

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

COPY

THIS AGREEMENT is made and entered into this the 5th day of June, 2012, which date is designated for purposes of reference only, by and between the Alameda County Fire District, a dependent fire district formed under the Fire Protection District Law of 1961 (Health and Safety Code Sections 13801 et seq.) and governed by the Alameda County Board of Supervisors, hereinafter referred to variously as ALAMEDA COUNTY FIRE DEPARTMENT, ACFD, and ALAMEDA COUNTY, and the CITY OF EMERYVILLE ("City"), a municipal corporation.

RECITALS

- A. The City of Emeryville has relied upon the fire service proposal submitted by ACFD (Exhibit 4) and desires to enter into this agreement for the stated services at the identified cost.
- B. The term of the 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 District (also known as the Alameda County Fire Department), or any successor organization or successor governmental entity.
- b. "Board of Directors" is the Board of Supervisors of the County of Alameda and who serve as the Board of Directors in their role as the governing body of the ACFD.
- c. "City" means the City of Emeryville.
- d. "City Council" means the City Council of the City of Emeryville.

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- e. "City Manager" means the City Manager of the City of Emeryville.
- f. "County" means the County of Alameda.
- g. "Fire Chief" means the chief executive officer of the ACFD.
- h. "Fiscal Year" means the annual period commencing on July 1 and ending June 30.

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 major response areas for fire and medical incident response. (See Service Area Map attached as Exhibit 1.)

ACFD shall maintain a reciprocal response agreement with neighboring jurisdictions that will ensure an effective response identified in the Service Area Map attached as Exhibit 1. Additionally, ACFD will develop and maintain a sub-contract with the City of Oakland to meet response requirements outlined in this agreement and is included as Exhibit 5. If the City of Oakland or any other response related agreement is cancelled by the contracting party, ACFD shall immediately notify the City.

B. Station Location/Staffing.

ACFD's response configuration to the City is based upon 2 stations and 2 engine companies as shown below:

Current Response Configuration

Emeryville Station No. 1 (2333 Powell St)	1 Engine Company	3 Personnel
Emeryville Station No. 2 (6303 Hollis St)	1 Engine Company	3 Personnel

Within the City boundaries, ACFD will maintain a minimum staffing level of 6 personnel (2 companies) per shift. Each company shall consist of 1 captain, 1 engineer, and 1 firefighter. In the absence of ranked positions, qualified personnel will act in the next higher job classification (e.g., Engineer can act as a Fire Captain if qualified).

One of the three positions at each station will include a minimum of one state licensed paramedic accredited in Alameda County. The remaining personnel will be certified at least at the level of Emergency Medical Technicians with defibrillation capabilities accredited in Alameda County.

Each company on duty shall consist of the following minimum staffing number, job classification, and minimum required certifications (Exception: It is understood that probationary fire personnel may not meet these requirements until such time as their training is completed):

Station	Position	Minimum Required Certifications
Station 1 (A, B, C)	Captain	FF1, FF2, EMT/EMT-P, ACFD Captain's Academy
Station 1 (A, B, C)	Engineer	FF1, FF2, EMT/EMT-P, Driver/Operator
Station 1 (A, B, C)	Firefighter	FF1, FF2, EMT/EMT-P
Station 2 (A, B, C)	Captain	FF1, FF2, EMT/EMT-P, ACFD Captain's Academy
Station 2 (A, B, C)	Engineer	FF1, FF2, EMT/EMT-P, Driver/Operator
Station 2 (A, B, C)	Firefighter	FF1, FF2, EMT/EMT-P

ACFD will ensure that the City has adequate response capabilities within the city in the event that permanently assigned units are not available for an extended period of time.

C. Response Levels.

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

ACFD will, at a minimum, provide Advanced Life Support (ALS) response to include 12-lead EKG and mechanical CPR assist device on each frontline company. No reduction to this service level will occur without agreement between the City Manager and the Fire Chief.

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 code 3 emergency incidents. In a multiple unit response meeting the same criteria, 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 units in the first alarm assignment 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 incidents.

