

AGREEMENT FOR CHIEF AND ADMINISTRATIVE SERVICES
Between
NEWCASTLE FIRE PROTECTION DISTRICT AND PENRYN FIRE PROTECTION DISTRICT

THIS AGREEMENT FOR CHIEF AND ADMINISTRATIVE SERVICES (“Agreement”) is entered into as of the 1st day of November, 2013, by and between the Newcastle Fire Protection District (“Newcastle”) and the Penryn Fire Protection District (“Penryn”).

RECITALS

WHEREAS, the Newcastle Fire Protection District is a fire protection district organized and existing under the laws of the State of California; and

WHEREAS, the Penryn Fire Protection District is a fire protection district organized and existing under the laws of the State of California; and

WHEREAS, the Board of Directors of the Newcastle Fire Protection District desires to contract with the Penryn Fire Protection District for Chief and Administrative services; and

WHEREAS, the Board of Directors of the Penryn Fire Protection District has agreed by unanimous vote to enter into this contract for Chief and Administrative Services;

NOW, THEREFORE, in consideration of the mutual agreements and covenants herein set forth, it is agreed as follows:

ARTICLE 1
TERM AND RENEWAL

1.1 Term.

The term of this Agreement shall commence beginning on November 1, 2013 and continuing through June 30, 2015, provided that it is fully ratified and executed by all parties on or before November 1, 2013. The Agreement is subject to termination during the initial term and any renewal term under the terms and conditions set forth in Article 5 below.

1.2 Renewal.

This Agreement shall be automatically renewed for an additional one year term commencing July 1, 2015 and each July 1 thereafter; unless written notice of intent to renegotiate or terminate is given by any as specified by Article 5 below.

ARTICLE 2
PROVISION OF SHARED SERVICES

2.1 Fire Chief and Assistant Fire Chief and/or Duty Officer.

The parties agree to contract the services of the Penryn Fire Chief so that he will also act as the Chief to Newcastle in addition to his duties as the Chief for Penryn. The parties agree that the Fire Chief will appoint a part-time Assistant Chief and/or Duty Officer who will also act as Assistant Chief and/or Duty Officer to Newcastle in addition to his or her duties to Penryn.

2.1.1 Scope of Duties. The duties and authorities of the Chief and/or Assistant Chief, and/or Duty Officer shall be as set forth below and as detailed in the Description of Tasks and Services attached hereto as Exhibit A and incorporated herein by reference. The Description of Tasks and Services may be amended as appropriate and necessary only with the concurrence of the both respective Boards of Directors of the Newcastle Fire Protection District and the Penryn Fire Protection District.

2.1.2 Division of Service. The parties anticipate that the Chief and/or Assistant Chief, and/or Duty Officer will reasonably divide his time as Chief and/or Assistant Chief, and/or Duty Officer between Penryn and Newcastle as the duties and responsibilities of each district require. This includes sharing time at the physical location of the fire station in each District. Both parties understand that there will be times when one district requires more of the Chief's and/or Assistant Chief, and/or Duty Officer's attention than the other.

2.1.3 Rules and Regulations. The Fire Chief will apply the Penryn Fire Protection District Rules, Regulations, Policies and Practices in both jurisdictions. The Fire Chief will follow the requirements of the Firefighters Procedural Bill of Rights in both jurisdictions as well.

2.1.4 Assistant Chief Position. Within the contract dollar amount of this Agreement the Chief will hire an Assistant Chief and/or a Duty Officer as a part-time employee of Penryn. The Assistant Chief and/or a Duty Officer will be responsible to the Chief and may undertake such duties for both Newcastle and Penryn as are required by the Chief. At times the Assistant Chief and/or Duty Officer may be called upon to supervise personnel in either or both fire districts at the discretion of the Chief.

