

LIVERMORE-PLEASANTON FIRE DEPARTMENT
JOINT POWERS AUTHORITY

AMENDED AND RESTATED AGREEMENT BETWEEN
THE CITY OF LIVERMORE
AND
THE CITY OF PLEASANTON

February 12, 2018

**AMENDED AND RESTATED AGREEMENT FOR THE
LIVERMORE-PLEASANTON FIRE DEPARTMENT JOINT POWERS AUTHORITY**

This Amended and Restated Agreement for the Joint Powers Authority, dated February 12, 2018, is between the City of Livermore, a general law city ("Livermore"), and the City of Pleasanton, a general law city ("Pleasanton"), collectively referred to as the "Parties".

RECITALS

In 1996, the Parties entered into an agreement dated December 3, 1996 (the "Original Agreement") to create the Livermore-Pleasanton Fire Department Joint Powers Authority (the "Authority") as a separate governmental entity pursuant to the Joint Exercise of Powers Act, Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (commencing with section 6500, *et seq.*) (the "Act") to exercise powers common to Livermore and Pleasanton and powers granted under the Act.

The Authority was created to merge the Parties' individual fire departments and consolidate them into a single fire department to deliver more cost-effective Fire Protection Services, as defined herein, for Livermore and Pleasanton by eliminating duplicative efforts. The management and governance structure for the Authority was established to preserve the ability for Livermore and Pleasanton to each establish the level of service it determines to be appropriate within its own jurisdiction.

On January 31, 1997, a *Notice of Joint Powers Agreement for the Authority* was filed with the Secretary of State pursuant to section 6503.5 of the Act (Attachment A).

In 2000, the Parties entered into an agreement, dated August 1, 2000 (the "2000 Agreement"), that amended the Original Agreement to identify the administrative services contributed by the Parties to the Authority, to define the limits of the Authority's powers relative to personnel, to allow the Authority to acquire assets, to allocate liability, and to provide for legal services.

The Authority has been successful, and the Parties want the Authority to continue providing Fire Protection Services at the level of service that Livermore and Pleasanton each determine to be appropriate for its own jurisdiction. The Parties also want to improve the Authority's efficiency by providing it with additional powers to contract for goods and services, possess personal and real property, and insure against its liabilities to further increase its operational capabilities and efficiencies.

NOW, THEREFORE, Livermore and Pleasanton, for and in consideration of the mutual promises and agreements herein contained, do agree that the Authority shall be managed, governed, operated, and administered as follows:

SECTION 1. DEFINITIONS

Unless the context otherwise requires, the terms defined in this Section 1 shall for all purposes of this Amended and Restated Agreement have the meanings herein specified.

Act. The term "Act" means Articles 1 through 4 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California.

Administrative Services. The term "Administrative Services" means those essential organizational and support services contributed by the Parties and necessary to enable the Authority to provide Fire Protection Services. It includes, but is not limited to, the following categories of services: finance and budget, purchasing, human resources and labor, legal, risk management and workers compensation, city clerk, and information technology.

Amended and Restated Agreement. The term "Amended and Restated Agreement" means this agreement.

Assign. The term "Assign", when used in conjunction with the word "Personnel", means individuals employed by Livermore or Pleasanton, but whose primary work assignment is with the Authority and the majority of their hours worked is for the Authority.

Authority. The term "Authority" means the Livermore-Pleasanton Fire Department Joint Powers Authority.

Board of Directors. The term "Board of Directors" means the Authority's governing board as constituted in Section 5(A).

Contribute. The term "Contribute" means to provide an in-kind service, item, or property.

Cost Allocation Plan. The term "Cost Allocation Plan" means the allocation of administrative costs and assigned personnel by each party, as described in Section 6(A) and the methodology in Attachment C.

Cost Sharing Plan. The term "Cost Sharing Plan" means each Party's responsibility for its share of the costs and supportive services, as described in Section 6(A) and the methodology in Attachment B.

Fire Protection Services. The term "Fire Protection Services" means those services directly related to, and in furtherance of, providing fire prevention, fire suppression, and may, but is not required to, include emergency medical response, hazardous materials response, ambulance transport, disaster

preparedness, fire regulation enforcement (including the Uniform Fire Code, California Health and Safety Code sections 13800 *et seq.*, and such fire code and fire ordinances as may be adopted and revised from time-to-time by Livermore and Pleasanton), emergency rescue, and dispatch services, as well as administration and support necessary to provide those services.

Livermore. The term "Livermore" means the existing municipal corporation known as the City of Livermore, a general law city duly organized and existing under and by virtue of the laws and the constitution of the State of California.

Original Agreement. The term "Original Agreement" means Joint Exercise of Powers Agreement between the City of Livermore and the City of Pleasanton creating the Livermore-Pleasanton Fire Department Joint Powers Authority dated December 3, 1996.

Pleasanton. The term "Pleasanton" means the existing municipal corporation known as the City of Pleasanton, a general law city duly organized and existing under and by virtue of the laws and the constitution of the State of California.

Parties. The term "Parties" means collectively the City of Livermore and the City of Pleasanton.

Real Property Schedule. The term "Real Property Schedule" means the schedule of properties each Party owns and makes available, contributes, or leases to the Authority, as described in Section 6(A) and Attachment E.

Vehicle and Equipment Schedule. The term "Vehicle and Equipment Schedule" means the schedule of vehicles, equipment, and other properties made available, contributed, or leased by each Party to the Authority, as described in Section 6(A) and the template in Attachment D.

2000 Agreement. The term "2000 Agreement" means the Joint Exercise of Powers Agreement between the City of Livermore and the City of Pleasanton creating the Livermore-Pleasanton Fire Department Joint Powers Authority dated August 1, 2000, which revised the Original Agreement.