In the event that the Alameda County Fire Department 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 and to ensure such performance standards are met in the future at their regularly scheduled meeting.

Data on response times will be provided to the City Manager within 30 days of the calendar quarter in which the responses occur.

E. Chief Officer Coverage.

ACFD will provide a Battalion Chief response for all first alarm fire and multiple piece incidents. Under normal conditions, the initial Battalion Chief response will be provided by an Oakland Battalion Chief as identified in the Oakland sub-contract in Exhibit 5; additional Battalion Chief response, depending on proximity, be an ACFD Chief Officer. For incidents of two alarms or greater, ACFD will, in addition, provide an additional Battalion Chief (or greater rank) response and sufficient management staff to appropriately mitigate the emergency.

Additionally, a Chief Officer at the rank of Division Chief or above will be assigned as the Assigned Chief Officer (ACO) to the City of Emeryville. The ACO will serve as the initial single point of contact for City of Emeryville staff with the Alameda County Fire Department.

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 work to develop expanded mutual aid, automatic aid and mutual response areas with other fire departments adjacent to the City of Emeryville.

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, at a minimum, with one (1) paramedic and two (2) EMT-I trained personnel.

All thirteen (13) paramedics identified in Exhibit 4, List of Current Emeryville Fire Department employees, will be offered employment with ACFD at that rank. Six (6) of these with paramedic specialty pay will be utilized to staff stations located within Emeryville. The additional seven (7) specialty pays for paramedic will be absorbed by ACFD at no additional cost to Emeryville.

ACFD shall fulfill City's obligations under the City's First Responder Agreements with the Alameda County Emergency Medical Services (EMS) District. ACFD's duty to fulfill the City's obligations under the latter's 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.

ACFD shall provide City all specialized EMS programs and training provided to other ACFD communities and personnel.

No reduction to this service level will occur without the Fire Chief's consultation with the City Manager.

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 participates in the Alameda County Mutual Aid Agreement.

ACFD will provide the same Hazardous Materials specialized apparatus and level of service to the City as provided to other communities served by ACFD. This does include response to sewage overflow when requested.

5. Rescue Services.

ACFD shall provide the City with rescue services in accordance with the provisions of Section 3(a)(1)(A)-(G) above.

ACFD will provide rescue tools for appropriate number of, but no less than two companies located in the City.

ACFD will provide medium level rescue services in the City as defined by

the California Office of Emergency Services Rescue Division.

ACFD will provide heavy rescue services to the City as defined by the California Office of Emergency Services Rescue Division. This service is available as needed.

ACFD will provide trained personnel to perform confined space rescue operation when required in the City.

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)(1) (A)-(G) above.

8. Homeland Security

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

ACFD understands that one of the City's priorities is to have the Emergency Operations Plan (EOP) revised and completed by June 30, 2013. However, a large portion of the EOP revision requires significant participation and input from City staff. ACFD and the City will meet within the first month of execution of this Agreement to develop a mutual timeline for completion of the EOP, which at a minimum will include the completion of a NIMS/SEMS compliant EOP template document with City staff training to start by June 30, 2013. ACFD and the City will be responsible for meeting the established timelines for completion within their area of responsibility.

ACFD will conduct will coordinate with City Manager's Office to conduct one annual exercise per year. The exercise mat be either a tabletop, functional, or full-scale exercise that will build upon the skills of EOC staff. Prior to conducting drills, ACFD will offer training to key City staff to ensure personnel are prepared to fill their designated EOC assignments.

9. Major Disaster Response.

In the event of a major disaster, ACFD will supplement the fire personnel assigned to Emeryville by providing additional resources for direct response to an incident or move-up coverage from ACFD Stations outside of the City provided that supplemental resources are available.

Upon activation of the City's Emergency Operations Center (EOC), 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 trained personnel who are members of the Urban Search and Rescue Team (USAR) and command level officers who are members of the Alameda County Incident Command Team (ICT) in the event that such personnel are required during a major disaster.

ACFD will ensure participation with regional organizations deemed necessary to ensure the City of Emeryville is represented in disaster preparedness and response.

