

**East Davis County Fire Protection District
Contract with City of Davis**

**JULY 1, 2009 to JUNE 30, 2029
20 year Contract**

I129779v3 30008/4002

AGREEMENT

THIS AGREEMENT is executed as of _____, 2009, by and between the City of Davis, a municipal corporation, (hereinafter "City"), and the East Davis County Fire Protection District, a county fire protection district (hereinafter "District"), who agree as follows:

RECITALS

1. City is a municipal corporation organized and existing under the laws of the State of California. City has the power and authority to establish, and does operate, a municipal fire department, to, among other things, provide for:

- a) Fire protection and prevention services, rescue services, emergency medical services, hazardous materials emergency response services and disaster preparedness;
- b) Fire stations, fire engines and other necessary apparatus for the prevention and extinguishment of fires, rescue services, emergency medical services, emergency medical services and hazardous materials emergency response services;
- c) to fix and pay the compensation of the fire chief and other paid firefighters; and
- d) Reciprocal agreements with neighboring fire providers.

2. District, through its governing board, has the power and authority, pursuant to the Fire Protection District Law of 1987, Health and Safety Code section 13800 et seq., to provide within the East Davis County Fire Protection District territorial boundaries, among other things, for:

- a) Fire protection and prevention services, rescue services, emergency medical services, hazardous materials emergency response services and disaster preparedness;
- b) The establishment and enforcement of all rules and regulations necessary for the furnishing of fire protection to, and for the elimination of fire hazards in the District; and
- c) The appointment of agents and employees, and acquisition of real and personal property for District purposes.

3. Pursuant to Government Code section 6500 et seq., City and District desire to exercise jointly the aforementioned powers in the manner set forth herein.

4. City has provided fire protection and prevention services and other emergency services to the District pursuant to agreements for fire service beginning on January 14, 1966. By this Agreement, City and District intend to continue this provision of services, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, City and District agree as follows:

Section 1. Joint Exercise of Powers. City and District agree to exercise jointly the powers afforded them in the manner set forth herein, subject to the terms of this Agreement.

Section 2. Fire Protection Services. City agrees to provide fire protection and prevention services, rescue services, emergency medical services and hazardous materials emergency response services and disaster preparedness as follows:

- a) Service Area. City agrees to provide the services described in this Section 2 to the entire territory of the District. District boundaries shall be deemed those existing as of the date of this Agreement, plus any addition of territory to the District during the term of this Agreement, provided that the land uses and occupancy types in the area(s) annexed to the District do not significantly change from the land uses and occupancy types in existence as of the date of this Agreement, less any territory that may be subsequently annexed to a city. The parties understand that City shall, in its sole discretion, have the option to reopen this Agreement upon ninety (90) days written notice to District, if there are significant changes in land uses and/or occupancy types and/or, may, in its sole discretion, terminate this Agreement pursuant to Section 12.
- b) Fire Protection and Related Services. City shall maintain a fire department which is staffed and equipped to provide for the fire protection, emergency medical service, rescue service, and other related services as defined herein; at substantially the same service level in the District as such services are provided within the City limits; provided that response times may be longer in the outlying rural areas of the District than in the City and further provided that the parties understand and agree that the specific services provided and the service levels in the City and the District may change from time to time subject to the availability of funds and the direction of the City Council, and provided that if a change occurs, the specific services and service level afforded to District shall remain substantially the same as that provided within the City limits.

Section 3. Related Services. City shall provide the following related services within the District when and where appropriate:

- a) Review building plans for all commercial, industrial, public assembly and multifamily structures for compliance with all applicable fire regulations, fire codes and ordinances;
- b) Perform fire code enforcement inspections of commercial and industrial structures and conduct fire prevention programs;
- c) Investigate causes of fires;
- d) Provide limited inspections of existing rural water systems and maintain records of same as may be required by the Insurance Services Office;

- e) Assist the District in its collection of assessments from other government agencies that own property and facilities within the District territory;
- f) Direct the City Fire Chief or his/her fire employee designee to attend all regular and special District meetings and to provide fire department reports related to the District;
- g) Provide the District, upon request, with fire department cost/budget information, in the possession of the City, subject to the City's records retention policy, as may be needed by the District in meeting its responsibilities as set forth in this Agreement; and
- h) Assist the District with its Proposition 218 efforts as may be needed to meet future payment obligations to the City, including speaking engagements and attending public meetings.

