

**Agreement between the County of Solano and \_\_\_\_\_ Fire Protection District for the Abatement of Flammable Material and Fire Prevention Services**

This Agreement (the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, by and between the \_\_\_\_\_ Fire Protection District (the "District") and the County of Solano, a political subdivision of the State of California (the "County"). The County and the District are collectively referred to herein as the "Parties," and individually as a "Party." This Agreement is made by the Parties with reference to the following Recitals:

- A. Cal. Health & Safety Code (HSC) section 13879 authorizes the District to abate hazardous weeds and rubbish pursuant to HSC sec. 14875 et seq.
- B. Solano County Code (SCC) sec. 12.5-20 further authorizes the District to clear or order the clearing of land, or remove or order the removal of dry grass, stubble, brush, rubbish, litter, or other flammable material which endangers the public's safety by creating a fire hazard.
- C. SCC sec. 12.5-21 authorizes the County to abate any fire hazard as determined by the District and to charge that cost against the subject property owner to be collected on the property tax roll.
- D. Cal. Government Code sec. 54981 authorizes the District to contract with the County to perform any of the District's functions on its behalf.
- E. The County and the District desire to enter into this Agreement to define their respective roles in the enforcement of the abatement of flammable materials and the provision of fire prevention services in the unincorporated area of the County.

NOW, THEREFORE, in consideration of the promises and commitments contained in this Memorandum of Understanding, the Parties agree as follows:

- 1) **MOU Duration.** This MOU shall remain in effect until terminated by a Party in accordance with Section 7 below.
- 2) **District Enforcement Responsibilities.** The District shall conduct its enforcement duties pursuant to the HSC sec. 14875 and this MOU within the full extent of its territorial jurisdiction located within unincorporated Solano County. Specifically, District shall:
  - a) Be responsible for all investigations and property surveys to discover properties in need of weed abatement, clearing of flammable materials, or the construction of fire breaks between wildland and urban interfaces.

- b) Provide notice to any owner, occupant, or person in charge of any property in need of weed abatement or clearing of flammable material in accordance with HSC sections 14892, 14895, and 14896 and post any required notice on the property as required under HSC sec. 14893.
- c) Conduct a hearing for any potential violator and take such action to order the abatement of weeds and/or flammable materials within [redacted] days; the failure of which to so comply will cause the abatement to be done by the County at the property owner's expense.
- d) Provide the County with copies of all notices and orders to abate.
- e) For the construction of fire breaks, provide County with an executed right of entry from the identified property owner in the form attached as Exhibit A.

3) **County Responsibilities.**

a) Upon receipt of copies of the notice and order to abate, County will perform the abatement and shall file a lien against the property with the County Assessor-Recorder to be collected on the property's annual tax bill.

b) For any property identified by District for the construction of a fire break, County will coordinate and construct the necessary fire break.

4) **Compliance with Law.** District is responsible to comply with all federal, state, and local laws in performing its enforcement. If an inspection warrant is necessary for District to determine whether a violation exists on private property, District must obtain said warrant prior to entering upon the property. District will document and retain records of any and all noticing required by the HSC, including but not limited to copies of executed Notices/Orders, photographs of posted Notices/Orders, and dates of depositing Notices/Orders in the mail.

5) **Cost Recovery.**

a) County is authorized under SCC 12.5-21 to seek recovery of costs incurred by the District and County in the abatement of the flammable materials. If County is required to have violations abated due to the owner/occupant's failure to perform abatement as directed, County is more likely to pursue cost recovery—first through issuance of a demand for payment, and then, if payment is not received, through a request that the Board of Supervisors impose a special assessment/lien against the subject property to recover abatement costs.

b) District understands that County may recover only a portion of costs due under certain circumstances; in those cases, County reserves the right to allocate such funds first to the reimbursement of County's abatement costs, and to allocate any remaining funds toward payment of costs incurred by District. County shall never be liable to pay/reimburse District for District's enforcement costs, except out of funds

recovered from the property owner/occupant, and only after all County costs have been paid.

c) If District wishes to have County seek recovery of District's costs, District must maintain detailed records showing the name, title, and hourly rate of any personnel involved in a particular enforcement case, along with a description of activities performed broken down into fifteen-minute (or lesser) increments of time. If District does not adequately document its costs, County will not seek recovery of those costs.

6) **Notice.** All notices required by this MOU shall be deemed to have been given when made in writing and hand delivered or mailed, certified, return receipt requested, or sent by email (upon written confirmation of receipt) to the respective Parties and their representatives at their respective addresses as set forth below or such other addresses as they may provide, in writing as set forth above, to the other Party from time to time:

To the County: County  
of Solano

\_\_\_\_\_  
Fairfield, CA 94533

Attention: \_\_\_\_\_

To the District:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7) **Termination.** Either party may terminate this MOU by providing written notice to the other sixty (60) days in advance.

8) **Indemnification and Insurance.** Indemnification and Insurance Requirements are attached hereto as Exhibit B, attached hereto and incorporated herein by reference.

9) **General Provisions.** Additional provisions are attached hereto as Exhibit C and incorporated herein by reference.