10. Basic Cause and Origin Investigation Service.

ACFD fire personnel shall determine the cause of every fire, fire fatality or explosion within the City and where there is knowledge or suspicion that the crime of arson may have been committed. ACFD Fire personnel shall work with the Emeryville Police Services in the investigation process.

b. Dispatch Service.

Alameda County Regional Emergency Communication Center (ACRECC) supplies dispatch services to partner agencies. ACFD may arrange for dispatch service through a different provider with the prior written approval of 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.

ACFD acknowledges that the Oakland Fire Department currently dispatches Emeryville units. It is agreed that dispatch services will be provided by ACRECC within a reasonable amount of time necessary to ensure seamless interoperable communications between ACFD units operating in Emeryville, Oakland units, and other mutual or automatic aid partners. A plan for transition will be established between ACFD and Oakland and communicated to the City.

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. Additionally, ACFD will provide – upon request – safety and prevention training to elderly residents and staff members in senior care facilities. Programs to be provided by ACFD shall be as mutually agreed to by the Fire Chief and the City Manager. 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	Juvenile Firesetters
Emergency Preparedness	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. This training shall be provided within the boundaries of the City.

3. Community Emergency Response Team Program.

ACFD shall offer up to two Community Emergency Response Team trainings per year to members of the Emeryville Community. This training shall be coordinated with the City's current disaster preparedness programs. City staff shall work with ACFD to ensure annual CERT training is scheduled as part of ACFD's annual calendar setting process to enhance coordination.

4. Miscellaneous.

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

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 (1333 Park Avenue), or other location identified by the City, to provide fire prevention services. 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 Inspection Staffing.

ACFD shall provide 1 Fire Marshal, as needed, in accordance with the established shared allocation and 1 Deputy Fire Marshal. The City will fund one (1) .5 FTE administrative support position to provide clerical type support to Fire Prevention activities in Emeryville. The City Manager and the Fire Chief will mutually agree upon changes in the level of staffing, as the level of construction and development in the City may vary.

The ACFD Fire Marshal shall serve as the City of Emeryville Fire Marshal. Emeryville will have access to the Fire Marshal to ensure federal, state and local fire prevention ordinances requiring Fire Marshal approval or input are managed appropriately. These oversight services will include items such as fire code adoption, administration, enforcement, fire cause and origin investigations, plan check and inspection programs that are managed in accordance with established City ordinances and standards. The Fire Marshal will work with other City departments to ensure all fire and life safety programs are coordinated with the correct City resources as determined by the City of Emeryville.

Staffing and functions of the Emeryville Fire Prevention Office will include a Deputy Fire Marshal and .5 FTE Administrative Support. The following is a description of the positions:

1 FTE - Deputy Fire Marshal

These individuals are supervisors and serve as the primary plan checker for the jurisdiction and conduct complex inspections within the City.

0.5 FTE - Fire Prevention Administrative Assistant

This position shall perform fire prevention administrative duties for the fire prevention office in Emeryville. He/she will answer phones, schedule meetings, track plan review status, schedule travel and coordinate office purchasing and other administrative duties as assigned.

The ACFD has Fire Prevention staff that can be assigned to the City of Emeryville on a short-term, as-needed basis.

Emeryville and ACFD shall monitor workflow and reflex time relative to Fire Prevention activities. Project work surges in Emeryville that exceed the capacity of the Fire Prevention staffing identified above will be handled by ACFD and billed to Emeryville on an hourly basis as identified in the approved annual budget.

3. Pre-development Planning.

The Fire Marshal or Deputy Fire Marshal assigned to the City will 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 permitting process; and
- D. Attendance at weekly pre-development meetings as required.

4. Plan Submittal Review.

Under the direction of the ACFD Fire Marshal, ACFD Staff assigned to the City will review proposed construction plans to ensure compliance with the City's adopted Fire Codes. Written comments will be attached to plans to inform applicants of Fire Department requirements. All plans submitted for Fire Department review will be reviewed by 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.

