

**AGREEMENT BETWEEN
THE CITY OF EMERYVILLE AND
THE ALAMEDA COUNTY FIRE DEPARTMENT
REGARDING FIRE AND EMERGENCY
RESPONSE SERVICES**

THIS AGREEMENT is made and entered into by and between the ALAMEDA COUNTY FIRE DEPARTMENT, a dependent fire district formed under the Fire Protection District Law of 1987 (Health and Safety Code Sections 13800, et seq.) and governed by the Board of Supervisors of the County of Alameda as its Board of Directors ("ACFD"), and the CITY OF EMERYVILLE ("City"), a municipal corporation, referred to herein collectively as the "Parties".

RECITALS

- A. WHEREAS, ACFD and the City previously entered into an initial contract for fire and emergency response services from July 1, 2012, through June 30, 2018; and,
- B. WHEREAS, ACFD and the City entered into a subsequent agreement for the same fire and emergency response services on or about July 1, 2018, through July 1, 2024; and,
- C. WHEREAS, pursuant to these contracts, ACFD has been providing fire and emergency response services to City for approximately 12 years; and,
- D. WHEREAS, the Parties wish to continue the relationship and to clarify or amend certain aspects of their prior contract; and,
- E. WHEREAS, the City desires to enter into this Agreement for the stated services at the identified costs (See 5-Year Cost Projection provided by ACFD, attached as Exhibit 5); and,
- F. WHEREAS, the term of this Agreement shall be as set forth in Section 9 of this Agreement.

AGREEMENT

In consideration of the mutual promises contained herein, the Parties hereto agree as follows:

Section 1. Recitals.

The foregoing recitals are true and correct.

Section 2. Definitions.

As used in this Agreement:

- a. "ACFD" means the Alameda County Fire Department, or any successor organization or successor governmental entity.
- b. "Board of Directors" means the Alameda County Board of Supervisors acting as the Board of Directors of the Alameda County Fire Department and governing body of ACFD.
- c. "Board of Supervisors" means the Alameda County Board of Supervisors acting as the governing body of the County of Alameda.
- d. "City" means the City of Emeryville.
- e. "City Council" means the City Council of the City of Emeryville.
- f. "City Manager" means the City Manager of the City of Emeryville.
- g. "County" means the County of Alameda.
- h. "Fire Chief" means the chief executive officer of ACFD.
- i. "Fiscal Year" means the annual period commencing on July 1 and ending June 30.
- j. Fire specific terminology used in this Agreement (e.g., Shift, Company, Quint Engine, etc.) shall be used in a manner consistent with the definitions published by the National Fire Protection Agency (NFPA), as revised from time to time.

Section 3. Scope of Services.

Within the boundaries of the City, ACFD shall provide and be fully responsible for the following services.

a. Incident Response.

1. General Service Criteria.

A. Response Area.

ACFD shall provide all services identified below to all areas within the incorporated limits of the City.

Currently, the City is divided into two (2) major response areas for fire and medical incident response. (See Service Area Map attached as Exhibit 1.)

The Parties acknowledge that ACFD entered into a sub-contract with the City of Oakland, attached hereto as Exhibit 9, to meet the response time requirements outlined in this Agreement. In the event that the City of Oakland Agreement is cancelled by the contracting parties, the ACFD shall immediately notify the City.

B. Station Location/Staffing.

There is a fire station located in both of the response districts within the City of Emeryville. Each of these stations is strategically located to provide for minimal response times into first-in areas. The response configuration to the City is based upon two (2) stations with two (2) engines:

Response Configuration

Emeryville Station No. 1 (ACFD #34) (2333 Powell Street)	1 Engine Company	3 Personnel
Emeryville Station No. 2 (ACFD #35) (6303 Hollis Street)	1 Engine Company	3 Personnel

Within the City boundaries, ACFD will maintain a minimum staffing level of six (6) personnel, consisting of two (2) three-person (3-person) companies per shift.

Each company shall consist of one (1) Captain, one (1) Engineer, and one (1) Firefighter. In the absence of ranked positions, personnel working "out-of-class" (acting) will be used. At least one (1) member of each company on each shift shall be a licensed paramedic in good standing.

In the event that engine companies stationed in the City leave the City for any reason, ACFD will arrange for appropriate back-up coverage to ensure that the City has adequate response capability, with a minimum of one (1) Advanced Life Support ("ALS") company, in the event of an incident.

The response configuration above shall only be changed upon mutual agreement between the Fire Chief and City Manager.

C. Response Levels.

ACFD shall respond to incidents as shown in ACFD Emeryville Response Plan attached as Exhibit 2.

ACFD will maintain, at a minimum, the current level of ALS response, including both a 12-Lead EKG device and a mechanical CPR assist device on all two frontline companies, provided such devices remain available for ACFD's use. If 12-Lead EKG devices, mechanical CPR assist device, or both become unavailable for ACFD's use, they may be replaced pursuant to Section 5(a) herein.

D. Response Time.

On a single unit incident, ACFD shall arrive at the scene of an emergency incident within seven (7) minutes or less from the time that the Company is first dispatched for 90% of all emergency incidents. In multiple unit incidents, the first due company shall arrive at the scene of an emergency incident within seven (7) minutes or less from the time that the company is first dispatched for 90% of all such incidents. The remaining 1st Alarm units from within the City shall arrive at the scene of the incident within eleven (11) minutes or less from the time that the first due company is dispatched for 90% of all such incident.

In the event that ACFD is unable to meet the established response time standards, the Fire Chief and the City Manager shall confer regarding ACFD's ability to meet the above stated performance standards. The Fire Chief and the City Manager shall, at their regularly scheduled meeting, discuss strategies to ensure such performance standards are met in the future.

Data on response times will be provided to the City Manager within thirty (30) days of the calendar quarter in which the responses occur. Data on response times shall be reviewed on a quarterly basis as part of the regular business of the Fire Advisory Commission and Executive Management Oversight Committee.

E. Chief Officer Coverage.

ACFD will provide a Battalion Chief response for all first alarm fire and multiple apparatus incidents. For extended attack incidents of two (2) alarms or greater, ACFD will also provide a second chief officer response and sufficient management staff to ensure appropriate management of the emergency.

F. Utilization of Contract Services outside of the City of Emeryville.

Automatic Aid Plans, Mutual Aid Plans, Borderless Response Plans, Daily Operational Plans, and any other plans utilizing contract fire services assigned to the City of Emeryville outside of the City, will be conveyed in writing to the City Manager prior to implementation.

G. Mutual Aid.

ACFD shall provide necessary services to meet the City's obligations with respect to mutual aid in accordance with but not limited to the Alameda County Fire Mutual Aid Plan, and all appropriate state of California interagency service agreements. ACFD shall develop expanded mutual aid, automatic aid, and mutual response areas with other fire departments adjacent to the

City of Emeryville. ACFD may enter into such agreements on behalf of the City only with the prior written consent of the City.

2. Fire Suppression.

Fire Suppression services shall be provided in accordance with Section 3(a)(1)(A)-(G) above.

3. Emergency Medical Response.

Emergency Medical Response Service shall be provided in accordance with Section 3(a)(1)(A)-(G) above. In responding to Emergency Medical incidents, each engine company will be staffed with one (1) State licensed and County accredited paramedic and two (2) EMT-I trained personnel.

