

**PROPERTY TAX ALLOCATION
AGREEMENT BETWEEN
THE CITY OF FRESNO
AND
THE FRESNO COUNTY FIRE PROTECTION DISTRICT**

This Property Tax Allocation Agreement ("Agreement") is entered into and effective August 19th, 2015 ("Effective Date"), between the City of Fresno, a California charter city ("City") and the Fresno County Fire Protection District ("District"), a local fire protection district organized and existing as a California Special District under provisions of the Fire Protection District Law of 1987 (Health & Safety Code Section 13800 *et seq.*).

RECITALS

- A. The District is the primary provider of fire suppression, prevention, rescue, emergency medical services and hazardous material emergency response and other services relating to the protection of lives and property ("Fire Protection Services") within its territorial limits, which includes areas near the incorporated centers of the County of Fresno ("County"), including the City. Current District boundaries are reflected in **Exhibit 1**, attached and incorporated by this reference. The District also provides Fire Protection Services to certain incorporated cities and substantial portions of unincorporated areas within the County.
- B. The City is the provider of Fire Protection Services within its corporate limits.
- C. The District's primary source of funding comes from general purpose *ad valorem* property tax revenue from all real property within its territory.
- D. As the City expands and annexes property, the property detaches from District, reducing the size of District's territorial limits and increasing City's service burden. This also results in a lowering of District's tax base and Property Taxes it receives. Although District no longer services properties that annex into the City and detach from the District, District wide service obligations and regional support are not reduced commensurately and have historically and currently increased.
- E. To address the impact of the resulting loss of property tax revenue on District facilities and equipment, and partially mitigate impacts upon the District from annexations and detachments, Fresno County Local Agency Formation Commission ("LAFCo") policy requires the City and District to reach an agreement governing the transition of fire protection services as property annexes into City and detaches from District.

- F. In 2003 the City and the District entered into a transition agreement in which, upon annexation and detachment of property, the City agreed to pay the District a percentage of Property Taxes District would have received had the property not been annexed for a period of 10 years ("Prior Agreement"). Due to the expiration of the Prior Agreement, the District and City now wish to enter into a new agreement.
- G. The intent of this Agreement is to apply to all unincorporated areas that are within the jurisdictional boundaries of the District which may be, or have been, subject to annexation to the City subject to such modification as may be applicable to the involved affected territory in subsequent annexations.
- H. Although this Agreement is applicable to the allocation of property taxes required by the involved reorganization, because the City and District have executed an agreement for automatic aid for fire protection services, the City and the District agree that the level of services set forth in the automatic aid agreement constitutes the determination that the services rendered to the affected territory for which the Agreement's allocation of property taxes is applicable is reflective of the cost of services rendered by the District to such affected territory for the benefit of fire protection services.

AGREEMENT

NOW, THEREFORE, the parties agree as follows:

1. Effect of Recitals. The foregoing Recitals are incorporated in, and are a substantive part of this Agreement.
2. Affected Territory. "Affected Territory" shall mean the property subject to annexations or reorganizations into the City and the related detachment from the District.
3. Property Tax Revenue. The form of property taxes subject to this Agreement shall mean revenue from "ad valorem real property taxes on real property," as the phrase is used in Section 1 of Article 13A of the California Constitution, and more particularly defined in subsection (c) of Section 95 of the California Revenue and Taxation Code, that is collected from the Affected Territory.
4. Annexation Effective Date. For the purposes of this Agreement, the effective date of annexations or reorganizations and the date to be used for when the tax reallocation to District commences, shall be the date upon which the Certificate of Completion for the annexation or reorganization of the Affected Property is recorded with the County Recorder and California State Board of Equalization consistent with applicable law, including but not limited to the Cortese-Knox-Hertzberg Local Governmental Reorganization Act of 2000 (California Government Code Section 56000 *et seq.*).

