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# AGREEMENT

## BETWEEN THE SAN MATEO COUNTY SHERIFF'S OFFICE AND THE SAN FRANCISCO BAY AREA RAPID TRANSIT (BART) DISTRICT

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THIS AGREEMENT, entered into on the entered into on the \_\_\_ day of \_\_\_\_\_, 2016, by and between the **SAN MATEO COUNTY SHERIFF'S OFFICE**, a political subdivision of the State of California, hereinafter referred to as "Sheriff" or "County" and the **SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq., hereinafter referred to as "District."

### WITNESSETH

*WHEREAS, District is desirous of having the Sheriff provide law enforcement services, more specifically critical incident response by the Sheriff's Office Special Weapons and Tactics (SWAT) Team, as hereinafter set forth, for and on behalf of District, within the territorial limits of said District, and the Sheriff is willing to perform such services as provided herein below:*

**NOW, THEREFORE, IT IS HEREBY AGREED as follows:**

### **1. EXHIBITS AND ATTACHMENTS.**

- 1.1 The following exhibits and attachments are included hereto and incorporated by reference herein:
- Exhibit A - Services
  - Exhibit A-1 - SMCSO SWAT Policy
  - Exhibit B - Rates / Payments
  - Exhibit B-1 - Personnel Rates

### **2. SERVICES TO BE PERFORMED BY COUNTY.**

- 2.1 In consideration of the payments set forth herein and in Exhibit B, Sheriff shall provide critical incident response services within District. Said services are described in Exhibit A.
- 2.2 In addition to the services indicated in Exhibit A, but the District may request any additional services in the field of public safety, law enforcement or related fields within the legal power of the Sheriff to provide at the Sheriff's discretion.

### **3. PAYMENTS.**

- 3.1 The District shall pay the Sheriff for the services provided under the terms of this Agreement at the rates set forth in Exhibit B.

**4. TERM.**

- 4.1 This Agreement shall be in full force and effect from **JANUARY 1, 2016 to JUNE 30, 2018.**
- 4.2 District shall notify County no later than January 1, 2018 of its desire for the Sheriff's Office to continue to provide law enforcement services for and on behalf of District within the territorial limits of District, and the parties shall thereafter endeavor to reach a mutual agreement for said law enforcement services to take effect upon expiration of this Agreement.

**5. RIGHT OF TERMINATION.**

- 5.1 Either party may terminate this Agreement with or without cause upon thirty (30) days advance written notice to the other party.

**6. HOLD HARMLESS.**

- 6.1 District shall defend, hold harmless and indemnify County, its officers, agents, and/or employees from any and all claims for injuries to persons and/or damage to property which arise out of the terms and conditions of this Agreement and which result from the negligent acts or omissions of District, its officers, agents and/or employees.
- 6.2 County shall defend, hold harmless and indemnify District, its officers, agents and/or employees from any and all claims for injuries to persons and/or damage to property, which arise out of the terms and conditions of this Agreement and which result from the negligent acts or omissions of County, its officers, agents, and/or employees.
- 6.3 In the event of the concurrent negligence of District, its officers, agents and/or employees, and County, its officers, agents and/or employees, then the liability for any and all claims for injuries or damages which arise out of the terms and conditions of this Agreement shall be apportioned under California's theory of comparative fault as presently established or may be hereafter modified.

**7. INSURANCE.**

- 7.1 Both parties shall maintain sufficient insurance, self-insurance or a combination thereof to comply with the following requirements, and, if requested, each party shall furnish the other party with certificates of insurance evidencing the required coverage. 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.

- 7.1.1 Worker's Compensation and Employer's Liability Insurance. Both parties shall have in effect during the entire life of this Agreement Worker's Compensation and Employer's Liability Insurance, or an acceptable program of self-insurance providing full statutory coverage. In signing this Agreement, parties certify, as required by Section 1861 of the California Labor Code, that they are aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and parties will comply with such provisions before commencing the performance of the work of this Agreement.

7.1.2 **Liability Insurance.** District and County shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance for services covered 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 District's and County's operations under this Agreement, whether such operations be by himself/herself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified on the following page.

