

**AGREEMENT FOR FIRE INVESTIGATION SERVICES AND FIRE
PREVENTION SERVICES BETWEEN THE CONTRA COSTA COUNTY FIRE
PROTECTION DISTRICT AND THE EAST CONTRA COSTA FIRE
PROTECTION DISTRICT**

This Agreement for Fire Investigation Services and Fire Prevention Services Between the Contra Costa County Fire Protection District and the East Contra Costa Fire Protection District, dated December 3, 2013, (this "Agreement") is made and entered into by and between the Contra Costa County Fire Protection District, a fire protection district existing under the laws of the State of California ("CCCFPD"), and the East Contra Costa Fire Protection District, a fire protection district existing under the laws of the State of California ("ECCFPD," and together with CCCFPD, the "Parties," and each a "Party").

RECITALS

- A. Pursuant to California Health and Safety Code section 13862, each Party has the power to provide fire prevention services and fire investigation services within their respective boundaries.
- B. Due to the proximity of the Parties to one another, their similar organizational structure, and CCCFPD's fully developed and staffed fire prevention and fire investigation programs, CCCFPD currently provides fire prevention services and fire investigation services to ECCFPD.
- D. CCCFPD's provision of fire prevention services and fire investigation services to ECCFPD allows ECCFPD to save costs associated with staffing and maintaining completely independent fire prevention, code enforcement, and fire investigation programs, while still realizing effective fire prevention and fire investigation services from CCCFPD.
- E. CCCFPD will be compensated for its performance of fire prevention services on behalf of ECCFPD through its collection of fees for such services, and any shortfall between CCCFPD's costs of providing fire prevention services to ECCFPD and the amount of fees it collects, will be paid to CCCFPD by ECCFPD up to a certain amount.
- F. CCCFPD will invoice ECCFPD directly once a year for fire investigation services it performs for ECCFPD, and will be paid by ECCFPD based on an hourly rate for providing fire investigation services to ECCFPD.
- G. The Parties wish to enter into this Agreement to document and specify the foregoing arrangements, all pursuant to the terms of this Agreement.

Now, therefore, in consideration of the mutual covenants and conditions identified herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

I. **SCOPE OF SERVICES.** In accordance with the terms and conditions contained in this Agreement, CCCFPD will provide the Fire Investigation Services and Fire Inspection Services defined below to ECCFPD when requested by ECCFPD's Authorized Representative (as defined in section III of this Agreement).

A. Fire Investigation Services.

1. CCCFPD will provide all aspects of fire investigation services, including investigating fire cause and origin, conducting follow-up interviews, collecting and retaining evidence, report writing and filing, and assisting law enforcement agencies in providing information necessary for of arrests, warrant preparation, and criminal prosecution ("Fire Investigation Services").
2. CCCFPD will provide Fire Investigation Services to ECCFPD on an as-needed basis, when requested by ECCFPD's Authorized Representative.
3. CCCFPD will respond to incidents requiring a fire investigator when requested by ECCFPD.
4. CCCFPD will provide additional fire investigators when necessary to process a complex fire scene. Additional CCCFPD fire investigators shall be approved by the ECCFPD incident commander and requested through the ECCFPD incident commander.

B. Fire Prevention Services.

1. The CCCFPD Fire Prevention Bureau will provide one fire inspector to manage the Fire Prevention Services to be provided to ECCFPD under this Agreement.
2. CCCFPD will provide the following fire prevention services (collectively, the "Fire Prevention Services") to ECCFPD:
 - a. Project review and plan review;
 - b. New construction inspections, fire and life safety systems acceptance tests, state mandated occupancy inspections, and annual occupancy inspections where California Fire Code (defined to mean the then current California fire code as adopted by ECCFPD) operational permits are required;
 - c. Inspect assembly, educational, multi-family residential occupancies, and other occupancies where operational permits are required for compliance with the California Fire Code and State Fire Marshal regulations;
 - d. Entry of data into the CCCFPD Fire Prevention Bureau's record management system (Codepal) and insure correction of any noted deficiencies;
 - e. Review building plans for conformance with state and locally adopted codes, standards, and ordinances. CCCFPD will provide written correction comments, plan approvals and meet with designers, contractors and developers as needed;

- f. Conduct new construction inspections for compliance with approved plans. Inspections will include, but are not limited to, new construction, tenant improvements, automatic fire sprinkler systems, fire mains, fire hydrant installations, fire alarm systems, pre-engineered extinguishing systems and fire pumps. CCCFPD will prepare correction notices and sign off on job cards; and
 - g. Review and coordinate application of a permit fee program created by ECCFPD and update and add fees where applicable.
- C. Other Fire Administrative Services. CCCFPD will confer with the ECCFPD Authorized Representative to ascertain the need for, and provide support in, the areas of fire investigation and fire prevention. Examples include, but are not limited to, coordination and instruction, project planning and development, and fire prevention expertise and leadership. These services will not exceed 20 hours a month unless mutually agreed upon by the Parties.
- D. Services Review. The Parties will meet once every six months to review the Fire Investigation Services and Fire Prevention Services provided by CCCFPD under this Agreement, and more frequently if requested by either Party. If it is determined that an additional fire inspector is required to fulfill all requirements of this Agreement based on increased workloads due to external factors such as increases in new construction, the additional position shall only be filled upon written agreement of both Parties, including any necessary amendments to this Agreement.

