

**SECOND AMENDED AGREEMENT BY AND BETWEEN GOLD RIDGE FIRE
PROTECTION DISTRICT AND THE COUNTY OF SONOMA FOR THE RED FLAG
EVENT UP-STAFFING PROGRAM**

This Second Amended Agreement is by and between Gold Ridge Fire Protection District, a public entity (“DISTRICT”), and the County of Sonoma, a political subdivision of the State of California (“COUNTY”).

RECITALS

- A. COUNTY is engaged in a multi-year Fire Services Project to improve the efficiency, effectiveness, and sustainability of fire services in Sonoma County.
- B. The Board of Supervisors formed the Fire Services Advisory Council (“COUNCIL”) on April 19, 2016 and tasked it with making recommendations regarding fire and emergency services in the County, including recommendations to distribute allocated funding.
- C. The Board of Supervisors approved the use of funds remaining in the 2017-18 allocation (approximately \$900,000) be set-aside to reimburse agencies for increased costs during the fire season to enhance fire prevention efforts and to increase the total number of available fire personnel and apparatus that would be available during high fire threat periods (“Red Flag Events”).
- D. The COUNCIL recommended DISTRICT be the agency to administer the enhanced fire prevention efforts during Red Flag Events using the Cal Fire Assistance by Hire Format.
- E. On June 11, 2018, COUNTY and DISTRICT entered into the Agreement By and Between Gold Ridge Fire Protection District and the County of Sonoma for the Red Flag Event Up-Staffing Program (“Original Agreement”).
- F. On January 26, 2021, COUNTY and DISTRICT entered into the Amended Agreement by and Between Gold Ridge Fire Protection District and the County of Sonoma for the Red Flag Event Up-Staffing Program (“Amended Agreement”) to add \$300,000 and to extend the term of the Original Agreement until June 30, 2021.
- G. COUNTY and DISTRICT desire to increase the funding of the Amended Agreement by adding \$400,000 and to extend the term of the Amended Agreement until June 30, 2022.

AGREEMENT

- 1. **RECITALS.**
 - 1.1. All of the foregoing recitals are true and correct.
- 2. **Effect of Amendment.**
 - 2.1. This Second Amended Agreement shall replace and supersede the Amended Agreement in its entirety.
- 3. **Red Flag Event Up Staffing Program.**
 - 3.1 In order to enhance preparedness and operational deployment, the Sonoma County Operational Area will consider up staffing fire resources based on several decision points during the wildland fire season and beyond. Up staffing will be a collective decision made by the Sonoma County Fire Chief’s Conference Call at 11:00 a.m. Monday mornings or on an as needed basis.

- 3.2 Up staffing of Sonoma County fire resources for local response enhancement will be considered using the following criteria. These criteria need to be analyzed for the collective needs of the county with considerations for the entire region. These factors may be considered individually or in unison.
- NWS Red Flag Warning predicted or in effect;
 - NWS High Wind Warning predicted or in effect;
 - Relative Humidity <20% predicted or in effect;
 - Burning Index >100 in Cal Fire Zone 1 or >150 in Cal Fire Zone 2;
 - Cal Fire Severe Weather Forecast Model (LNU Predictive Services);
 - Dry Lightning predicted in the region; and
 - Major Op Area resource drawdown.
- 3.3 Driven from the Operational Area Coordinator or designee, the decision to up staff resources will be a collective decision based on the totality of factors and the greater good of all Sonoma County Zones. This decision can be made due to forecasting or on an as needed basis. The planned Operational Area conference call will look at forecasting the need up staff on a weekly basis. As needed, a conference call can be requested by the Operational Area Coordinator, the REDCOM Duty Officer, or any Sonoma County Fire Chief. The Operational Area Coordinator or designee will maintain ultimate decision-making authority to up staff fire resources.
- 3.4 The up staffing of fire resources will result in the formation of a Sonoma County Task Force consisting of various types of engines, water tenders, and a leader. If available, each Sonoma County Zone will dedicate one up staffed apparatus on a rotational basis. In other words, if possible, the Sonoma County Task Force will be comprised of one apparatus from Zones 2 through 9 to a total of 8 (Zone 2 defined as engines within the Sonoma County Fire and Emergency Services purview). If a Zone is unable to provide apparatus, there will be no penalty and the Task Force will be formed with remaining available resources. Task Force Leaders will be chosen based on a rotational basis as well. The Active Status spreadsheet will be used to maintain fair and equitable opportunities to all agencies in the Operational Area.
- 3.5 Up staffed apparatus will remain housed in their respective districts and respond when dispatched as a Task Force to assemble at the scene. In the event a district requires logistical support (i.e. housing) closer to the core of the Operational Area, other agencies may opt to “host” that up staffed apparatus. The Fire Chief responsible for the up staffed apparatus will express that the expectation is that while not engaged
- 3.6 In emergency response, personnel assigned will remain operationally ready and engaged with the community within Zone. If an immediate need single unit or Strike Team/Task Force request come from an adjoining county the closest resources will be dispatched per REDCOM policies. The up staffed apparatus may then be used to backfill those stations vacated by the request. Should a planned need Strike Team/Task Force be requested through Mutual Aid, the Active Status list will be utilized, keeping up staffed apparatus assigned to the Operational Area available for local needs.
- 3.7 Based on the up staffing decision points and other potential threats to the Operational Area, there may be consideration to up staff two apparatus per zone leading to the development of two Sonoma County Task Forces.
- 3.8 The Operational Area may consider in extreme conditions to up staff local overhead positions dedicated to local response. Some examples may include Battalion Chiefs,