Such insurance shall include:

- Comprehensive General Liability \$5,000,000
- Motor Vehicle Liability Insurance \$5,000,000

## **8. NON-DISCRIMINATION AND OTHER REQUIREMENTS.**

- 8.1 **Section 504.** District and County shall comply with § 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990, as amended, which provide that no otherwise qualified handicapped individual 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 this Agreement, and that reasonable and legally-specified accommodations will be made to serve individuals with disabilities.
- 8.2 **General Non-discrimination.** No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.
- 8.3 **Equal Employment Opportunity.** District and County shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. District's and County's equal employment policies shall be made available to either party upon request.
- 8.4 **Violation of Non-discrimination Provisions.** Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and may result in termination of this Agreement, and /or legal action to recover any Court-imposed damages incurred as a result of said violation(s). To effectuate the provisions of this section, the County Manager and District Manager may request authorization to examine District's or County's employment records relating to this Agreement, as the case may be with respect to compliance with this paragraph, and District and County shall not unduly withhold authorization.
- 8.5 **Other Statutory Compliance.** District and County shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5 (a), which is incorporated herein as if fully, set forth. All services to be performed pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, including, but not limited to, Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended.
- 8.6 **Compliance with Contractor Employee Jury Service Ordinance.** District and County shall comply with the County Ordinance with respect to provision of jury duty pay to

employees and have and adhere to a written policy that provides that its employees shall receive from the District, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the District or that the District deduct from the employees regular pay the fees received for jury service.

**9. RETENTION OF RECORDS.**

- 9.1 Each party agrees to provide to the other party, to any federal or state department having monitoring or reviewing authority, to County's or District's authorized representatives and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine and audit records and documents necessary to determine compliance with relevant federal, state, and local statutes, rules, and regulations, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.
- 9.2 District and County shall maintain and preserve all financial records relating to this Agreement for a period of four (4) years from the termination date of this Agreement, or until audit findings are resolved, whichever is greater.

**10. MERGER CLAUSE.**

- 10.1 This Agreement including the Exhibits attached to each 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. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications to either Agreement shall be in writing and signed by the parties.

**11. CONTROLLING LAW.**

- 11.1 The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California.

**12. DISPUTE RESOLUTION.**

- 12.1 Should any dispute arise out of this Agreement, the parties shall first meet and confer in an attempt to resolve the dispute. Should such efforts fail to resolve the dispute within twenty (20) days, the parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. Neither party shall file legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution. The costs of the mediator, if any, shall be paid equally by the parties. If a mediated settlement is reached neither party shall be deemed the prevailing party for purposes of the settlement and each party shall bear its own legal costs.

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**13. NOTICES.**

- 13.1 Any notice, request, demand, or other communication required or permitted hereunder shall be deemed to be properly given when deposited in the United State mail, postage prepaid, or when deposited with a public telegraph company for transmittal, charges prepaid, addressed to:

***In the case of County, to:***

San Mateo County Sheriff's Office  
ATTN: Sheriff  
400 County Center  
Redwood City, CA 94063

***In the case of District, to:***

Bay Area Rapid Transit District  
ATTN: BART Chief of Police  
P.O. Box 12688  
Oakland, CA 94604-2688

**IN WITNESS WHEREOF**, the parties hereto, by their duly authorized representatives, have affixed their hands.

**SAN MATEO COUNTY SHERIFF'S OFFICE**  
*A Political Sub-division of the  
State of California*

BY: \_\_\_\_\_  
Greg Munks, Sheriff

DATE: \_\_\_\_\_

**BAY AREA RAPID TRANSIT DISTRICT**

BY:           Kt W Rainey            
Kenton W. Rainey, BART Chief of Police

DATE:           11/24/15

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# EXHIBIT A - SERVICES

Agreement between San Mateo County Sheriff's Office and Bay Area Rapid Transit District

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*In consideration of the payments set forth in Exhibit B, County shall provide District with the following services:*

**1. DESCRIPTION OF SERVICES PROVIDED BY DISTRICT.**

**1.1 Incident Commander:** The Incident Commander will be the member of the District who is responsible for the overall command of the entire operation, including all tactical and support resources at the incident site.

**2. DESCRIPTION OF SERVICES PROVIDED BY COUNTY.**

**2.1 Tactical Commander:** The Tactical Commander will be a member of the San Mateo County Sheriff's Office Special Weapons and Tactics (SWAT) Team. The SWAT Team includes the Crisis Negotiation Unit (CNU), Psychiatric Emergency Response team (PERT) and the Tactical Dispatch Team (TDT). The Sheriff's Office tactical commander is a management team member, of lieutenant rank or higher, or designate, will be the Tactical Commander for operations requiring the services of the SWAT Team.

The Tactical Commander will be responsible for tactical planning, determining the necessary number of Sheriff's personnel, and execution of authorized courses of action that are put into effect to resolve the critical incident. The Tactical Commander will develop and coordinate tactical operations subject to the approval of the District Incident Commander.

**2.2 Tactical Dispatcher:** The Tactical Dispatcher will be a member of San Mateo County Public Safety Communications (PSC). Each Tactical Dispatcher/Supervisor is specially trained and responsible for responding to and supporting the field operations units involved in high-risk incidents. A Manager who has received the appropriate training may participate in lieu of a Supervisor when necessary.

