

**JOINT EXERCISE OF POWERS AGREEMENT
BETWEEN THE CITY OF SAN RAFAEL
AND MARINWOOD COMMUNITY SERVICES DISTRICT
FOR FIRE PROTECTION, EMERGENCY SERVICES, AND
PERSONNEL SHARING**

This Joint Exercise of Powers Agreement (“Agreement”) is entered into this 8th day of April, 2014, by and between the **CITY OF SAN RAFAEL** (hereinafter “**CITY**”), and **MARINWOOD COMMUNITY SERVICES DISTRICT** (hereinafter “**DISTRICT**”).

RECITALS

WHEREAS, CITY and DISTRICT, the agency parties to this Agreement, have entered into a series of cooperative agreements for fire and emergency services since 1973 and mutually agree to continue with an automatic aid agreement for the benefit of both communities; and

WHEREAS, CITY and DISTRICT desire to continue their cooperative efforts in delivering fire and emergency services with this automatic aid agreement for the benefit of both communities; and

WHEREAS, CITY and DISTRICT have determined that the continued sharing of personnel services between **CITY and DISTRICT** exemplified in previous agreements between the two agencies will be advantageous to each of them; and

WHEREAS, CITY and DISTRICT agree that a more comprehensive agreement for the sharing of fire service personnel between **CITY and DISTRICT** over a unified operational area depicted in Exhibit A attached hereto and incorporated herein (“the **Unified Operational Area**”), would provide enhanced benefits to each of them by increasing the availability of required minimum staffing for emergency response throughout the **Unified Operational Area**; and

WHEREAS, it is the CITY’s and DISTRICT’s intention in entering into this Agreement not to alter or in any way affect the employment relationship each has with its respective fire department employees, and is on a voluntary basis; and

WHEREAS, the parties understand and agree that under Government Code Sections 6513 and 55634, when one party’s employees are performing their functions and duties extraterritorially in the other party’s jurisdiction under this Agreement, these employees shall continue to have and enjoy the same privileges and immunities, exemptions from laws, ordinances and rules, all pension, relief, disability, worker’s compensation and other benefits which these employees have and enjoy when engaged in such duties and functions within the territorial limits of their own jurisdiction; and

WHEREAS, both CITY and DISTRICT desire to enter into a new operational agreement for the provision of fire protection, emergency services, and personnel sharing, which

shall supersede the existing agreement between the **CITY** and **DISTRICT** dated June 20, 2011; and

WHEREAS, in carrying out their obligations under this Agreement, the parties understand and agree that they are acting under the authority of the Joint Exercise of Powers Act, Government Code Sections 6500 et seq.;

AGREEMENT

NOW, THEREFORE, the agency parties hereby agree as follows:

1. **TERM OF AGREEMENT**

This Agreement shall commence on _____, 2014 (the “**Effective Date**”) and shall remain operative and effective until participation is terminated by one of the parties. It is further agreed that either of the parties may terminate the Agreement at any time by giving written notice to the other party at least ninety (90) days prior to the date of the termination.

2. **TYPE OF ASSISTANCE - CITY TO DISTRICT**

In aid of **DISTRICT**, **CITY** agrees:

A. To automatically dispatch, within **CITY**’s capabilities of available personnel and equipment, on a first alarm structural fire response within **DISTRICT**’s service area as illustrated in Exhibit “A”, one (1) **CITY** Engine Company, one (1) **CITY** Aerial Ladder Truck Company, and one (1) **CITY** Chief Officer. If the **DISTRICT** Engine Company is unavailable for response, **CITY** agrees to send one (1) additional **CITY** Engine Company for a total of three (3) Fire Companies.

B. To automatically dispatch, within **CITY**’s capabilities of available personnel and equipment, on a vegetation/wildland fire response within **DISTRICT**’s service area as illustrated in Exhibit “A”, two (2) **CITY** Engine Companies, and one (1) **CITY** Chief Officer. If the **DISTRICT** Engine Company is unavailable for response, **CITY** agrees to send one (1) additional **CITY** Engine Company for a total of three (3) Fire Companies.

C. To automatically dispatch, within **CITY**’s capabilities of available personnel and equipment, on a rescue response within **DISTRICT**’s service area as illustrated in Exhibit “A”, one (1) **CITY** Aerial Ladder Truck Company and one (1) **CITY** Chief Officer. If the **DISTRICT** Engine Company is unavailable for response, **CITY** agrees to send one (1) additional **CITY** Engine Company for a total of two (2) Fire Companies.

