

**FUNDING AGREEMENT BETWEEN THE CONTRA COSTA COUNTY
FIRE PROTECTION DISTRICT AND THE CITY OF SAN PABLO
FOR ENHANCED EMS SERVICES**

This Funding Agreement Between the Contra Costa County Fire Protection District and the City of San Pablo for Enhanced EMS Services, dated May 1, 2015, 2015, (this “Agreement”), is entered into between the Contra Costa County Fire Protection District, a fire protection district existing under the laws of the State of California (the “District”), and the City of San Pablo, a municipal corporation (the “City”).

RECITALS

A. The District provides fire, rescue and emergency medical incident response services within the City, which is located within the District’s boundaries.

B. The District’s Station 70 is located within the City at 13928 San Pablo Avenue (“Station 70”), and is currently staffed by one (1) fire captain, one (1) fire engineer and one (1) firefighter; at least one of which is a paramedic. Station 70 currently has the capacity to house one three-person company.

C. The City’s voters recently passed sales tax Measure K, and the City is required to spend the proceeds of Measure K to enhance the emergency medical incident response services provided in the City.

D. The parties desire to enter into an agreement to describe how an additional two-person squad to be operated out of Station 70 and staffed 24 hours a day will be funded. The City will pay for the EMS Squad vehicle, the costs of personnel, equipment and fuel for the EMS Squad, and the costs associated with constructing housing or other accommodations at Station 70 for the EMS Squad personnel.

NOW, THEREFORE, the parties agree as follows:

A. EMS SQUAD.

1. EMS Squad Personnel. For as long as the District keeps Station 70 open, the District shall minimally staff Station 70 with a two-person squad comprised of a fire engineer and a firefighter, at least one of which will be a paramedic (the “EMS Squad”), which is in addition to the existing three person squad comprised of a captain, a fire engineer, and a paramedic. The EMS Squad will be housed at, and permanently assigned to Station 70, 24 hours a day, seven days a week.

2. EMS Squad Vehicle and Equipment.

a. EMS Squad Vehicle. The District will obtain a new squad vehicle that meets the District’s specifications for use by the EMS Squad in performing its duties (the “EMS Squad Vehicle”). The cost of the EMS Squad Vehicle will not

exceed \$175,000. The EMS Squad Vehicle will be registered in the name of the District and covered by District insurance in the same manner as other District vehicles. The City shall pay the cost of obtaining the EMS Squad Vehicle. The City will advance funds to the District before the District obtains the EMS Squad Vehicle, if requested by the District. The District will retain ownership of the EMS Squad Vehicle after termination of this Agreement.

- b. EMS Squad Equipment. The EMS Squad will be equipped with firefighter protective clothing, a cardiac monitor, a defibrillator, necessary radios and communications equipment and other equipment the District determines is necessary to its duties (the “EMS Squad Equipment”). The EMS Squad Equipment will primarily be provided by the District from its surplus equipment supply. The remaining EMS Squad Equipment will be purchased by District after it provides the City with a list of EMS Squad Equipment that is necessary and in addition to the District supplied EMS Squad Equipment. The District will invoice the City for the cost of any new EMS Squad Equipment it purchases. City will pay the District for the cost of the EMS Squad Equipment within 30 days of its receipt of an invoice.
- c. EMS Squad Assignment. The EMS Squad personnel will be assigned at the sole discretion of the District. Notwithstanding that the EMS Squad is located at Station 70 in the City, the EMS Squad will be used in the same manner that the District would use it if the City were not funding the EMS Squad. At the District’s discretion, the EMS Squad may be assigned to provide emergency services at any location as deemed necessary by the District. The EMS Squad will not provide EMS transportation services.
- d. Station 70 Housing. To house the EMS Squad, the District will determine a design to add a double wide modular housing unit approximately 1,200 square feet in size (with sleeping quarters, bathroom, etc.), a breezeway, walkway, and portal into the existing Station 70, and the necessary site improvements for the new structure to serve as additional housing for the EMS Squad (the “EMS Squad Housing Design”). The housing improvements to Station 70 are contingent on and subject to appropriate review under the California Environmental Quality Act (“CEQA”). The District shall act as lead agency for the EMS Squad housing construction, obtain all permits, approval, and entitlements necessary for the EMS Squad housing, and prepare environmental clearance for the remodel project pursuant to CEQA. The City will assist in expediting plan review and the issuance of permits and entitlements within the jurisdiction of the City. The District will contract for the construction of the EMS Squad housing according to the EMS Squad Housing Design. The City will fund all reasonable costs of the EMS Squad housing at Station 70 with the exception of upgrades to the current structure and emergency generator. However, the District shall be responsible for competently managing the project and shall be liable for any contractor claims arising out of the project which could have been reasonably avoided by the District.