Safety Officers, Division/Group Supervisors, etc.

- 3.9 REDCOM should consider up staffing additional call takers/dispatchers falling into similar guidelines set forth by this document.
- 3.10 Fire Chiefs should consider up staffing additional resources individually based on the forecasted or immediate needs of their jurisdiction. This up staffing will not be eligible for FSAC funding.

4. **DISTRICT'S RESPONSIBILITIES.**

DISTRICT shall complete the following:

- 4.1 **General.** DISTRICT agrees to administer the Red Flag Events Up Staffing Program in accordance with Section 3 of this Agreement. All work shall be performed in accordance with the requirements of applicable federal, state, and local laws.
- 4.2 **Use of Funds.** DISTRICT shall use funds provided by COUNTY to administer the Red Flag Events Up-Staffing Program.
- 4.3 **Indemnification.** DISTRICT agrees to accept all responsibility for loss or damage to any person or entity, including the County of Sonoma, and to indemnify, hold harmless, and release the County of Sonoma and its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including DISTRICT, that arise out of, pertain to, or relate to DISTRICT's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. DISTRICT agrees to provide a complete defense for any claim or action brought against the County of Sonoma based upon a claim relating to DISTRICT's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. DISTRICT's obligations under this paragraph apply whether or not there is concurrent or contributory negligence on the part of the County of Sonoma, but, to the extent required by law, excluding liability due to conduct of the County of Sonoma. The County of Sonoma shall have the right to select its legal counsel at DISTRICT's expense, subject to DISTRICT's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for DISTRICT or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.
- 4.4 **Statutory Compliance/Living Wage Ordinance.** DISTRICT agrees to comply, and to ensure compliance by its subconsultants or subcontractors, with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, DISTRICT expressly acknowledges and agrees that this Agreement may be subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.
- 4.5 **Insurance.** With respect to performance of work under this Agreement, DISTRICT shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Exhibit C, which is attached hereto and incorporated

herein by this reference.

5. **PAYMENT AND TERM.**

5.1 DISTRICT shall be paid on a time and material/expense basis at the then current rate established by the Cal Fire Assistance by Hire Format for personnel and equipment, provided, however, that total payments to DISTRICT shall not exceed \$1,600,00.00 without the prior written approval of COUNTY. DISTRICT shall submit its bills in arrears on a monthly basis in a form approved by COUNTY's Auditor and the Head of the Fire and Emergency services Department.

5.2 Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in substantial conformance with Exhibit "A" to this Agreement. DISTRICT shall also submit a completed FC-33, in substantial conformance with Exhibit "B" to this Agreement, with all invoices to receive payment for the services provided.

5.3 Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the COUNTY shall withhold seven percent of the income paid to DISTRICT for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if DISTRICT does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.

