

AGREEMENT FOR FIRE CHIEF, DUTY CHIEF, AND ADMINISTRATIVE SERVICES
Between
PLACER HILLS FIRE PROTECTION DISTRICT and
NEWCASTLE FIRE PROTECTION DISTRICT

THIS AGREEMENT FOR FIRE CHIEF, DUTY CHIEF SERVICES, AND ADMINISTRATIVE SERVICES (“Agreement”) is entered into as of the 1st day of July 2019, by and between the Placer Hills Fire Protection District (“Placer Hills”) and the Newcastle Fire Protection District (“Newcastle”).

RECITALS

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

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 Placer Hills Fire Protection District and the Newcastle Fire Protection District have, to their mutual benefit, participated in a shared service agreement for Fire Chief and Administrative Services since 2015, and Duty Chief Services since 2018, and

WHEREAS, the Board of Directors of the Newcastle Fire Protection District desires to Contract with the Placer Hills Fire Protection District for Fire Chief, Duty Chief, and Administrative services; and

WHEREAS, the Board of Directors of the Placer Hills Fire Protection District has agreed by majority vote of the Board to enter into this contract for Fire Chief, Duty 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 July 1, 2019 and continuing through June 30, 2020, provided that it is fully ratified and executed by all parties on or before July 1, 2019. The Agreement is subject to termination pursuant to Article 5 below.

ARTICLE 2
PROVISION OF SHARED SERVICES

- 2.1 Fire Chief, Duty Chief, and District Manager. The parties agree to contract the services of the Placer Hills’ Fire Chief, Duty Chief, and District Manager so that they will also act as the Fire Chief, Duty Chief, and District Manager to Newcastle in addition to their duties as the Fire Chief, Duty Chief, and District Manager for Placer Hills.

- 2.1.1 Scope of Services. The duties and authorities of the Fire Chief, Duty Chief, and District Manager shall be those set forth in the Scope of Services attached hereto as

Exhibit A and incorporated herein by reference. The Fire Chief and Duty Chief have the authority to assign tasks and functions of the referenced Scope of Services to qualified department staff members. The Scope of Services for the Fire Chief, Duty Chief, and District Manager may be amended as appropriate and necessary only with the concurrence of both respective Boards of Directors of the Placer Hills Fire Protection District and the Newcastle Fire Protection District.

- 2.1.2 Division of Service. The parties anticipate that the Fire Chief, Duty Chief, and District Manager will reasonably divide their time between Placer Hills and Newcastle as the duties and responsibilities of each district require. This includes attending Board of Directors meetings and sharing time at the physical location of the fire stations in each District. Both parties understand that there will be times when one district requires more of the Fire Chief's, Duty Chief's, and District Manager's attention than the other. Division and allocation of the Fire Chief's, Duty Chief's, and District Manager's time shall be at the sole discretion of the Fire Chief.
- 2.1.3 Rules and Regulations. The Fire Chief will apply the Placer Hills Fire Protection District Rules, Regulations, Policies and Practices in both jurisdictions with the exception of specific rules and regulations that are unique to the Newcastle Fire Protection District. The Fire Chief and Duty Chief will follow the requirements of the Firefighters Procedural Bill of Rights in both jurisdictions when conducting employee investigations and interviews.
- 2.1.4 Limitations upon Authority to Bind Newcastle. Notwithstanding anything to the contrary contained herein, Placer Hills agrees that the Fire Chief, Duty Chief, and District Manager 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 operation of the fire department in amounts and quantities previously approved in the annual budget;
 - (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;
 - (d) Apply for, solicit, or accept, any grant, donations, contributions by foundations, or the like, that require any financial commitment on the part of the District either initially or in the future; and
 - (e) Execute any lease of real or personal property.

- 2.2 Consideration. Newcastle shall pay Placer Hills the sum of One Hundred and Two Thousand, and Six Hundred Dollars (\$102,600) payable in equal quarterly payments on the first day of each quarter commencing on July 1, 2019, for the services of the Fire Chief, Duty

Chief, and District Manager as described herein. Placer Hills will carry Workers Compensation Insurance for the Fire Chief and Duty Chief, and will cover all if injured while acting as, or responding to, within his/her district or contract district for administrative duties or an emergency incident.