B. ANNUAL COSTS, INVOICING AND PAYMENT.

1. EMS Squad Funding; Non-Appropriation. In addition to the start-up costs set forth in section A(2), the City will pay the District for the staffing and operation of the EMS Squad in the maximum amount of (a) \$1.2 million annually for the first three years of this Agreement, and (b) \$1.5 million annually for the fourth and fifth years of this Agreement; provided, however, that payments due from the City to the District that are in excess of Measure K funds received by the City are subject to annual appropriations by the City. The City represents and warrants: (a) that it has appropriated and budgeted the necessary funds to make all payments required by this Agreement for the remainder of the fiscal year in which this Agreement commences; (b) that it intends to make payments due hereunder so long as funds are appropriated in each fiscal year by its governing body; and (c) that it reasonably believes that moneys in an amount sufficient to make all payments due hereunder can and will lawfully be appropriated and made available therefor. If the City's governing body fails to appropriate sufficient funds in any fiscal year for payments due under this Agreement that are in excess of Measure K funds received, and if other funds are not designated for such payments (a "Non-Appropriation Event"), then the City shall give the District immediate written notice of the Non-Appropriation Event, and in no event not less than ninety (90) days before the end of the immediately prior fiscal year in which appropriations were made, and shall provide written evidence of such failure by the City's governing body. If the City gives notice of a Non-Appropriation Event, then the District may terminate this Agreement, effective as of the last date on which funds were appropriated, by providing written notice to the City, without penalty or expense to the District; provided, that for the period prior to termination, the City shall make all payments due hereunder from Measure K funds, and from funds that were appropriated or otherwise designated.
2. Invoicing and Payment. Within 30 days after the end of each District fiscal quarter the District will invoice the City for the preceding three month period ("Quarterly Invoice"). The City will pay Quarterly Invoices no later than thirty days after receipt. If a billing dispute arises between the City and the District, the Authorized Representatives will meet to resolve the dispute.
3. Annual Agreement Review. The City and the District will meet within sixty 60 days after the end of each District fiscal year to review the EMS Squad call statistics and the EMS Squad costs paid by the City for the preceding year.

C. TERM AND TERMINATION.

1. Term; Extension of Term. The term of this Agreement is for five years from the date first set forth above. Prior to expiration of the initial five year term, the parties may extend this Agreement for another five years by executing an amendment to this Agreement that (1) extends the term of this Agreement for another five years, and (2) sets forth the amounts that the City will pay the District annually during the extended five year period.

2. Termination. Either party may terminate this Agreement if it provides written notice specifying how that party has breached this Agreement, and the non-breaching party fails to cure the described breach within 30 days of receipt of the notice. The District may terminate this Agreement pursuant to a Non-Appropriation Event under Section B(1). This Agreement may also be terminated at any time by the written consent of both parties.