5. Development Inspection.

ACFD shall provide qualified personnel to perform fire inspection of all required construction projects. Inspection services shall be provided on all business days that are not designated as holidays. Off-hour inspections shall be made available by ACFD upon mutual agreement between City Manager and Fire Marshal. Inspection services shall be provided in a timely manner as determined by the City. Inspection services shall verify compliance with the approved plans and adopted City regulations and policies.

6. Post Occupancy Services.

- A. ACFD will utilize engine company personnel assigned to the City of Emeryville to perform annual inspections and pre-fire planning services. Pre-fire plans will be conducted at multi-family dwellings, educational and large retail/commercial business sites to develop familiarity of fire companies with the site, improve operations and identify hazards. Pre-fire plans will be consistent with ACFDs standard to ensure consistency for emergency response.
- B. ACFD shall provide inspection and permit issuance services in accordance with the City's adopted Codes. A member of the ACFD Fire Prevention Staff shall perform these inspections.
- C. ACFD shall review new business license applications in the City for compliance with the City's Fire Codes. Such review shall be provided in a timely manner. ACFD shall conduct a physical inspection of a new business to confirm that there are no existing fire code violations.

7. International Fire Code Administration.

- A. Under the direction of the City Manager, ACFD will administer and enforce all City adopted fire codes and ordinances and other applicable State and Federal Codes and regulations.
- 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.

8. Weed Abatement.

- A. ACFD will work with designated City of Emeryville Code Compliance Officer and the Community Preservation Committee using the authority of the Emeryville Municipal Code to mitigate fire hazard issues associated with weeds and vegetation.

e. Administration.

1. Contract Administration.

ACFD designates the Fire Chief, or his or her designee, 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.

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. Although ACFD officially designates the Fire Chief as the direct liaison to the City Manager, the initial point of contact for day-to-day interaction will be the Assigned Chief Officer as described in this

Agreement. Liaison responsibilities shall include but are not limited to:

- (i) Attendance by the Fire Chief or his designee at Department Head, City Council, and other City meetings 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 that 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;
- (ii) Any fire fatality;
- (iii) Major hazardous materials response;
- (iv) Serious response-related injury to any firefighter responding to service within the City;
- (v) Any evacuation; and,
- (vi) Any incident or event with potential of partial or full activation of City of Emeryville EOC facility.

C. The ACFD Fire Marshal shall be responsible for the operation of the Fire Prevention Division in the City of Emeryville. The Fire Marshal or Deputy Fire Marshal shall be responsible for attending all meetings necessary to meet the City's Fire Prevention needs.

4. Community Events.

ACFD will participate in the planning and implementation of community activities such as tree lighting ceremonies, Chamber of Commerce functions and similar 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., Annexation Agreement, EMS First Responder Agreement).
- 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 statistics utilized for monthly reporting in the Public Safety Committee, 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. It is understood by the City that ACFD will 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.

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.
- 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 Fire Chief and City Manager.
- C. ACFD will provide a high level of customer service to the City in accordance with the City's Customer Service Policy.

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 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.

9. ACFD Advisory Commission.

The City shall be entitled to have up to two City Council Members on the Alameda County Fire Department Advisory Fire Commission.

10. Executive Management Oversight Committee (EMOC)

The City shall be entitled to have up to one City representative (City Manager or designee) on the Alameda County Fire Department Executive Management Oversight Committee. Further, ACFD agrees that any issue with the potential to increase expenditures to the City (i.e., 2% or more of payroll) or matters of significant importance (e.g., public policy, annual budget, addition or deletion of a contracting agency, appointment or promotion of senior management

personnel, etc.) be vetted through a consensus process to be developed by the members of the EMOC.

11. 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 and ACFD so that such facilities and apparatus are clearly visible to the Emeryville community. This identification shall not be changed until the design is mutually agreed to by the City Manager and the Fire Chief.

Section 4. Facilities.

a. Buildings and Real Property.