5. Allocation, Payment and Use of Property Taxes.

(a). Upon the effective date of annexations/reorganizations of Affected Territory into the City and detachment from District, the real property tax imposed on the Affected Territory, and collected and allocated by Fresno County for the benefit of the District ("Base Year Allocation" or "BYA") shall continue to be collected by the County from the City's portion of real property taxes, and the County shall allocate and pay the BYA for the Affected Territory to the District for a period of 10 years from the effective date of the specific reorganization. The BYA shall include any increase of up to two percent (2%) per annum imposed by the County in accordance with the constitutional rate. Other than a potential up to 2% annual increase in the BYA, the District will not be eligible to receive any increase in the BYA. The BYA to be retained by County hereunder shall be in accordance with the tax allocation rate schedule provided to County by District during the term of this Agreement. This BYA shall not affect any allocation otherwise due to the County. **Exhibit 2**, attached and incorporated by this reference, sets forth an example of the calculation.

(b). District shall be responsible for creating the tax allocation rate schedule and providing City the ability for review prior to making arrangements with the County to allocate the BYA. Any fee charged by the County for collection of or retention and payment of the BYA shall be charged to the District. District and City agree to enter into supplemental agreements or instructions with the County for this purpose.

(c). Should Fresno County fail to pay directly to the District the BYA due the District, but instead include it in the City's portion of the payment by Fresno County, the District shall send written notice to City to pay the applicable BYA to the District. Such notice shall include the applicable tax allocation rate schedule showing the BYA due the District. City shall send the applicable payment to District within thirty (30) days after the City's receipt of the District's notice and tax allocation rate schedule. In the event the City does not pay to the District the applicable BYA due the District within said thirty (30) day period, the amount due the District shall be assessed interest at the legal rate commencing on the thirty-first (31st) day after the City's receipt of the District's notice and tax allocation rate schedule. The City's failure to make the allocated monetary payment amount due the District within the time period set forth in this subparagraph 5(c) shall be considered a material breach of this Agreement.

(d). As an alternative to the payment of the BYA and the annual 2% constitutional rate increases referenced in Agreement Section 5(a) through (c), for any annexation/reorganization subject to this Agreement the City may make a one time, lump sum payment of the total amount due under this Agreement, based on the calculations set forth in Exhibit 2 for the duration of the full term of this Agreement without the 2% annual increase. This alternative may only be used if the City so elects and gives notice to the District either within thirty (30) days of the Effective Date of this

Agreement or within thirty (30) days after the Annexation Effective Date of any reorganization before the Fresno County LAFCo, and immediately thereafter transmits payment of the lump sum.

(e). District shall use the BYA for the sole purpose of funding capital expenditures to mitigate the effects of detachment and shall not use the BYA for operating expenses. Examples of acceptable use of the BYA include construction of a new fire station to mitigate the effects of a change in service area and purchase of fire apparatus to support the Mutual Aid Agreement between City and District. If unused BYA funds remain at the end of the term of this Agreement, City and District shall meet and confer to determine the use of such funds.

6. Term. The term of this Agreement shall be for a period of 10 years from the Effective Date, except that obligations which by the terms expressed herein are intended to continue beyond the term of this Agreement shall continue until satisfied. Should the City elect to utilize the lump sum alternative in Agreement Section 5(d), the Agreement shall nonetheless continue in full force and effect for the full 10 year term, and the parties shall still be subject to the provisions in this Agreement, including but not limited to the option for renewal in Agreement Section 12.

7. Effect of Annexations. Upon annexation of affected properties to City, those properties shall detach from the District, and all Property Taxes shall be allocated consistent with Agreement Section 5 and existing laws, rules, policies and procedures established in the County, subject to any applicable agreement between City and the County.

8. LAFCo Compliance. District and City agree that this Agreement is intended to satisfy the intent and purpose of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000.

9. Non Opposition to Annexations. District represents and agrees that during the term of this Agreement, it will not oppose further annexation to the City. This District agreement does not extend to modifications to the City Sphere of Influence or required Municipal Service Reviews adopted by the Fresno County LAFCo.