ACFD shall fulfill and does hereby assume City's obligations under the City's First Responder agreements with the Alameda County Emergency Medical Services (EMS) District which are hereby assigned to ACFD. ACFD's duty to fulfill the City's obligations under the First Responder agreements with the EMS District shall not affect the City's right to receive all revenue from the EMS District due to the City under the above agreements.

4. Hazardous Materials Response.

Response to Hazardous Material incidents shall be in accordance with the provisions of Section 3(a)(1) (A)-(G) above.

ACFD will provide a Type I (as defined by FIRESCOPE) Hazardous Materials team level of service to the City.

ACFD will provide trained personnel to perform hazardous materials operations when required in the City. These personnel are staffed and equipped each day; response to the City will be the time necessary for notification and travel of the closest available ACFD resource that meets the needs of the emergency incident.

5. Rescue Services.

ACFD shall provide the City with rescue services in accordance with the provisions of Section 3(a)(l)(A)-(G) above.

ACFD will provide Type I (as defined by FIRESCOPE) Heavy Rescue team level of service to the City.

ACFD will provide trained Urban Search and Rescue Team (USAR) personnel to perform confined space and trench rescue operations when required in the City. These personnel are staffed and equipped each day; response to the City will be the time necessary for notification and travel of the closest available ACFD resource that meets the needs of the emergency incident.

6. Response to Mass Casualty Incidents.

ACFD shall respond to mass casualty incidents in the City with the same level of response provided to other areas served by ACFD.

7. Other Calls for Service.

ACFD shall respond to all other calls for services in accordance with the provisions of Section 3(a)(l)(A)-(G) above.

8. Homeland Security.

ACFD will represent the City, and proactively participate on its behalf, in the planning, coordination and development of programs to address homeland security threats. ACFD will maintain a state of awareness and readiness to respond to incidents impacting homeland security within the City.

9. Major Disaster Response.

In the event of a major disaster, ACFD will supplement the fire personnel assigned to the City by either providing additional resources for direct response to an incident or by moving coverage from ACFD Stations outside of the City, provided that

supplemental resources are available.

Should the City's Emergency Operations Center (EOC) be activated, ACFD shall provide sufficient staff to operate assigned functions in the EOC. Release of personnel and resources may occur after evaluation of local conditions and upon mutual agreement by the City Manager and the Fire Chief.

ACFD shall provide adequately trained command level officers in the event that such personnel are required during a major disaster.

Upon City's request, ACFD shall work cooperatively with the City to consult on City's Comprehensive Emergency Response Plan. ACFD will conduct, in coordination with the City, at least one annual exercise per year. The exercise may be a tabletop, a functional or full-scale exercise that will build upon the skills of the EOC staff. Prior to conducting drills, ACFD will assist with the training of key City staff to ensure that all City personnel are prepared to fill their designated EOC assignments.

City shall be responsible for maintenance of all supplies provided by City and for ensuring that all procedures are kept up-to-date at the Full- Activation EOC (located at Emeryville Fire Station 35).

ACFD will continue to participate in local or regional organizations necessary to ensure the City is represented in disaster preparedness and response.

10. Basic Fire Investigation Service.

ACFD fire personnel shall be assigned to determine the cause and origin of every major fire (3rd Alarm), or fire fatality within the City and shall conduct an investigation on every incident in which there is knowledge or suspicion that the crime of arson may have been committed. Fire investigators shall work with the Emeryville Police Department and any other appropriate law enforcement agencies involved in the fire and/or criminal investigation.

b. Dispatch Service.

ACFD manages the Alameda County Regional Emergency Communication Center (ACRECC) which supplies fire and ambulance dispatch services from a dispatch center located at the Lawrence Livermore National Laboratory. ACFD

may arrange for dispatch service to City through a different provider with the prior written approval of the City Manager (said approval shall not be unreasonably withheld by the City Manager), in which case the cost for such dispatch service shall not exceed the amount charged by the then-current provider at the time of the change.

c. Community Education.

1. Fire Prevention and Safety Programs.

ACFD will coordinate the planning and development of fire prevention and safety education training programs for schools, businesses, community associations, childcare providers, and other members of the community. Programs to be provided by ACFD shall be as mutually agreed to by the Fire Chief and the City Manager. The ACFD shall provide quarterly reporting on community outreach activities that benefit the City. Current examples of education programs are as follows:

- | | |
|-------------------------|--------------------------------|
| Burn Prevention | Fire Safety in the Workplace |
| Smoke Detectors | Extinguisher Use |
| Stop, Drop & Roll | Exit Drills in the Home |
| Partners in Fire Safety | |
| Emergency Preparedness | Safely Surrender Baby Program |
| Fireworks | Fire in Health Care Facilities |

2. CPR Training.

ACFD shall provide CPR training to members of the Emeryville Community at no charge to the participant, not including certification cost. This training shall be provided within the boundaries of the City.

3. Community Emergency Response Team (CERT) and Personal Emergency Preparedness (PEP).

ACFD shall offer Community Emergency Response Team and Personal Emergency Preparedness training to members of the Emeryville Community. This training shall be coordinated with and compliment the City’s current disaster preparedness programs. Any significant changes to the CERT or PEP programs shall be mutually agreed upon between the City Manager and Fire Chief prior to

implementation.

4. Miscellaneous.

ACFD shall respond to specific requests from the community including but not limited to Fire Station Tours and Ride-alongs.

ACFD will develop specific bulletins and programs targeted to meet identified needs or hazards within the City. Fire Prevention and Life Safety Programs will be tailored to educate City residents and business community in order to help preserve life and property.

d. Fire Prevention.

1. Office Space.

ACFD shall maintain an office in the Emeryville City Hall, or such other location as may be designated by the City, to provide fire prevention services. ACFD will be provided use of these facilities at no cost to ACFD. In the provision of those services, ACFD recognizes the need for business retention and attraction in the City and will make every effort to facilitate this goal while at the same time assuring community safety.

2. Fire Prevention Division Staffing.

ACFD shall provide one (1) Fire Marshal, as needed in accordance with the established shared allocation, one (1) full-time Fire Plan Checker II and one (1) Code Compliance Officer. The Fire Plan Checker II and Code Compliance Officer assigned to Emeryville shall work out of the office space provided by the City pursuant to Section 3(d)(1) above and shall support the Community Development's and/or Building Division administrative process and procedures. All duties of the Fire Plan Checker II assigned to Emeryville shall be performed at this office, during the City's designated counter business hours, except for duties that must take place away from the office, such as off-site meetings and field inspections. Changes in the level of staffing will be mutually agreed upon by City Manager and the Fire Chief. Factors that may impact fire inspection staffing levels include, but are not limited to, the level of

construction and development in the City, regulatory changes, and fiscal constraints of the City.

In the event that ACFD is unable to provide a full-time Fire Plan Checker II /or Code Compliance Officer to work out of the City office space and/or ACFD fails to meet performance standards, the City Manager in consultation with the Fire Chief, may elect to contract for a qualified third party to provide such services. The City's cost of such contract services shall be deducted from the City's monthly payments to ACFD pursuant to Section 5(c)(3) below.

3. Pre-development/Preliminary Planning.

A member of the Fire Prevention Staff shall participate in pre-development planning. Pre-development planning will include but not be limited to the following activities:

- A. Preparation of written comments based upon development/construction submittals made to the City;
- B. Attendance at scheduled meetings with applicants when requested;
- C. Active participation in the development and implementation of the City's One Stop Permit Center process;
- D. Participation in the development or modification of the City's permitting process; and
- E. Attendance at development review meetings as required.