D. To automatically dispatch, within **CITY**’s capabilities of available personnel and equipment, within **DISTRICT**’s service area as illustrated in Exhibit “A”, one (1) **CITY** Engine Company on a single engine response when the **DISTRICT** Engine Company is not available.

E. To arrange for the County of Marin Sheriff Department’s Communication Center (“**COMM CENTER**”) to provide **DISTRICT** with twenty-four (24) hour 9-1-1 response and dispatching service and oversight for receipt and re-transmission of emergency alarms.

F. To provide, within **CITY's** capabilities of available personnel and equipment, a Chief Officer response to any first alarm or other incident in the **DISTRICT** that would normally include a Battalion Chief in a dedicated vehicle in the **CITY**, as part of the **DISTRICT** response, as dispatched by the COMM CENTER. During response and upon arrival at the incident, the **CITY's** Chief Officer shall direct and oversee the emergency event in an incident command role and function. The **CITY** understands that the Chief Officer can be relieved or cancelled by the **DISTRICT's** Fire Chief who appears at the incident scene and communicates to the **CITY's** Chief Officer his intention to assume command. The **CITY** Chief Officer will remain on scene until the incident is mitigated or command is assumed by the **DISTRICT's** Fire Chief. In the event of simultaneous calls in the **CITY** and **DISTRICT**, the responding **CITY** Chief Officer shall have discretion as to the priority handling of such calls, considering alternate available resources.

G. To provide computer related support for fire reporting and communication purposes.

H. Subject to the terms of this Agreement, to be solely responsible for control of its personnel, standards of performance, discipline, and all other aspects of performance by **CITY** employees while performing services under this Agreement.

I. To place a reserve ambulance at **DISTRICT's** Fire Station upon **DISTRICT's** written request to **CITY** to have it there, for use at the discretion of the on-duty Battalion Chief or on-duty Fire Captain, to maintain adequate service levels, provided the ambulance can be a cross-staffed ALS unit with a minimum of one (1) Captain, Engineer or Firefighter EMT-P and one (1) Captain, Engineer or Firefighter EMT. **CITY** shall perform regular maintenance on such ambulance by **CITY's** mechanics at the times and places determined by **CITY**.

J. As specified herein, to assist **DISTRICT** in establishing Engine 58 (**DISTRICT's** Engine) as an ALS Engine Company to complement **CITY's** paramedic services in Paramedic Service Area B. Within 120 days from the **Effective Date**, **CITY** shall provide **DISTRICT** with ALS Equipment, Medical Direction, ongoing training, and other ALS needs that are required to provide services that meet Marin County EMS standards, and to match what **CITY** provides to its own ALS Engines; provided that:

- i. **DISTRICT** paramedic personnel shall serve strictly within the parameters of the medical and operational procedures and requirements of and for **CITY's** firefighter-paramedics;
- ii. In recognition that regular rotation of paramedic personnel onto ambulance units is desirable for the maintenance of essential paramedic skills, **DISTRICT** and **CITY** shall cooperate to establish a mutually agreeable staffing and operational plan to require and enable **DISTRICT's** paramedic personnel to participate with **CITY's** paramedic personnel in regular rotations onto ambulance units;
- iii. **DISTRICT** shall retain discretion on when to operate Engine 58 as an ALS Engine Company; and
- iv. If and when **DISTRICT** commences to provide paramedic services in Paramedic Service Area B, then **CITY** shall, on an annual basis, reimburse **DISTRICT** for any paramedic pay differential costs actually incurred by **DISTRICT** for not more than three (3) members serving in the rank of firefighter/paramedic.

Additional expenditures by **DISTRICT** in connection with the provision of paramedic services may be eligible for reimbursement by **CITY** provided that prior approval for such expenditures has been given by **CITY** in writing.

K. To provide fuel for **DISTRICT** Fire Apparatus from any of **CITY**'s Fire Department Fuel Stations, at no cost to **DISTRICT**, to the extent such fuel is available and in excess of **CITY**'s needs, at times and places determined by **CITY**.

L. To provide to **DISTRICT** a Type 1 Fire Apparatus, capable of front line service, for **DISTRICT** use as needed when requested by **DISTRICT**, to the extent that **CITY** has such an apparatus in good working order that is not presently needed by **CITY**, and to perform regular maintenance on such apparatus by **CITY**'s mechanics at the times and places determined by **CITY**.

M. To establish and define a structure for the sharing of personnel between the fire departments of **DISTRICT** and **CITY**, to jointly provide necessary fire and emergency services to both agencies within the **Unified Operational Area**, thus improving the delivery of such services to both **Agencies** while achieving greater efficiency and economic benefit.

