

**MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN
COUNTY OF HUMBOLDT
AND
ARCATA FIRE PROTECTION DISTRICT
FOR FISCAL YEAR 2020-2021**

This Memorandum of Understanding (“MOU”), entered into this 23 day of June, 2020, by and between the County of Humboldt, a political subdivision of the State of California, hereinafter referred to as “COUNTY,” and the Arcata Fire Protection District, a political subdivision of the State of California, hereinafter referred to as “AFPD,” is made upon the following considerations:

WHEREAS, COUNTY has entered into Cooperative Fire Programs – Fire Protection Reimbursement Agreement No. 1CA04863 (“Fire Protection Reimbursement Agreement”) with the California Department of Forestry and Fire Protection (“CalFIRE”) regarding the provision of mutually advantageous fire and emergency services within Humboldt County; and

WHEREAS, pursuant to the terms and conditions of the Fire Protection Reimbursement Agreement, CalFIRE is primarily financially responsible for protecting natural resources from fires and COUNTY is primarily financially responsible for protecting life and property from fires and other emergencies; and

WHEREAS, pursuant to the terms and conditions of the Fire Protection Reimbursement Agreement, CalFIRE has agreed to provide fire department 9-1-1 emergency dispatch services (“Dispatch Services”) in support of the local fire protection districts within Humboldt County; and

WHEREAS, pursuant to the terms and conditions of the Fire Protection Reimbursement Agreement, COUNTY has agreed to pay any and all costs associated with the Dispatch Services provided by CalFire; and

WHEREAS, COUNTY and AFPD have mutually determined that approximately forty percent (40%) of the Dispatch Services provided by CalFIRE will directly benefit AFPD; and

WHEREAS, AFPD has agreed to reimburse COUNTY for up to forty percent (40%) of the costs associated with the Dispatch Services provided by CalFIRE; and

WHEREAS, COUNTY and AFPD desire to enter into an agreement which sets forth each party’s rights and responsibilities regarding payment of the costs associated with the Dispatch Services provided by CalFIRE.

NOW THEREFORE, in consideration of the foregoing, and of the mutual promises contained herein, the parties hereto agree as follows:

1. RIGHTS AND RESPONSIBILITIES OF COUNTY:

COUNTY shall directly pay any and all costs associated with the Dispatch Services provided pursuant to the terms and conditions of the Fire Protection Reimbursement Agreement upon receipt of approved invoices from CalFIRE. COUNTY shall submit to AFPD quarterly invoices itemizing any and all costs related to the Dispatch Services provided by CalFIRE.

2. RIGHTS AND RESPONSIBILITIES OF AFPD:

AFPD shall provide COUNTY with an amount not exceed One Hundred Thirty-Eight Thousand Five

Hundred Eighty Dollars (\$138,580.00) for the purpose of paying forty percent (40%) of the costs associated with the Dispatch Services provided by CalFIRE. Payment for the applicable costs associated with the Dispatch Services provided by CalFIRE will be made within thirty (30) days after the receipt of approved invoices from COUNTY.

3. TERM:

This MOU shall begin on July 1, 2020 and shall remain in full force and effect until June 30, 2021, unless sooner terminated as provided herein.

4. TERMINATION:

Either party may, in its sole discretion, terminate this MOU, if the other party fails to comply with the terms or conditions set forth herein, or violates any local, state or federal law, regulation or standard applicable to its performance hereunder, and such default continues unremedied for a period of thirty (30) days following the receipt of written notice thereof.

5. NOTICES:

Any and all notices required to be given pursuant to the terms and conditions of this MOU shall be in writing and either served personally or sent by certified mail, return receipt requested, to the respective addresses set forth below. Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

COUNTY: Humboldt County Administrative Office
Attention: Amy S. Nilsen, County Administrative Officer
825 Fifth Street, Room 112
Eureka, California 95501

AFPD: Arcata Fire Protection District
Attention: Justin McDonald, Fire Chief
2149 Central Avenue
McKinleyville, California 95519

6. REPORTING REQUIREMENTS:

Each party hereto agrees to prepare and submit any and all reports that may be required by any local, state and/or federal agencies for compliance with this MOU. Any and all reports required hereunder shall be prepared in a format that complies with the Americans with Disabilities Act, and any other applicable local, state and federal accessibility laws, regulations and standards, and submitted in accordance with any and all applicable timeframes.