The scope of these described related services are limited in that City shall not be required by the Agreement to duplicate those efforts or services being provided by other governmental agencies. Nor shall City be required to provide any service which is required by law to be provided by another government agency at any time during the term of this Agreement.

Section 4. Manner of Exercise of Joint Powers. City shall exercise the powers conferred upon it by this Agreement subject to the restrictions upon the manner of exercising the power of City and in accordance with the Joint Exercise of Powers Act, Government Code section 6500 et seq.

Section 5. Delegation of Authority. In consideration of the covenants of the City pursuant to this Agreement, District hereby delegates to City, District's authority and powers, during the term of this Agreement, to perform the services described in Section 2 and Section 3 of this Agreement.

Section 6. District Annual Payment. In consideration of the City providing services to District, District shall annually pay to City a sum of money as determined by this section at the times provided below.

- a) Cost of Service. The cost of service for each year of this Agreement shall be that proportion of the cost of fire service for the entire area serviced by City during the preceding fiscal year less the revenue received by City for providing service to Springlake Rural Fire District Area "B", and No Man's Land Fire Protection District, that the assessed valuation of the District, then lying outside the boundaries of the City, bears to the assessed valuation of the City and the District. The cost of fire protection shall include both direct and indirect costs. Direct costs shall include maintenance and operations expenses and depreciation upon equipment. Indirect costs shall be set at two percent (2%) of the direct cost of fire protection. Assessed valuation shall be determined by assessed valuations for the year for which payment is made. Assessed valuation shall mean the assessed valuation of total taxable property as shown on the equalized County of Yolo and Board of Equalization assessment rolls for the year or years in question.

The amount of the cost of service shall be computed as follows:

$$\text{Cost of Service} = \text{Cost of Fire Service} \text{ LESS Revenue from Springlake, \&No Man's Land} \times \frac{\text{Assess. Value (Dist.)}}{\text{Assd. Val. City \& Dist.}}$$

Costs shall be determined in accordance with the City's then current practices. City shall give District reasonable notice and an opportunity to meet and discuss before implementing any change in current practice that will affect the determination of costs under this Agreement. City shall make all program and accounting records relating to the determination of costs, including working papers, available for inspection by authorized representatives of District at any reasonable time during the performance of this Agreement and for a period of three (3) years from and after the date of final payment. If during the term of this Agreement, the City commences fire protection and related services to areas outside the City's boundaries that are not currently served by the City, the parties shall meet and discuss modifications, if any, to the payment formula to reflect this change in circumstances.

- b) Time of Payment. On or before February 1 of each year, City shall deliver to District a statement setting forth the cost of service for that year accompanied by the computation and cost data from the preceding year upon which it is based. If District questions the amount of the cost of service, City and District shall meet and discuss the computation of the cost of service. District shall pay to City one-half (1/2) of the cost of service on or before the later of April 1, or the tenth day after District receives its first installment of property tax revenue. District shall pay to City the remainder of the cost of service on or before May 1, or the tenth day after the District receives its second installment of property tax revenue. If District bases its time of payment upon the receipt of property tax revenue, it shall provide City with a statement of the date District received those revenues. If District does not pay City on or before May 1, City may terminate this agreement for non-payment as provided in Section 10. Except as provided in Section 7 below, if payment is not made within thirty (30) days after the due date of the payment, that payment shall bear interest at the rate of eight percent (8%) per year.
- c) Accounting Report. Within six (6) months after the close of each fiscal year of this Agreement, City shall provide to District an accounting of all funds and a report of all receipts and disbursements relating to the provision of services under this Agreement.