4. Plan Submittal Review.

ACFD Fire Prevention staff will review proposed construction plans and fire protection system plans in compliance with the City's adopted codes and applicable standards and adhere to the City Building Division administrative permitting process. Written comments, in format agreed upon by ACFD and City, will be attached to approved plans to inform applicants of fire code

requirements. All plans submitted for ACFD review will be reviewed by the Fire Plan Checker II assigned to Emeryville or other qualified personnel and such review shall be completed within the timelines established by the City, provided such work can be performed with the staffing levels provided by this Agreement. All fire plan review comments, email, phone meetings and other correspondence shall be scheduled by the Fire Plan Checker II and communicated to the applicant.

5. Fire Inspections.

ACFD shall provide inspection and permit issuance service. All inspections shall be conducted by the Fire Plan Checker II or Code Compliance Officer assigned to Emeryville or other qualified personnel. In the absence of assigned inspection personnel, ACFD will notify the city's Chief Building/Fire Official and assign or designate qualified staff for interim coverage.

A. General Inspections. In accordance with the California Fire Code, ACFD shall provide qualified personnel to perform fire inspections relating to structures, processes, premises, and safeguards regarding:

- i) The hazard of fire and explosion arising from the storage, handling or use of structures, materials, or devices;
- ii) Conditions hazardous to life, property, or public welfare in the occupancy of structures or premises;
- iii) Fire hazards in the structure or on the premises from occupancy or operation; and
- iv) Matters related to the construction, extension, repair, alteration, or removal of fire suppression or alarm systems.

B. Fire Protection System Inspections. As part of the City's permitting process, qualified ACFD personnel shall inspect all fire protection systems subject to ACFD approval to verify compliance with the approved plans and applicable codes and standards.

- C. Mandated Inspections. ACFD shall provide qualified personnel to conduct inspections of all occupancies mandated by the California Office of the State Fire Marshal.
- D. Construction Permit Inspections. ACFD shall provide qualified personnel to perform fire inspections for any required construction permit issued in accordance with the City's adopted Fire Code.
- E. Operational Permits. ACFD shall issue operational permits at the end of the building permit process. These permits are valid until revoked.
- F. Company Inspections. ACFD shall administer the company inspection program for non-residential occupancies.

6. Pre-fire Plan Inspections.

ACFD will perform pre-fire planning services. The information shall be shared with City departments as requested.

7. Fire Code Administration.

- A. Under the direction of the City Manager, ACFD will administer and enforce all City adopted fire codes and other applicable State and Federal Codes and regulations, including, but not limited to, the Emeryville Fire Code (Chapter 5 of Title 4 of the Emeryville Municipal Code).
- B. ACFD will be responsible for monitoring changes to Fire Codes and providing the City with recommendations regarding proposed changes. ACFD will work with City Staff to complete the code adoption process.

e. Administration.

1. Contract Administration.

ACFD designates the Fire Chief of ACFD, or his or her designated

representative, to represent ACFD in all matters pertaining to the administration of this Agreement.

The City designates the City Manager, or his or her designated representative, to represent the City in all matters pertaining to the administration of this Agreement.

The Parties desire to work cooperatively to ensure that the City receives the highest level of service possible at the least-cost to both Parties. Accordingly, the Parties desire to set forth a process for reaching Agreement on mutually acceptable alterations to this Agreement with regard to service delivery standards and material changes to the budget.

The City and ACFD will formally notify one another prior to a service delivery change and/or material budget modification. Said notification shall provide adequate time for the other Party to provide comment, express concerns, and to allow for agreement on the aforementioned changes and modifications. ACFD and City shall obtain written approval from the other Party prior to making any material changes or modifications to service delivery or the adopted budget.

2. Fire Chief Designation.

The Fire Chief is hereby designated by City as the City of Emeryville Fire Chief and shall have and possess such authority as the Emeryville Municipal Code and general laws provide for the Fire Chief.

3. Liaison to City.

A. ACFD designates the Fire Chief or designee (at no time below the rank of Chief Officer) as the direct liaison to the City Manager. Liaison responsibilities shall include but are not limited to:

- i) Attendance by the Fire Chief or his designee at Staff, City Council or similar meetings/retreats when requested by the City Manager; and
- ii) Meetings with the City Manager as requested by either the Fire Chief or City Manager to discuss budget,

operational, or other issues which may arise.

- B. ACFD will promptly notify the City Manager of the following events occurring within the City.
 - i) Any fire in excess of two alarms; or structure fire and homeless encampment fire
 - ii) Any fire fatality;
 - iii) Major hazardous materials response (Level III);
 - iv) Serious response-related injury to any firefighter responding to service within the City; and,
 - v) Any incident resulting in the closure of a business, evacuation of large numbers of citizens, or the displacement of any persons from their home for more than 24 hours.
- C. The ACFD Fire Marshal shall be responsible for operation of the Fire Prevention Division in the City. The Fire Marshal shall be responsible for ensuring attendance by the Plan Checker II assigned to the City at all meetings necessary to meet the City's Fire Prevention needs. In the absence of the Plan Checker II, ACFD will consult with the City's Chief Building/Fire Official and designate a replacement to assume the responsibilities in Fire Prevention.
- D. The City's Chief Building Official shall serve as the City's Fire Code Official and shall have final authority over the interpretation and administration of the Fire Code.

4. Community Events.

ACFD will participate in the planning and implementation of community activities and events as reasonably requested by the City Manager.

5. Reports and Records.

- A. Records related to providing services to the City under the terms of this Agreement shall be the property of the City.

- B. ACFD will maintain sufficient records to enable the City to meet its reporting obligations and needs as they relate to the provision of services as provided for in this Agreement and as such services relate to performance obligations which are provided for in other Agreements which the City has or may enter into (e.g., EMS First Responder Agreement). ACFD will submit, on the City's behalf, all information required by requesting authorities such as NFIRS, OSHA Industrial Injuries, etc.
 - C. ACFD will maintain sufficient financial records related to the performance of services under this contract to enable the City to seek financial reimbursement for disaster response, hazardous material and other incident response for which the City may be eligible for reimbursement.
 - D. ACFD will provide to City Manager all financial and other reports reasonably requested by the City Manager.
 - E. Upon request by the City Manager, ACFD will make available its records for audit and inspection by the City Manager, or his or her designated representative.
 - F. ACFD shall continue the current practice of a yearly independent audit of ACFD's financial performance. ACFD shall provide such audit reports to the City Manager within thirty (30) days of publication. ACFD will provide any financial information required by the Governmental Accounting Standards Board (GASB) for the City's financial reporting that is in ACFD's possession or control in a timely manner.
6. Fire Complaints and Requests for Service.
- A. ACFD shall inform the City Manager of any and all complaints regarding the provision of services to the City by ACFD. ACFD shall continue the practice of the Fire Advisory Commission reviewing all community complaints including resolution.
 - B. ACFD shall reasonably accommodate requests for service from the community. Requests for service which are not

included within the scope of this Agreement shall be provided by ACFD subject to mutual agreement by the Fire Chief and the City Manager.

- C. ACFD will provide a high level of customer service to the City in accordance with the City's customer service philosophies.