1. Use of Fire Station No. 1 and 2.

City will provide ACFD use of the City-owned Emeryville Fire Station No. 1 located at 2333 Powell St and Station 2 located at 6303 Hollis St for performance of services to the City of Emeryville under the terms of this Agreement. The ACFD will be provided use of this facility 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, water softener, fuel tank maintenance, utilities, phone service, and fire alarm service. The scheduling of repairs shall be coordinated with the ACFD designated Facilities Coordinator.

3. ACFD Responsibility.

ACFD shall be responsible for dispatch lines and day-to-day cleaning and light maintenance of the facility. Only those actual and direct costs incurred by the ACFD in maintaining this facility shall be charged to the City. Those costs incurred by the ACFD in performing maintenance and repair responsibilities as provided for in this section shall be identified separately by facility on the 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.

4. Fire Prevention.

The City shall be responsible for providing office space and equipment (including one vehicle, City computers with network access if required to access the City's database/system) for ACFD Fire Prevention personnel assigned to the City. The City will incur all costs associated with providing office space, vehicle, and equipment related to providing services performed pursuant to this Agreement.

In the event ACFD utilizes City facilities not already provided for in this Agreement to provide ACFD services, 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 deliver Fire Stations 1 and 2 to the City in serviceable condition, reasonable wear and tear excepted.

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.

ACFD shall repair and maintain such apparatus and equipment to appropriate and applicable fire service standards. ACFD shall maintain complete maintenance and repair records on all major pieces of apparatus. ACFD shall have no responsibility for maintaining property insurance for such apparatus and equipment.

3. 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.

City shall bear all costs 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.

4. Annual Inventory.

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

5. Deletion or Addition of Apparatus and Equipment.

Upon agreement between the Fire Chief and the City Manager, 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.

6. 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.

c. Information Technology

ACFD shall provide all networking equipment; communications lines; hardware; software; cabling upgrades; telephones and telephone systems; print, copy, and fax devices; and all other technology and support required to meet all aspects of its obligations under this Agreement per the costs estimated in the ACFD Full Service Five Year Projections (Exhibit 6).

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 fiscal year to the City Manager in accordance with the City's budget instructions and required deadlines.

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 regarding 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 modification to services, which the City provides to directly support the provision of ACFD contractual service. These recommendations shall be submitted along with the contract Fire Budget.

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 Annual 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 Annual 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 that the approved fire budget is insufficient in any respect to insure the provision of service at the service levels required by this Agreement, he or she shall immediately inform the City Manager in writing specifying the budgetary deficiency.

7. Form of Budget.

The budget shall be submitted to the City in a form identified by the City Manager or designee so long as the budget data is practicable.

b. Payment for Services.

1. City Payment.

The City shall pay ACFD the actual cost incurred by ACFD for providing services under this Agreement, which may be more or less than the amount included within the budget.

2. Quarterly Expenditure Report.

No later than 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 45 days of receipt of the monthly invoice. 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 12). The invoice amount for the third month of each quarter will be reconciled utilizing the actual quarterly expenditure report.

If such monthly payments are not received by ACFD within forty-five (45) days after the receipt of the quarterly expense statement and or reconciliation statement, ACFD shall recover interest thereon. Said interest shall be at the rate of one percent (1%) simple interest per calendar month or any portion thereof calculated from the last day of the month in which the services were performed.

4. Billing Dispute.

In the event the City disputes any portion of the quarterly invoice submitted by ACFD pursuant to this Agreement, 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 mediator by the fifteenth (15) day notice. These two designated mediators shall mutually select a third mediator (also a qualified professional with expertise in the subject matter 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 taken seriously by both parties. 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.

5. Modifications Affecting Billing and Payment

In the event that ACFD enters into a contract to provide services to another entity, or terminates such an existing contract, and the creation or termination of that contract affects the resources and/or costs allocated by ACFD to the City, the ACFD, in consultation with the City, will adjust the cost/resource allocation in the next fiscal year as agreed to between the City and the ACFD.

c. Retiree Healthcare Plan Unfunded Liability

1. Side Fund Calculation

The City shall establish a side fund consisting of the City's unfunded actuarial accrued liability based on the requirements of a minimum 5 years employment with ACFD and 20 years of CalPERS service credit vesting. The specific City liability will be determined using criteria consistent with ACFD actuarials on OPEB liability based on the staffing levels of transferred City employees and the benefit in effect on July 1, 2017.