SECTION 2. PURPOSE

The purpose of the Authority is to operate the Livermore-Pleasanton Fire Department to efficiently provide Fire Protection Services for the Parties at the level of service that Livermore and Pleasanton each determine to be appropriate for its own jurisdiction.

The purpose of this Amended and Restated Agreement is to enumerate the Authority's duties, responsibilities, and powers, which may be amended from time-to-time by the Parties.

SECTION 3. TERM

This Amended and Restated Agreement shall become effective when it has been approved by the City Councils for Livermore and Pleasanton, and shall continue in full force and effect until it is amended by the Parties or the Authority is dissolved. The effective date shall be the date when the agreement has been fully executed by both parties.

SECTION 4. AUTHORITY

A. Creation.

Pursuant to the Act, the Parties created the Authority as a public entity separate and distinct from each of the Parties. Notice of the Original Agreement creating the Authority was filed with the office of the Secretary of State for the State of California, effective January 31, 1997, in the manner set forth in Government Code section 6503.5 (Attachment A).

B. Jurisdiction.

The Authority's jurisdiction is all territory within the jurisdictional boundaries for Livermore and Pleasanton. In addition, the Authority may undertake actions outside its jurisdictional boundaries as may be necessary and incidental to the accomplishment of its purpose, and may provide Fire Protection Services to others as approved by the Board of Directors or by the City Councils for Livermore and Pleasanton.

C. Principal Office.

The principal office of the Authority shall be its headquarters located at 3560 Nevada Street, Pleasanton, California unless otherwise designated by the Joint Executive Directors.

D. Members.

The Parties shall be the only members of the Authority.

E. Officers.

At a minimum, the Authority's principal officers shall be the Joint Executive Directors, a Secretary, and a Treasurer. In its discretion, the Board of Directors may designate additional officers with duties and responsibilities that do not conflict with the duties of the principal officers.

F. Powers.

Except as provided in Section 4(G) *Powers Expressly Reserved to the Parties* below, the Authority is authorized to exercise and shall have all common powers of the Parties to provide Fire Protection Services, including the enforcement of fire codes regulations, at the level of service determined by Livermore and Pleasanton to be appropriate for its own jurisdiction. None of the powers articulated herein shall limit the Parties' ability to act on behalf of the Authority. In addition to those general powers, and not as a limitation thereon, the Authority has the power to:

(1) Adopt rules, regulations, policies, and procedures governing the operation of the Authority;

(2) Make and enter into contracts;

(3) Sue and be sued;

(4) Acquire and maintain insurance of all types;

(5) Set limits for insurance coverage, based on recommendations from the Joint Executive Directors;

(6) Contract with consultants and general service providers;

(7) Acquire, hold, own, operate, maintain, lease, and dispose of personal and intangible property, materials, supplies, and equipment and light duty vehicles, fire trucks, and other vehicles, except that the Parties may contribute or make such items available to the Authority as set forth in Section 6(C);

(8) Acquire, hold, own, operate, maintain, lease, and dispose of real property, except that the Parties may contribute or make such real property available to the Authority as set forth in Section 6(C);

(9) Obtain and secure grant funding from any and all available public and private sources including local, state, and federal government;

(10) Incur debts, liabilities, or obligations, subject to the provisions of this Agreement, as detailed in Section 4(I);

(11) Carry on technical, regulatory, enforcement, and other investigations of all kinds necessary to further the purposes of the Authority;

(12) Pursuant to Section 6505.5 of the Act, invest any money in the treasury that is not required for the Authority's immediate necessities in the manner and upon the same conditions for local agencies pursuant to Section 53601 of the Government Code; and,

(13) Except for the limitations, the Authority shall have all additional powers conferred under the Act or under applicable law, insofar as such additional powers may be necessary to accomplish the purposes set forth in Section 2.

G. Powers Expressly Reserved to the Parties.

The Parties expressly reserve the power, and the Authority shall not have the power, to:

- (1) Exercise the power of eminent domain;
- (2) Impose taxes, assessments, fees, or charges;
- (3) Impose, levy, collect, or cause to be collected, or to receive and use, any impact or development fees on new residential, commercial, and industrial development;
- (4) Form one or more special assessment districts under any legal authority that exists now or in the future, including, without limitation, the Improvement Act of 1911 (Streets and Highways Code section 5000 *et seq.*), the Municipal Improvement Act of 1913 (Streets and Highways Code section 10000 *et seq.*), the Improvement Bond Act of 1915 (Streets and Highways Code section 8500 *et seq.*), and the Marks-Roos Local Bond Pooling Act of 1985 (Government Code section 6584 *et seq.*);
- (5) Form one or more special tax districts under the Mello-Roos Community Facilities District Act of 1982 (Government Code section 53311 *et seq.*) or any other authority that may exist now or in the future;
- (6) Issue bonds; and
- (7) Lease real property for purposes of debt financing.

The Parties expressly reserve the power to exercise any of the above-listed powers on behalf of the Authority, and expressly reserve all of their individual rights and powers to provide Fire Protection Services separately within their respective jurisdictional boundaries.

H. Restriction on the Manner Powers are Exercised.

Pursuant to Section 6509 of the Act, Pleasanton is the party designated for determining the restrictions on the Authority's manner of exercise of its powers.

