

## **AMENDMENT NO. 1**

**AMENDMENT NO. 1. TO THE AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND CITY OF REDWOOD CITY FOR PROVIDING FIRE PROTECTION AND EMERGENCY RESPONSE SERVICES FOR THE FIRE PROTECTION SUB-ZONE LOCATED IN COUNTY SERVICE AREA NO. 8 (NORTH FAIR OAKS).**

This Amendment ("Amendment No.1") to the Agreement Between the County of San Mateo and City of Redwood City, is entered into this day of \_\_\_\_ and month \_\_\_\_ 2022, and effective as of June 30, 2022, by and between the City of Redwood City, a charter city and municipal corporation of the State of California ("Contractor"), and the County of San Mateo, a political subdivision of the state of California ("County"), (collectively, the "Parties").

### **WITNESSETH:**

**WHEREAS**, pursuant to Government Code, Section 31000, the County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof; and

**WHEREAS**, pursuant to Government Code, Section 23210.1, County Service Area No. 8 was created on November 21, 1972 to provide for fire protection and garbage services in certain unincorporated areas of the County; and

**WHEREAS**, the Parties previously executed that certain Agreement between the County of San Mateo and City of Redwood City, dated June 19, 2007, and numbered 068804 ("Agreement No. 068804," attached as Exhibit 1 to this Amendment No. 1); and

**WHEREAS**, it is necessary and desirable that the Contractor continue to be retained for the purpose of Fire Protection and Emergency Response services for the Fire Protection Sub-Zone located in San Mateo County Services Area No. 8. This geographic area is specified in Agreement No. 068804, Exhibit C "Map of Fire Protection Sub-Zone of San Mateo County Service Area No. 8"; and

**WHEREAS**, the 15-year term in Agreement No. 068804 is set to expire on June 30, 2022; and

**WHEREAS**, the Parties wish to amend Agreement No. 068804 to extend the term of the contract period through June 30, 2037; and

**WHEREAS**, the Parties have negotiated and agreed to amend Agreement No. 068804 to an extension on the terms and conditions set forth in this Amendment No. 1 (Agreement No. 068804 and Amendment No. 1 are collectively referred to as "the Agreement.").

**NOW, THEREFORE, IT IS AGREED BY THE PARTIES HERETO AS FOLLOWS:**

**1. Exhibits and Attachments**

The following exhibits and attachments to this Amendment No. 1 are included hereto and incorporated by reference herein:

1. Agreement No. 068804

**2. Services to be performed by Contractor**

In consideration of the payments set forth in Section 4, of this Amendment No. 1, Contractor shall perform services in accordance with the terms, conditions, and specifications set forth herein.

**3. Remaining Provisions**

Except as provided in this Amendment No. 1, all other provisions of Agreement No. 068804 shall remain in full force and effect.

**4. Agreement, Paragraph 3. Payments is hereby amended in its entirety to read as follows:**

**3. Payments**

In consideration of the services provided by Contractor in accordance with all terms, conditions and specifications set forth herein and in Exhibit A of Agreement No. 068804, County shall make payment to Contractor based on the rates and in the manner as amended for Exhibit "B." The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this Agreement exceed 32% of the total property tax revenues received for County Service Area No. 8 Fire Protection Sub-Zone for each fiscal year.

**5. Agreement, Exhibit "B"-Payments and Rates Paragraphs 1-3, are hereby amended in their entirety to read as follows and Paragraphs 4 and 5 below are added:**