2. Funding of Retiree Healthcare Plan Unfunded Liability

The strategy of funding retiree healthcare plan shall be vetted through the EMOC process. The City will determine its funding policy for its allocated retiree healthcare plan unfunded liability.

3. Withdrawal Liability Methodology

The City shall be responsible for its proportionate share of retiree healthcare plan unfunded liability remaining with the ACFD plan if the contract for fire service with ACFD is terminated. The amount of City liability will be based on a mutually agreed upon formula.

Section 6. Personnel.

a. General Provisions

Upon the Effective Date of this Agreement, the City will be relieved of all fire department personnel management related responsibilities. ACFD will be responsible for salary management, disciplinary actions, labor relations, risk management, salary and benefit determinations, grievances, personnel-related legal actions and the implementation of any new or changed personnel rules or regulations.

b. Disposition of City Fire Department Sworn Employees

As described in Exhibit 4, the Alameda County Fire Department will make job offers to all Emeryville Fire Department safety personnel in good standing at an equivalent rank to that of their Emeryville ranks of Firefighter, Engineer, and Captain if they are active members of the Emeryville Fire Department the day fire protection services are transferred to the Alameda County Fire Department. The Emeryville Fire Inspector will be made a job offer at the ACFD rank of Deputy Fire Marshal and Fire Chief

will be made a job offer at the ACFD rank of Division Chief if they are active members of the Emeryville Fire Department the day fire protection services are transferred to the Alameda County Fire Department.

c. No City 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 costs and Risk Management cost to the ACFD.

d. Labor Relations

The Fire Chief shall consult with and advise the City Manager on all material matters pertaining to labor relations between the 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, County, on behalf of itself and the ACFD, 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 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 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 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 County, including 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.

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 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, on its own or through the County, may self-insure to these limits of 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 on other than the City's forms provided those endorsements 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 this Agreement 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-license vehicles, equipment, and apparatus damages attributable to, "acts of nature", manufacturer's defective design and/or construction, general wear and tear, damage not arising out of and in connection with the provision of service by ACFD under this Agreement, or inadequate maintenance by the City in accordance to 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 this Agreement at any time.

c. Workers' Compensation Insurance.

ACFD shall maintain Workers' Compensation Insurance as required by the State of California and Employers Liability Insurance. Employers Liability Insurance shall have limits of no less than \$1 million per accident for bodily injury or disease. The 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 incurred on or after the Effective Date of this Agreement, as of the date specified in Section 9a, during the tenure of said Agreement.

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

1. The City shall be fully responsible for all Workers' Compensation claims including all Labor Code 4850 benefits with date of injury (DOI) prior to the date of execution of this Agreement, as of the date specified in Section 9a, with respect to the persons identified in Exhibit 4. The City shall administer the claims and shall solely be liable for all administration and settlement costs. The City is also responsible for claims that were incurred prior to the date of

execution of this agreement AND that are:

- Reopened
 - Incurred but not reported
 - Submitted for new and further disability
 - Incurred subsequently and consequently to the original claim
2. The ACFD shall be fully responsible for all Workers Compensation claims not the responsibility of the City pursuant to paragraph 1 (above). The ACFD shall administer said claims and shall solely be liable for all administration and settlement costs.
3. For cumulative trauma claims that span both agencies and for all Labor Code presumptive claims filed on or after the date of execution of this Agreement, the ACFD shall administer these claims. The cost of administration and settlement shall be pro-rated between the ACFD and the City based on the length of services for each employer. Should the claim involve prior employers, the City shall be responsible for the service time. The City and the 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 9c, below. This includes, but not limited to, the sharing of notes, reports and other documents. The City shall have the right to review and contest any determination of a recurrence of a prior injury. In the event that an agreement cannot be reached, the City and the ACFD shall accept the Worker's Compensation Appeals Board decision as the final decision and without further appeal rights on this limited issue.

e. Industrial Disability Retirement.