I. Debts, Liabilities, and Obligations.

Pursuant to Section 6508.1 of the Act, the debts, liabilities, and obligations of the Authority shall not constitute debts, liabilities, or obligations of Livermore or Pleasanton, either jointly or severally without the prior approval of the City Councils for Livermore and Pleasanton. Except, however, liability for pension obligations and past employment retirement benefits for personnel assigned to the Authority by Pleasanton shall be shared by Livermore and Pleasanton, as detailed in a separate agreement adopted by the

respective City Councils for Livermore and Pleasanton and revised from time to time when adjustments to suppression staffing ratios are made. No debt, liability, or obligation of the Authority shall be a lien against any personal property, real property, or vehicle Livermore or Pleasanton contributes or makes available to the Authority, as set forth in Section 6(C), without the prior approval of the City Councils for Livermore and Pleasanton.

J. Personnel Rules and Procedures.

The Authority shall maintain personnel workplace procedures, rules, regulations, and policies. The personnel assigned by one of the Parties to the Authority shall follow the personnel procedures, rules, and regulations of the Authority. All Livermore and Pleasanton employees who provide Administrative Services that are contributed by a Party to the Authority shall follow the personnel procedures, rules, and regulations of the City that employs them.

K. Records Retention.

Pursuant to its retention schedule, the Authority's records shall be retained at its principal office for inspection and copying by the public, unless the Joint Executive Directors direct the records to be retained in a different location as set forth in Section 6(D)(1).

L. Fiscal Matters.

The Authority Treasurer shall establish and maintain such funds and accounts, and keep such financial records, as may be required by good accounting practice, which shall be retained as required by the Authority's retention schedule. The Treasurer shall have the duty and responsibilities set forth in Section 5(G) to maintain said funds and accounts at either Livermore or Pleasanton as designated by the Joint Executive Directors as set forth in Section 6(D)(2).

M. Confidentiality

As provided in Government Code section 54956.96, information from a closed session of the Authority may be shared in closed sessions of the City Councils of Livermore and Pleasanton.

SECTION 5. ADMINISTRATION

A. Board of Directors.

The Board of Directors is the legislative body for the Authority and shall consist of four members. Two Board Members shall be Council Members from Livermore, and two Board Members shall be Council Members from Pleasanton. Livermore and Pleasanton each have the discretion to determine which of its Council Members will be appointed as Board Members to the Board of Directors.

(1) Voting. Each Board Member shall have one vote. The Board of Directors may take action by the affirmative vote of the majority of the entire Board of Directors. Impasse matters may be referred to the City Councils as provided for in Subsection 5(A)(7)(b).

(2) Meetings. The Board of Directors shall hold at least two meetings annually and such additional meetings as may be noticed by the Joint Executive Directors. Meetings shall be held at the Authority's principal office unless the Joint Executive Directors identify an alternative location in the meeting notice.

(a) Quorum. A majority of the Board Members shall constitute a quorum for the Board of Directors to transact business, except that less than a quorum may adjourn meetings from time-to-time.

(b) Legal Notice. All Board of Directors meetings shall be called, noticed, held, and conducted subject to the provisions of the Ralph M. Brown Act (Chapter 9 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California (sections 54950-54961)) or any successor legislation hereinafter enacted.

(c) Minutes. The Secretary shall keep, and the Board of Directors shall approve, the minutes for all Board of Director meetings. The minutes shall be retained as provided for in Section 4(K). Within 30 days of a Board of Directors meeting, the Secretary shall deliver draft minutes to each Board Member and to each member of the City Councils for Livermore and Pleasanton.

(3) Budgeting. The Board of Directors shall annually consider the following for the Authority: budget, Cost Allocation Plan, Cost Sharing Plan, Real Property Schedule, Vehicle and Equipment Schedule, service goals, and service performance standards prepared by the Fire Chief and recommended by the Joint Executive Directors. If the Board recommends any or all of these items, the items shall be referred to the City Councils for Livermore and Pleasanton for consideration and approval. The budget, plans, and schedules for the Authority must be approved by a Council majority for both Livermore and Pleasanton.

(4) Labor Agreements. As may be necessary, the Board of Directors shall consider any labor relations agreements for any personnel assigned to the Authority. The labor negotiators for the Authority shall be the Joint Executive Directors or their designees. For meet-and-confer purposes, the City Councils for Livermore and Pleasanton shall, as provided in Government Code section 54957.6, be authorized to meet in a joint closed session or separately to instruct the Board of Directors and the Authority's negotiators. The Board of Directors and the Authority's negotiators shall negotiate with "Exclusively Recognized Employee Organizations." After the Authority's negotiators and the "Exclusively Recognized Employee Organizations" have reached a tentative agreement, the Board of Directors shall request approval of the tentative agreement by the City Councils for Livermore and Pleasanton, which shall meet separately or jointly to confirm or reject the tentative agreement.

(5) Conflict of Interest Policy. The Board of Directors shall adopt, and thereafter maintain, a local conflict of interest policy for the Authority that complies with the requirements in Government Code section 87300 *et seq.*

(6) Records Retention Schedule. The Board of Directors shall adopt a records retention schedule for the Authority.

(7) Referral to Livermore and Pleasanton City Councils.

(a) The Board of Directors may refer matters to the City Councils for Livermore and Pleasanton, except impasse items as provided in subsection 5(A)(7)(b) below, by an affirmative vote of the majority of the entire Board of Directors. The Board of Directors may reconsider at any time any matter not receiving an affirmative vote of the majority of the entire Board of Directors. Moreover, the Board of Directors may re-refer any matter to the City Councils that does not receive approval by both City Councils.

