

**A COOPERATIVE AGREEMENT
BETWEEN FRESNO COUNTY FIRE PROTECTION DISTRICT
AND AUBERRY VOLUNTEER FIRE DEPARTMENT**

Made for the following services:

- FIRE PROTECTION
- MEDICAL SERVICES
- RESCUE SERVICES
- FIRE PREVENTION AND CODE ENFORCEMENT
- EMERGENCY DISPATCH SERVICES
- FIRE APARATUS REPAIR AND MAINTENANCE
- HAZMAT RESPONSE SERVICES

THIS AGREEMENT, made and entered into and effective this 1st day of July, 2020, by and between The Fresno County Fire Protection District (hereinafter referred to as "District") and the Auberry Volunteer Fire Department (hereinafter referred to as "AVFD"), whereby it is agreed as follows:

Article I. SECTION I: PURPOSE

The purpose of the Agreement is to arrange for the DISTRICT, through its Cooperative Fire Protection Programs and current Fire Protection Reimbursement Agreement ("CAL FIRE Agreement") with the California Department of Forestry and Fire Protection ("CAL FIRE") to provide AVFD with Emergency Dispatch and Fire Prevention and Code Enforcement Services (hereinafter called "fire protection services"). This Agreement is entered into pursuant to the authority granted by Government Code Sections 55603, 55603.5, 55606, 55632 and 55642, and will provide a unified, cooperative, integrated, and effective fire protection, rescue, and medical aid system. The parties hereto understand and agree that services to be provided under this agreement must be consistent with the terms and conditions of the CAL FIRE Agreement and that no services may be provided by the District under this agreement and the District is under no obligation to provide services under this agreement that are not consistent and in conformity with the CAL FIRE Agreement.

SECTION II: DESIGNATION OF FIRE CHIEF

A. The DISTRICT Fire Chief appointed by the Board of Directors of the DISTRICT, or his designee, (hereinafter referred to as "Chief") shall represent the DISTRICT and AVFD during the period of this Agreement and Chief shall, under the supervision and direction of the DISTRICT'S Board of Directors, have charge of the organization described in Exhibit "A", attached hereto and made a part hereof, for the purpose of providing fire protection services as deemed necessary to satisfy the needs of both the DISTRICT and AVFD, except upon those lands wherein other agencies of government have responsibility for the same or similar fire protection services.

B. AVFD may budget for the position of a Deputy Chief or a Division Fire Chief or the DISTRICT may assign an existing Chief Officer as the contract AVFD representative ("AVFD Representative"). The DISTRICT Fire Chief may delegate certain authority to the AVFD Representative, as the Chief's duly authorized designee and the AVFD Representative shall be responsible for directing the fire protection services provided to AVFD as set forth in Exhibit "B".

C. The DISTRICT will be allowed flexibility in the assignment of available personnel and equipment in order to provide the fire protection services, rescue and medical aid services as agreed upon herein.

SECTION III: PAYMENT FOR SERVICES

A. AVFD shall annually appropriate a fiscal year budget to support the fire services designated at a level of service mutually agreed upon by both parties and as set forth in Exhibit "C." This Exhibit may be amended in writing by mutual agreement by both parties in the event of an increase of salary or expenses or when AVFD requests an increase in services.

1. Any changes to the salaries or expenses set forth in Exhibit "C" made necessary by action of the Legislature, CAL FIRE or any other public agency with authority to direct changes in the level of salaries or expenses, shall be paid from the funds represented as set forth in Exhibit "C." There shall be no obligation on the part of AVFD to expend or appropriate any sum in excess of Exhibit "C" which exceeds the yearly appropriation of AVFD for the purposes of the Agreement. Except for unscheduled repairs to AVFD owned equipment. These costs will be billed at an hourly shop rate plus actual costs of parts. If within thirty (30) days after notice, in writing, from the DISTRICT to AVFD that the actual cost of maintaining the services specified in Exhibit "C" as a result of action by the Legislature, CAL FIRE or other public agency will exceed the total amount specified therein, and AVFD has failed to agree to make available the necessary additional funds, the DISTRICT shall have the right to unilaterally reduce the services furnished under this Agreement by an appropriate amount and shall promptly notify AVFD, in writing, specifying the services to be reduced. Personnel reductions resulting solely due to an increase in employee salaries or expenses occurring after signing this Agreement and set forth in Exhibit "C" to this Agreement shall not be subject to relocation expense reimbursement by AVFD. If AVFD desires to add funds to the total included herein to cover the cost of increased salaries or services necessitated by actions described herein, such increase shall be accomplished by an amendment to Exhibit "C" and approved by the parties hereto.

2. In the event AVFD requests an increase in services and paragraph A.1. of this Section is not applicable, an amendment to Exhibit "C" may be approved by the parties hereto.