- 2.3 Expenses. Newcastle shall reimburse either Placer Hills 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 (\$1,500).
- 2.4 Salary, Benefits, Vacation, Sick Leave, Holidays. The Fire Chief, Duty Chief(s), and District Manager shall remain employees of the Placer Hills Fire Protection District and the Placer Hills Board shall be responsible for setting and paying the salary and benefits of the Fire Chief, Duty Chief(s), and District Manager. Newcastle shall provide accommodation for vacation, sick leave and holidays as permitted under the employment contract between the Fire Chief and Placer Hills Fire Protection District, and as permitted under the policies and procedures of Placer Hills Fire Protection District. In the event of a long term absence of the Fire Chief (in excess of 30 days), both parties agree to determine alternatives to coverage including temporary suspension of this agreement as it pertains to the Fire Chief services.
- 2.5 Vehicle. The Fire Chief and Duty Chief are currently provided vehicles by Placer Hills and it is anticipated that they will continue to use the vehicles as they are available. They may also transport persons who are not employees of either District in the vehicle in appropriate circumstances. Placer Hills shall maintain adequate liability insurance, maintenance and fuel cards on the vehicles at all times.
- 2.6 Contract Services. Placer Hills retains the right to contract for similar services with other local Fire Service Agencies and, hereby, acknowledges that it currently contracts with Foresthill Fire Protection District and intends, upon approval by both Boards, to continue this contract for fiscal year 2019/2020. This contract with Newcastle is based on Placer Hills providing services to both Newcastle and Foresthill Fire Districts. If Placer Hills anticipates providing services to any other agency, it agrees to reopen the current contract with Newcastle for the purposes of adjusting contract related considerations.

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 solutions within a period of thirty (30) days, any party may terminate this Agreement as provided for in Article 5 below.

ARTICLE 4
INDEMNIFICATION

- 4.1 Indemnification. Each party agrees to defend, indemnify, and save all other parties harmless from any and all claims arising out of said party's employees' negligent acts, errors, omissions or willful misconduct while performing pursuant to this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of said party, its officers, employees, or agents.
- 4.1.1 Each party hereby agrees to defend itself from any claim, action or proceeding arising out of the concurrent acts or omissions of their employees. In such cases, each party agrees to retain their own legal counsel, bear their own defense costs, and waive their right to seek reimbursement of such costs.
- 4.1.2 Notwithstanding the above, where a trial verdict or arbitration award allocates or determines the comparative fault of the members, the members may seek reimbursement and/or reallocation of defense costs, settlement payments, judgments and awards, consistent with said comparative fault.
- 4.1.3 For purposes of this section, the terms "employee" or "employees" shall refer to and include employees, officers, agents, representatives, subcontractors or volunteers.
- 4.1.4 Notwithstanding the foregoing, no employee, officer, agent, representative, subcontractor or volunteer of any party to this Agreement shall be considered an "employee" of any other party to this Agreement for purposes of indemnification.

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 any amount still owed to Placer Hills will be paid on the date of termination of the Agreement or if Newcastle has over paid, then Placer Hills shall reimburse Newcastle on the date of termination of Agreement.
- 5.2 Unilateral Termination. Any party to this Agreement may unilaterally terminate the Agreement by notice to the other party in writing at least ninety (90) 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 party's 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 written notice of such

breach. In the event the breach is not remedied within thirty (30) days of receipt of the written notice, the Agreement may be terminated unless the timelines are extended by mutual agreement.

ARTICLE 6

INSURANCE COVERAGE

- 6.1 Each Party shall provide and maintain either insurance in the form and amounts prescribed below or a statement that the Party is self-insured up to the amount specified below:
- 6.1.1 Commercial General Liability insurance, occurrence form, with the limits of not less than \$1 million each occurrence. The general aggregate limit shall be not less than \$2 million. The fire damage component of such insurance shall be not less than \$100,000.
- 6.1.2 Automobile Liability insurance, occurrence form, with a limit of not less than \$1 million each occurrence. Such insurance shall include coverage for owned, hired, and non-owned automobiles.
- 6.1.3 Workers Compensation in at least the minimum statutory limits. With respect to Workers Compensation coverage, the Party employing the fire department employee will provide Workers Compensation coverage for any injuries sustained in the normal course and scope of the employee's performance of services.
- 6.2 General provisions for all insurance shall include the other Party, its elected and appointed officials, employees, and agents, as additional insureds, except errors and omissions, with respect to this Agreement and the performance of services in this Agreement. Additional insured status under this provision shall be limited to each Party's obligation to indemnify the other as described in Article 4.
- 6.3 No changes in insurance affecting the requirements above may be made without the written approval of all Parties.

ARTICLE 7

MISCELLANEOUS

- 7.1 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, illness, death, or any other casualty or cause beyond either party's control, and which cannot be overcome by reasonable diligence and without unusual expense.
- 7.2 Non-assignability. 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.
- 7.3 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.