(b) An impasse item is any matter before the Board of Directors that does not receive an affirmative vote for action by the majority of the entire Board of Directors. If the Board of Directors is unable to reach an affirmative vote after reasonable attempts to reconsider, then the impasse item may be referred to the City Councils for Livermore and Pleasanton, which shall, (i) consider the item independently, and (ii) if, after independent consideration, the matter is still at impasse, the City Councils of Livermore and Pleasanton shall meet jointly in compliance with the Brown Act, at a suitable facility in the Authority's jurisdiction, to consider the impasse matter. An affirmative vote of the majority of the entire City Council for Livermore and an affirmative vote of the majority of the entire City Council for Pleasanton is necessary to take action on an impasse item.

B. Joint Executive Directors.

The Joint Executive Directors shall be the City Managers for Livermore and Pleasanton, who shall be the administrative head of the Authority. The Joint Executive Directors, under the direction and control of the Board of Directors, shall be responsible for the efficient administration of all the affairs of the Authority. The Joint Executive Directors shall prepare a policy that establishes the powers that must be exercised and the decisions must be made jointly, and which may be exercised and made by one of the Joint Executive Directors with notice to the other. In addition to their general powers as administrative head, and not as a limitation thereon, it shall be their joint duty and their joint power to:

- (1) Enforce all laws of the State of California and ordinances of Livermore and Pleasanton for the Authority's role to provide Fire Protection Services, and to see that all contracts, permits, and privileges authorized by the Authority are faithfully observed;
- (2) Control, order, and give direction to the Authority through the Fire Chief;
- (3) Appoint, and when necessary for the good of the Authority, remove the Fire

Chief, who shall be an at will employee;

- (4) Attend all meetings of the Board of Directors unless excused therefrom;
- (5) Keep the Board of Directors at all times fully advised as to the financial condition and needs of the Authority;
- (6) Each year, review with, and recommend to, the Board of Directors a budget for the Authority prepared by the Fire Chief;
- (7) Each year, prepare and recommend to the Board of Directors, a Cost Allocation Plan, Cost Sharing Plan, Real Property Schedule, and Vehicle and Equipment Schedule to establish Livermore's and Pleasanton's respective shares of the Authority's budget taking into account the level of service to be provided to Livermore and Pleasanton and the Parties' contributions to the Authority;
- (8) Instruct the Secretary to prepare and post notices and agendas for Board of Directors meetings to be held at the Authority's principal office or such other designation within the Authority's jurisdiction identified by the Joint Executive Directors; and
- (9) Perform such other duties and exercise such other powers as may be delegated to them from time-to-time by resolution or other action of the Board of Directors.

C. General Counsel.

The General Counsel for the Authority shall be either the City Attorney of Livermore or the City Attorney of Pleasanton, as selected by the Joint Executive Directors, but legal services shall be provided to the Authority by the City Attorney's Offices for both Livermore and Pleasanton. For purposes of attorney-client privilege, the Authority shall have an attorney-client relationship with the City Attorney's Offices of both Livermore and Pleasanton. When a Party contributes Administrative Services or assigns personnel to the Authority, the City Attorney's Office for that Party will be primarily responsible for legal issues related to those individuals, but shall consult with the City Attorney's Office for the other Party. The Livermore City Attorney's Office shall handle legal issues related to City of Livermore ordinances, and the Pleasanton City Attorney's Office shall handle legal issues related to City of Pleasanton ordinances.

D. Fire Chief.

The Fire Chief shall be an at-will employee appointed by the Joint Executive Directors and contributed to the Authority by one of the Parties, or contracted to the Authority by one of the Parties. The Fire Chief shall be the operational head for the Authority. The Fire Chief shall be responsible for the operation of the Authority to provide Fire Protection Services to the Parties under the direction and control of the Joint Executive Directors. In addition to his or her general powers as operational head, and not as a limitation thereon, it shall be the Fire Chief's duty and power to:

(1) Appoint, and when necessary for the good of the Authority, remove any employee assigned to the Authority in accordance with Section 4.J;

(2) Direct all personnel assigned to the Authority;

(3) Attend all meetings of the Board of Directors unless excused therefrom;

(4) Promulgate administrative regulations;

(5) Recommend to the Joint Executive Directors such reorganization of offices, positions, departments, or units under his or her direction, as may be indicated in the interest of efficient, effective, and economical conduct of the Authority's business;

(6) Recommend such measures and ordinances as the Fire Chief deems necessary or expedient for the Authority for the Board of Directors to consider for recommendation to the City Councils for Livermore and Pleasanton, except that no measures or ordinances shall be submitted to the Board of Directors except on report and approval of the Joint Executive Directors;

(7) Each year, prepare and submit to the Joint Executive Directors, a proposed budget, service goals, and service performance standards for the Authority to provide Fire Protection Services determined to be appropriate by Livermore and Pleasanton for their own jurisdictions, and then review and recommend the final budget to the Board of Directors for consideration and approval;

(8) Help the Joint Executive Directors prepare a Cost Allocation Plan, Cost Sharing Plan, Real Property Schedule, and Vehicle and Equipment Schedule to establish Livermore's and Pleasanton's respective shares of the Authority's budget, taking into account the level of service to be provided to Livermore and Pleasanton and the Parties' contributions to the Authority;

(9) Expend budgeted funds, except that no expenditures shall be submitted or recommended to the Board of Directors unless approved by the Joint Executive Directors;

(10) Investigate the affairs of the Authority and any contract, or the proper performance of any obligations of the Authority; and,

(11) Perform such other duties and exercise such other powers as may be delegated from time-to-time by the Joint Executive Directors or by resolution or other action of the Board of Directors.

E. Executive Committee.

An executive committee consisting of the Joint Executive Directors, Fire Chief, General Counsel, and such other persons as may be designated by the Joint Executive Directors shall meet at least every 2 months to review and discuss the operation of the Authority and related subjects specified by the Joint Executive Directors.