2.1.5 Limitations Upon Authority to Bind Newcastle. Notwithstanding anything to the contrary contained herein, Penryn agrees that the Chief shall not, without the prior approval of Newcastle Board of Directors or such officer or officers as the Board of Directors may designate, engage in any of the following on behalf of Newcastle:

- (a) Borrow or obtain credit in any amount or execute any guarantee, except for items for sale by vendors in the ordinary course of the Fire Chief's operation;
- (b) Expend funds for capital equipment in excess of expenditures expressly budgeted and approved by the Board of Directors;
- (c) Sell or transfer capital assets; and
- (d) Execute any lease of real or personal property.

2.1.6. Independent Contractor. It is mutually agreed by the parties that while the Fire Chief and Assistant Chief and/or Duty Officer are performing services on behalf of Newcastle, they shall at all times be an independent contractor for Newcastle and for no pur-

pose be considered an agent or employee of Newcastle, except as provided in Section 2.2 herein, as relates to Worker's Compensation coverage.

- 2.2 Consideration. Newcastle shall pay Penryn the sum of seventy-five thousand dollars (\$75,000.00) per year payable in four equal payments, on the first business day of each quarter of the year for the services of the Fire Chief, Assistant Chief and/or Duty Officer as described herein. The first pro-rated payment shall be due on or before November 15, 2013. This annual amount may be adjusted from time to time upon written agreement of the parties. Both Newcastle and Penryn will cover Workers Compensation for the Chief Officers if injured while acting or responding to or within their district for administrative duties or an emergency incident.
- 2.3 Expenses. Newcastle shall reimburse either Penryn or the Fire Chief for the actual cost of any direct expenses incurred by the Fire Chief in performing his duties pursuant to this Agreement, provided that documentary evidence of such expenses are presented to Newcastle to substantiate the expenses incurred and provided the Fire Chief receives prior approval from a designated officer of Newcastle for all expenses incurred in excess of fifteen hundred dollars (\$1500.00).
- 2.4 Reimbursement. Newcastle agrees that the Fire Chief may use qualified Penryn Fire Protection District employees to perform duties within Newcastle if there are no qualified Newcastle employees available for such duties. This may be filling shifts, fire prevention, training, inspections and other normal duties within a fire district. Said work shall be reimbursed at the employee's normal hourly rate and is NOT a part of the funds designated in paragraph 2.2 herein. Newcastle agrees to pay said hourly rates on a monthly basis based upon submitted invoices.
- 2.5 Memorandums of understanding (MOU). It is acknowledged that Newcastle does not currently engage in business inspections, fire prevention, or new residential plan checks for fire safety and that the training for Newcastle employees is minimal. Newcastle agrees that the Fire Chief may explore implementing or improving any or all of these areas within the Newcastle Fire Protection District and may use Penryn personnel to do so. The Fire Chief will submit to the Board of Newcastle Fire Protection District a Memorandum of Understanding (MOU) for the contracting of these services and any other areas that may be recommended by the Fire Chief or Newcastle Board. Subject to the approval of Newcastle's Board of Directors the MOU will establish the rate of pay and the scope of services to be rendered.
- 2.6 Salary, Benefits, Vacation, Sick Leave, Holidays. The Fire Chief and/or Assistant chief, and/or Duty Officer shall at all times remain an employee of the Penryn Fire Protection District and the Penryn Board shall be responsible for setting and paying the salary and benefits of the Chief and/or Assistant Chief, and/or Duty Officer and providing the necessary workers compensation insurance for those positions. Newcastle shall provide accommodation for vacation, sick leave and holidays as permitted under the employment contract between the Chief and Penryn Fire Protection District, which shall be made available to Newcastle upon request.
- 2.7 Vehicle. The Fire Chief is currently provided a vehicle by Penryn and it is anticipated that he will continue to use that vehicle as it is available. He or the appointed Assistant Chief and/or Duty Officer will use a vehicle from Newcastle for business related purposes or for duty coverage as required. He may also transport persons who are not employees of either District in the vehicle in appropriate circumstances. Penryn and Newcastle shall

maintain adequate liability insurance, maintenance and fuel cards on their respective vehicles at all times.