3. TYPE OF ASSISTANCE - DISTRICT TO CITY

In aid of **CITY**, **DISTRICT** agrees:

A. To dispatch, within **DISTRICT**'s capabilities of available personnel and equipment, one (1) Engine Company on a single engine response within the San Rafael Fire Department service area, as illustrated in Exhibit "A".

B. Subject to the terms of this Agreement, to be solely responsible for control of its personnel, standards of performance, discipline, and all other aspects of performance by **DISTRICT** employees while performing services under this Agreement.

C. To establish and define a structure for the sharing of personnel between the fire departments of **DISTRICT** and **CITY**, to jointly provide necessary fire and emergency services to both **Agencies** within the **Unified Operational Area**, thus improving the delivery of such services to both **Agencies** while achieving greater efficiency and economic benefit.

4. MUTUAL BENEFIT - INTERAGENCY PERSONNEL DEPLOYMENT AND OPERATIONAL STRUCTURE

A. **CITY** and **DISTRICT** intend that this Agreement will provide mutual benefits to both parties, and agree to continue to participate in the Marin County Local Fire Service and Rescue Mutual Aid Plan and other areas of cooperation.

B. Sharing of Personnel. Subject to the limitations and requirements of the collective bargaining agreement(s) between each agency and its respective union(s), as of the **Effective Date**, the Fire Chief of each agency is hereby authorized to assign any of the agency's fire department personnel, subject to such personnel's voluntary agreement to this assignment, to temporary duty with the other agency upon the request of the Fire Chief of the other agency.

Personnel from the agency providing services (hereinafter the “**Sole Employer**”) assigned for duty to the other agency (hereinafter the “**Receiving Agency**”) shall become familiar with and observe all operational policies and procedures of the **Receiving Agency**.

C. Staffing Plan. A staffing plan shall be developed and implemented jointly by the **DISTRICT** Fire Chief and the **CITY** Fire Chief. The objective of sharing personnel and the goal of the staffing plan will be to cover overtime shifts or vacancies in each agency for captain, firefighter or engineer positions, on an as-needed basis. In no event shall personnel deployment cause either agency to fall below defined minimum staffing levels; each agency shall continue to be responsible for maintaining its own minimum staffing levels.

D. Budgets/Reimbursement of Overtime Costs. Each agency will maintain its existing separate budget; provided, however that the **DISTRICT** Fire Chief and the **CITY** Fire Chief shall work together to facilitate the efficient and equitable allocation of revenues and costs under this Agreement. The agencies agree that when an agency acting as the **Sole Employer** incurs overtime costs due to the assignment of its personnel to the **Receiving Agency** pursuant to this Agreement, the **Sole Employer** shall be reimbursed by the **Receiving Agency** for the total amount of overtime pay liability incurred by the **Sole Employer**. It is understood and agreed that the calculation of overtime pay due to the assignment of personnel to the **Receiving Agency** shall be based upon the base pay compensation rates set for such personnel by the **Sole Employer**, and that the assignment of personnel under this Agreement shall not result in any change in the base pay compensation rates for such personnel. Quarterly, any **Sole Employer** incurring such overtime pay costs shall send an invoice to the **Receiving Agency** for reimbursement of such overtime costs, which shall be paid by the **Receiving Agency** within thirty (30) days of receipt.

5. THE UNIONS

As of the **Effective Date**, the San Rafael Firefighters Association, the San Rafael Chief Officers Association and Marinwood Professional Firefighters Association represent the Firefighters employed by both Agencies. The existing respective bargaining agreements, as may be amended from time to time, shall apply to the shared personnel contemplated by this Agreement, according to the specific collective bargaining agreement(s) in effect between the Agency and said personnel.

6. ADMINISTRATION OF AGREEMENT

The City Manager of **CITY** and the District Manager of **DISTRICT**, or their respective designees, are each authorized to take such actions as are necessary to implement and administer the terms of this Agreement on behalf of their respective agencies, provided, however, that either Manager may determine in his or her sole discretion that it is necessary to receive the approval of his or her agency’s Elected Body.

7. EMPLOYER/EMPLOYEE RELATIONSHIP

It is the intent of the parties that each agency acting as a **Sole Employer** shall remain the sole employer of any and all of its employees temporarily assigned to the **Receiving Agency** under the terms of this Agreement. Employees of the **Sole Employer** shall continue to receive

the rights, privileges and benefits conferred by the **Sole Employer** at all times that the employee is temporarily assigned to the **Receiving Agency**.

A. Compensation. No employee of a **Sole Employer** may receive any compensation (including salary, retirement, leave and other benefits) from the **Receiving Agency**. Compensation shall only be conferred upon the employee by the **Sole Employer** regardless of the number of hours the employee may be assigned to the **Receiving Agency**.