10. Accounting. District and City agree that their designated representatives shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. District and City agree to maintain such records for a possible audit for a minimum of four (4) years from the recording date of an annexation to the City and to allow access to such records for an audit during normal business hours.

11. Termination.

(a). Termination Upon Expiration. This Agreement shall terminate upon

expiration of its Term.

(b). Termination Due to Invalidity. Should any material portion of this Agreement be declared invalid or inoperative by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect.

(c). Termination Due to Material Breach: Right to Cure. This Agreement may be terminated by either party for a material breach and a failure to cure that breach within thirty (30) days after receipt of a notice to cure.

(d). Termination Due to Change in Law. It is mutually understood and agreed that this Agreement shall terminate immediately and shall be of no further force and effect should substantial substantive changes occur in such statutory scheme or successor statutory schemes (whether by legislative or judicial action) which negate or frustrate the fundamental reasons or tenets of this Agreement, such termination to be in the entirety. Any party contending this section applies shall give written notice of termination pursuant to this section, which notice shall include an explanation of the reason(s) for such termination.

12. Renewal of Agreement. Within 60 days after the date of commencement of the ninth year of this Agreement, the District and the City agree to meet and negotiate in good faith, in an attempt to agree upon the terms and conditions of an extension of this Agreement consistent with applicable law at the time.

13. Remedies for Breach of Agreement. In addition to termination of this Agreement for a material breach, the parties may exercise any other remedy available to them at law or in equity, including specific performance, injunctive relief, and writ of mandate.

14. Dispute Resolution.

(a). If any dispute arises regarding the interpretation or application of this Agreement or any determination or calculation thereunder, the parties agree upon the request of either of them to meet and attempt to resolve the same amicably for a period not to exceed thirty (30) days.

(b). If the dispute is not otherwise resolved, and absent the need for emergency relief or to meet a statute of limitations, the parties agree to enter into mediation before initiating litigation. The parties shall mutually agree upon a mediator and each party shall pay one half (1/2) the cost of the mediator and bear their own costs for the mediation. The mediation shall be completed within sixty (60) days of notice of the intent to undergo mediation. If the mediation is not completed within sixty (60) days of notice, a party may initiate litigation. The parties shall act in good faith and with due diligence to timely complete the mediation.

(c). If litigation is commenced before mediation due to one of the reasons mentioned above, the parties agree to immediately commence and complete mediation within sixty (60) days of the commencement of litigation as evidenced by the

filing in court of a formal complaint, petition, or similar document.

15. Modification. This Agreement may be modified or amended only by a writing duly authorized and executed by the City and District.

16. Enforcement. The City and District each acknowledge that this Agreement cannot bind or limit themselves or each other or their future governing bodies in the exercise of their discretionary legislative power except as the Agreement provides. However, each binds itself that it will insofar as is legally possible, fully carry out the intent and purposes hereof, if necessary, by administrative and ministerial action independent of that legislative power and that this Agreement may be enforced by injunction or mandate or other writ to the full extent allowed by law.

17. Integration. With respect to the subject matter hereof, this Agreement is intended to be an integrated agreement and supersedes any and all previous negotiations proposals, commitments, writings and understandings of any nature whatsoever between the City and the District as to the subject matter of this Agreement.

18. Notice. All notices, requests, determinations or other correspondence required or allowed by law or this Agreement to be provided by the parties shall be in writing and shall be deemed given and received when delivered to the recipient by first-class mail (or an equal or better form of delivery) at the following addresses:

CITY
City Manager
City of Fresno
2600 Fresno Street, Rm 2064
Fresno, CA 93721

DISTRICT
Fire Chief
Fresno County Fire Protection District
210 South Academy Avenue
Sanger, California 93657

By giving notice, either party may change its address for these purposes.

19. Third Parties. This Agreement shall not be construed as or deemed an agreement for the benefit of any third party or parties, with the exception of the described benefit facilities [and others as may be appropriate] within the affected territory. No other third party or parties shall have any right of action hereunder for any cause of action whatsoever.