II. BILLING AND PAYMENT.

- A. Fire Investigation Services. No later than April 1 of each year, CCCFPD shall submit invoices to ECCFPD identifying the Fire Investigation Services performed and the charges incurred for the preceding 12 month period pursuant to the payment provisions set forth on Exhibit A attached hereto and incorporated herein by reference.
- B. Fire Prevention Services. No later than April 1 of each year, CCCFPD shall submit invoices to ECCFPD identifying the following for the preceding 12 month period: (1) the Fire Prevention Services performed; (2) the fees collected for such Fire Prevention Services; (3) the cost of providing the Fire Prevention Services; and (4) whether ECCFPD owes CCCFPD any shortfall amount for CCCFPD's costs of providing Fire Prevention Services, all pursuant to the payment provisions set forth on Exhibit A attached hereto and incorporated herein by reference.
- C. Payment. ECCFPD shall make payment to CCCFPD within 30 days after its receipt of invoices submitted pursuant to subsections A and B above. If ECCFPD disputes any portion of an invoice from CCCFPD, ECCFPD shall provide written notice of the dispute to CCCFPD within 30 days after receipt of invoice from CCCFPD. In the event of a disputed invoice, the Parties will meet and confer to resolve any dispute.

III. AUTHORIZED REPRESENTATIVES.

- A. CCCFPD's Authorized Representative. All services performed by CCCFPD under this Agreement shall be performed by, or under the supervision of its authorized representative, the CCCFPD Fire Marshal (the "CCCFPD Authorized Representative"), unless otherwise designated in writing by CCCFPD's Authorized Representative or the Fire Chief of CCCFPD.
- B. ECCFPD's Authorized Representative. For the performance of services under this Agreement, CCCFPD shall take direction from ECCFPD's Authorized Representative, the ECCFPD Fire Chief (the "ECCFPD Authorized Representative"), unless otherwise designated in writing by ECCFPD's Authorized Representative.

IV. INFORMATION AND DOCUMENTATION.

- A. Accounting Records. ECCFPD and CCCFPD shall maintain all accounting records related to this Agreement in accordance with generally accepted accounting principles and state law requirements, and in no event for less than four years from the date the record was created. The accounting records to be maintained in accordance with this Agreement shall include, at a minimum, documents which support CCCFPD's costs and expenses related to this Agreement, including documentation of requests for services, services performed, invoices, and payments. Each Party's accounting records shall be made available to the other Party within a reasonable time after request, during normal business hours.
- B. Ownership of Work Product. All original documents prepared by CCCFPD (including by its employees and agents) pursuant to this Agreement ("Work Product"), whether complete or in progress, are the property of CCCFPD, and shall be given to ECCFPD at the completion of CCCFPD's services, or upon demand by ECCFPD. CCCFPD has the right to make and keep copies of any Work Product.

V. RELATIONSHIP BETWEEN THE PARTIES. CCCFPD and ECCFPD are each an independent "public agency," as defined by Government Code section 6500, and this Agreement does not create a separate legal entity. Each Party shall, at all times, remain an independent public agency solely responsible for all acts of its employees or agents, including any negligent acts or omissions.

- A. No ECCFPD Agency. CCCFPD (including its employees and agents) is not ECCFPD's agent, and shall have no authority to act on behalf of ECCFPD, or to bind ECCFPD to any obligation whatsoever, unless ECCFPD provides prior written authorization to CCCFPD. None of CCCFPD, its employees, or agents is an officer or employee of ECCFPD, and none of CCCFPD, its employees, or agents shall be entitled to any benefit, right, or compensation other than that provided in this Agreement.

- B. No CCCFPD Agency. ECCFPD (including its employees and agents) is not CCCFPD's agent, and shall have no authority to act on behalf of CCCFPD, or to bind CCCFPD to any obligation whatsoever, unless CCCFPD provides prior written authorization to ECCFPD. None of ECCFPD, its employees, or agents is an officer or employee of CCCFPD, and ECCFPD shall not be entitled to any benefit, right, or compensation other than that provided in this Agreement.

