination. This Agreement may be terminated immediately by the mutual written consent of the governing bodies of all parties.
14. Notices. All notices, including requests, demands, approvals and other communications, under this Agreement must be in writing. The place for delivery of all notices given under this Agreement will be as follows:

DISTRICT: East Contra Costa Fire Protection District
Attn: Fire Chief
134 Oak Street
Brentwood, CA 94513

COUNTY: County of Contra Costa
Attn: County Administrator
651 Pine Street
Martinez, CA 94553

CITY: City of Oakley
Attn: City Manager
3231 Main Street
Oakley, CA 94561

AGENCY: Redevelopment Agency of the City of Oakley
Attn: Executive Director
3231 Main Street
Oakley, CA 94561

15. Counterparts. The parties recognize and agree that separate counterpart signature pages may be used but that all such pages constitute one and the same Agreement.
16. Construction. The section headings and captions of this Agreement are, and the arrangement of this instrument is, for the sole convenience of the parties to this Agreement. The section headings, captions and arrangement of this instrument do not in any way affect, limit, amplify or modify the terms and provisions of this Agreement. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. The parties to this Agreement and their counsel have read and reviewed this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement. The Recitals are, and shall be enforceable as, a part of this Agreement.
17. Further Assurances. Whenever requested to do so by the other party, each party will execute, acknowledge and deliver all further conveyances, assignments, confirmations, satisfactions, releases, powers of attorney, instruments of further assurance, approvals, consents and all further instruments and documents as may be necessary, expedient, or proper in order to complete all conveyances, transfers, sales, and assignments under this Agreement, and do all other acts and to execute, acknowledge, and deliver all documents as requested in order to carry out the intent and purpose of this Agreement.

18. Waiver. A waiver or breach of any covenant or provision in this Agreement will not be deemed a waiver of any other covenant or provision in this Agreement, and no waiver will be valid unless in writing and executed by the waiving party.
19. No Third Party Beneficiaries. Nothing in this Agreement is intended, nor shall it be construed, to create rights inuring to the benefit of third parties.
20. Severability. If any term or provision of this Agreement is, to any extent, held invalid or unenforceable, the remainder of this Agreement shall not be affected.
21. Applicable Law; Venue. This Agreement shall be governed by and construed in accordance with California law. The venue for any legal action pertaining to this Agreement shall be Contra Costa County, California.
22. Effective Date. This Agreement is effective upon its execution by all parties.

EAST CONTRA COSTA
FIRE PROTECTION DISTRICT

REDEVELOPMENT AGENCY OF THE
CITY OF OAKLEY

By: _____
Fire Chief

By: _____
Executive Director

Approved as to Form:

Approved as to Form:

By: _____
District Counsel

By: _____
Agency Counsel

COUNTY OF CONTRA COSTA

CITY OF OAKLEY

By: _____
County Administrator

By: _____
City Manager

Approved as to Form:

Approved as to Form:

By: _____
County Counsel

By: _____
City Attorney