7. RECORD RETENTION AND INSPECTION:

A. Maintenance and Preservation of Records. Each party hereby agrees to timely prepare accurate and complete records, documents and other evidence relating to its performance hereunder, and to maintain and preserve said records for at least three (3) years after the expiration or termination of this MOU, or as otherwise required by any and all applicable local, state and federal laws, regulations and standards, except that if any litigation, claim, negotiation, audit or other action is pending, the records shall be retained until completion and resolution of any and all issues arising therefrom.

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- B. Inspection of Records. Pursuant to California Government Code Section 8546.7, all records, documents and other evidence relating to each party's performance hereunder, shall be subject to the examination and audit of the California State Auditor and any other duly authorized agents of the State of California for a period of three (3) years after the expiration or termination of this MOU. Each party hereby agrees to make all such records, documents and other evidence available during normal business hours to inspection, audit and reproduction by any duly authorized local, state and/or federal agencies. Each party further agrees to allow interviews of any of its employees who might reasonably have information related to such records, documents or other evidence by any duly authorized local, state and/or federal agencies. All examinations and audits conducted hereunder shall be strictly confined to those matters connected with the performance of this MOU, including, without limitation, the costs of administering this MOU.
- C. Audit Costs. In the event of an audit exception or exceptions related to the performance of this MOU, the party responsible for not meeting the requirements set forth herein shall be responsible for the deficiency and for the cost of such audit.

8. CONFIDENTIAL INFORMATION:

- A. Disclosure of Confidential Information. Each party hereby agrees to protect all confidential information obtained pursuant to the terms and conditions of this MOU in accordance with any and all applicable local, state and federal laws, regulations, policies, procedures and standards.
- B. Continuing Compliance with Confidentiality Requirements. Each party hereby acknowledges that local, state and federal laws, regulations and standards pertaining to confidentiality, electronic data security and privacy are rapidly evolving and that amendment of this MOU may be required to ensure compliance with such developments. Each party agrees to promptly enter into negotiations concerning an amendment to this MOU embodying written assurances consistent with the requirements of any and all applicable local, state and federal confidentiality laws, regulations or standards.

9. NON-DISCRIMINATION COMPLIANCE:

- A. Professional Services and Employment. In connection with the execution of this MOU, neither party shall unlawfully discriminate in the provision of professional services or against any employee or applicant for employment because of: race; religion or religious creed; color; age (over forty (40) years of age); sex, including, without limitation, gender identity and expression, pregnancy, childbirth and related medical conditions; sexual orientation, including, without limitation, heterosexuality, homosexuality and bisexuality; national origin; ancestry; marital status; medical condition, including, without limitation, cancer and genetic characteristics; mental or physical disability, including, without limitation, HIV status and AIDS; political affiliation; military service; denial of family care leave; or any other classifications protected by any and all applicable local, state or federal laws, regulations or standards, all as may be amended from time to time. Nothing herein shall be construed to require employment of unqualified persons.
- B. Compliance with Anti-Discrimination Laws. Each party further assures that it will abide by the applicable provisions of: Title VI and Title VII of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; the Food Stamp Act of 1977; Title II of the Americans with Disabilities Act of 1990; the California Fair Employment and Housing Act; California Civil Code Sections 51, *et seq.*; California Government Code Sections 4450, *et seq.*; California Welfare and Institutions Code Section 10000; Division 21 of

the California Department of Social Services Manual of Policies and Procedures; United States Executive Order 11246, as amended and supplemented by United States Executive Order 11375 and Part 60 of Title 41 of the Code of Federal Regulations ("C.F.R."); and any other applicable local, state or federal laws, regulations or standards, all as may be amended from time to time. The applicable regulations of the California Fair Employment and Housing Commission implementing California Government Code Section 12990, set forth in Sections 8101, *et seq.* of Title 2 of the California Code of Regulations, are incorporated herein by reference as if set forth in full.