F. Secretary.

The Secretary for the Authority shall be the City Clerk for either Livermore or Pleasanton as designated by the Joint Executive Directors in Section 6(D)(1).

The Secretary shall be the custodian of records for the Authority and shall administer its record retention schedule. The Secretary shall prepare and post notices, and prepare and keep minutes, for all Board of Director meetings.

G. Treasurer.

The Treasurer for the Authority shall be the treasurer, Finance Director, Administrative Services Director, or such other individual exercising the responsibilities of the City Treasurer for Livermore or Pleasanton pursuant to Part 1 of Division 3 of Title 4 of the Government Code of the State of California (commencing with section 36500 *et seq.*) as designated by the Joint Executive Directors in Section 6(D)(2).

The Treasurer is the depository of the Authority to have custody of all the money of the Authority, from whatever source, and, as such, shall have the powers, duties, and responsibilities specified in Section 6505.5 of the Act.

The Treasurer shall make, or contract with a certified public accountant or public accountant to make, an annual audit of the accounts and records of the Authority pursuant to Section 6505 of the Act.

The Treasurer shall be the public officer or person who has charge of, handles, or has access to all property of the Authority, and shall file an official bond in the amount of \$25,000 as required by Section 6505.1 of the Act.

SECTION 6. BUDGET CONTRIBUTIONS AND APPOINTMENTS

A. Budget – Cost Allocation Plan, Cost Sharing Plan, Real Property Schedule, and Vehicle and Equipment Schedule.

Concurrent with the annual consideration of the Authority's budget, the City Councils for Livermore and Pleasanton shall also consider: a Cost Allocation Plan that establishes their respective shares of the Authority's budget, taking into account the level of service to be provided to Livermore and Pleasanton and each Party's contributions to the Authority; a Cost Sharing Plan that establishes how various costs shall be shared, such as employee retirement obligations; a Real Property Schedule that lists real property made available, contributed, or leased by each Party; and a Vehicle and Equipment Schedule that lists vehicles and equipment contributed, made available, or leased to the Authority by each Party. If the Authority's budget, Cost Allocation Plan, Cost Sharing Plan, Real Property Schedule, and Vehicle and Equipment Schedule are recommended by the Board of Directors and approved by the City Councils for Livermore and Pleasanton, then Livermore and Pleasanton shall each ensure funding for their respective share in the Cost

Allocation Plan for the Authority's budget for the Fire Protection Services provided and ensure resources listed in the Cost Sharing Plan, Real Property Schedule, and Vehicle and Equipment Schedule are made available to the Authority. The Joint Executive Directors shall meet periodically to evaluate the plans, schedules, and budget to identify and recommend adjustments to the Board of Directors and City Councils. Any adjustment to the plans, schedules, or budget must be recommended by the Board of Directors and approved by the City Councils of Livermore and Pleasanton to become effective.

B. Budget – Funding Allocations

The Parties shall regularly contribute funding to cover the Authority's expenses pursuant to the adopted budget, plans, schedules, and adopted Amended and Restated Agreement. Such funding shall be held in separate dedicated Livermore and Pleasanton funds to be exclusively used to cover the Authority's expenses. The Joint Executive Directors shall periodically compare actual expenditures to the budget and make adjustments as necessary. Any adjustments to the plans, schedules, or budget must be recommended by the Board of Directors and approved by the City Councils of Livermore and Pleasanton to become effective.

C. Personnel, Personal Property, Real Property, Vehicles

The Parties may contribute, assign, or make available to the Authority, by contract or otherwise, the following:

1. Personnel;
2. Personal and intangible property, materials, supplies, and equipment;
3. Real Property; and
4. Light duty vehicles, fire trucks, and other vehicles.

The Cost Allocation Plan, Cost Sharing Plan, Real Property Schedule, and Vehicle and Equipment Schedule shall include an itemized list of all personnel, personal property, real property, and vehicles contributed, assigned, made available, or leased by Livermore and Pleasanton to the Authority.

The Parties may agree to provide personnel to the Authority by contract, and may lease personal property, real property, and vehicles to the Authority, the terms and conditions of which shall be negotiated by the Joint Executive Directors and approved by the Board of Directors and the Party providing the personnel, personal property, real property, or vehicle to the Authority.

The Authority may not sublease or structurally modify any real property contributed or leased to it by Livermore or Pleasanton without the Party's prior written approval.

D. Appointment of Principal Officers.

The Joint Executive Directors shall appoint the following principal officers:

(1) Secretary. The Joint Executive Directors shall appoint the City Clerk for Pleasanton or Livermore as the Secretary for the Authority, and shall designate the location of the repository for the retention of the Authority's records.

(2) Treasurer. The Joint Executive Directors shall appoint the Treasurer, Finance Director, Administrative Services Director, or such other individual exercising the responsibilities of the City Treasurer for Livermore or Pleasanton pursuant to Part 1 of Division 3 of Title 4 of the Government Code of the State of California (commencing with section 36500 *et seq.*) as the Treasurer for the Authority, and may designate the corresponding Finance Department as the depository for the Authority's funds and accounts.

E. Administrative Services.

The Joint Executive Directors may designate staff from either Livermore or Pleasanton to provide Administrative Services for the Authority. The Joint Executive Directors shall create an itemized list of all Administrative Services contributed by Livermore and Pleasanton to the Authority, which list shall be included in the Cost Allocation Plan and distributed to the Board of Directors and the City Councils for Livermore and Pleasanton.