**IN WITNESS WHEREOF**, the Parties have executed this MOU effective as of the date first set forth above.

County of Solano

\_\_\_\_\_ Fire Protection District

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Approved as to Form

\_\_\_\_\_  
County Counsel

- Exhibit A: Sample Right of Entry
- Exhibit B: Indemnification and Insurance Requirements
- Exhibit C: General Provisions

DRAFT

**EXHIBIT A**

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**EXHIBIT B**  
**INDEMNIFICATION AND INSURANCE REQUIREMENTS**

**1) HOLD HARMLESS AND INDEMNIFICATION AGREEMENT**

District shall indemnify, defend, and hold harmless, County, its officers, directors, employees, agents, and volunteers, from and against any and all claims, suits, actions, causes of action, loss, damages, expense and costs (including, without limitation, costs and fees of litigation) of every nature arising out of or in connection with District's performance of work hereunder, except such losses or damages which are caused by the sole negligence or willful misconduct of County or any County-hired contractor.

County shall indemnify, defend, and hold harmless District, its officers, directors, employees, agents, and volunteers, from and against any and all claims, suits, actions, causes of action, loss, damages, expense and costs (including, without limitation, costs and fees of litigation) of every nature arising out of or in connection with County's performance of work hereunder, except such losses or damages which are caused by the sole negligence or willful misconduct of District.

**2) INSURANCE:**

It is agreed that DISTRICT and COUNTY shall each maintain at all times during the performance of this MOU insurance coverage or self-insurance in the amounts of not less than One Million Dollars (\$1,000,000) to cover all of their operations. Specifically, but not limited to not less than One Million Dollars (\$1,000,000) general liability, One Million Dollars (\$1,000,000) automobile liability, One Million Dollars (\$1,000,000) workers' compensation, and One Million Dollars (\$1,000,000) professional liability (E&O).

## **EXHIBIT C GENERAL PROVISIONS**

### **1. ENTIRE AGREEMENT.**

This MOU and any attachments constitute the sole, final, complete, exclusive and integrated expression and statement of the terms and conditions of the agreement among the Parties concerning the subject matter addressed herein, and supersede all prior negotiations, representations or agreements, oral or written, that may be related to the subject matter of this MOU.

### **2. EXHIBITS.**

Any and all exhibits referred to in and/or attached to this MOU are incorporated into this MOU as if set forth in full herein.

### **3. AMENDMENTS.**

No revision or amendment to this MOU shall be valid unless made in writing and signed by duly authorized representatives of all Parties.

### **4. FURTHER ASSURANCES.**

From time to time, either Party, at the request of the other Party, and without further consideration, shall execute and deliver further instruments and take such other actions as the requesting Party may reasonably require to complete more effectively the transactions contemplated by this MOU.

### **5. TIME OF THE ESSENCE.**

Time is of the essence with respect to the obligations to be performed under this MOU.

### **6. NO THIRD PARTY BENEFICIARY.**

This MOU is made and entered into for the sole protection and benefit of the Parties and their successors and assigns. This MOU is not intended to, and shall not be construed to, create any right on the part of any third party to bring any action or otherwise enforce any of its terms.

### **7. STATUS OF EMPLOYEES.**

- a) All persons performing services for District shall be solely employees or contractors of District and not employees of County, except those persons expressly and directly employed by County. Furthermore, District is not an agent of County.
- b) All persons performing services for County shall be solely employees or contractors of County and not employees of District, except those persons expressly and directly employed by District. Furthermore, County is not an agent of District.

### **8. CONSTRUCTION AND INTERPRETATION.**

It is agreed and acknowledged by the Parties that the provisions of this MOU have been arrived at through negotiation, and that each of the Parties has had a full and fair opportunity to review the provisions of this MOU and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this MOU.

**9. HEADINGS.**

The headings in this MOU are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any section or paragraph of this MOU. All references to section numbers refer to sections in this MOU.

**10. COUNTERPARTS.**

This MOU may be executed in counterparts, each of which shall be deemed an original, and all of which when affixed together shall constitute but one and the same instrument.

**11. SEVERABILITY.**

The invalidity of any term or provision of this MOU as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof. Each remaining term and provision of this MOU shall be valid and enforceable to the fullest extent permitted by law.

**12. WAIVER.**

The failure of any Party to insist upon strict performance of any of the terms, covenants, or conditions of this MOU shall not be deemed a waiver of any right or remedy that said Party may have, and shall not be deemed a waiver of said Party's right to require strict performance of all terms, covenants, and conditions thereafter, nor a waiver of any remedy for the subsequent breach of any of the terms, covenants or conditions.

**13. FORCE MAJEURE.**

If any Party shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, or other cause without fault and beyond the control of the Party obligated (financial inability excepted), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

**14. LEGAL JURISDICTION.**

The Parties hereto expressly agree that this MOU shall be governed by, interpreted under and construed and enforced in accordance with the laws of the State of California. Venue for any disputes shall be the Superior Court for the State of California, in Solano County. The Parties waive any federal court removal rights and/or original jurisdiction rights that they may have.