10. NUCLEAR-FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE:

By executing this MOU, AFPD certifies that it is not a Nuclear Weapons Contractor, in that AFPD is not knowingly or intentionally engaged in the research, development, production or testing of nuclear warheads, nuclear weapons systems or nuclear weapons components as defined by the Nuclear-Free Humboldt County Ordinance. AFPD agrees to notify COUNTY immediately if it becomes a Nuclear Weapons Contractor. COUNTY may immediately terminate this MOU if it determines that the foregoing certification is false or if AFPD subsequently becomes a Nuclear Weapons Contractor.

11. INDEMNIFICATION:

- A. Mutual Indemnity. Each party shall hold harmless, defend and indemnify the other party and its agents, officers, officials, employees and volunteers from and against any and all claims, demands, losses, damages, liabilities, expenses and costs of any kind or nature, including, without limitation, attorney's fees and other costs of litigation, arising out of, or in connection with, the negligent performance of, or failure to comply with, any of the duties and/or obligations contained herein, except such loss or damage which was caused by the sole negligence or willful misconduct of the other party or its agents, officers, officials, employees or volunteers.
- B. Comparative Liability. Notwithstanding anything to the contrary, in the event that both parties are held to be negligently or willfully responsible, each party will bear their proportionate share of liability as determined in any such proceeding. In such cases, each party will bear their own costs and attorney's fees.
- C. Effect of Insurance. Acceptance of the insurance required by this MOU shall not relieve either party from liability under this provision. This provision shall apply to all claims for damages related to either party's performance hereunder, regardless of whether any insurance is applicable or not.

12. INSURANCE REQUIREMENTS:

- A. General Insurance Requirements. Without limiting either party's indemnification obligations set forth herein, each party shall maintain in full force and effect, at its own expense, any and all appropriate comprehensive general liability, comprehensive automobile, workers' compensation and professional liability insurance policies.
- B. Insurance Notices. Any and all insurance notices required to be given pursuant to the terms and conditions of this MOU shall be sent to the addresses set forth below in accordance with the notice requirements contained herein.

COUNTY: County of Humboldt
Attention: Risk Management
825 Fifth Street, Room 131

AFPD: Eureka, California 95501
Arcata Fire Protection District
Attention: Justin McDonald, Fire Chief
2149 Central Avenue
McKinleyville, California 95519

13. RELATIONSHIP OF PARTIES:

It is understood that this MOU is by and between two (2) independent entities and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture, or any other similar association. Each party shall be solely responsible for the acts and omissions of its agents, officers, employees, assignees and subcontractors.

14. COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS AND STANDARDS:

- A. General Legal Requirements. Each party hereby agrees to comply with any and all local, state and federal laws, regulations, policies, procedures and standards, including, without limitation, any and all local, state and federal licensure, certification and accreditation requirements, applicable to its performance hereunder.
- B. Accessibility Requirements. Each party hereby agrees to comply with any and all applicable accessibility requirements set forth in the Americans with Disabilities Act, Section 508 of the Rehabilitation Act of 1973, as amended, California Government Code Section 1135 and any current and future implementing regulations, policies, procedures and standards promulgated thereunder, including, without limitation, the federal accessibility standards set forth in 36 C.F.R. Section 1194.1, all as may be amended from time to time.
- C. Conflict of Interest Requirements. Each party hereby agrees to comply with any and all applicable conflict of interest requirements set forth in the California Political Reform Act and any current and future implementing regulations, policies, procedures and standards promulgated thereunder, including, without limitation, COUNTY's Conflict of Interest Code, all as may be amended from time to time.

15. PROVISIONS REQUIRED BY LAW:

This MOU is subject to any additional local, state and federal restrictions, limitations or conditions that may affect the terms, conditions or funding of this MOU. This MOU shall be read and enforced as though all legally required provisions are included herein, and if for any reason any such provision is not included, or is not correctly stated, the parties agree to amend the pertinent section to make such insertion or correction.

16. REFERENCE TO LAWS, REGULATIONS AND STANDARDS:

In the event any law, regulation or standard referred to herein is amended during the term of this MOU, the parties agree to comply with the amended provision as of the effective date thereof.

17. SEVERABILITY:

If any provision of this MOU, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this MOU.

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18. ASSIGNMENT:

Neither party shall delegate its duties nor assign its rights hereunder, either in whole or in part, without the other party's prior written consent. Any assignment in violation of this provision shall be void, and shall be cause for immediate termination of this MOU. This provision shall not be applicable to service agreements or other arrangements usually or customarily entered into by either party to obtain supplies, technical support or professional services.