B. The DISTRICT provides fire personnel, equipment and services through its CAL FIRE Agreement. In the event AVFD desires a reduction in STATE civil service employees or services assigned to AVFD as provided for in Exhibit "C," when paragraph A.1. of this Section is not applicable, AVFD shall provide one hundred twenty (120) days written notice of the requested reduction. Proper notification shall include the following: (1) The total amount of reduction; (2) The effective date of the reduction; and (3) The number of employees, by classification, affected by the proposed reduction. If such notice is not provided, AVFD shall reimburse COUNTY for relocation costs incurred by STATE because of the reduction, in addition to any other remedies available resulting from the reduction in services.

C. AVFD shall pay the DISTRICT actual costs for fire protection services pursuant to this agreement in an amount not to exceed that set forth in Exhibit "C," as amended. The DISTRICT shall make a claim to AVFD for the actual cost of contracted services, pursuant to Exhibit "C," on an annual basis with the payment due on January 1st. AVFD shall pay the claim within thirty (30) days after receipt thereof.

D. The DISTRICT Fire Chief is authorized to negotiate and execute any amendments to Exhibit "C" of this Agreement on behalf of the DISTRICT without further authority from the DISTRICT'S Board of Directors. AVFD shall designate a "Contract Administrator" who shall, under the supervision and direction of AVFD, be authorized to execute amendments to Exhibit "C" on behalf of AVFD.

SECTION IV: INITIAL TERM AND RENEWAL

A. The term of this Agreement shall be from **July 1, 2020 to June 30, 2021**. Either party to this Agreement may terminate this Agreement by providing a written notice of termination to the other party hereto no less than 90 days prior to the expiration of the term hereof. If such notice is given unilaterally by the DISTRICT except any notice issued because of actions of CAL FIRE or AVFD, the DISTRICT agrees to continue to provide fire protection services to AVFD until such time as AVFD has a reasonable opportunity to implement an alternative fire protection service. In no event shall this Agreement be terminated by either party prior to June 30, 2020.

B. Ninety (90) days prior to the date of expiration of this agreement, AVFD shall give the DISTRICT written notice of whether AVFD intends to enter into a new agreement with the DISTRICT for fire protection services and, if so, whether AVFD intends to change the level of fire protection services from that provided by this agreement.

C. If AVFD fails to provide such notice, as defined in paragraph B above, the DISTRICT shall have the option to extend this agreement for a period of up to one year from the original termination date and to continue providing services at the same or reduced level as the DISTRICT determines would be appropriate during the extended period of this agreement. Six months prior to the date of expiration of this agreement, the

DISTRICT shall give written notice to AVFD of any extension of this agreement and any changes in the level of fire protections services the DISTRICT will provide during the extended period of this agreement. Services provided and obligations incurred by the DISTRICT during an extended period shall be accepted by AVFD as services and obligations under the terms of this agreement.

D. The cost of services provided by the DISTRICT during the extended period shall be based upon the amounts that would have been charged AVFD during the fiscal year in which the extended period falls had a new agreement been entered into. Payment by AVFD for services rendered by the DISTRICT during the extended period shall be provided as set forth in Exhibit "C," as amended.

SECTION V: TERMINATION

Neither the DISTRICT nor AVFD shall have the power to abrogate or otherwise terminate this Agreement during the term set forth in Section IV. This Agreement may, however, be terminated by the voters of either the DISTRICT or the AVFD pursuant to Government Code §55603.5.

SECTION VI: COOPERATIVE OPERATIONS

All fire protection services contemplated under this Agreement shall be performed by both parties to this Agreement working as one unit; therefore, personnel and equipment belonging to either AVFD or the DISTRICT may be temporarily dispatched elsewhere from time to time for mutual aid.

SECTION VII: MUTUAL AID

When rendering mutual aid or assistance as authorized in Health and Safety Code Sections 13050 and 13054, the DISTRICT shall, at the written request of AVFD, demand payment of charges and seek reimbursement of AVFD costs for personnel as funded herein, under authority given by Health and Safety Code Sections 13051 and 13054. The DISTRICT, in seeking said reimbursement, will represent the AVFD in following the procedures set forth in Health and Safety Code Section 13052. Any recovery of AVFD costs, less extraordinary collection expenses, will be credited to the AVFD.

SECTION VIII: SUPPRESSION COST RECOVERY

As provided in Health and Safety Code Section 13009, the DISTRICT may bring an action for collection of suppression costs of any fire caused by negligence, violation of law, or failure to correct noticed fire safety violations. When using AVFD equipment and personnel under the terms of this agreement, the DISTRICT may, on request of AVFD, bring such an action for collection of costs incurred by AVFD. In such a case AVFD appoints and designates the DISTRICT as its agent in said collection proceedings. In the

event of recovery, the DISTRICT shall apportion to AVFD its pro-rata proportion of recovery, less the reasonable pro-rata costs including legal fees.