VI. INSURANCE AND BONDS.

- A. Insurance. Each Party shall, throughout the duration of this Agreement, maintain insurance (which may include for the purpose of this section, self-insurance or coverage under a self-insurance pool) to cover each of their respective interests related to work performed under this Agreement (including coverage for their employees and agents). Concurrently with the execution of this Agreement, and prior to the commencement of any services, each Party shall provide the other with written proof of insurance (that may be satisfied through self-insurance or self-insurance pool coverage) (certificates and endorsements), in a form acceptable to the other Party. Each Party shall provide substitute written proof of insurance no later than 30 days prior to the expiration date of any insurance coverage required by this Agreement.
- B. Commercial General Liability. Each Party shall have commercial general liability coverage (with coverage at least as broad as ISO form CG 00 01 01 96) in an amount not less than \$1,000,000 per occurrence for general liability, bodily injury, personal injury and property damage. Each Party shall name the other as an additional covered Party or additional insured.
- C. Automobile Liability. Each Party shall have automobile liability coverage (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
- D. Workers' Compensation. Each Party shall have workers' Compensation coverage as required by the State of California.

VII. HOLD HARMLESS AND INDEMNITY.

- A. CCCFPD Indemnity. CCCFPD agrees to defend, indemnify and hold harmless ECCFPD from CCCFPD's share of liability for damages caused by the negligence or willful misconduct of CCCFPD, its officers, agents or employees in CCCFPD's performance under this Agreement. CCCFPD's obligations under this section VIII(A) shall not apply to any claim, cost or liability caused in whole or in part by the negligence or willful misconduct of ECCFPD. Under no circumstances shall CCCFPD have any liability to ECCFPD or to any other person or entity, for consequential or special damages, or for any damages based on loss of use, revenue, profits or business opportunities arising from or in any way relating to CCCFPD's performance under this Agreement. ECCFPD shall cooperate with CCCFPD in the defense of any action required by this section.

B. ECCFPD Indemnity. ECCFPD shall defend, indemnify and save harmless CCCFPD, its officers and employees from all claims, suits or actions of every name, kind and description brought by or on account of injuries to or death of any person or damage to property resulting from anything done or omitted to be done by ECCFPD, its officers, agents or employees under or in connection with this Agreement or with any work, authority or jurisdiction of ECCFPD. CCCFPD shall cooperate with ECCFPD in the defense of any action required by this section.

VIII. TERM OF THIS AGREEMENT. The term of this Agreement shall commence on the date first set forth above (the “Effective Date”), and shall continue for a period of two (2) years from the Effective Date. This Agreement shall automatically renew for a two (2) year period on each two year anniversary of the Effective Date. This Agreement may be terminated by either Party without cause upon ninety (90) days written notice to the other Party. If either Party exercises its right to terminate this Agreement in accordance with this section 8, ECCFPD shall pay CCCFPD for all services performed in accordance with this Agreement, including without limitation, amounts due pursuant to section 2(c) of Exhibit A, through and including the date of termination, but not to exceed the payments according to the rates specified in Exhibit A. This Agreement may also be terminated at any time by the written consent of both Parties.

IX. DEFAULT. If either Party (the “Demanding Party”) has a good faith belief that the other Party (the “Responding Party”) is not complying with the terms of this Agreement, the Demanding Party shall give written notice of the purported default in performance (the “Default”), providing sufficient specificity of the alleged Default so that the Responding Party is capable of responding to the Demanding Party, and demand the Default to be cured within ten days of the notice. If (a) the Responding Party fails to cure the Default within ten (10) days of the notice, or, (b) if more than ten (10) days are reasonably required to cure the Default and the Responding Party fails to give adequate written assurance of cure of the Default within ten (10) days of the notice, then the Demanding Party may terminate this Agreement upon written notice to the Responding Party.

X. NOTICES. All notices required or contemplated by this Agreement shall be in writing and shall be delivered to the respective Party as set forth in this section. Communications shall be deemed to be effective upon the first to occur of: (a) actual receipt by a Party’s Authorized Representative; (b) actual receipt at the address designated below; and (c) three working days following deposit in the United States Mail of registered or certified mail sent to the address designated below. The CCCFPD Authorized Representative and the ECCFPD Authorized Representative may modify their respective contact information identified in this section by providing notice to the other Party.