19. AGREEMENT SHALL BIND SUCCESSORS:

All provisions of this MOU shall be fully binding upon, and inure to the benefit of, the parties and to each of their heirs, executors, administrators, successors and permitted assigns.

20. WAIVER OF DEFAULT:

The waiver by either party of any breach of this MOU shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this MOU.

21. NON-LIABILITY OF OFFICIALS AND EMPLOYEES:

No official or employee of either party shall be personally liable for any default or liability under this MOU.

22. AMENDMENT:

This MOU may be amended at any time during the term of this MOU upon the mutual consent of both parties. No addition to, or alteration of, the terms of this MOU shall be valid unless made in writing and signed by the parties hereto.

23. JURISDICTION AND VENUE:

This MOU shall be construed in accordance with the laws of the State of California. Any dispute arising hereunder, or relating hereto, shall be litigated in the State of California and venue shall lie in the County of Humboldt unless transferred by court order pursuant to California Code of Civil Procedure Sections 394 or 395.

24. ADVERTISING AND MEDIA RELEASE:

Each party shall obtain the written approval of the other party before any informational material related to this MOU may be used as advertising or released to the media, including, without limitation, television, radio, newspapers and internet. Each party shall inform the other party of any and all requests for interviews by media related to this MOU before such interviews take place; and the other party shall be entitled to have a representative present at such interviews. Any and all notices required by this provision shall be given to the Humboldt County Administrative Officer in accordance with the notice requirements set forth herein.

25. SURVIVAL OF PROVISIONS:

The duties and obligations of the parties set forth in Section 7 – Record Retention and Inspection, Section 8 – Confidential Information and Section 11 – Indemnification shall survive the expiration or termination of this MOU.

26. CONFLICTING TERMS OR CONDITIONS:

In the event of any conflict in the terms or conditions set forth in any other agreements in place between the parties hereto and the terms and conditions set forth in this MOU, the terms and conditions set forth herein shall have priority.

27. INTERPRETATION:

This MOU, as well as its individual provisions, shall be deemed to have been prepared equally by both of the parties hereto, and shall not be construed or interpreted more favorably for one (1) party on the basis that the other party prepared it.

28. INDEPENDENT CONSTRUCTION:

The titles of the sections and subsections set forth herein are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this MOU.

29. FORCE MAJEURE:

Neither party hereto shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control, and without the fault or negligence, of such party. Such events shall include, without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, pandemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism or other disasters, whether or not similar to the foregoing.

30. ENTIRE AGREEMENT:

This MOU contains all of the terms and conditions agreed upon by the parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this MOU shall be deemed to exist or to bind either of the parties hereto. In addition, this MOU shall supersede in its entirety any and all prior agreements, promises, representations, understandings and negotiations of the parties, whether oral or written, concerning the same subject matter. Any and all acts which may have already been consummated pursuant to the terms and conditions of this MOU are hereby ratified.

31. COUNTERPART EXECUTION:

This MOU, and any amendments hereto, may be executed in one (1) or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to be one (1) and the same agreement. This MOU, and any amendments hereto, may be signed by manual or electronic signatures in accordance with any and all applicable local, state and federal laws, regulations and standards, and such signatures shall constitute original signatures for all purposes. A signed copy of this MOU, and any amendments hereto, transmitted by email or by other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this MOU and any amendments hereto.

32. AUTHORITY TO EXECUTE:

Each person executing this MOU represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this MOU. Each party represents and warrants to the other that the execution and delivery of this MOU and the performance of such party's obligations hereunder have been duly authorized.

IN WITNESS WHEREOF, the parties hereto have entered into this MOU as of the first date written above.

ARCATA FIRE PROTECTION DISTRICT:

By: _____

Date: _____

Name: _____

Title: _____

COUNTY OF HUMBOLDT:

By: Estelle Fennel

Date: 6/23/2020

Estelle Fennel, Chair
Humboldt County Board of Supervisors

INSURANCE AND INDEMNIFICATION REQUIREMENTS APPROVED:

By: _____

Date: _____

Risk Management