7. Fire System Planning.

- A. The Fire Chief will support the City in planning the extension of fire services and facilities as the City grows.
- B. If the City requires additional contract services to provide fire and emergency services to areas not currently served by the City through its contract with ACFD, the Fire Chief and the City Manager will negotiate a mutually acceptable amendment to this Agreement to provide such services which shall become effective upon approval by the governing bodies of ACFD and City.
- C. This paragraph shall not apply to those services provided under mutual aid, automatic and/or other interagency response agreements.

8. Fees and Miscellaneous Revenue Collection.

- A. ACFD will assist the City in the development of an appropriate fee schedule for fire services rendered in the City by ACFD. ACFD will provide all documentation necessary to support the imposition of fees by the City.
- B. All fees and other revenues attributable to the provision of services rendered by resources funded by this Agreement shall be the property of the City.
- C. All fees and other revenues described in paragraph B above shall be collected by the City with the assistance of ACFD when necessary.
- D. The parties acknowledge that Hazardous Materials, Urban Search and Rescue and Heavy Rescue responses will be provided by ACFD to City pursuant to Section 3(a)(4), (5)

above but are services that are not funded by this Agreement. Instead, ACFD pursues cost recovery for such services directly from the responsible party. Accordingly, any funds recovered by ACFD for these services are not the property of City and shall not be collected by or remitted to City.

9. Local Identity.

It is important that the Emeryville community closely identify with the provision of fire services as a municipally provided service. ACFD shall

identify fire facilities and apparatus with the name of Emeryville so that such facilities and apparatus are clearly visible to the Emeryville community. Such identification shall be as mutually agreed to by the City Manager and the Fire Chief.

10. ACFD Advisory Commission.

The City shall be entitled to have one City representative (City Council member or designee) on the Alameda County Fire Department Fire Advisory Commission. The City shall designate one alternate representative to serve in the absence of the primary Commission member.

11. Executive Management Oversight Committee (EMOC).

The purpose of the EMOC shall be to provide a formal setting for the discussion of issues pertaining to the management, maintenance, and organization of ACFD, and to provide a standard method for the communication of the opinions and recommendations of the EMOC members to ACFD Fire Chief and the Board of Directors.

The City shall be entitled to have one (1) City representative (City Manager or designee) on the EMOC which shall meet at least quarterly.

ACFD is governed by the Alameda County Board of Supervisors acting as the ACFD Board of Directors. Recognizing the legitimate interests of the EMOC members,

however, ACFD and the Board of Directors have recognized and authorized the EMOC to meet routinely, to discuss pertinent issues, to receive reports from the ACFD Fire Chief, and to issue reports and other communications to the Board of Directors on subjects of mutual interest (e.g., collective bargaining agreements, budgets, public policy, and appointment/promotion of executive management).

The Fire Chief shall consult with the EMOC prior to Board of Directors or Board of Supervisors considering taking any action that would result in a substantial increase in costs to City, including without limitation: (1) adoption of a MOU, or any amendments thereto; and (2) approval of ACFD's budget. The Fire Chief shall provide sufficient notice to the EMOC of any proposed action, so as to allow time for EMOC to provide formal comments before any such matters are considered by the Board of Directors or Board of Supervisors. The Fire Chief shall relay those comments in writing to the Board of Directors or Board of Supervisors prior to the Board of Directors or Board of Supervisors taking any proposed action that would result in a substantial increase in costs to City. For the purposes of this Section (e)(12), the term "substantial increase in costs" shall mean any amount that is estimated in good faith to be equal to or greater than one and one-half percent (1.5%) above the approved budget.

Section 4. Facilities.

a. Buildings and Real Property.

1. Use of Emeryville Fire Station No. 34 and 35.

City will provide ACFD use of the City-owned Emeryville Fire Station 34 located at 2333 Powell Street and Station 35 located at 6303 Hollis Street for performance of services to the City of Emeryville under the terms of this Agreement. ACFD will be provided use of these facilities at no cost to ACFD. Responsibility for maintenance of the building and grounds are as set forth below.

2. City Responsibility.

City shall be responsible for grounds maintenance, building repairs, painting, major carpet/floor cleaning, window cleaning, pest control, major landscaping, water softener, fuel tank maintenance, utilities, phone service, and fire alarm service if any of these services are deemed by the City to be necessary for operations. The scheduling of repairs shall be coordinated with ACFD's designated Facilities Coordinator. The City shall provide such reasonable maintenance so that the major systems and appliances of the facilities are in working order.

3. ACFD Responsibility.

ACFD shall be responsible for the routine day-to-day cleaning (e.g., vacuuming, taking out trash, mopping, etc.), minor landscaping, and light maintenance and repairs (e.g., light bulb replacement, leaky faucet repair, etc.) of the facilities and grounds utilized by ACFD in the execution of this Agreement at no additional cost to the City.

All work that exceeds the day-to-day repairs of the facilities and grounds as described above and that costs less than five hundred dollars (\$500) may be made by ACFD, provided that: (i) ACFD gives reasonable notice to City of the need for such work prior to commencing the work if possible; and (ii) after such work is performed, ACFD notifies the City of its completion. Any such approved and completed work shall be identified separately by line-item on ACFD monthly billing statements.

All other facility and groundwork shall be made by City in accordance with the City's normal work and maintenance policies.

Additionally, ACFD shall keep track of all maintenance and repairs that it performs and shall make this information available to the City upon request. Those costs incurred by ACFD in performing maintenance and repair responsibilities as provided for in this section shall be identified separately by facility on ACFD's bill for services to the City and on ACFD's annual budget submittal to the City.

ACFD shall have no responsibility for maintaining general liability and property insurance for City-owned Fire Stations. Damage caused solely by the negligent or intentional misconduct of ACFD, or its employees shall be the responsibility of ACFD at no additional cost to the City.

4. General.

The City will incur all expenses associated with providing or utilizing office space related to providing services pursuant to this Agreement, including space provided directly by City and a proportion of space provided by ACFD as set forth in the annual budget. In the event ACFD utilizes City facilities to provide ACFD services unrelated to the City, ACFD shall reimburse the City for the cost of providing such facilities/equipment as mutually agreed upon by the City Manager and Fire Chief.

5. Return Upon Termination.

Upon termination of this Agreement, ACFD will vacate Fire Stations 34 (formerly Emeryville Station 1), 35 (formerly Emeryville Station 2), and fire prevention offices and shall remove any and all materials, equipment, and improvements not to remain as determined by the City Manager and Fire Chief. Damage caused by the use of the facilities by ACFD, or the removal of materials, equipment, or improvements will be repaired by ACFD to the satisfaction of the City. Reasonable wear and tear and improvements previously approved by the City will be excluded from this requirement.

b. Apparatus/Equipment.

1. Use of Apparatus and Equipment.

The City will provide ACFD use of City-owned apparatus and equipment identified in Exhibit 3 ("City of Emeryville Fire Apparatus/Equipment Inventory") for performance of services to the City under the terms of this Agreement. The City may purchase new equipment and apparatus, as necessary in order to maintain adequate service levels and to ensure safe working conditions. The City will be responsible for maintaining registration and licensing of City-owned equipment.

2. Maintenance.

The City shall bear all cost of maintenance and repair on apparatus and equipment. The City may elect to have the maintenance and repair on apparatus and equipment performed by ACFD pursuant

to a separate Services Agreement for Apparatus Maintenance and Repair. The ACFD shall maintain complete maintenance and repair records on all major pieces of apparatus for maintenance or repair work performed by ACFD.