- 2.8 Professional Development. Newcastle may approve training or professional development opportunities for the Fire Chief, the Assistant Chief and/or Duty Officer, and share in the cost of such when the training benefits both Districts.

ARTICLE 3 **DISPUTE RESOLUTION**

- 3.1 In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement or breach thereof, the parties agree to use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interest, attempt to reach just and equitable solutions satisfactory to all parties. If they do not reach such solution within a period of thirty (30) days, any party may terminate this Agreement as provided in Article 5 below.

ARTICLE 4 **INDEMNIFICATION**

- 4.1 Indemnification. Each party hereunder agrees to indemnify and hold each other party, its Board, agents and employees harmless from all liability, claims and demands on account of injury, loss or damage, including, without limitation, claims arising from the party's intentional or negligent actions. The foregoing provision shall not be deemed a relinquishment or waiver of any kind of applicable limitations of liability provided by the California Tort Claims Act.

Notwithstanding anything to the contrary contained in this Agreement, no indemnification shall be provided under this Agreement from any party to any other party for any claims against any party based on, arising out of, or relating to any of the following:

- 4.1.1 Any liability expressly assumed by any district in writing expressly referencing this Agreement;
- 4.1.2 Any breach of contract, negligent or intentional misconduct of any district officer, director, employee, agent, attorney, representative, volunteer, successor or assign;
or
- 4.1.3 Any violation by any party, its officers, directors, employees, agents, attorneys, representatives, volunteers, successors or assigns of the laws of the United States or any state of the United States.

ARTICLE 5

TERMINATION

5.1 Termination:

Upon termination of this Agreement, unless otherwise agreed to by the parties, the current payment under the Agreement shall be prorated and the amount of such funds remaining that have already been paid to Penryn shall be reimbursed to Newcastle.

5.2 Unilateral Termination:

Any party to this Agreement may unilaterally terminate the Agreement by notice to the other party in writing at least sixty (60) days prior to the effective date of the termination. The notice of termination shall also include the reasons for such termination.

5.3 Termination Based on Mutual Agreement:

This Agreement may be terminated at any time with the mutual agreement of both parties subject to mutually agreeable terms and conditions.

5.4 Termination for Cause.

In the event any party breaches a material provision of this Agreement, the non-breaching party shall give the other party notice of such breach. In the event the breach is remedied within (60) calendar days; the notice shall be null and void. In the event the breach is not remedied within sixty (60) days, the Agreement may be terminated unless the timelines are extended by mutual written agreement.

ARTICLE 6 **MISCELLANEOUS**

6.1 Force Majeure.

Neither party shall be liable if the performance of any part or all of this contract is prevented, delayed, hindered or otherwise made impracticable or impossible by reason of any strike, flood, riot, fire, explosion, war, act of God, sabotage, accident or any other casualty or cause beyond either party's control, and which cannot be overcome by reasonable diligence and without unusual expense.

6.2 Nonassignability.

This Agreement and the rights and duties hereunder may not be assigned by any party hereto without obtaining the prior written consent of the other, and the parties expressly agree that any attempt to assign the rights of any party hereunder without such consent will be null and void. This Agreement is not intended to create any rights of a third party beneficiary.

6.3 Construction and Enforcement.

This Agreement shall be construed and enforced in accordance with the laws of the State of California. The article and paragraph headings are used solely for convenience, and shall not be deemed to limit the subject of the articles and paragraphs or be considered in their interpretation. This Agreement may be executed in several counterparts, each of which shall be deemed an original.

6.4 Independent Contractor Status.

The parties to this Agreement intend that the relationship between them created by this Agreement is that of an independent contractor, and not an employer/employee. No agent, employee, or servant of any district shall be deemed to be an employee, agent, or servant of any other district.