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

Section 9. Miscellaneous.

a. Term.

This Agreement is for a term of five years. It shall continue in force from 12:00 a.m. on July 1, 2012 ("Effective Date") until 11:59 p.m. on June 30, 2017, unless sooner terminated in accordance with the provisions herein.

The parties will make every effort to begin the renewal process and evaluation process at least six (6) months in advance of the date of expiration of the contract to

allow sufficient time for evaluation of performance, the development of mutually desired contract changes (if necessary), and the scheduling for approval of the new Agreement to the City Council of Emeryville and the Alameda County Board of Directors.

b. Termination.

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 September 1 of the same fiscal year.

Upon termination of this Agreement, the City either directly or through its fire service provider shall offer employment to nineteen (19) ACFD employees. The City and ACFD will mutually agree on the numbers of each classification. Such ACFD employees shall meet minimum qualifications based upon industry standards for Fire Captain, Fire Engineer, Firefighter, Firefighter/Paramedic, and Deputy Fire Marshal. The number of offers of employment to be made by the City shall be reduced by the number of resignations, retirements, and or terminations of ACFD Captains, Engineers, Firefighters, Firefighter/Paramedics, and Deputy Fire Marshal, 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) Deputy Fire Marshal 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 exercises the termination clause at the same time then credit for retiring employees will be assigned consistent with the allocation percentage of each agency rounded to the nearest whole number.

c. 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: Fire Chief
Alameda County Fire Department
835 East 14th Street, Suite 200
San Leandro, CA 94577

To City: City Manager
City of Emeryville
1333 Park Avenue
Emeryville, CA 94608

d. 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.

e. No Assignment of Agreement

With the exception of the sub-contract with the City of Oakland described in Exhibit 5, ACFD covenants and agrees not to assign or transfer any interest in, nor delegate any duties of this Agreement, without the prior express written consent of the City.

f. Exhibits

Each Exhibit referred to in this Agreement forms an essential part of this Agreement. Each such Exhibit is a part of this Agreement and each is incorporated herein by reference.

In the event of discrepancy between any Exhibit or part thereof and this Agreement, the terms of this Agreement shall control.

g. Severability

If any provision of this Agreement 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 and shall be enforced to the fullest extent permitted by law.

h. Governing Law, Jurisdiction and Venue; Attorneys Fees

The laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties under this Agreement and shall govern the interpretation of this Agreement.

The parties agree that any litigation between City and ACFD concerning or arising out of this Agreement shall be filed and maintained exclusively in the Superior Court of California, County of Alameda, or in the United States Court for the Northern District of California to the fullest extent permissible by law. Each party consents to service of process in any manner authorized by California law.

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 County, by order of its Board of Directors has ratified the execution of this contract by the President of the Board of Directors of the Alameda County Fire Department, this 5th day of June, 2012.

Approved as to form and content:

Donna Ziegler, County Counsel

By: [Signature]
County Counsel

ATTEST: Assistant Clerk of the Board
Clerk, Board of Directors Alameda County,
California

By: [Signature]
Cheryl Perkins

Alameda County, a political subdivision of
the State of California, as the governing
body of the Alameda County Fire
Department

By: [Signature]
Nate Miley, President

I hereby certify under penalty of perjury that the President of the Board of Directors was duly authorized to execute this document on behalf of the Alameda County Fire Department by a majority vote of the Board on June 5, 2012.

Date: 6/12/12

[Signature]
Clerk
Board of Directors, Alameda County
Fire Department, State of California

LIST OF EXHIBITS

- Exhibit 1: Service Area Map
- Exhibit 2: Alameda County Fire Department Emeryville Response Plan
- Exhibit 3: City of Emeryville Fire Apparatus/Equipment Inventory
- Exhibit 4: Scope of Work
- Exhibit 5: ACFD/Oakland Services Agreement ("Subcontract")
- Exhibit 6: 5-Year Cost Projections