3. Reserve Apparatus.

A reserve apparatus will be provided by ACFD and will be placed in service as soon as possible if a frontline apparatus is to be out-of-service for an extended period of time. If a reserve apparatus is unavailable, the Parties acknowledge that the response provisions in this Agreement may not be met until the frontline (City-owned) apparatus is back in operating condition or a reserve apparatus becomes available. The Parties shall use reasonable, good faith efforts to minimize reliance on reserve apparatus.

4. Apparatus Replacement.

ACFD shall submit a proposed apparatus replacement schedule to City indicating the anticipated dates for replacement of major pieces of apparatus. ACFD shall provide the City with sufficient advanced notice regarding the need to replace apparatus and equipment. The timing of equipment replacement shall be determined by the City and the specifications for replacement equipment shall be reviewed by ACFD prior to purchase.

City shall bear all expenditures to replace apparatus and major equipment and may create such reserves for depreciation as may be necessary and prudent for replacement of apparatus and major equipment. ACFD shall use reasonable, good faith efforts to submit applications on behalf of City for grants to defray the replacement cost for City apparatus and major equipment.

5. Annual Inventory.

ACFD shall assist the City in maintaining an annual inventory of City apparatus and equipment.

6. Deletion or Addition of Apparatus and Equipment.

Upon agreement between the Fire Chief and the City Manager,
Agreement for Fire Services

individual pieces of apparatus and equipment specified in Exhibit 3 may be deleted from the inventory available to ACFD for performance of services under this Agreement or new apparatus and equipment may be added to such inventory. Notwithstanding anything to the contrary in this Agreement, such modifications to this inventory shall not be considered an amendment to this Agreement.

7. Return Upon Termination.

Upon termination of this Agreement, ACFD will deliver to the City all City- owned equipment and apparatus forthwith in good and serviceable condition, the timing of which shall be pursuant to the transition plan to be established by the parties pursuant to Section 9 herein.

Section 5. Cost of Services.

a. Fire Budget.

1. Operating Budget.

For purposes of budgeting for the cost of services to be provided hereunder, the Fire Chief shall prepare and submit a budget for the succeeding one (1) or two (2) fiscal years to the City Manager. To the extent possible, the budget will be submitted in accordance with the City's budget instructions and required deadlines. ACFD shall prepare a draft budget by the third Thursday in February of each year. The Fire Chief and City Manager shall use their best efforts to agree on a final budget that will be recommended for approval by their respective governing bodies by March of the same year. The City utilizes a biennial budget system and ACFD budget information will be submitted in accordance with the two-year budget cycle. The final budget shall be comprised of line items that are consistent with previously authorized line items unless otherwise approved by City.

If the City does not approve the budget agreed upon by the Fire Chief and the City Manager, then the Parties acknowledge that services provided hereunder may be reduced accordingly.

For the term of this contract, the City has relied upon cost projections provided by ACFD in Exhibit 5 ("5-Year Cost Projection Provided by ACFD"). City acknowledges that Exhibit 5 contains projections and not actuals. ACFD will make good faith efforts to provide budgets in accordance with these projections and the budgetary process outlined above.

2. Monitor Indirect Charges.

ACFD will evaluate the appropriateness of the County's indirect charges and, where necessary, consult, on behalf of all entities contracting with ACFD, with the County regarding indirect charges.

3. Consultation Regarding Changes to MOU.

ACFD will consult with the City in accordance with paragraph (e)(12) of Section 3 for any changes to its existing Memorandum of Understanding (MOU) with Alameda County Firefighters Local 55A and 55B or any new MOU which applies to ACFD employees prior to agreeing to such changes or new MOU.

4. Capital Requirements.

The Fire Chief will also recommend any capital needs or modifications to the resources or services provided by City that directly support the provision of ACFD contractual service. These recommendations shall be submitted along with the contract fire budget. The City shall have the final authority to approve capital expenses.

5. City Adoption of Budget.

The fire budget, as modified by the City Manager as necessary, shall be included in the City Manager's proposed Biennial Budget and Capital Improvement Program.

The fire budget shall be reviewed, modified (if necessary) and approved by the City Council at the same time and place as the City's Biennial Budget.

6. Management of Budget.

In accordance with the expenditures authorized by the fire budget, the Fire Chief shall be responsible for managing the fire budget to keep fire expenditures within the amount budgeted. If during the year, the Fire Chief believes in good faith that the approved fire budget is insufficient in any respect to ensure the provision of service at the service levels required by this Agreement, (s)he shall immediately notify the City Manager in writing specifying the budgetary deficiency, along with a request for a budget amendment that identifies all reasons for the proposed amendment. If the budget amendment is not approved by City, then the Parties acknowledge that there may be a decrease in service levels commensurate with the deficiency identified in the budget amendment request.

7. Form of Budget.

The budget shall be submitted to the City Manager in a form identified by the City Manager or his/her designee.

b. Retiree Medical Benefits/ Funding OPEB Liability.

1. Methodology for Calculation of OPEB Liability.

ACFD currently offers retiree medical benefits, also known as Other Post Employment Benefits (“OPEB”), to retirees, as identified in the relevant MOU between ACFD and any relevant bargaining groups.

The City acknowledges that ACFD has incurred an obligation to fund these benefits. The City further acknowledges that ACFD has provided services to the City since 2012 and that the City has a responsibility to pay a portion of ACFD’s long-term OPEB obligation, as specified below, including upon withdrawal from this Agreement—OPEB liability incurred by the ACFD and other agencies in the pool prior to July 1, 2012 should not be allocated to the City as the liability was related to services not provided to the City.

The Parties acknowledge that this OPEB liability is rapidly

increasing and therefore the Parties shall continue to discuss and consider options for reducing the Parties' exposure.

The City's liability for OPEB shall be calculated in accordance with the methodology and illustrations in Exhibit 6 entitled "June 30, 2023 GASB 75 Actuarial Valuation and any successors thereto. The Parties further agree that the methodology for calculating the City's liability will be consistent with, but not necessarily identical to, the illustration in said Exhibit. The Parties acknowledge that the specific methodology may be altered by changes in assumptions, standards of practice, and other conditions outside the Parties' control.

The City's OPEB shall be calculated with specificity as described above. Generally, the Parties agree that the City has an obligation ~~liability~~ for OPEB with respect to twenty (20) of the employees identified in Exhibit 4 ("City of Emeryville List of Fire Department Employees Sorted by Date of Hire With the City of Emeryville") beginning when the City's contracted for fire services with ACFD, as well as the City's allocated portion of the ACFD service costs (including, for example, costs of shared overhead positions like the Fire Chief), and the costs of staff stationed at City's fire stations which may change in the future but currently includes 20 employees (18 firefighters, 1 fire plan checker II and 1 fire code compliance officer).

The Parties agree that the minimum required annual payment from the City to ACFD related to OPEB is the City's Allocated Percentage of the Pay-As- You-Go amount. The City's Allocated Percentage is calculated in the Side Fund Calculation in Exhibit 7. The City shall in its own and complete discretion, determine the funding level above the Pay-As-You-Go, if any.

Any employee contributions towards the unfunded liability shall be credited to the City's CERBT subaccount based on the Allocated Percentage.

2. City's OPEB Liability Upon Separation.

Upon separation, the City shall be responsible for its share of the OPEB obligation, as determined using the methodology consistent with Exhibit 8 ("Illustration of Methodology and Potential Calculation for Withdrawal Liability for City of

Emeryville”), if its contract for fire services with ACFD is terminated, expires, is not extended pursuant to the terms in Section 9, or otherwise becomes inoperative (“Separation”).