F. Fire Protection Service Revenue.

If one of the Parties contracts with a third party to provide Fire Protection Services and collects revenue and utilizes Authority resources, then it shall be noted in the Authority's budget and reflected in that Party's level of service. That Party shall have the power to direct the Authority to provide such contracted for services on its behalf. All Fire Protection Services revenues received that are exclusive to one party shall be provided directly to that Party and not deposited in the Authority's account, unless the City Council for that Party directs the funds to be deposited in the Authority's account.

G. Fire Stations.

The fire stations used by the Authority shall be constructed, maintained, and insured by and at the sole cost of the city in which the station is located, except for the Authority's headquarters, located at 3560 Nevada Street, Pleasanton, California, and training center, located at 3301 Busch Road, Pleasanton, California. Livermore and Pleasanton shall construct and maintain the Authority's headquarters and Pleasanton shall insure it. The Authority shall own the headquarters' structure, and Pleasanton shall own the real property beneath the structure. Pleasanton shall construct, insure, and own the training center. The maintenance, insurance, operating, and future capital costs for the headquarters and training center shall be shared equally by Livermore and Pleasanton. Pleasanton shall be solely responsible for all costs for the fire station attached to the headquarters. The Authority may not structurally modify a fire station

without the prior written approval of the Party owning the fire station.

SECTION 7. INDEMNITY, INSURANCE, AND WAIVERS

A. Indemnity.

To the maximum extent allowed by California law, and at no expense to the Parties, the Authority shall defend, indemnify, and hold harmless Livermore, Pleasanton, and their respective officials, officers, directors, employees, attorneys, agents, and designated volunteers from and against any and all claims, loss, liability, damage, including but not limited to, reasonable attorney, consultant, and expert fees, and court costs arising out of, or in connection with, this Amended and Restated Agreement and the Fire Protection Services provided by the Authority, except for the gross negligence and willful misconduct of Livermore, Pleasanton, and their respective elected officials, officers, directors, employees, agents, and designated volunteers.

The defense and indemnification obligations in this Amended and Restated Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in Section 7(B).

The indemnity in this Section 7(A) is unlimited as to amount or duration and is binding upon, and inures to the benefit of, the Parties and the Parties' successors and assigns, and shall survive termination of this Amended and Restated Agreement for the full period of time allowed by law.

B. Insurance.

The Authority shall acquire such insurance protection as is necessary to protect the interests of the Authority and the Parties. At a minimum, the Authority shall procure and maintain insurance during the term of this Amended and Restated Agreement under the terms established in Attachment F, in the amounts established by the Board of Directors upon recommendations from the Joint Executive Directors, against claims that may arise from or in connection with this Amended and Restated Agreement. The Authority, at no cost to the Parties, is responsible for the payment of all premiums, deductibles, and self-insured retention amounts for such insurance.

It shall be a requirement under this Amended and Restated Agreement that any available insurance proceeds broader than, or in excess of, the specified minimum insurance coverage requirements and/or limits shall be available to Livermore and Pleasanton. Furthermore, the requirements for coverage shall be (1) the minimum coverage specified in this Amended and Restated Agreement; or (2) the broader coverage of any insurance policy or proceeds available to the Authority; whichever is greater. Coverage limits shall be established by the Board of Directors, as recommended by the Joint Executive Directors. No representation is made that the minimum insurance requirements in this Amended and Restated Agreement are sufficient to cover the Authority's obligations.

The Authority shall maintain the insurance required by this Amended and Restated Agreement for a minimum of five years following the completion of the Fire Protection Services. In the event the Authority fails to obtain or maintain coverage as required by this Amended and Restated Agreement, Pleasanton or Livermore at their sole discretion may jointly or separately purchase the coverage required and the cost will be paid by the Authority.

The premiums for insurance acquired by the Authority, as well as any anticipated funds necessary to pay for self-insured retentions and deductibles for insurance, shall be determined based upon actuarial studies and included in the budget. Any adjustments to the budget to pay for insurance premiums, self-insured retentions, and deductibles shall be prepared by the Fire Chief with the approval of the Joint Executive Directors for presentation to the Board of Directors for recommendation to the City Councils for Livermore and Pleasanton for consideration and approval.

C. Subcontractors.

The Board of Directors shall adopt minimum insurance requirements, as recommended by the General Counsel, Risk Manager, and Joint Executive Directors, for agreements with Subcontractors.

D. Waiver of Right of Contribution.

The Authority hereby waives and relinquishes any right of contribution it may have at any time against the Parties under California Government Code sections 895.2 and 895.6, or otherwise, for any claim for which the Authority is obligated by this Section 7.

E. Waiver of Subrogation.

The Authority agrees to release Livermore and Pleasanton, and waives its rights of recovery against them under the insurance policies required by this Amended and Restated Agreement. The Authority shall ensure that each policy of insurance includes a waiver of subrogation against Livermore and Pleasanton.

F. Settlement Agreements.

The Authority shall not enter into any settlement of any litigation or other proceeding in which the Authority is jointly liable with Livermore or Pleasanton (or would be if joined in the litigation or proceeding) unless the settlement provides for a full and final release of all claims asserted against Livermore and Pleasanton.

SECTION 8. FISCAL YEAR

The fiscal year of the Authority shall be the period from July 1 of each year to and including the following June 30.

SECTION 9. COVENANT NOT TO SUE

The Authority acknowledges that the Parties would not have entered into this Amended and Restated Agreement had they been exposed to damage claims from the Authority for any breach thereof. As such, the Authority and the Parties agree that in no event shall the Authority be entitled to recover damages against the Parties for breach of this Agreement. The Parties further agree that no Party shall be entitled to recover damages against the other Party for a breach of this Agreement. The enforceability and validity of this Section 9 prohibiting the recovery of damages, is part of the bargained for, negotiated consideration for the Parties' agreement to enter into this Amended and Restated Agreement and it is acknowledged that the Parties would not have entered into this Amended and Restated Agreement if they were to be liable in damages under this Amended and Restated Agreement. The Parties' sole relief for a breach of this Amended and Restated Agreement shall be specific performance.