In all such instances, the DISTRICT shall give timely notice of the possible application of Health and Safety Code Section 13009 to the officer designated by AVFD.

SECTION IX: PROPERTY ACCOUNTING

All personal property provided by AVFD and by the DISTRICT for the purpose of providing fire protection services under the terms of this Agreement shall be marked and accounted for in such a manner as to conform to the standard operating procedure established by the DISTRICT Fire Department for the segregation, care, and use of the respective property of each.

SECTION X: INDEMNIFICATION

A. The DISTRICT, to the extent permitted by law, agrees to indemnify, defend and hold harmless AVFD, its officers, agents and employees from any and all claims for economic losses accruing or resulting to any and all contractors, subcontractors, materialmen, laborers and any other person, firm, or corporation furnishing or supplying work services, materials or supplies in connection with any activities under this agreement; and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the DISTRICT in the performance of any activities under this agreement, except where such injury or damage arose from the sole negligence or willful misconduct attributable to AVFD or from acts not within the scope of duties to be performed pursuant to this agreement.

B. AVFD, to the extent permitted by law, agrees to indemnify, defend and hold harmless the DISTRICT, its officers, agents and employees from any and all claims for economic losses accruing or resulting to any and all contractors, subcontractors, materialmen, laborers and any other person, firm, or corporation furnishing or supplying work services, materials or supplies in connection with any activities under this agreement; and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by AVFD in the performance of any activities under this agreement, except where such injury or damage arose from the sole negligence or willful misconduct attributable to the DISTRICT or from acts not within the scope of duties to be performed pursuant to this agreement.

C. Each party will provide the other with a Certificate of Insurance with liability coverage shown in an amount of not less than \$1,000,000.00

SECTION XI: AUDIT

The DISTRICT/AVFD agree that their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. The DISTRICT/AVFD agree to maintain such records

for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated, and to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records.

SECTION XII: DISPUTES

AVFD shall select and appoint a "Contract Administrator" who shall, under the supervision and direction of AVFD, be available for contract resolution or policy intervention with the DISTRICT, when, upon determination by the DISTRICT Fire Chief that a situation exists under this agreement in which a decision to serve the interest of AVFD has the potential to conflict with the DISTRICT interest or policy. Any dispute concerning a question of fact arising under the terms of this agreement which is not disposed of within a reasonable period of time (ten days), shall be brought to the attention of the Contract Administrator.

Disputes that are unable to be resolved by AVFD and the DISTRICT representatives will attempt to be resolved through arbitration. If arbitration is unsuccessful, venue for litigation will be the County of Fresno.

SECTION XIII: ATTORNEY'S FEES

If AVFD fails to remit payments for services rendered pursuant to any provision of this agreement, the DISTRICT may seek recovery of fees through arbitration and/or litigation, in addition to all other remedies available.

In the event of arbitration or litigation between the DISTRICT and AVFD to enforce any of the provisions of this Agreement or any right of either party hereto, the unsuccessful party to such litigation agrees to pay the prevailing party's costs and expenses, including reasonable attorneys' fees, all of which shall be included in and as a part of the judgment rendered in such arbitration or litigation.

SECTION XIV: DELIVERY OF NOTICES

Any notices to be served pursuant to this Agreement shall be considered delivered when deposited in the United States mail and addressed to:

Fresno County Fire
Protection District

Mark A. Johnson, Chief

210 S. Academy Ave.

Sanger, CA 93657

AUBERRY VOLUNTEER
FIRE DEPARTMENT

RICHARD SCHACHER JR, CHIEF

P.O. BOX 171

AUBERRY CA 93602

Provisions of this section do not preclude any notices being delivered in person to the addresses shown above. Delivery in person shall constitute service hereunder, effective when such service is made.

SECTION XV: ENTIRE CONTRACT

This Agreement contains the whole contract between the parties for the provision of fire protection services. It may be amended or modified upon the mutual written consent of the parties hereto. This agreement does NOT supplement other specific agreements entered into by both partners for equipment or facilities, and excepting those equipment or facilities agreements, this agreement cancels and supersedes any previous agreement for the same or similar services.

IN WITNESS WHEREOF, the duly authorized officials of the parties hereto have, in their respective capacities, set their hands as of the date first hereinabove written.

Dated: 6/15/2020

AUBERRY VOLUNTEER
FIRE DEPARTMENT

By: [Signature]

Title: FIRE CHIEF

ATTEST:

APPROVED AS TO FORM:

By: _____

Title: _____

(SEAL)

Dated: _____

FRESNO COUNTY FIRE
PROTECTION DISTRICT

By: _____
President, Board of Directors

ATTEST:

APPROVED AS TO FORM:

Clerk of the Board

By: _____

FRESNO COUNTY FIRE
PROTECTION DISTRICT
LEGAL COUNSEL

(SEAL)