20. Subsequent District Agreements. District agrees that if, during the term of this Agreement, District negotiates a property tax allocation and fire services agreement involving an annexation to the municipality and a detachment from the District with any other municipality which contains more favorable terms than this Agreement, District shall notify City within thirty (30) days of such agreement and offer those same terms to City. More favorable terms, means, but is not necessarily limited to, another municipality allocating to District a lower percentage of taxes than City allocates District under Section 2 of this Agreement.

21. Attorney's Fees and Costs. In any action to enforce the provisions of this Agreement or for breach of the Agreement, the prevailing party shall recover from the other party, in addition to any damages, injunctive or other relief, all costs (whether or not allowable as "cost" items by law) reasonably incurred at, before and after trial or on appeal, including without limitation attorneys' and witness (expert and otherwise) fees, deposition costs, copying charges and other expenses.

22. Approval. The parties represent that this Agreement was approved by their respective governing boards at a properly noticed meeting.

23. Choice of Law and Venue. This Agreement shall be governed by the laws of the State of California. Venue for actions and proceedings between the parties related to this Agreement shall be in the Eastern District of California for any federal action and, unless otherwise agreed by the parties, in Fresno County Superior Court for state actions.

24. Agreement Mutually Drafted. Each party has participated jointly in the drafting of this Agreement, which each Party acknowledges is the result of extensive negotiations between the Parties, and the language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent. If an ambiguity or question of intent or interpretation arises, then this Agreement will accordingly be construed as drafted jointly by the parties, and no presumption or burden of proof will arise favoring or disfavoring any Party to this Agreement by virtue of the authorship of any of the provisions of this Agreement. The captions, headings and table of contents contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

25. Indemnification.

(a). The City shall indemnify and hold harmless the District and its elected and appointed officials, officers, employees, attorneys, volunteers, and agents from and against any and all claims, actions, causes of action, demands, or liabilities of whatsoever kind and nature, including judgments, interest, reasonable attorneys' fees, and all other costs, fees, expenses, and charges (collectively, "Claims") to the extent that such Claims arise out of or were caused by the negligence, gross negligence, or willful misconduct of the City or from any breach of the Agreement by the City.

(b). The District shall indemnify and hold harmless the City and its elected and appointed officials, officers, employees, attorneys, volunteers, and agents from and against any and all claims, actions, causes of action, demands, or liabilities of whatsoever kind and nature, including judgments, interest, reasonable attorneys' fees, and all other costs, fees, expenses, and charges (collectively, "Claims") to the extent that such Claims arise out of or were caused by the negligence, gross negligence, or willful misconduct of the District or from any breach of the Agreement by the District. Notwithstanding the foregoing, the District shall indemnify, defend, and hold harmless the City and its elected and appointed officials, officers, employees, attorneys, volunteers, and agents from and against any and all Claims arising out of or related to

collection of the BYA, including, without limitation, calculations related to the BYA.

26. Cooperation In The Event of Legal Challenge

(a). In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of, any provision of the Agreement, or the calculation and collection of the BYA, the Parties hereby agree to affirmatively cooperate in defending said action. The parties desire to engage in an ongoing and joint effort to develop, facilitate, and cooperate in, their defense of the actions in a manner consistent with applicable law.

(b). Communications and other exchanges of information in the joint defense effort undertaken by the Parties are, or may be, attorney-client privileged and/or attorney work-product. The joint defense effort may also involve communications among the Parties and their counsel for the purpose of furthering the Parties' common defense strategy.

(c). Information transmitted by and between the Parties and their counsel, whether written, oral or in any other form, to facilitate the common defense of the Parties in the respective actions filed against them, is intended to remain privileged and confidential and shall not be disclosed at any time to anyone other than (a) attorneys of record for the Parties and their associates and support staff working on the actions, (b) inside counsel, if any, employed by each party and working on the actions, (c) independent consultants and/or experts retained by the parties, and (d) elected officials, directors, officers, employees and agents of the Parties who are engaged in managing the litigation, except in connections with trial and related proceedings, or pursuant to Court order or the written consent of the Parties.