D. INDEMNIFICATION AND INSURANCE.

1. The District shall provide the City with evidence of liability insurance to the same extent as provided for all District operations.
2. Subject to Section F(1) below, and to the fullest extent permitted by law, the District shall defend, and indemnify the City, and its officials, volunteers, officers, and employees (“Indemnitees”) from and against all liabilities regardless of nature or type, directly or indirectly, in whole or in part, arising out of or resulting from the District’s performance of services under this Agreement; provided, however, that the District is not required to indemnify an Indemnitee for the proportion of liability a court of competent jurisdiction determines is attributable to the negligence or willful misconduct of the Indemnitee. It is understood that the duty of District to indemnify the City includes the duty to defend as set forth in section 2778(4) of the California Civil Code, which is a separate and distinct obligation from the District’s duty to indemnify. The District’s obligation to defend an Indemnitee is subject to the City providing the District with prompt notice of any claim or suit. The parties further agree that the provisions of this Section shall survive any termination or expiration of this Agreement.

E. AUTHORIZED REPRESENTATIVES.

1. District’s Authorized Representative. For purposes of the administration of this Agreement, the District’s Fire Chief is designated as the District’s authorized representative (the “District Authorized Representative”), unless otherwise designated in writing by the District’s Fire Chief. The Fire Chief may delegate administrative matters under this Agreement.
2. City’s Authorized Representative. For purposes of the administration of this Agreement, the City’s City Manager is designated as the City’s authorized representative (the “City Authorized Representative”), unless otherwise designated in writing by the City’s City Manager.

F. MISCELLANEOUS PROVISIONS.

1. Immunities. By entering into this Agreement, neither party waives any of the immunities provided by the California Government Code or other applicable provisions of law.

2. 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 District Authorized Representative and the City Authorized Representative may modify their respective contact information identified in this section by providing notice to the other party.

To the District:

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

To the City:

San Pablo
13831 San Pablo Avenue
San Pablo, CA 94806
Attn: City Manager
Telephone: (510) 215-3016

3. Relationship Between the Parties. The District and the City 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 City Agency. The District (including its employees and agents) is not the City's agent, and shall have no authority to act on behalf of the City, or to bind the City to any obligation whatsoever. None of the District, its employees, or agents is an officer or employee of the City, and none of the District, its employees, or agents shall be entitled to any benefit, right, or compensation other than that provided in this Agreement.
 - b. No District Agency. The City (including its employees and agents) is not the District's agent, and shall have no authority to act on behalf of the District, or to bind the District to any obligation whatsoever. None of the City, its employees, or agents is an officer or employee of the District, and none of the City, its employees, or agents shall be entitled to any benefit, right, or compensation other than that provided in this Agreement.

4. No Third Party Beneficiaries. Nothing in this Agreement confers any rights or remedies upon any person or legal entity not a party to this Agreement.
5. 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 prior 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.
6. Counterparts. The parties recognize and agree that this Agreement may be executed in separate counterparts, each of which shall constitute an original, but all of which when taken together shall constitute a single contract.
7. 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.
8. Other Agreements. Nothing in this Agreement shall limit the ability of either party from agreeing to participate in more specific contracts for services, mutual assistance, or automatic response. Nothing in this Agreement shall limit the ability of either party from providing emergency assistance to another jurisdiction that is not a party to this Agreement.
9. Integration; Amendments. This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes any and all previous documents, agreement and understandings, oral or written, relating to the subject matter hereof. Any amendment or modification to this Agreement must be effected by a written document executed by both parties hereto.
10. Governing Law. This Agreement shall be governed by the laws of the State of California. Any action relating to this contract shall be instituted and prosecuted in the courts of Contra Costa County, California.
11. Each Party's Role in Drafting 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.

The parties hereto have set forth their signatures to this Agreement as of the date first set forth above.

CONTRA COSTA COUNTY
FIRE PROTECTION DISTRICT

By: _____
Name: Jeff Carman
Title: Fire Chief

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

By: _____
Name: _____
Deputy County Counsel

CITY OF SAN PABLO

By: _____
Name: Matt Rodriguez
Title: City Manager

Approved as to form:
City Attorney

By: _____
Brian M. Libow
Title: City Attorney