Section 7. Resolution of Disputes Concerning Amount of Payment. In the event that the District disputes the cost of service and this dispute is not resolved prior to the date a payment is due to City pursuant to Section 6(b), District and City agree as follows:

- a) District shall pay to City an amount equal to one-half (1/2) of the cost of service paid for the fiscal year preceding the year for which payment is currently due and disputed. Such payment shall be made on or before the applicable date for payment established under Section 6(b). If the dispute is not resolved prior to the next

succeeding date for payment, the District shall again pay to City an amount equal to one-half (1/2) of the cost of service paid for the fiscal year preceding the year for which payment is currently due and disputed.

- b) District shall pay the difference between the payment(s) made to City under subsection (a) above and the amount demanded by City into an interest-bearing escrow account. Such payment shall be made on or before the applicable date for payment established under Section 6(b). These amount(s) shall be held in escrow pending resolution of the dispute.
- c) District and City agree that the dispute shall be resolved as expeditiously as possible through binding arbitration. The matter shall be arbitrated by an administrative law judge from the California Department of General Services, Office of Administrative Hearings. The cost of arbitration shall be paid equally by City and District. Such arbitration shall be limited to review of the computation of the cost of service for the year in dispute. Such arbitration shall be further limited to the arbitrator selecting the last offer of one of the parties as the cost of service for the year in dispute. The decision of the arbitrator shall be final and binding upon the City and District.
- d) The prevailing party in the arbitration shall be paid interest at a rate of eight percent (8%) per year on the disputed amount from the date payment was due through the date of payment. The interest accrued on the amount(s) in escrow shall be applied to this interest obligation.

Section 8. Establishment of Reserve. District may, in its sole discretion, provide funds to the City for the establishment of a fiscal reserve by the City for the benefit of the District. Such funds shall be at least sufficient to provide the cost of twelve (12) months of service under this Agreement. If District provides such funds, City shall establish a separate fund entitled the EDFPD Reserve Fund. Any funds deposited into this EDFPD Reserve Fund shall be used only as provided for herein, or as may be agreed to, in writing between the City and the District, from time to time. The funds may be invested with City funds, provided that all interest attributable to the EDFPD Reserve Fund shall be allocated back to the EDFPD Reserve Fund, and the City shall provide to the District reports on fund investment activity and interest accrue on the same schedule as reports are provided to the City Council but not less than semi-annually. The District may at any time, in its sole discretion, withdraw any or all funds from the EDFPD Reserve Fund by providing the City with ten (10) days' written notice. In the event that the City becomes insolvent or files for bankruptcy, or the District terminates this Agreement pursuant to Section 11, all monies remaining in the EDFPD Reserve Fund shall be immediately disbursed to the District.

Section 9. Additional Revenue. A portion of the costs of service under this Agreement are currently paid from funds generated through an assessment district. The District and the City understand that the District may require additional revenue to pay the costs of services under this Agreement during the term of this Agreement. It is the District's responsibility to provide the funds necessary under this Agreement, through taxes, assessments or other revenues. Should the District determine that additional funds are necessary, it shall be the District's responsibility to seek such funding and to comply with Propositions 13 and 218 and

any other requirements necessary to seek and collect such funds from the residents or property owners within the District. City shall assist the District with its Proposition 218 efforts as described in Section 3(h) above and shall provide revenue and expenditure projections and other information in the City's possession that may be necessary to establish the amounts required to pay the estimated costs of such services.

Section 10. Termination for Non-Payment.

- a) Except as provided in Section 7, above, and provided that funds equal to, or greater, than twelve (12) months projected contract costs to the City are currently on deposit in the EDFPD Reserve Fund as set forth in Section 8, above, City shall, in its sole discretion, have the right to terminate this Agreement upon twelve (12) months written notice to District, if District fails to pay in full, and when due, any payment due under this Agreement. City shall utilize said funds in the EDFPD Reserve Fund to pay the cost of service otherwise due under this Agreement until the termination date, unless the parties agree otherwise, in writing.
- b) If the District has not established a reserve fund as set forth in Section 8 and deposited at least twelve (12) months projects contract costs in the EDFPD Reserve Fund, above, then, except as provided in Section 7, above, the City shall, in its sole discretion, have the right to terminate this Agreement upon one hundred twenty (120) days written notice to the District, if the District fails to pay in full, and when due, any payment under this Agreement, provided that the parties may agree in writing to a longer termination period. In the event of such termination, District shall pay to City for services under this Agreement an amount that bears the same ratio in the total annual payment as the number of days of service that is provided bears to the fiscal year, plus interest thereon.