**2.3 Procedure:**

**2.3.1** The Chief of Police of the BART Police Department or his/her designee will contact San Mateo County Public Safety Communications (Dispatch) to request response to a critical incident within the District's San Mateo County jurisdiction. Dispatch will follow standard Sheriff's Office authorization for specialized unit call-out, and management notification procedures and assign tactical dispatchers to respond to the incident.

**2.3.2** District agrees to only request service in situations described by Section 404.8.3 of the San Mateo County SWAT policy manual, excerpts of which are attached hereto as Exhibit A-1 and incorporated herein by reference. District understands and agrees that the San Mateo County SWAT Team will follow the policies contained in its manual and that this agreement will not be interpreted to require the San Mateo County SWAT Team to perform any tasks inconsistent with those policies.

## **2.4 Command Responsibility:**

- 2.4.1 District's Incident Commander will be responsible for the overall management of the incident and his/her responsibilities will include:
- All on-scene activities
  - Minute-to-minute decisions
  - Establishing a command post site
  - Media relations
  - Agency liaison
- 2.4.2 The Tactical Commander will be responsible for implementing specific tactical operations in San Mateo County as directed by District's Incident Commander.
- 2.4.3 The Tactical Commander will establish the necessary tactical command post(s). The Tactical Commander will maintain contact with District's Incident Commander.
- 2.4.4 After being briefed on the situation, the Tactical Commander will formulate a full tactical plan including all appropriate contingency plans.
- 2.4.5 The Tactical Commander will not execute any part of any tactical plan without express authorization from District's Incident Commander, except in exigent circumstances when it is not possible or feasible to contact the Incident Commander.
- 2.4.6 The Tactical Commander will be responsible for writing an after-action report and creating a file, which will include documentation of all actions undertaken by each respective unit in response to the critical incident.



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# EXHIBIT A-1

## SMCSO SWAT POLICY

Agreement between San Mateo County Sheriff's Office and Bay Area Rapid Transit District

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### 404.8.3 APPROPRIATE SITUATIONS FOR SWAT AND CNU

The mission of the SWAT Team is to support the San Mateo County Sheriff's Office with a tactical response to critical incidents. Critical Incidents are defined as follows:

- (a) **Hostage Situations:** The holding of any person(s) against their will by an armed and/or potentially armed suspect.
- (b) **Barricaded Situations:** The stand-off created by an armed and/or potentially armed suspect in any location, for whom is fortified or not, who is refusing to comply with police directives and demands to surrender.
- (c) **Sniper Situations:** The firing upon citizens and/or law enforcement by an armed suspect(s), whether stationary or mobile.
- (d) **Apprehension:** The arrest or apprehension of armed and/or potentially armed suspect(s) where there is the likelihood of armed resistance.
- (e) **Warrant Service:** The service of search and/or arrest warrants where the threat assessment warrants a SWAT Team response.
- (f) **Personal Protection:** The security of special person(s), such as VIP's, witnesses and/or suspects, based upon a threat and/or potential threat to the well-being of the person(s).
- (g) **Special Assessments:** Any assignment, approved by the SWAT Team Commander, based upon a high level of threat.
- (h) **Unusual Occurrences:** The initial response to unusual occurrences and/or requests for mutual aid. Any Division or Bureau within the Sheriff's Office may request the assistance of the SWAT Team in planning or conducting appropriate operations. The supervisor of the requesting Division or Bureau or their designated representative shall contact the SWAT Team Commander with the request for activation. The SWAT Team Commander, upon approval of request, will then follow the designated process for SWAT Team activation.

### 404.8.4 OUTSIDE AGENCY REQUESTS

The Sheriff's Office SWAT Team is available to any requesting law enforcement agency. When a request for the SWAT Team is received, it shall be immediately forwarded to the SWAT Team Commander; who will determine if in fact the situation and/or incident warrants the activation of the SWAT Team. The SWAT Team Commander will then contact the Division Commander and request an activation of the SWAT Team. Once approval is granted, the activation will follow standard procedures; i.e., written request and completion of a decision/threat matrix.

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#### **404.8.5 MULTI-JURISDICTIONAL SWAT OPERATIONS**

The Sheriff's Office SWAT Team, including relevant specialized units and supporting resources, shall develop protocols and/or working standard operating procedures to support multijurisdictional and/or regional responses.

- (a) If it is anticipated that a multi-jurisdictional SWAT operation will be conducted regularly; SWAT Team multi-jurisdictional and multi-disciplinary joint training exercises are recommended.
- (b) Sheriff's Office SWAT Team members shall operate under the governing policies, procedures and command of the San Mateo County Sheriff's Office when working in a multijurisdictional situation.

#### **404.8.6 SWAT CALL-OUT PROCEDURE**

**Purpose:**

To establish procedures for a SWAT/CNU activation for critical incidents and to guide the Team Member's response.