B. Discipline. The **Receiving Agency** may not reprimand, suspend, or take any disciplinary action whatsoever against an employee of the **Sole Employer** temporarily assigned to the **Receiving Agency**. Only the **Sole Employer** may discipline an employee temporarily assigned to a **Receiving Agency**, regardless of the number of hours the employee may be assigned to the **Receiving Agency**.

C. Control of Work and Temporary Hour Limitations. The parties expressly understand and agree that the **Sole Employer** controls and shall continue to control the means and manner by which all work is to be performed by the personnel of the **Sole Employer** at all times while the personnel are temporarily assigned to a **Receiving Agency** under the terms of this Agreement. Additionally, the parties expressly understand and agree that the employees of the **Sole Employer** shall not be temporarily assigned to the **Receiving Agency** in excess of any of the following: 1) an average of twenty (20) hours per week per year; 2) one thousand (1,000) hours within a fiscal year; or 3) full-time for any six-month period.

D. Retirement System and Benefits. **CITY** and **DISTRICT** further represent and warrant that each of them are contracting agencies of the Public Employees' Retirement System ("PERS"), established by Part 3 of Division 5 of Title 2 of the Government Code (Gov. Code §§ 20000 et seq.) or the Marin County Employees' Retirement Association ("MCERA"), established pursuant to the County Employees Retirement Law of 1937 (Gov. Code §§ 31450 et seq.), and will remain contracting agencies with such retirement systems throughout the term of this Agreement. The agencies further warrant that each agency's employees that will be assigned to the other agency pursuant to this Agreement are members of the **Sole Employer's** retirement system at all times that such members are assigned to the **Receiving Agency**. No employee of a **Sole Employer** may accrue any retirement credits or be entitled to any retirement benefits from the **Receiving Agency**, regardless of how many hours, days, months or years that employee may be assigned to the **Receiving Agency** under this Agreement.

E. Notice to Employees. The parties further represent and warrant that each **Sole Employer** shall provide a copy of this section or summary of the provisions of this section to each of its employees that may be assigned to the **Receiving Agency** under this Agreement within 30 days of the **Effective Date** or the employee's date of hire, whichever comes later. Each **Sole Employer** shall retain a copy of the notice provided to each employee under this section in a form that bears the signature of the employee with the date of the employee's signature attesting to the receipt of such notice and the understanding of the employee as to his/her rights while being assigned to the **Receiving Agency** under this. No **Sole Employer** shall assign any employee to the **Receiving Agency** until the **Sole Employer** has received a signed copy of this notice from its employee.

8. INSURANCE

A. Workers' Compensation Insurance. **CITY** and **DISTRICT** shall each provide workers' compensation insurance for its respective employees, even when such employees are assigned to a **Receiving Agency**. All workers' compensation claims shall be filed exclusively with the employee's employer and each agency party retains its own losses for any workers' compensation loss, without any right of subrogation or other recourse against the other agency party. **CITY** and **DISTRICT** each warrants that it carries workers' compensation insurance or is self-insured in compliance with the requirements of the California Workers' Compensation Act.

B. Liability Insurance. **CITY** and **DISTRICT** each shall maintain at its sole cost and expense, either through private insurance or membership in a risk-sharing joint powers authority, liability insurance coverage with minimum limits of five million dollars (\$5,000,000) per occurrence for death, bodily injury, personal injury, or property damage.

C. Auto Physical Damage Insurance. For any **CITY** ambulance or Type 1 Fire Apparatus provided by **CITY** to **DISTRICT** under this Agreement, **DISTRICT** shall maintain for **CITY's** benefit replacement cost auto physical damage insurance coverage on such vehicle through a private insurer or through its membership in a risk-sharing joint powers authority. In the event of any damage to such vehicle while provided to **DISTRICT**, **DISTRICT** shall be responsible for the payment of the amount of any deductibles under such coverage that may be necessary to replace such vehicle.

D. Other Requirements. All required insurance coverages shall be substantiated with a certificate of insurance or certificate of coverage and must be signed by a representative of the insurer or risk-sharing joint powers authority evidencing such insurance to its named insured. Each agency party's general liability policy shall be endorsed naming the other agency party as an additional insured. Each agency party's workers' compensation policy shall be endorsed to waive any right of subrogation against the other agency party. The certificates of insurance and required endorsements shall be furnished to each agency party prior to the **Effective Date**. Said policies shall remain in force through the term of this Agreement and shall be payable on a per occurrence basis only. Nothing herein shall be construed as a limit of either agency party's liability, and each agency party shall indemnify, defend, and hold harmless the other agency party in accordance with the provisions of Section 11 of this Agreement. Failure to provide and maintain the insurance required by this Agreement will constitute a material breach of the Agreement. In addition to any other remedies, an agency party may suspend payment to the other agency party for any services provided during the time that insurance was not in effect and until such time as the defaulting agency party provides adequate evidence that it has obtained the required coverage.