SECTION 10. DEFAULT

In the event that a Party is in default in the performance of any obligation on its part to be performed under the terms of this Amended and Restated Agreement, and such default continues for thirty (30) days (or such longer period of time as is reasonably required to cure such default, provided that the defaulting Party has begun to cure such default as soon as is reasonably feasible) following notice and demand by the non-Defaulting Party for correction thereof to Defaulting Party, then the Non-Defaulting Party may seek the Defaulting Party's specific performance.

SECTION 11. DISPUTE RESOLUTION

A. Informal Resolution.

In the event of a dispute arising out of, or relating to, any term or condition in this Amended and Restated Agreement, any budget, Cost Allocation Plan, Cost Sharing Plan, Real Property Schedule, or Vehicles and Equipment Schedule for the Authority approved by the City Councils for Livermore and Pleasanton, any default specified in Section 10, and any other disagreement related to the Fire Protection Services provided by the Authority, the Joint Executive Directors shall meet informally to resolve the dispute and reach agreement on the proper interpretation of any term or condition, or a cure for the breach.

B. Mediation.

If the Joint Executive Directors cannot reach an agreement after an informal meeting, then they shall participate in good faith mediation proceedings until the earlier of (1) they reach agreement on the relevant issues, or (2) they have completed 16 hours of mediation.

C. Referral to Board of Directors.

If the Joint Executive Directors cannot reach an agreement after mediation, the dispute shall be presented to the Board of Directors to make a determination recommendation to the City Councils for Livermore and Pleasanton to resolve the dispute.

SECTION 12. SEVERABILITY

Should any part, term, or provision of this Amended and Restated Agreement be decided by the courts to be illegal or in conflict with any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms or provisions hereof shall not be affected thereby.

SECTION 13. RESERVED

SECTION 14. SUCCESSORS; ASSIGNMENT

This Agreement shall be binding upon and shall inure to the benefit of the successors of the Parties. Except to the extent expressly provided herein, neither Party may assign any right or obligation hereunder without the consent of the other.

SECTION 15. AMENDMENT OF AGREEMENT

The Authority shall continue to exercise the powers herein conferred upon it until the earlier of the date the Parties terminate this Amended and Restated Agreement or the Authority is dissolved as set forth in Section 16. This Amended and Restated Agreement may be amended, and the powers set forth herein may be changed, restricted, or eliminated by an agreement executed by Livermore and Pleasanton at any time. Any and all amendments shall be filed with the Secretary of State in the manner required by law.

SECTION 16. DISSOLUTION OF AUTHORITY; DISPOSITION OF ASSETS

Either Party may dissolve the Authority for any reason by delivering a written notice of intent to dissolve to the other Party at least 12 months prior to the dissolution date. Immediately following delivery of the notice, the Joint Executive Directors shall negotiate a disposition plan to distribute the Authority's assets, property, and contributions from the Parties, to either the Authority's successor or successors that will provide Fire Protection Services for Livermore and Pleasanton, to the Parties, or for surplus sale. The dissolution plan shall also include a budget for the Authority's operations during the 12 month period leading to dissolution. The disposition plan may also include a plan to dispose of the Authority's assets to satisfy any of its outstanding liabilities. The intent of the Parties is that Livermore, Pleasanton, or a successor that will provide Fire Protection Services for Livermore and Pleasanton, will be encouraged to work towards hiring personnel assigned to the Authority and assume responsibility of their benefits and pension liabilities. The employment liabilities will be included in the disposition plan. The disposition plan shall be approved by the Board of Directors and the City Councils for Livermore and Pleasanton. In the event the disposition plan is not approved by the Board of Directors and City Councils, then each Party's contributions will be returned to that Party, and any

remaining assets will be sold for surplus and the proceeds used to satisfy the Authority's outstanding liabilities, with any remaining proceeds being shared 50/50 by the Parties.

SECTION 17. FORM OF APPROVALS

Whenever an approval is required in this Amended and Restated Agreement, unless the context specifies otherwise, it shall be given, in the case of Livermore, by resolution duly adopted by the City Council of Livermore, and in the case of Pleasanton, by resolution duly adopted by the City Council of Pleasanton, and in the case of the Authority, by resolution duly adopted by the Board of Directors. Whenever consent or approval is required by the Parties or the Board of Directors, the same shall not be unreasonably withheld.

SECTION 18. NOTICES

Notices to Livermore and/or Pleasanton shall be sufficient if delivered to the City Clerk of each City. Notices to the Authority shall be sufficient if delivered to the headquarters, located at 3560 Nevada Street, Pleasanton, California.

SECTION 19. SECTION HEADINGS

All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Amended and Restated Agreement.

Signatures and Attachment List on the Next Page

IN WITNESS WHEREOF, the parties hereto have caused this Amended and Restate Agreement to be executed and attested by their proper officers thereunto duly authorized, and their official seals to be hereto affixed, as of the day and year first above written.