If DISTRICT does not qualify, COUNTY requires that a completed and signed Form 587 be provided by the DISTRICT in order for payments to be made. If DISTRICT is qualified, then the COUNTY requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the DISTRICT agrees to promptly notify the COUNTY of any changes in the facts. Forms should be sent to the COUNTY pursuant to Paragraph 7.10. To reduce the amount withheld, DISTRICT has the option to provide COUNTY with either a full or partial waiver from the State of California.

5.4 Term of Agreement. The term of this Agreement shall be from June 11, 2018 to June 30, 2022, unless terminated earlier in accordance with the provisions of Section 6 below. The County Administrator may extend the term of this Agreement for one (1) additional year by providing notice to District of County's intention to extend the term of this Agreement on or before May 31, 2022.

6. **TERMINATION.**

6.1 Termination Without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, COUNTY shall have the right, in its sole discretion, to terminate this Agreement by giving 5 days written notice to DISTRICT.

6.2 Termination for Cause. Notwithstanding any other provision of this Agreement, should DISTRICT fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, COUNTY may immediately terminate this Agreement by giving DISTRICT written notice of such termination, stating the reason for termination.

- 6.3 Payment Upon Termination. Upon termination of this Agreement by COUNTY, DISTRICT shall be entitled to receive as full payment for all services satisfactorily rendered and reimbursable expenses properly incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by DISTRICT bear to the total services otherwise required to be performed for such total payment; provided, however, that if services which have been satisfactorily rendered are to be paid on a per-hour or per-day basis, DISTRICT shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked prior to the termination times the applicable hourly or daily rate; and further provided, however, that if COUNTY terminates the Agreement for cause pursuant to Paragraph 6.2, COUNTY shall deduct from such amount the amount of damage, if any, sustained by COUNTY by virtue of the breach of the Agreement by DISTRICT.
- 6.4 Authority to Terminate. The Board of Supervisors has the authority to terminate this Agreement on behalf of the COUNTY. In addition, the County Administrator shall have the authority to terminate this Agreement on behalf of the COUNTY.

7. MISCELLANEOUS REQUIREMENTS

- 7.1. Authority to Amend Agreement. Changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties.
- 7.2. No Waiver of Breach. The waiver by COUNTY of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or promise or any subsequent breach of the same or any other term or promise contained in this Agreement.
- 7.3. Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. DISTRICT and COUNTY acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. DISTRICT and COUNTY acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.
- 7.4. No Third-Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.
- 7.5. Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California excluding the law of conflicts. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the County of Sonoma.
- 7.6. Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.
- 7.7. Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure section 1856. Each

Party acknowledges that, in entering into this Agreement, it has not relied on any representation or undertaking, whether oral or in writing, other than those which are expressly set forth in this Agreement. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

- 7.8. Survival of Terms. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- 7.9. Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.
- 7.10 Notices. Method and Place of Giving Notice, Submitting Bills and Making Payments. All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

TO: COUNTY: County Administrator's Office
575 Administration Drive, Suite 104A
Santa Rosa, CA 95403

TO: DISTRICT: Gold Ridge Fire Protection District
4500 Hessell Road
Sebastopol, CA 95472

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

- 7.11 Assignment and Delegation. Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.
- 7.12 Authority. The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of DISTRICT.
- 7.13 Nondiscrimination. Without limiting any other provision hereunder, DISTRICT shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.
- 7.14 Records Maintenance. DISTRICT shall keep and maintain full and complete documentation and accounting records concerning all services performed that are

compensable under this Agreement and shall make such documents and records available to COUNTY for inspection at any reasonable time. DISTRICT shall maintain such records for a period of four (4) years following completion of work hereunder.

7.15 Status of District. The parties intend that DISTRICT, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. DISTRICT is not to be considered an agent or employee of COUNTY and is not entitled to participate in any pension plan, worker’s compensation plan, insurance, bonus, or similar benefits COUNTY provides its employees. In the event COUNTY exercises its right to terminate this Agreement, COUNTY expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed.

GOLD RIDGE FIRE
PROTECTION DISTRICT

COUNTY OF SONOMA

By: _____
Title: _____

By: _____
County Administrator

Date: _____

Date: _____

APPROVED AS TO FORM:

By: _____
Chief Deputy County Counsel