- 7.4 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.
- 7.5 Amendments. This Agreement may be modified in writing and signed by both parties.
- 7.6 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.
- 7.7 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.
- 7.8 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.
- 7.9 No Third-Party Beneficiary. This Agreement is only for the benefit of the Parties as municipal or corporate entities and shall not be construed as or deemed to operate as an agreement for the benefit of any third party or parties, and no third party or parties shall have any right of action or obtain any right to benefits or position of any kind for any reason whatsoever.
- 7.10 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 upon 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:

Lawrence Bettencourt, Chairperson of the Board of Directors

For Placer Hills Fire Protection District:

Peter Hills, President of the Board of Directors

7.11 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: _____
Lawrence Bettencourt, Chairperson of the Board of Directors

PLACER HILLS FIRE PROTECTION DISTRICT Date: _____

By: _____
Peter Hills, President of the Board of Directors

EXHIBIT A
SCOPE OF SERVICES

This Scope of Services is intended to be a broad scope of responsibilities for administrative services to be delivered to the Newcastle Fire Protection District by Placer Hills Fire Protection District. In no manner is it meant to be comprehensive, limited, or all-inclusive regarding the roles and responsibilities that will be administered during the duration of this Agreement.

The Placer Hills Fire Protection District (PHFPD) will furnish the following services to the Newcastle Fire Protection District (NFPD):

I. FIRE ADMINISTRATIVE SERVICES

A. Budget

- i. Agreement includes the costs of budgeting and estimating revenues for the NFPD.

B. Labor Management and Memorandum of Understanding

- i. Agreement includes the time and meetings of necessary negotiations with employee bargaining units.
- ii. Agreement does not include any services that may be required to respond to, prepare for, or participate in, any labor arbitration, or labor-related dispute that may be brought in any State of California or Federal tribunal, including by way of illustration, and not limitation, any proceeding before the California Employment Development Department (EDD), California Public Employees Retirement System (CalPERS), National Labor Relations Board (NLRB), California Labor Board, or California Public Employment Relations Board (PERB).
- iii. Any legal fees and costs that may be incurred on behalf of NFPD pursuant to B.ii. shall be solely the responsibility of NFPD.

C. Personnel Management

- i. Agreement includes oversight and managing personnel issues, scheduling and coordinating of new hires and promotions, and work with all employee associations/unions on policy changes needed for a smooth transition.
- ii. Agreement includes administrative services reasonable and necessary to process employee discipline matters appealed through the Board of Directors level.

- iii. Agreement does not include services that may be required to respond to, prepare for, or participate in any dispute involving employee discipline that may be filed in a court of law or otherwise appealed to any tribunal beyond the Board of Directors level.
- iv. Any legal fees and costs that may be incurred on behalf of NFPD pursuant to C.ii. through C.iv. shall be solely the responsibility of NFPD.

D. Allied Agency Interaction

- i. Agreement includes working with the NFPD Board of Directors on budgets, future planning, and cooperation with surrounding public safety agencies to improve levels of service.

E. If anytime NFPD determines that they should have their own District Manager to perform administrative services, both parties to this agreement, will negotiate the financial terms associated with providing services commensurate with the terms of this agreement.

II. OPERATIONAL SERVICES

A. Incident Management

- i. The Agreement includes the management of all NFPD incidents within the district and working with Cal Fire on State Responsibility Incidents.

B. Daily Operations

- i. Agreement includes coordination of activities in major incidents in the NFPD.
- ii. The Agreement includes the cost of an on-duty Duty Officer to coordinate day-to-day operations, provide emergency incident management, and monitor training needs.

C. Staffing Management

- i. The agreement includes day to day staffing to keep Station 41 open 24/7.

D. Promotional Examination Process

- i. The Agreement includes all in-house promotional testing.

E. Dispatch and Communication Services

- i. The Agreement includes oversight for changes in dispatch search orders, response plans, response zones, and incident types.

III. SUPPORT SERVICES

A. Facilities Maintenance and Capital Improvement

- i. The Agreement includes forecasting funding opportunities and estimating costs to upgrade the current apparatus and equipment.

B. Apparatus Equipment Maintenance and Replacement Programs

- i. The Agreement includes forecasting funding opportunities for apparatus and estimating costs for replacement.

IV. FIRE PREVENTION SERVICES

A. Fire Investigations

- i. The Agreement includes all fire investigations.
- ii. Additional rates for fire investigation services not included in the Agreement shall be for any investigations in which any outside agency, the Placer County Sheriff notwithstanding, is called in to assist in the investigation. Included, but not limited to, are outside agencies such as Alcohol, Tobacco, and Firearms (ATF), Federal Bureau of Investigations (FBI), etc.
- iii. NFPD will become active in Sierra-Sac Valley Arson Task Force

B. Public Education

- i. The Agreement includes oversight for the NFPD Public Education Program.
- ii. Public Education Services within the NFPD shall be performed by NFPD personnel.

C. Plan Review, Inspections, Variances, and Development Meetings

- i. The Agreement includes the cost of plan review, inspections, variances, and new development meetings.