The City, in its sole discretion, may, in accordance with Exhibit 8, elect to fund its share of said liability by either: (i) using the “walk-away” liability method; or (ii) continuing to participate in the gains and losses with ACFD’s OPEB plan:

If the City elects to use the “walk-away” method under option (i), above, City, in its sole discretion, may elect to either: (a) fully fund its OPEB liability on the Separation date, or (b) fully fund its OPEB liability within five (5) years of the Separation date. If the City elects to fully fund its OPEB liability on the Separation date under option (a), then a “walk away” discount rate, as that term is defined in Exhibit 8, shall be used to calculate City’s withdrawal liability. If the City elects to fund its liability within a five (5) year period under option (b), then City shall pay interest at the “walk-away” discount rate, which interest shall accrue from date of Separation until payment is made in full.

The Parties agree that the “walk-away” discount rate shall be 1% above the rate identified by CalPERS as the discount rate assumption used for termination valuations in the most recent Annual Valuation Report for the Safety Plan of the Alameda County Fire Department preceding the Separation date.

If the City elects to continue to participate in the gains and losses with ACFD’s OPEB plan under option (ii) above, then the Net Withdrawal Liability shall be calculated in accordance with actuarial assumptions for an obligation funded at the level of City’s funding as calculated in ACFD’s actuarial valuations for each year the City participates in gains and losses.

In the event that: (a) the City and ACFD separate; and (b) the City elects to use the “walk-away” method (option i) to satisfy its share of the OPEB liability; and (c) the benefits levels used to calculate the liability are reduced after the City Separation, resulting in excess funding, then the ACFD shall return a commensurate portion of the sub-account to the extent allowable by law.

In the event that another public agency that contracts with the ACFD negotiates a contract with ACFD that provides a more

favorable discount rate (e.g. >1% above CalPERS) to that public agency than the provisions in this Agreement, then the discount rate in this Agreement, or any amendments hereto, shall be immediately replaced by the more favorable discount rate provided to that public agency, provided that City is not in breach of a material term of this Agreement.

3. Funding of Retiree Medical Benefits Unfunded Liability.

a) City's Pre-Funding.

The City's minimum annual OPEB contribution share should be the actuarially determined contribution (ADC) as described in Exhibit 6. However, while the City acknowledges and recognizes the importance of OPEB prefunding, the City maintains the budgeting authority to increase or decrease the contribution in its discretion consistent with the City's budgeting needs.

In the event that the City determines that the minimum annual OPEB prefunding contribution share greatly exceeds the City's reasonably expected funding amounts, the City may fund less than the ADC amount to meet City-wide budgetary needs. The decision to advance fund OPEB should reflect the City's careful analysis of its own unique financial situation. However, the City's annual OPEB contribution shall not be less than the annual Pay-As-You-Go amount.

The City, in its sole discretion, may pre-fund the unfunded liability (as that term is more specifically defined by GASB for the applicable accounting period, e.g., as Unfunded Actuarial Accrued Liability ("UAAL") or Net OPEB Liability ("NOL")) through the CERBT subaccount as described below.

In the event that City fails to fully fund its ADC, City shall report the cumulative effect of underfunding to its Council and the ACFD shall report the cumulative effect of underfunding to its Board. To the extent feasible, each Party agrees to provide reasonable notice to the other Party in advance of presenting such a report.

b) Background and Purpose of Pre-Funding.

ACFD has entered into a contract with CalPERS to join the California Employers' Retiree Benefit Trust (CERBT), establishing a separate sub-account for each agency contracting with ACFD. Each agency may decide independently how much, if any, of its own side fund to pre-fund in their CERBT sub-account. The intention is that an agency's pre-funding contributions will benefit only that agency and will not subsidize the retiree medical benefits of any other agency.

The purpose of the CERBT sub-account is to allow each agency contracting with ACFD, including the City, the option to pre-fund OPEB liability independent of the pre-funding choices of the other agencies. Pre-funding is expected, but not guaranteed, to reduce long term OPEB obligations and lead to an OPEB cost that, over time is more level as a percentage of payroll.

c) Side-Fund and Sub-Account.

ACFD has a CERBT fund account with CalPERS to fund its retiree healthcare plan. The City has a sub-account under ACFD's main account. City may pre-fund its allocated share of ACFD's OPEB liability by contributing to the CERBT sub-account designated for City. Any such pre-funding shall be in accordance with this Agreement.

No portion of an agency's CERBT sub-account balance will be used to offset any other agency's side fund balance. Each agency's side fund contributions will go into their CERBT sub-account and will offset their individual agency OPEB liability with ACFD.

Any cost sharing by employees towards the OPEB costs will be deposited based on the City's Allocated Percentage share into the City's CERBT sub-account.

To the extent authorized by law and within the rules of CERBT, the City, in its sole discretion, may use funds in its CERBT sub-account to pay ACFD for any of the City's

OPEB liability.

4. California Employers' Retiree Benefit Trust (CERBT) Fund Account Management.
 - A. All deposits and disbursements will be made through ACFD.
 - B. CalPERS will provide online access for City to view its account activity. City shall provide the contact information (name, phone number, and email address) for its designated custodian to ACFD to be forwarded to CalPERS in order to set up the access.
 - C. City will be responsible for the cost of administration and maintenance of its sub-account, which costs will be deducted from City's sub-account and reflected on City's quarterly statements.
 - D. Disbursement cannot exceed the annual premium and other costs of post-employment healthcare benefits and OPEB as defined in GASB 75.
 - E. No disbursement shall be made from the sub-account if the sub-account has an insufficient balance for such disbursement.
 - F. City shall submit its requests for deposits and disbursements to ACFD. ACFD will submit City's requests to CalPERS within thirty (30) days. City acknowledges that at least two (2) months of turnaround time may be required for its requested deposits or disbursements to be finalized and reflected in the sub-account.
 - G. Requests for disbursement received by CalPERS on or after the first day of a month will be processed by the 15th of the following month by CalPERS. Agency shall confirm the request by reviewing the transactions activity in its subaccount.
 - H. City shall not withhold payment(s) from any fire services

contract payment to avoid making withdraw request from CalPERS through ACFD.

C. Payment for Services.

1. City Payment.

The City shall pay ACFD the actual cost incurred by ACFD for providing any and all services to be provided to the City under this Agreement, which may be more or less than the amount within the budget. Budget modifications are subject to Section 5(a)(6).

2. Quarterly Expenditure Report.

No later than forty-five (45) days following the end of each quarter, ACFD shall deliver to the City a report setting forth the actual expenditures during the preceding quarter and the percentage of the budget, which such expenditures represent.

3. Method of Billing and Payment.

City will pay ACFD monthly within thirty (30) days of receipt of the monthly invoice. In the event that an invoice is not paid in full by the due date, a late fee of 1% of the unpaid balance will be assessed for each month or portion thereof that the invoice remains unpaid. The late fee will be assessed on the 1st day of each month following the due date. The invoice amount for the first two months of the quarter will be based on the average monthly budget expenditures for the fiscal year (annual budget divided by twelve (12)). The invoice amount for the third month of each quarter will be reconciled utilizing the actual quarterly expenditure report. The City's actual cost for any third-party Deputy Fire Marshal services pursuant to Section 3(d)(2) above shall be deducted from the City's payments to ACFD.