#### Exhibit B-- Payments and Rates

- 1) For each year of this Agreement (i.e., each fiscal year, which is July 1 through June 30 next following) the County agrees to reimburse the Contractor 32% of total amount of property tax collected for CSA 8 Fire Protection Sub Zone (the "Total Tax") during that fiscal year. For 2021/2022 this total amount is projected to be \$1,218,320. Therefore, \$389,862 would be the projected reimbursement to the Contractor by the County for these fire protection services.
- 2) By July 31st of each year, or at the close of the Fiscal Year, the County will notify the Contractor of the projected Total Tax for the current fiscal year, and the actual Total Tax for the immediate prior fiscal year. The projected Total Tax is currently identified in the County's annual budget system called "OFAS," (One Finance and Accounting Solution), Subunit 40711; Sub Account 1021-1043 "Taxes", as the line-item summary: 1021 Current Year Secured, 1031 Current Year Unsecured, 1033 Prior Year Unsecured, 1041 CY SB 813 Secured Supplemental, 1043 PY SB 813 Redemption.
- 3) At the end of each quarter, the Contractor shall invoice the County in an amount equal to 8% of the projected Total Tax, and the County shall pay such an amount to the Contractor within thirty (30) days of receipt of the City's invoice. The Contractor's invoice shall be sent electronically or via mail to the County address stated in Section 15 this Amendment No. 1. Each of the first three quarterly invoices for each fiscal year shall be equal to 8% of the projected Total Tax for that fiscal year. The Fourth Quarter invoice and payment by the County is to be calculated using the actual Tax as listed in 2) above and shall reflect any adjustments in the total annual invoice and payment (i.e., 32% of the actual Total Tax) required as a result of the actual Total Tax being different than the projected Total Tax (8% + delta between projected Fiscal Year and actual Fiscal Year at the close of the Fiscal Year).
- 4) The Contractor will provide the following information on an annual basis at the end of the Fiscal Year for reporting purposes:
  - i. Percent of Fire and Emergency Medical Calls Responded to Within Time Criteria Established by County and EMS (6:59),
  - ii. Average Response Time for all calls,
  - iii. The Total Calls responded to; 1- Fire Calls, 2- Paramedic First Responder (Medical Calls)
- 5) In the event that the County makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by the County at the time of contract termination or expiration. Contractor is not entitled to payment for work not performed as required by this agreement.

**6. Agreement, Paragraph 4. Term and Termination, parts a) and b) are hereby amended in their entirety to read as follows; and parts c) through d) below are added as follows:**

**4. Term and Termination**

- a) Subject to compliance with all terms and conditions of the term of the Agreement, the Amendment shall be extended for a new period of fifteen (15) years from July 1, 2022 through June 30, 2037.
- b) The Agreement as amended may be terminated by Contractor or County at any time without a requirement of good cause upon one hundred and eighty (180) days written notice to the other party.
- c) County may terminate the Agreement as amended, or a portion of the services referenced in the Attachments and Exhibits based upon the unavailability of Federal, State, or County funds by providing written notice to Contractor as soon as is reasonably possible after County learns of said unavailability of outside funding.
- d) County may terminate the Agreement as amended for cause. In order to terminate for cause, County must first give Contractor notice of the alleged breach. Contractor shall have five business days after receipt of such notice to respond and a total of ten calendar days after receipt of such notice to cure the alleged breach. If Contractor fails to cure the breach within this period, County may immediately terminate the Agreement as amended without further action. The option available in this paragraph is separate from the ability to terminate without cause with appropriate notice described above. In the event that County provides notice of an alleged breach pursuant to this section, County may, in extreme circumstances, immediately suspend performance of services and payment under this Agreement as amended pending the resolution of the process described in this paragraph. County has sole discretion to determine what constitutes an extreme circumstance for purposes of this paragraph, and County shall use reasonable judgment in making that determination.

**7. Agreement, Paragraph 7. Hold Harmless, is hereby amended to add the following paragraph:**

**7. Hold Harmless**

The Contractor shall indemnify and hold harmless the County, its officers, employees, and agents from any and all claims, actions or liability for injuries to persons, including any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply, if applicable, with the requirements set forth in the

Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or

**8. Agreement, Paragraph 9. Non-Discrimination and Other Requirements parts A, B, D, E and F are hereby amended in their entirety to read as follows:**

**9. Non-Discrimination and Other Requirements**

**A. Section 504 of the Rehabilitation Act of 1973.**

Contractor shall comply with § 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of the Agreement. Contractor's equal employment policies shall be made available to County upon request.

**B. General Non-Discrimination.**

No person shall be denied any services provided pursuant to the Agreement (except limited by the scope of services) on the grounds of race, color, national origin, religion, ancestry, gender identity, marital or domestic partner status, age, national origin, medical condition (cancer-related), disability (physical or mental), sexual orientation, familial or parental status (including pregnancy), or political beliefs or affiliation, military service, or genetic information.

