

**FIREBOAT USE AGREEMENT BETWEEN THE CONTRA COSTA COUNTY FIRE
PROTECTION DISTRICT AND THE EAST CONTRA COSTA FIRE PROTECTION DISTRICT**

This Fireboat Use Agreement, dated _____, 2015, (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

1. ECCFPD owns a thirty-one (31) foot fireboat manufactured by Safe Boats International bearing vessel registration number LF5048XC, which is equipped with twin Mercury 250 horsepower outboard motors, a 1,000 gallon per minute water pump and emergency medical response equipment (the “Fireboat”). The Fireboat is presently docked at Bethel Harbor, Bethel Island, California.
2. ECCFPD does not presently possess the manpower or fiscal resources to staff and deploy the Fireboat.
3. CCCFPD operates one fireboat that lacks the firefighting capabilities the Fireboat can provide, and its use of the Fireboat will significantly improve CCCFPD’s firefighting capabilities.
4. Due to the proximity of the Parties to one another, and CCCFPD’s ability to staff and deploy the Fireboat in both Parties’ territories, the parties desire to enter into this Agreement to permit CCCFPD to use and operate the Fireboat in both Parties’ territories.

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:

AGREEMENT

- A. Fireboat Use. In accordance with the terms and conditions contained in this Agreement, ECCFPD will deliver the Fireboat to CCCFPD for its use during the term of this Agreement.
1. Initial Fireboat Inspection. Each of the Party’s Authorized Representatives or their designees will inspect the Fireboat prior to CCCFPD taking possession of the Fireboat and document its condition and inventory of emergency response equipment, boating gear, and other personal property.
 2. Fireboat Training; Documentation. ECCFPD will provide CCCFPD personnel selected by the CCCFPD Authorized Representative with training in the operation and crewing of the Fireboat. ECCFPD will provide CCCFPD with the Fireboat’s user manual and other operations documentation.
 3. Fireboat Possession and Control. Once the Fireboat has been inspected and inventoried, and CCCFPD personnel trained in the operation of the Fireboat, CCCFPD will take possession and control of the Fireboat. During the term of this Agreement CCCFPD will have all rights and interests in the Fireboat as if it were the lessee of the Fireboat. ECCFPD represents and warrants to CCCFPD that it is the owner of the Fireboat and that the Fireboat is free from

third party liens and encumbrances. CCCFPD covenants not to encumber the Fireboat with any liens or pledge the Fireboat as security.

4. Fireboat Mooring. CCCFPD will moor the Fireboat in a location that is mutually agreeable to the Parties and that allows it to be deployed in each Party's territory with reasonably equivalent response times.
5. Fireboat Deployment. CCCFPD is hereby authorized to, and shall deploy the Fireboat as dispatched by the CCCFPD dispatch center to respond to incidents in its territory, and shall deploy the Fireboat as dispatched by the CCCFPD dispatch center to respond to incidents in ECCFPD territory. CCCFPD's use of the Fireboat in ECCFPD territory will not be considered auto aid or mutual aid. CCCFPD will only use the Fireboat for firefighting, training, and emergency response purposes.
6. Fireboat Operation. CCCFPD will only allow appropriately-trained CCCFPD personnel to operate and crew the Fireboat. CCCFPD will operate the Fireboat according to its user manual and manufacturer recommendations. CCCFPD will only operate the Fireboat in the navigable waters of the nine bay area counties, and not beyond the Golden Gate Bridge.
7. Fireboat Maintenance, Operating Costs, Insurance, and Repairs. CCCFPD will maintain the Fireboat according to its user manual and manufacturer recommendations. CCCFPD will pay for all operating costs incurred in the operation of the Fireboat during the term of this Agreement, including without limitation, fuel, maintenance, replacement parts, and mooring fees. CCCFPD will fully insure the Fireboat against fires, marine and collision risks for the term of this Agreement, and in the case of any accident or disaster, CCCFPD shall give ECCFPD prompt notice thereof. CCCFPD will cause any damage to the Fireboat to be repaired. ECCFPD will cause the Fireboat to be registered in its name as required by state law. CCCFPD will reimburse ECCFPD for the registration fees upon request from ECCFPD.
8. Fireboat Inspection. ECCFPD may inspect the Fireboat no more than twice each calendar year to determine that it is being used and maintained according to the terms of this Agreement.
9. Return of Fireboat. Within fifteen (15) days after the expiration or earlier termination of this Agreement, CCCFPD shall return the Fireboat to a location selected by ECCFPD that is within ECCFPD's territory, and in the same condition it was received, fair wear and tear from ordinary use excepted.

B. Authorized Representatives.

1. CCCFPD's Authorized Representative. CCCFPD's authorized representative for the purposes of this Agreement is its Fire Chief (the "CCCFPD Authorized Representative"), unless otherwise designated in writing by CCCFPD's Authorized Representative.
2. ECCFPD's Authorized Representative. ECCFPD's authorized representative for the purposes of this Agreement is its Fire Chief (the "ECCFPD Authorized Representative"), unless otherwise designated in writing by ECCFPD's Authorized Representative.

- C. Maintenance and Repair Records. CCCFPD shall maintain all repairs, maintenance, and accounting records related to the Fireboat in accordance with generally accepted accounting principles. The records maintained by CCCFPD shall be made available to ECCFPD within a reasonable time after request, during normal business hours.

D. 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.

1. 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.
2. 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.

E. Insurance.

1. 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 their obligations under this Agreement (including coverage for their employees and agents) including:
 - a. 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.
 - b. 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.

F. Hold Harmless and Indemnity.

1. CCCFPD Indemnity. CCCFPD shall 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 F(1) 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.
2. ECCFPD Indemnity. ECCFPD shall defend, indemnify and hold harmless CCCFPD from ECCFPD’s share of liability for damages caused by the negligence or willful misconduct of

ECCFPD, its officers, agents or employees in ECCFPD's performance under this Agreement. ECCFPD's obligations under this section F(2) shall not apply to any claim, cost or liability caused in whole or in part by the negligence or willful misconduct of CCCFPD. Under no circumstances shall ECCFPD have any liability to CCCFPD 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 ECCFPD's performance under this Agreement. CCCFPD shall cooperate with ECCFPD in the defense of any action required by this section.

- G. Term of 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 three (3) years from the Effective Date. This Agreement may be terminated by either Party without cause upon thirty (30) days' written notice to the other Party. This Agreement may also be terminated at any time by the written consent of both Parties.
- H. 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 (10) days of the notice. If (i) the Responding Party fails to cure the Default within ten (10) days of the notice, or, (ii) 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.
- I. 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 Chief
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

- J. 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.
- K. 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.
- L. 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.
- M. 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.
- N. Modifications. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both Parties.
- O. 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.
- P. Entire Agreement. This Agreement comprises the entire integrated understanding between the Parties concerning the subject matter 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.
- Q. 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.
- R. 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.

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: _____

By: _____

Jeff Carman, Fire Chief

Hugh Henderson, Fire Chief

David Twa, County Administrator

Approved as to Form:

By: _____
Timothy Ewell,
Senior Deputy County Administrator

By: _____
Shayna van Hoften, Legal Counsel

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

By: _____
Eric Gelston, Deputy County Counsel