4. Billing Dispute.

In the event the City disputes any portion of the monthly invoice submitted by ACFD pursuant to Section 5(c)(3), the

Fire Chief shall meet with the City Manager, and the Fire Chief and the City Manager shall attempt to resolve the dispute. Billing disputes not resolved at the City Manager and Fire Chief level may be escalated by giving written notice to the other Party of the need to proceed with mediation. It is the Parties' intention to avoid the cost of litigation and to resolve any issues that may arise amicably if possible.

Within fourteen (14) days from the date of notice, the Parties shall mutually select one person who shall mediate the dispute. The Parties should select a qualified professional with expertise in the subject matter of the dispute. If the Parties are unable to mutually agree upon a mediator within fourteen (14) days, the Parties shall each designate one person as a mediator by the fifteenth (15) day following notice. These two designated mediators shall mutually select a third mediator (also a qualified professional with expertise in the subject of the dispute) within twenty-one (21) days of the notice. The one selected mediator shall mediate the dispute.

The mediation shall be completed within thirty (30) days of the appointment of the mediator. The mediation shall be conducted in accordance with the discretion of the mediator. However, if the mediator is unable to resolve the dispute within thirty (30) days, the mediator shall submit specific and written recommendations for full resolution of the dispute within ten (10) days thereafter. The written recommendations by the mediator shall be considered by the Parties in good faith. In addition, these written recommendations shall be reviewed by the governing bodies of both Parties. Within forty-five (45) days of receipt of the written recommendations from the mediator, the governing bodies shall give the respective Parties input for resolution of the dispute. After input from the governing bodies, the Parties may continue to negotiate a resolution of the dispute. The fees and expenses of the one selected mediator shall be divided equally between the Parties. The above deadlines shall be enforced unless extensions are mutually agreed

upon or granted to either Party by the mediator for good cause shown.

Section 6. Personnel

a. Personnel Liability.

The City is not liable for compensating ACFD Employees. The City shall not be liable for the direct payment of any salary, wages, or other compensation to ACFD personnel performing services hereunder for the City, or any liability other than that provided in this Agreement. The City shall not be directly liable for compensation or indemnity to any ACFD employee for injury or sickness arising out of his/her employment, except as part of the City's payment of indirect expenditures and Risk Management cost to ACFD and as otherwise provided by this Agreement.

b. Labor Relations.

The Fire Chief shall consult with the City Manager on matters pertaining to labor relations between ACFD and its recognized employee organizations, when such matters and the resolution of them may affect the service levels or the City's costs pursuant to this Agreement.

Section 7. Indemnification.

a. Mutual Indemnification.

Except as otherwise specifically provided in this Agreement or any attachment hereto, ACFD or, at ACFD's sole discretion, the County, shall defend, indemnify, and hold harmless the City, its elected and appointed officials, officers, and employees free and harmless from any and all claims for damage or injury to persons or property of whatsoever kind or nature, including consequential damages, based or asserted upon any act or omission of or purported act of omission of County and/or ACFD, their elected or appointed officials, officers or employees in connection with or arising out of the performance by County and/or ACFD and its elected or appointed officials, officers and employees of this Agreement and with regard to any alleged illegality or unconstitutionality of a County or ACFD ordinance.

Except as otherwise specifically provided in this Agreement or any

attachment hereto, the City shall defend, indemnify, and hold harmless the County and ACFD, their elected and appointed officials, officers, and employees free and harmless from any and all claims for damage or injury to persons or property of whatsoever kind of nature, including consequential damages, based or asserted upon any act or omission of or purported act of omission of City, its elected or appointed officials, officers or employees in connection with or arising out of the performance by City and its elected or appointed officials, officers and employees of this Agreement and with regard to any alleged illegality or unconstitutionality of a City ordinance.

b. Mutual Indemnification Obligations Survive Termination.

The obligations created by Section 7(a) shall survive the expiration or termination of this Agreement as to activities occurring or being carried out during the term of this Agreement in the performance of this Agreement.

Section 8. Insurance.

a. General and Auto Liability.

ACFD shall maintain general and auto liability insurance, including bodily injury and property damage, with a single combined liability limit of not less than \$10 million insuring all liability of ACFD and its authorized representatives arising out of and in connection with the provision of service by ACFD under this Agreement, including the use and/or occupancy of City-owned equipment, apparatus, real property and premises. ACFD, on its own or through the County, may self-insure to these limits of coverage.

The City shall be named as an additional insured and the policy shall contain cross liability endorsements. An endorsement shall be provided which states that the ACFD or County coverage is the primary insurance and that no other insurance affected by the City will be called upon to contribute to a loss under this coverage. ACFD shall furnish City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the City or otherwise conform to City requirements. All certificates and endorsements are to be received and approved by the City. The City reserves the right to require complete certified copies of all required insurance policies,

including endorsements effecting the coverage required by these specifications at any time.

b. Property and Auto Insurance.

ACFD shall maintain property insurance at replacement value of City-owned licensed and non-licensed vehicles, equipment, and apparatus for property damage arising out of and in connection with the provision of service by ACFD under this Agreement.

ACFD shall not be responsible or liable for City-owned licensed and non-licensed vehicles, equipment, and apparatus damages attributable to, "acts of nature", manufacturer's defective design and/or construction, general wear and tear, or inadequate maintenance by the City in accordance with the manufacturer's specifications.

ACFD will not maintain any insurance for City-owned real property and buildings, or the contents of the City-owned buildings (unless otherwise specified in this Agreement), including but not limited to, City-owned fire stations.

ACFD shall furnish City with original certificates effecting coverage required by this Agreement. All certificates are to be received and approved by the City. The City reserves the right to require complete certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

c. Workers' Compensation Insurance.

ACFD shall maintain Workers' Compensation Insurance as required by the State of California in Employers Liability Insurance. Employers Liability Insurance shall have limits of no less than \$1 million per accident for bodily injury or disease. ACFD, on its own or through the County, may self-insure to the limits of coverage. ACFD shall provide City with an endorsement that its Workers Compensation insurer (or ACFD or the County of Alameda if it is self-insured on its own or through the County) waives the right of subrogation against City, its officers, officials,

employees and volunteers for all claims on or after the effective start date of this Agreement, as of the date specified in Section 9(a), for claims arising during the tenure of said Agreement.

d. Workers' Compensation Claims for Employees in Exhibit 4.