Section 11. Termination for a Material Reduction in Services. The District may terminate this Agreement upon one hundred twenty (120) days written notice to City if there is a material change that decreases the level of service to the District. By way of example, a material change could include, but not be limited to, the closure of the South Davis fire station or a determination by the City not to provide emergency medical response services. With the termination notice, the District shall provide the City with a minimum of thirty (30) calendar days written notice to cure the reduction in service. In such case, the notice to cure will state the material change(s) and whether the reinstatement of the service(s) or other appropriate conditions would cure the reduction in service. The parties agree to meet and attempt to resolve their differences within the thirty (30) day cure period, which period may be extended by mutual written agreement of the parties. District shall pay to City the pro rata amount of the annual payment described in Section 6, up through and including the date of termination. Upon termination under this section, all monies remaining in the EDFPD Reserve Fund shall be immediately disbursed to the District.

Section 12. Term of Agreement.

- a) It is the intent of City and District that this Agreement be in effect for a term sufficient to facilitate long-term fire protection planning. This Agreement shall

commence as of July 1, 2009, and shall be in effect for twenty (20) years ending on June 30, 2029, unless either party sooner terminates this Agreement for convenience by giving four (4) years advance written notice thereof to the other party, or gives written notice pursuant to Section 10 or 11. District shall pay City for services under this Agreement during the four year notice period. At the District's election, District may pay City at the times set forth in this Agreement or, if, or when, there are sufficient funds in the EDFPD Reserve Fund to pay the cost of services under this Agreement for the remaining period of the Agreement, the District may direct City, in writing, to utilize the EDFPD Reserve Fund to pay the City for services under this Agreement until the termination date. If there are funds remaining in the EDFPD Reserve Fund at the termination of this Agreement, such funds shall be remitted to the District within thirty (30) days of the termination date of this Agreement.

b) Approximately two (2) years prior to the expiration of the twenty (20) year term, the City and District shall begin the joint review of this Agreement which will enable both parties to approve, amend and approve, or disapprove the renewal of this Agreement. If this Agreement is renewed, it shall be for a mutually agreed upon term.

c) Nothing in this Agreement prevents either party from requesting modification of Agreement at any time during its term.

Section 13. Successors. This Agreement is binding upon the successors of City and District.

Section 14. Disposition of Property. Upon termination of this Agreement, all property acquired as a result of the joint exercise of powers shall be distributed to City. Payment for services through the date of termination shall be made as provided in Section 10.

Section 15. Indemnity. City shall defend, indemnify and hold the District harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages arising from City's operations or the performance of this Agreement, with the exception of, and in proportion to, matters that are based upon the negligent or intentional acts or omissions of the District, its officers, agents, employees or volunteers. District shall defend, indemnify and hold the City harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages arising from District's operations or the performance of this Agreement, with the exception of, and in proportion to, matters that are based upon the negligent or intentional acts or omissions of the City, its officers, agents, employees or volunteers.

Section 16. Insurance.

a) During the term of this Agreement, each party, at its sole cost and expense, shall obtain and maintain throughout the entire term of this Agreement insurance, workers' compensation/employers' liability insurance, and automobile liability insurance. The commercial general liability insurance shall include:

- 1) Minimum Coverage. Insurance coverage shall be with limits not less than the following:
 - i. Commercial General Liability - \$1,000,000 per occurrence and \$2,000,000 per aggregate, or equivalent self-insurance subject to approval by each party.
 - ii. Automobile Liability - \$1,000,000 per occurrence (general) and \$500,000 per occurrence (property) (include coverage for Hired and Non-owned vehicles)
 - iii. Workers' Compensation / Employers' Liability - Statutory Limits.
- 2) City, its elected representatives, officers, agents, employees and volunteers shall be named as additional insured or as additional covered party for self-insurance, on all liability insurance or self-insurance maintained by District other than workers' compensation insurance. (Evidence of additional covered party may be needed as a separate endorsement due to wording on the certificate negating any additional writing in the description box.) Any insurance maintained by City shall apply in excess of, and not contribute with, insurance provided by District's self-insurance or liability insurance policy. District, its elected representatives, officers, agents, employees and volunteers shall be named as additional insured or as additional covered party for self-insurance, on all liability insurance or self-insurance maintained by City other than workers' compensation insurance. Any insurance maintained by District shall apply in excess of, and not contribute with, insurance provided by City's self-insurance or liability insurance policy. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the other party. Upon request, each party shall provide the other party proof of such insurance coverage.

Section 17. Notice.

- a) Except as otherwise provided for in this Agreement, all notices shall be made in writing and either served personally, sent by first class mail, or sent by facsimile provided confirmation of delivery is obtained at the time of facsimile transmission, addressed as follows:

To District: East Davis County Fire Protection District
Attention: Chairperson
3411 Bermuda Avenue
Davis, CA 95616
Telephone No.: (530) 756-1136

To City: City of Davis

Attention: City Manager
City Fire Chief
23 Russell Blvd.
Davis, CA 95616
Telephone No.: (530) 757-5602
Fax No.: (530) 757-5603

- b) Any party may change the address to which notice is to be given by providing the other party with written notice of such change at least fifteen (15) calendar days prior to the effective date of the change.
- c) Service of notices shall be deemed complete on the date of receipt if personally served, if served using facsimile machines provided confirmation of delivery is obtained at the time of facsimile transmission, or if sent by certified mail with return receipt requested. However, if signature is refused on a notice sent by certified mail with return receipt requested, then service shall be deemed complete three (3) days after the recipient refuses to sign. Service of notices sent by first class mail shall be deemed complete on the fifth (5th) day following deposit in the United States mail.

Section 18. Governing Law. This Agreement shall be deemed to be executed within the State of California and construed in accordance with and governed by laws of the State of California.

Section 19. Time of the Essence. Time is of the essence in the performance of every term, covenant, condition, and provision of this Agreement.

Section 20. Warranty of Authority. The persons executing this Agreement on behalf of City and District affirmatively represents that she/he has the requisite legal authority to enter into this Agreement on behalf of City and District and to bind City and District to the terms, covenants and conditions of this Agreement.

Section 21. Captions. The title or headings to the Sections of this Agreement are not part of this Agreement and shall have no effect upon the construction or interpretation of any part of this Agreement.

Section 22. Amendment. This Agreement may only be amended in writing signed by both City and District, and any other purported amendment shall be of no force or effect.

Section 23. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute the same one document.

Section 24. Entire Agreement. This Agreement constitutes the entire agreement between City and District and supersedes all prior negotiations, representations, or agreements, whether written or oral. In the event of a dispute between the parties as to the language of this Agreement or the construction or meaning of any term hereof, this Agreement shall be deemed to

have been drafted by the parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any party to this Agreement.

IN WITNESS WHEREOF, each party has executed this Agreement by its duly authorized officers, as of the date first written above.

CITY OF DAVIS

EAST DAVIS COUNTY FIRE
PROTECTION DISTRICT

By: _____
Ruth Asmundson, Mayor

By: _____
Robert Ball, Chairman

Attest: Zoe Mirabile, Clerk
City of Davis

Attest: Roxie J. Weaver, Clerk
East Davis County Fire Protection District

By: _____
Deputy
(SEAL)

By: _____
Roxie J. Weaver
(SEAL)

APPROVED AS TO FORM:

McDonough Holland & Allen

By: _____
Harriet A. Steiner

APPROVED AS TO FORM:

Robyn Truitt Drivon, County Counsel

By: _____
Sonia Cortés, Senior Deputy