**D. Reporting: Violation of Non-Discrimination Provisions.**

Violation of the non-discrimination provisions of the Agreement shall be considered a breach of the Agreement and subject the Contractor to penalties, to be determined by the County Executive Officer, including but not limited to:

- termination of this Agreement;
- disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
- liquidated damages of \$2,500 per violation; and
- imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Executive Officer.

To effectuate the provisions of this paragraph, the County Executive Officer shall have the authority to offset all, or any portion of the amount described in this paragraph against amounts due to Contractor under the Agreement or any other Amendment between Contractor and County.

Contractor shall report to the County Executive Officer the filing in any court or with any administrative agency or allegation of discrimination on any of the bases prohibited by this subparagraph of the Agreement or Paragraph 8 of the Agreement.

Such duty shall include reporting of the of the filing of any and all charges with the

Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing Commission or any other entity charged with the investigation or adjudication of allegations covered by this subparagraph within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include a general description of the circumstances involved and a general description of the kind of discrimination alleged (for example, gender-, sexual orientation-, religion-, or race-based discrimination).

**E. Compliance with County's Equal Benefits Ordinance.**

Contractor shall comply with all laws relating to the provision of benefits to its employees and their spouses or domestic partners, including, but not limited to, such laws prohibiting discrimination in the provision of such benefits on the basis that the spouse or domestic partner of the Contractor's employee is of the same or opposite sex as the employee.

**F. Discrimination Against Individuals with Disabilities.**

The nondiscrimination requirements of 41 C.F.R. 60-741.5(a) are incorporated into this Agreement as if fully set forth here, and Contractor and any subcontractor shall abide by the requirements of 41 C.F.R. 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

In the event of the breach of any provision of this subparagraph, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, the County of San Mateo at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

**9. Agreement, Paragraph 9. Non-Discrimination and Other Requirements, parts G, H, and I are hereby added:**

**9. Non-Discrimination and Other Requirements**

**G. History of Discrimination**

Contractor certifies that no finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other investigative entity. If any finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other investigative entity, Contractor

shall provide County with a written explanation of the outcome(s) or remedy for the discrimination prior to execution of this Agreement. Failure to comply with this subparagraph shall constitute a material breach of this Agreement and subjects the Agreement to immediate termination at the sole option of the County.

**H. Reporting: Violation of Non-discrimination Provisions**

Contractor shall report to the County Executive Officer the filing in any court or with any administrative agency of any complaint or allegation of discrimination on any of the bases prohibited by this subparagraph of the Agreement or Paragraph 8 of the Agreement. Such duty shall include reporting of the filing of any and all charges with the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other entity charged with the investigation or adjudication of allegations covered by this subsection within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include a general description of the circumstances involved and a general description of the kind of discrimination alleged (for example, gender-, sexual orientation-, religion-, or race-based discrimination).

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Executive Officer, including but not limited to the following:

- i. termination of this Agreement;
- ii. disqualification of the Contractor from being considered for or being awarded a County contract for a period of up to 3 years;
- iii. liquidated damages of \$2,500 per violation; and/or imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Executive Officer.

To effectuate the provisions of this Section, the County Executive Officer shall have the authority to offset all, or any portion of the amount described in this Section against amounts due to Contractor under this Agreement or any other agreement between Contractor and County.

**I. Compliance with Living Wage Ordinance**

As required by Chapter 2.88 of the San Mateo County Ordinance Code, Contractor certifies all contractor(s) and subcontractor(s) obligated under this contract shall fully comply with the provisions of the County of San Mateo Living Wage Ordinance, including, but not limited to, paying all covered employees the current living wage under the County of San Mateo Living Wage Ordinance, and providing notice to all

covered employees and subcontractors as required under the County of San Mateo Living Wage Ordinance.

**10. Agreement, Paragraph 10. Compliance with Contractor Employee Jury Service Ordinance Paragraph 10 is hereby amended in its entirety to read as follows:**

**10. Compliance with Contractor Employee Jury Service Ordinance**

Contractor shall comply with Chapter 2.85 of the County's Ordinance Code, which states that Contractor shall have and adhere to a written policy providing that its employees, to the extent they are full-time employees and live in San Mateo County, shall receive from the Contractor, on an annual basis, no fewer than five days of regular pay jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the employees' regular pay the fees received for jury service in San Mateo County. Contractor acknowledges that Chapter 2.85's requirements will apply if compensation under the Agreement's exceeds two-hundred thousand dollars (\$200,000).