To CCCFPD:
Contra Costa County Fire Protection District
2010 Geary Road
Pleasant Hill, CA 94523
Attn: Fire Marshal
Telephone: (925) 941-3300

To ECCFPD:
East Contra Costa Fire Protection District
134 Oak Street
Brentwood, CA 94513
Attn: Fire Chief
Telephone (925) 634-3400

- XI. HEADINGS.** The heading titles for each section of this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.
- XII. SEVERABILITY.** If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this section shall not be applied to the extent that it would result in a frustration of the Parties' intent under this Agreement.
- XIII. GOVERNING LAW, JURISDICTION, AND VENUE.** The interpretation, validity, and enforcement of this Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Contra Costa.
- XIV. ASSIGNMENT AND DELEGATION.** This Agreement, and any portion hereof, shall not be assigned or transferred, nor shall any of either Party's duties be delegated, without the written consent of the other Party. Any attempt to assign or delegate this Agreement without the written consent of the other Party shall be void and of no force or effect. Consent to one assignment shall not be deemed to be consent to any subsequent assignment.
- XV. MODIFICATIONS.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both Parties. All costs for services identified in Exhibit A may only be modified through a written amendment to this Agreement and based upon changes in CCCFPD's labor rate obligations. Fees charged to the public for services provided by CCCFPD shall be based on the most recent ECCFPD fire prevention fee schedule.
- XVI. WAIVERS.** Waiver of a breach or Default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
- XVII. ENTIRE AGREEMENT.** This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the Parties

concerning the services described herein. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all.

XVIII. EACH PARTY'S ROLE IN DRAFTING THE AGREEMENT. Each Party to this Agreement has had an opportunity to review the Agreement, confer with legal counsel regarding the meaning of the Agreement, and negotiate revisions to the Agreement. Accordingly, neither Party shall rely upon Civil Code section 1654 in order to interpret any uncertainty in the meaning of the Agreement.

XIX. SIGNATURES. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of CCCFPD and ECCFPD. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

[Signatures appear on following page.]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed the day and year first above written.

Contra Costa County Fire Protection District

East Contra Costa Fire Protection District

By: _____
Jeff Carman, Fire Chief

By: _____
Hugh Henderson, Fire Chief

David Twa, County Administrator

Approved as to Form:

By: _____
Timothy Ewell, Senior Deputy County
Administrator

By: _____
Name: _____
Title: _____

Approved as to Form:
Sharon L. Anderson, County Counsel

By: _____
Eric Gelston, Deputy County Counsel

EXHIBIT A

Payment for Services

1. Fire Investigation Services.

- a. CCCFPD will charge ECCFPD a flat rate of \$150.00 per hour for providing Fire Investigation Services. The number of hours billed for investigating an incident will be calculated as beginning at the time ECCFPD requests a fire investigator and ending at the completion of the incident. Additional fire investigator time needed for report writing, evidence collection and storage, follow-ups, interviews, meetings, and other post-investigation work is part of Fire Investigation Services and will accordingly be charged at a flat rate of \$150.00 per hour. Fire Investigation Services are charged in one-half (½) hour increments. For after-hours requests where CCCFPD incurs overtime costs beginning at the time of request, ECCFPD will be charged a minimum of two (2) hours for Fire Investigation Services even if the fire investigator spends less than two (2) hours on the incident.
- b. Revenues from the ECCFPD emergency response portion of Nuisance Fire Alarm fees (ECCFPD Ordinance No. 2010-01) will be collected by CCCFPD and credited towards any Fire Investigation Service charges ECCFPD owes to CCCFPD for the provision of Fire Investigation Services under this Agreement. As of the Effective date of this Agreement, the emergency response portion of the Nuisance Fire Alarm fee is \$168 per incident. The amount that ECCFPD will be credited by CCCFPD for collection of the emergency response portion of the Nuisance Fire Alarm fee will be adjusted as that amount is adjusted from time to time in the fee schedule adopted by ECCFPD.

2. Fire Prevention Services.

- a. CCCFPD will charge ECCFPD at the rate of \$185.00 dollars an hour for Fire Prevention Services, provided however, that \$215.00 dollars an hour will be charged for CCCFPD engineering services; i.e., new construction inspections, project and plan review, life safety testing, etc. The foregoing rates for Fire Prevention Services include the fully encumbered hourly rate of each inspector's travel time and mileage expense, and administrative and clerical support.
- b. Payments from the public for all plan reviews, meetings, inspections, and other related fire prevention work will be directly collected by CCCFPD. These revenues will be credited against CCCFPD's costs of providing Fire Prevention Services to ECCFPD under this Agreement and are subject to the provisions of subsection (c) below.
- c. If the amount of the fees collected by CCCFPD for Fire Prevention Services is less than its cost of providing a fire inspector to perform the Fire Prevention

Services for ECCFPD under this Agreement (the “CCCFPD Fire Inspector Costs”), ECCFPD will pay CCCFPD the shortfall, if any, between the CCCFPD Fire Inspector Costs and the amount of fees collected by CCCFPD for Fire Prevention Services; *provided*, that ECCFPD will not be required to pay CCCFPD any more than \$50,000 in a fiscal year in respect of a shortfall in CCCFPD Fire Inspector Costs.