6.5 Entire Agreement.

This Agreement shall constitute the full and complete Agreement between the parties hereto. This Agreement supersedes all prior negotiations, representations or agreements, if any.

6.6 Amendments.

This Agreement may be modified in writing and signed by both parties.

6.7 Invalidity of Provisions of this Agreement.

If, for any reason, any provision hereof shall be determined to be invalid or unenforceable, the validity and effect of the other provisions shall not be affected.

6.8 No Waiver

No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision. Nor shall such waiver constitute a continuing waiver unless otherwise expressed.

6.9 Negotiated Agreement

The provisions of this Agreement are the product of negotiation among all parties and shall not be construed as having been prepared by one party or another. All parties to this Agreement understand their right to seek independent counsel and advice regarding the terms of this Agreement prior to execution of the Agreement.

6.10 Notices.

All notices required or permitted by this Agreement shall be in writing and shall either be hand delivered, sent by telecopy or facsimile, sent by U.S. mail, postage prepaid, addressed as set forth on the signature page hereof. A notice shall be effective either when personally delivered, on the date set forth on the receipt of a telecopy or facsimile, or up-

on the earlier of the date set forth on the receipt of registered or certified mail or on the fifth day after mailing.

Notices shall be delivered to the following individuals on behalf of each party:

For the Newcastle Fire Protection District:

Dave Ward, Chairman of the Board of Directors

Newcastle Fire Protection district

For Penryn Fire Protection District:

Brian Myers, Chairman of the Board of Directors

Penryn Fire Protection District

6.11 Authorized Signatures.

Each party represents and warrants that the signatories to this agreement are legally authorized to sign and enter into this Agreement on behalf of the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

NEWCASTLE FIRE PROTECTION DISTRICT

Date:

By: _____
Dave Ward, Chairman of the Board of Directors

PENRYN FIRE PROTECTION DISTRICT

Date:

By: _____
Brian Myers, Chairman of the Board of Directors

EXHIBIT A:

DESCRIPTION OF TASKS AND SERVICES

The following contains the job description for the Fire Chief. It is agreed to by the parties that this job description describes the tasks and services which the Fire Chief will also perform on behalf of Newcastle pursuant to the Agreement for Shared Administrative Services.

The Fire Chief shall select and appoint individuals to all other positions within the District. All such employees and district officers serve at the will of the Fire Chief with right of appeal to the Board of Directors.

Subject to the supervisory powers of the Board of Directors, the Fire Chief shall perform all duties commonly incident to that office, including management of the day to day affairs of the District.

The Fire Chief or his/her representative shall provide for suitable drills covering the operation and handling of all equipment essential for efficient District Operation. In addition, he/she shall provide instructions in first aid in subjects generally considered essential.

The appointed Assistant Chief and/or Duty Officer shall assume the duties of the Fire Chief, in his/her absence or incapacity and shall perform such other duties as directed by the Chief.

- PERSONNEL , SCHEDULING
- PERSONNEL EVALUATIONS
- DUAL COMPANY OFFICER MEETINGS
- TRAINING, SCHEDULING AND LOCATION OUTLINE
- JOINT COMPANY TRAINING – **MOU SEPARATE FROM CONTRACT**
- PREVENTION, ANNUAL INSPECTIONS ON BUSINESSES – **MOU SEPARATE FROM CONTRACT**
- WILL SERVE LETTERS FOR NEW PROJECTS WITH REVIEW OF PROJECT
- EQUIPMENT & FLEET PROGRAM ALONG WITH REPLACEMENT PLAN
- FINANCES
- FINANCIAL & BUDGETING RECOMMENDATIONS FOR THE NEWCASTLE BOARD
- BILL PAYING AND TRACKING
- PAYROLL & TIME CARDS SUBMITTALS TO COUNTY, WITH UPDATED PAF'S
- PREPARE ANNUAL AUDITS
- PUBLIC RECORDS REQUESTS