**11. Agreement, Paragraph 11. Retention of Records; Right to Monitor and Audit, is hereby modified in its entirety to read as follows:**

**11. Retention of Records, Right to Monitor and Audit**

- a) Contractor shall maintain all required records relating to services provided under this Amendment for three (3) years after County makes final payment and all other pending matters are closed, and Contractor shall be subject to the examination and/or audit by County, a Federal grantor agency, and the State of California.
- b) Contractor shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by County.
- c) Contractor agrees upon reasonable notice to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representative, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

**12. Agreement, Paragraph 12. Merger Clause is hereby modified in its entirety to read as follows:**

**12. Merger Clause; Amendments**

This Agreement, including all Exhibits and/or Attachments attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in this body of the Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to the Agreement, the provisions of this body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in these documents are not binding. All subsequent modifications shall be in writing and signed by the parties.

**13. Agreement, Paragraph 13. Controlling Law; is hereby modified in its entirety to read as follows:**

**13. Controlling Law; Venue**

The validity of this Agreement and of its terms, the rights, and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

**14. Agreement, Paragraph 14. Notices, is hereby modified in its entirety to read as follows:**

**14. Notices**

Any notice, request, demand, or other communication required or permitted under this Contract shall be deemed to be properly given when both: (1) transmitted via email to the email addresses listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of County, to:

Name/Title: San Mateo County-Special Districts  
Address: Director of the Office of Sustainability  
455 County Center, 4<sup>th</sup> Floor  
Redwood City CA 94063  
Special Districts Program Manager  
(650) 599-1447  
lclark@smcgov.org and cbloede@smcgov.org

In the case of Contractor, to:

Name/Title: City of Redwood City  
Fire Department  
Address: 755 Marshall Street  
Redwood City, CA 94063  
(650)780-7401  
  
dpucci@redwoodcity.org and ghamilton@redwoodcity.org

**15. Agreement, Paragraphs 15. Contract Materials, 16. Assignability and Subcontracting, and 17. Insurance, parts a. through c. are hereby amended in their entirety to read as follows:**

**15. Contract Materials**

At the end of this Agreement, or in the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials (collectively referred to as "contract materials") prepared by Contractor under this Agreement shall become the property of County and shall be promptly delivered to County. Upon termination, Contractor may make and retain a copy of such contract materials if permitted by law.

**16. Assignability and Subcontracting**

Contractor shall not assign this Agreement or any portion of it to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without County's prior written consent shall give County the right to automatically and immediately terminate this Agreement without penalty or advance notice.

17. Insurance

a. General Requirements

Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by County's Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. Contractor shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Contractor's coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to County of any pending change in the limits of liability or of any cancellation or modification of the policy.

b. Workers' Compensation and Employer's Liability Insurance

Contractor shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, Contractor certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.

c. Liability Insurance

Contractor shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor's operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below:

- i. Comprehensive General Liability.....\$1,000,000
- ii. Motor Vehicle Liability Insurance.....\$1,000,000
- iii. Professional Liability..... \$1,000,000

County and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that (a) the insurance afforded thereby to County and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the County or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, County, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

**16. Electronic Signatures:**

If all Parties agree, electronic signatures may be used in place of original signatures on this Amendment No. 1. Each Party intends to be bound by the signatures on the electronic document, is aware that the other Parties will rely on the electronic signatures, and hereby waives any defenses to the enforcement of the terms of this Amendment No.1 based on the use of an electronic signature. After all Parties agree to the use of electronic signatures, all Parties must sign the document electronically.

*[Signature Page Follows]*

In witness of and in agreement with this Amendment No. 1's terms, the Parties, by their duly authorized representatives, affix their respective signatures:

**For Contractor: City of Redwood City**

Melissa Stevenson Diaz  
Melissa Stevenson Diaz, City Manager

6/13/22  
Date

By: Pamela Aguilar  
Clerk of Said Board City  
Pamela Aguilar, City Clerk

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**COUNTY OF SAN MATEO**

By: \_\_\_\_\_  
President, Board of Supervisors, San Mateo County

Date:

ATTEST:

By: \_\_\_\_\_  
Clerk of Said Board County