(d). Upon request by a party, no party shall unreasonably withhold its consent to the disclosure of information exchanged pursuant to the Agreement. The terms of this Agreement shall not prevent any party, upon written notice to any objecting party, from seeking a Court order permitting such disclosure or otherwise from exercising any of its rights pursuant to law. Said information is intended to be and shall be conclusively presumed to be privileged or protected pursuant to the joint defense privilege, and shall be perpetually protected from disclosure by the joint defense privilege, as well as by the attorney-client privilege, attorney work-product doctrine, and all other applicable rights or privileges.

(e). Neither the Agreement nor any actions taken under it shall constitute, or be deemed to create, a conflict of interest should the interests of the Parties become adverse in connection with future litigation or proceedings. Each party and its counsel waives any right to seek the disqualification as counsel of any other attorney party to the Agreement based upon a communication of joint defense privileged or protected information.

(f). Nothing herein is intended to nor shall be deemed to obligate any party to follow any particular course of action or to act other than in its own self-interest.

(g). Each party retains the right to prosecute and defend claims and/or settle any claim or any action in its sole discretion.

(h). Nothing herein is intended to nor shall be deemed to relieve the Parties from the indemnification terms set forth in Section 25 of this Agreement.

27. Agreement Contingent on Adoption of City Policy Regarding Property Owner Petitions for Annexations. This Agreement is contingent upon approval by the City Council of a policy regarding property owner petitions for annexation. A policy will be brought to the City Council for approval within 45 days of City Council approval of this Agreement.

28. Waiver. The City expressly waives the statute of limitations defense in Government Code section 65009 as to the District only with respect to payment of the allocation amount set forth in this Agreement. Any and all defenses, including statutes of limitation defenses, are reserved unless otherwise stated herein. In no event shall this limited waiver apply to any party other than the District.

29. Notification to County Auditor-Controller/Treasurer/Tax-Collector. Immediately after the Effective Date of this Agreement, City and District shall furnish a fully executed copy of this Agreement to the Fresno County Auditor-Controller/Treasurer Tax-Collector ("County Auditor") at the address listed below. Any Agreement amendment, upon its becoming effective, shall also be furnished to the County Auditor by the City and the District.

Fresno County Auditor-Controller/Treasurer Tax-Collector
2281 Tulare Street
Fresno, CA 93721

30. Annexations Subject to Prior Agreement. The Parties agree that the BYA for any and all annexations which were approved by LAFCo during the term of the Prior Agreement, but recorded after its expiration shall be governed by the Prior Agreement, including, without limitation, three recently completed annexations by the City and the related detachments from the District, specifically the Shields-Locan No. 3 Reorganization, recorded October 8, 2014, the California-Temperance No.3 Reorganization, recorded December 18, 2014, and Kings Canyon-Minnewawa No. 3, approved by LAFCo on or around October 11, 2006, but not yet recorded as of the date of this Agreement.

Signatures on next page

IN WITNESS WHEREOF, the parties have entered into this Agreement in Fresno County, California.

FRESNO COUNTY FIRE PROTECTION DISTRICT

CITY OF FRESNO

By: Mike Del Puppo
Mike Del Puppo, Board President

By: Bruce Rudd
Bruce Rudd, City Manager

Date: 09/01/15

Date: 8/25/15

ATTEST:

ATTEST:

By: Frank Del Testa
Frank Del Testa, Board Secretary

By: Cindy Bruer, Deputy
Yvonne Spence, City Clerk

Date: 9-2-15

Date: 9/10/15

APPROVED AS TO FORM:

APPROVED AS TO FORM:

William D. Ross
William D. Ross, District Counsel

Douglas Sloan
Douglas Sloan, City Attorney

Date: 8/28/15

Date: 8/25/15

Fresno County Fire Protection District Exhibit 1