**Policy:**

SWAT/CNU will only be activated on the authority of a Sheriff's Captain or above. Immediate call outs of the SWAT Team will include the CNU, PERT, Tactical Dispatch Team and the San Mateo County Tactical Medical Group activation.

**Notification Procedures for Critical Incidents:**

- (a) The Patrol Watch Commander can immediately request the SWAT Team for any critical incident within jurisdictional boundaries through the Sheriff's Office Chain of Command.
- (b) The Patrol Watch Commander shall make the request that the current procedure be activated through County Communications.
- (c) Upon the determination of a SWAT Team Call Out, the Patrol Watch Commander, will notify County Communications to alert the SWAT Team Commander and/or his designated Team Leader.
- (d) The SWAT Team Commander or his/her designated Team Leader will receive approval from the Sheriff's Office Captain in charge of the SWAT Team to activate the team.
- (e) Once approval is authorized, the SWAT Team Commander or his/her designated Team Leader will alert all SWAT Team members through County Communications.
- (f) County Communications will dispense a text page to all SWAT Team members and CNU members. After receiving the text page, all available SWAT Team members are required to contact the SWAT Team Leader with their availability and respond to the SWAT armory.
- (g) The SWAT Team Commander or his/her designee will insure that partner agency's (Belmont and East Palo Alto PD) dispatch centers are notified of the call out concurrently with our team.
- (h) County Communications will also notify the San Mateo County Tactical Medic Team.
- (i) The Crisis Negotiation Unit, Psychiatric Emergency Response Team (PERT), Tactical Dispatch Team Leaders and/or designees, will determine who responds

from their respective units. CNU will assign a minimum of two negotiators, in addition to the CNU Team Leader and the PERT Team TDT leaders will assign the dispatchers. The SWAT Team Commander and/or designee may alter the standard response by CNU and/or TDT upon the circumstance.

- (j) SWAT Team activations take precedence over all other assignments within the Sheriff's Office. SWAT Team members assigned to the SWAT Team are under the authority and subordinate to the SWAT Team Commander, until the SWAT Team Commander determines the activation has concluded.
- (k) The SWAT Team will not be activated until an appropriate amount of orientation and training has been conducted. Specialized training specific to BART shall be documented to insure that the team has adequately obtained the recommended individual and team skill sets necessary to safely and proficiently operate in the new environment.

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# **EXHIBIT B**

## **RATES / PAYMENTS**

Agreement between San Mateo County Sheriff's Office and Bay Area Rapid Transit District

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*In consideration of the services described in Exhibit A, District shall pay County based on the following:*

### **1. CHARGES FOR SERVICES.**

- 1.1 The District does hereby agree to provide the Sheriff and Public Safety Communications with full financial reimbursement, at actual cost, for any and all personnel and damaged and/or expended equipment utilized by the Sheriff's Office in response to any critical incident.
- 1.2 In addition, the District does hereby agree to provide the Sheriff and Public Safety Communications with full financial reimbursement for any additional specialized training specific to public rail transportation, to include tubular assaults, platform clearing, operating in tunnels or other skills and experience needed for the SWAT Team to safely perform its duties and be successful in the assigned mission space.
- 1.3 In addition, the District does hereby agree to provide the Sheriff and Public Safety Communications with full financial reimbursement for any additional services provided by Sheriff's Office personnel following the Sheriff's Office response to any request for assistance by District.
- 1.4 The personnel rates for the 2015-16 fiscal year are attached hereto as Exhibit B-1. These rates will be adjusted every year on July 1st and will be provided to the District upon request.

### **2. INVOICING / BILLING.**

- 2.1 The Sheriff shall bill the District within 30 (thirty) days of any critical incident, which has required response pursuant to this agreement. The District does hereby agree to provide payment, in full, within 30 (thirty) days of receipt of any such billing. The Sheriff shall reasonably detail the actual costs and services in any bill sent to the District.
- 2.2 Payments and questions regarding invoicing shall be directed to the Sheriff's Office Fiscal Services Bureau Manager at (650) 363-1842 or be mailed to:

San Mateo County Sheriff's Office  
Fiscal Services Bureau  
400 County Center  
Redwood District, CA 94063

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# EXHIBIT B-1 PERSONNEL RATES

Agreement between San Mateo County Sheriff's Office and Bay Area Rapid Transit District

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## 1. FISCAL YEAR 2015-16

	Hourly Rates DAY SHIFT	Hourly Rates NIGHT SHIFT
SWAT Lieutenant	\$170.26	\$170.26
Sergeant	\$106.57	\$112.01
Detective Sergeant	\$128.01	\$133.95
Deputy	\$89.44	\$94.17
Detective	\$117.82	\$122.83
K-9 Deputy	\$94.17	\$98.90
PSC Manager	\$84.54	
Dispatch Supervisor	\$78.58	\$85.55
Dispatcher	\$63.93	\$69.04