9. TRAINING

DISTRICT's Fire Chief and firefighters shall be able to participate in all **CITY** Fire Department exercises, drills and proficiency indexes, at no cost to **DISTRICT**, subject to any qualification requirements and any limitations on space available for such training. Subject to the **CITY** Fire Department's first priority for its use, **DISTRICT** may utilize the **CITY's** training

facility at Fire Station No. 2. **CITY** will provide emergency response, within the **CITY's** capabilities of available personnel and equipment, from the closest appropriate **CITY** emergency response unit to **DISTRICT** while **DISTRICT's** personnel are absent from their station for purposes of said training.

10. AGREEMENT ADMINISTRATION/NOTICES

The City Manager shall be the representative of the **CITY** for all purposes under this Agreement. The **CITY's** Fire Chief is hereby designated the Agreement Administrator for the **CITY**, and said Administrator shall supervise all aspects of the implementation of this Agreement for **CITY**.

The District Manager shall be the representative of **DISTRICT** for all purposes under this Agreement. The **DISTRICT's** Fire Chief is hereby designated the Agreement Administrator for the **DISTRICT**, and said Agreement Administrator shall supervise all aspects of the implementation of this Agreement for **DISTRICT**.

All notices and other communications required or permitted to be given under this Agreement, including any notice of change of address, shall be in writing and given by personal delivery, or deposited with the United States Postal Service, postage prepaid, addressed to the parties intended to be notified. Notice shall be deemed given as of the date of personal delivery, or if mailed, upon the date of deposit with the United States Postal Service. Notice shall be given as follows:

TO CITY: Fire Chief, San Rafael Fire Department
City of San Rafael
P.O. Box 151560
San Rafael, CA 94915-1560

TO DISTRICT: Fire Chief, Marinwood Fire Department
Marinwood Community Services District
777 Miller Creek Road
San Rafael, California 94903-1323

11. INDEMNIFICATION

To the fullest extent allowed by law, **CITY** shall defend, indemnify and hold harmless **DISTRICT**, its officers, agents and employees, while acting within the course and scope of their employment under this Agreement, from any liability or damage, including but not limited to attorneys' fees, arising from any acts or omissions of **CITY**, its officers, agents and employees, provided that such hold harmless and indemnification shall not extend to liabilities or damages caused by the sole negligence or willful misconduct of **DISTRICT**.

To the fullest extent allowed by law, **DISTRICT** shall defend, indemnify and hold harmless **CITY**, its officers, agents and employees, while acting within the course and scope of their employment under this Agreement, from any liability or damage, including but not limited to attorneys' fees, arising from any acts or omissions of **DISTRICT**, its officers, agents and employees, except such liability or damage caused by the sole negligence or willful misconduct of

CITY. DISTRICT shall further defend, indemnify and hold harmless **CITY**, its officers, agents and employees, from any and all loss, liabilities, or property damage incurred, no matter how caused, in connection with the use and/or operation, for any purpose whatsoever, of any **CITY**-owned vehicles provided for **DISTRICT** use pursuant to this Agreement, provided that such hold harmless and indemnification shall not extend to liabilities or damages caused by the sole negligence or willful misconduct of **CITY**.

The defense and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement, and shall survive the termination of this Agreement for the full period of time allowed by law.

12. ENTIRE AGREEMENT -- AMENDMENTS

Subject to the provisions of Section 1, this Agreement supersedes any and all prior agreements between the parties and represents the whole and entire Agreement between **CITY** and **DISTRICT**. No provision or obligation hereunder may be amended except upon subsequent written agreement of **CITY** and **DISTRICT**.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day, month and year first above written.

CITY OF SAN RAFAEL

MARINWOOD COMMUNITY SERVICES DISTRICT

Gary O. Philips, Mayor

Bill Hansell, Board President

Nancy Mackle, City Manager

Thomas D. Horne, District Manager

Christopher Gray, Fire Chief

Thomas Roach, Fire Chief

ATTEST:

ATTEST:

Esther C. Beirne, City Clerk

Carolyn Sullivan, Secretary to the Board of Directors

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Robert F. Epstein, City Attorney

Gregory W. Stepanicich, District Counsel