1. City shall be fully responsible for all Workers' Compensation claims with date of injury (DOI) prior to July 1, 2012, with respect to the persons identified in Exhibit 4 ("City of Emeryville List of Fire Department Employees Sorted by Date of Hire With the City of Emeryville"). The City shall administer the claims and shall be solely liable for all administration and settlement costs. The City is also responsible for claims that were incurred prior to the date of the original Agreement between ACFD and the City of Emeryville, dated May 15, 2012 AND that are:
 - Reopened
 - Incurred but not reported
 - Submitted for new and further disability
 - Incurred subsequently and consequently to the original claim
2. ACFD shall be fully responsible for all Workers Compensation claims not the responsibility of the City pursuant to paragraph 1 above. ACFD shall administer said claims and shall solely be liable for all administration and settlement costs.
3. ACFD shall administer cumulative trauma claims that span the City and ACFD; however, ACFD shall, immediately upon receipt of a cumulative trauma claim, send a copy of said claim to City. The Parties shall meet and confer prior to ACFD taking any action on the claim, unless ACFD is required to take immediate action or circumstances do not allow adequate time to meet and confer, in which case ACFD will notify City as soon as possible. For Cumulative trauma claims that span both agencies, the cost of administration and settlement shall be based on medical and legal opinions determining causation and responsibility with liability determined pursuant to Labor Code 5412 and 5500.5. The City and ACFD agree to cooperate with each other in the administration of the claims that involve both Parties, including any decisions or determinations regarding industrial disability retirement,

notwithstanding paragraph 9(c), below. This includes, but not limited to, the sharing of notes, reports and other documents. The City and ACFD shall have the right to review and contest determinations of prior injuries and prior injurious exposure applying Labor Code Sections 5412 and 5500.5. In the event that an agreement cannot be reached, the City and ACFD shall adjudicate the dispute before the Worker's Compensation Appeals Board [which under certain conditions set forth in the labor code, may require mandatory arbitration] with the parties preserving all rights to file Petitions for Reconsideration and to seek further Appellate review.

e. Industrial Disability Retirement.

The County Director of Risk Management or designee shall be solely responsible for making the determination of industrial disability retirement for CalPERS retirement application for the employees listed in Exhibit 4.

Section 9. Miscellaneous.

a. Term and Extension by Mutual Agreement.

This Agreement shall commence at 12:00 a.m. on July 1, 2024, (“Effective Date”), and shall continue until 11:59 p.m. on June 30, 2029, unless: (i) this Agreement is automatically extended as discussed below; or (ii) mutually agreed upon in writing by both Parties in accordance with the provisions herein.

The term may be extended for one five-year (5-year) term by mutual written agreement of the Parties executed by the Fire Chief for ACFD and by the City Manager for City. Unless otherwise agreed by the Parties, the extension agreement must be fully executed at least nine (9) months prior to the then-effective termination date.

The City and ACFD agree to jointly prepare a review and analysis of services provided to the City by July 31, 2028. Upon receipt of a timely fully executed extension agreement, ACFD shall prepare an updated 5-year cost projection, which shall become a part of this Agreement. If the Parties do not timely execute an extension agreement, the Parties will begin to develop a transition plan pursuant to Section 9(b) below.

b. Termination and Transition Plan.

Notwithstanding Section 9(a) above, this Agreement may be unilaterally terminated effective June 30 of any fiscal year, by either party, by giving written notice of termination to the other party not later than July 1 of the same fiscal year.

Within six (6) months of either a notice of termination by either party or following City's failure to timely exercise an available option to extend, a transition plan shall be developed and agreed to by and between the City and ACFD. The transition plan shall include specific implementation deadlines, including a contract service termination date.

As part of the transition plan, the City, either directly or through its fire service provider, shall offer employment to nineteen (19) ACFD employees, subject to reduction based on resignations, retirements, and/or terminations discussed below. The selection of employees to be offered employment will be made by the City. Such employees shall meet minimum qualifications based on industry standards for Fire Captain, Fire Engineer, Firefighter, and Paramedic.

The minimum number of offers of employment to be made by the City may be reduced by the number of resignations, retirements, and/or terminations of ACFD Captains, Engineers, Firefighters, and Paramedics, respectively, occurring between the date of notice of termination and the date of termination. For example, if two (2) Captains, two (2) Engineers, and one (1) Firefighter retire from ACFD between the date of notice of termination and the date of termination, City shall make offers of employment to fourteen (14) employees of ACFD. If more than one contracting agency provides notice of termination on or before July 1 of the same year, the credit for retiring employees will be assigned consistent with the allocation percentage of each agency (calculated by including all of the terminating agencies that year), rounded to the nearest whole number.

The Parties shall meet and confer in good faith regarding any dispute between the Parties over the implementation of any provisions in this Section 9(b). Any dispute that is not resolved by meeting and conferring shall be submitted to non-binding mediation conducted by a JAMS mediator. The Parties agree to meet and confer as soon as practically possible regarding the selection of the mediator and, if

possible, agree to mediate the dispute within 45 calendar days. However, nothing in this provision shall be construed so as to delay any of the time periods above, including the adoption of a transition plan and implementation thereof.

c. Automatic Extension.

The Parties acknowledge that the termination of this Agreement would require extensive operational adjustments for both parties. The Parties further acknowledge that any fire service interruption would result in risks to public welfare. Accordingly, the following extensions shall automatically apply, unless the parties agree otherwise in writing.

1. Extension Following a Notice of Termination. If a timely notice of termination has been given and the parties have not completed a transition plan in accordance with Section 9(b), above, then this Agreement shall be automatically extended for an additional six-month (6-month) period to allow the Parties sufficient time to complete the transition plan. Automatic extensions pursuant to this paragraph shall be applied a maximum of three times, for a total of eighteen (18) months.
2. Extension Prior to Expiration of Contract Term. If a notice of termination has not been given and the parties have not executed an extension agreement or a successor Agreement, then this Agreement shall be extended for a period of one (1) year on an annual basis until the Parties have given a notice of termination or executed a successor agreement.

d. Notices.

All notices required or permitted hereunder shall be deemed sufficiently given if delivered by hand or mailed, by United States mail, postage prepaid, certified or registered mail, addressed to the parties at the addresses set forth below or to such other address as may, from time to time to designated in writing.

TO ACFD:

County Administrator
Alameda County Administration Building
1221 Oak Street, Suite 555
Oakland, CA 94612

-and-

Alameda County Fire Chief
Alameda County Fire Department
6363 Clark Avenue
Dublin, CA 94568

TO CITY:

City Manager
City of Emeryville
1333 Park Avenue
Emeryville CA 94608

e. Further Obligations.

The parties recognize that this Agreement cannot represent a complete expression of all issues, which may arise during the performance of the Agreement. Accordingly, ACFD and City agree to meet and confer in good faith over any issue not expressly described herein to the end that the City will obtain the best fire and emergency medical services possible under the most favorable economic terms and that ACFD will be fairly and adequately compensated for the services it provides hereunder.

f. No Assignment.

Neither Party shall delegate, sub consult, assign, sell, mortgage, hypothecate, or otherwise transfer their respective interests or obligations in this Agreement without the express prior written consent of the non-transferring party.

g. Exhibits.

All exhibits referred to herein are attached hereto and are, by this reference, incorporated herein.

h. Severability.

If any provision of this Agreement (including without limitation any phrase, provision, covenant, or condition) is found to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall continue in full force and effect.

i. 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 Alameda.

k. Attorney's Fees.

If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which said party may be entitled.

IN WITNESS WHEREOF, the City, by resolution or ordinance duly adopted by its City Council, has approved the execution of this contract by its mayor, and the President of the Board of Directors of the Alameda County Fire Department has executed this contract as of this _ day of _____, 2024.

ALAMEDA COUNTY FIRE DEPARTMENT,
A dependent fire protection district

By: _____
Nate Miley
President of Board of Directors

Date: _____

Approved as to form
DONNA ZIEGLER, COUNTY COUNSEL

By: _____
Deputy County Counsel

Date: _____

CITY OF EMERYVILLE, a Municipal Corporation

By: _____
Paul Buddenhagen, City Manager

Date: _____

Attest: _____
April Richardson, City Clerk

Approved as to form:

DocuSigned by:
John Kennedy

2C934D02DB5546Z
John I. Kennedy, City Attorney