Dated: 2/28/2018


CITY OF LIVERMORE

By: 
Marc Roberts
City Manager

Attest:

By: 
Susan Neer
City Clerk

Approved as to form:

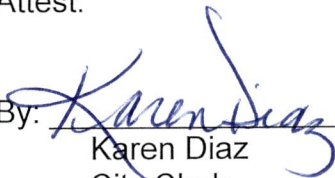
By: 
Jason R. Alcala
City Attorney

Dated: 3/20/18


CITY OF PLEASANTON

By: 
Nelson Fialho
City Manager

Attest:

By: 
Karen Diaz
City Clerk

Approved as to form:

By: 
Daniel G. Sodergren
City Attorney

- Attachment A: Notice of Joint Powers Authority Agreement
- Attachment B: Joint Fire Operations - Cost Sharing Plan Methodology
- Attachment C: Administrative Support Services - Cost Allocation Plan Methodology
- Attachment D: Vehicle and Equipment Schedule
- Attachment E: Real Property Schedule
- Attachment F: Minimum Insurance Requirements

ATTACHMENT A

State of California
Secretary of State

CERTIFICATE OF FILING

I, DEBRA BOWEN, Secretary of State of the State of California hereby certify:

That on the 31st day of January 1997, a Notice of A Joint Powers Agreement was filed in this office in accordance with Section 6503.5 or 6503.7 of the Government Code of the State of California for the following:

Livermore – Pleasanton Fire Department Joint Powers Authority

IN WITNESS WHEREOF, I execute
this certificate and affix the Great
Seal of the State of California this
7th day of November 2013



Debra Bowen

DEBRA BOWEN
Secretary of State



State of California

Bill Jones

Secretary of State

NOTICE OF A JOINT POWERS AGREEMENT

(Government Code Section 6503.5 or 6503.7)

FILE NO. 1559

FILED
In the office of the Secretary of State
of the State of California

JAN 31 1997

Bill Jones
BILL JONES, Secretary of State

(Office Use Only)

Instructions:

Complete and mail to: Secretary of State, P.O. Box 944225,
Sacramento, CA 94244-2250 (916) 653-3984

Include filing fee of \$5.00.

Do not include attachments, unless otherwise specified.

The name of the agency or entity created under the agreement and responsible for the administration of the agreement

LIVERMORE-PLEASANTON FIRE DEPARTMENT JOINT POWERS AUTHORITY

Mailing Address: P. O. BOX 520, PLEASANTON CA 94566-0802

Provide a short title of the agreement, if applicable: Joint Exercise of Powers Agreement between
the City of Livermore and The City of Pleasanton.

The public agencies party to the agreement are:

) City of Livermore

) City of Pleasanton

If more space is needed, continue on a separate sheet and attach it to this form.

The effective date of the agreement is: December 3, 1996

Provide a condensed statement of the agreement's purpose or the powers to be exercised: Management of
fire protection services for both agencies in order to increase effective-
ness and operating efficiency.

Date: January 30, 1997

Peggy L. Ezidro

Signature

Peggy L. Ezidro, City Clerk

Typed Name and Title

ATTACHMENT B

JOINT FIRE OPERATIONS and ASSIGNED PERSONNEL - COST SHARING PLAN METHODOLOGY

All joint fire operating costs of LPFD are summarized and categorized into the following types:

- Administrative
- Prevention
- Suppression
- Emergency Operations
- Capital Replacement

Administrative

These are costs incurred for the general administration and management of the JPA, and include salaries, other employment costs, and supplies necessary for the administration of the JPA. Costs categorized as Administrative are shared 50/50 by both Cities.

Prevention

These are costs incurred for development services (plan checking and inspection services) and include salaries, other employment costs, and supplies. Fifty percent of the costs categorized as Prevention are shared 50/50 by both Cities. The other 50% of these costs are shared proportionally based upon level of service during any given fiscal year. Currently, level of service is measured by number of inspections performed.

Suppression

These are costs incurred for suppression services including salaries, other employment costs, and supplies. Costs categorized as suppression will be shared by both Cities proportionally based upon staffing levels within the suppression function.

Emergency Operations

These are costs incurred for the administration and management of the Emergency Operations function, and include salaries, other employment costs, and supplies. Costs categorized as Emergency Operations are shared 50/50 by both Cities.

Capital Replacement

These are costs incurred for the replacement of significant program equipment, such as SCBA, thermal imaging cameras, and vehicle extraction tools. Costs categorized as Capital Replacement are shared 50/50 by both Cities.

ATTACHMENT C

ADMINISTRATIVE SUPPORT SERVICES - COST ALLOCATION PLAN METHODOLOGY

The Cities shall provide the following administrative support services to LPFD:

- Finance and Budget
- Purchasing
- Human Resources and Labor Relations
- Workers Compensation
- Legal
- Risk Management
- Information Technology
- City Clerk

The City responsible for providing each administrative support service shall be identified in a memorandum of understanding (MOU) signed by each City Manager.

The direct cost to provide each administrative support service shall be periodically calculated by an independent consultant. The Cities shall equally share in the direct cost of the administrative support services.

Pension Related Liabilities (PERS and OPEB)

Methodology of cost allocation of pension related liabilities shall be addressed in a separate MOU, as specified in Section 4.I.

ATTACHMENT E

REAL PROPERTY SCHEDULE

Each City owns the land and facilities that are located in that city and used by LPFD. Each City is responsible for maintenance and upgrades to those facilities with the exception of the training facility and Fire Headquarters located in Pleasanton. The City of Pleasanton owns the training facility land and facilities, but the maintenance and operating expenses and revenues are equally shared by Pleasanton and Livermore. The Fire Headquarters building and related infrastructure are owned by the Authority, and the land upon which the building sits is owned by Pleasanton. The Cities and LPFD shall maintain a real property list identifying the address and the owner. The following is a list of property made available to LPFD and the ownership status:

Pleasanton Real Property

Station 1 & Headquarters Land
3560 Nevada Street
Pleasanton, CA 94566

Station 2
6300 Stoneridge Mall Road
Pleasanton, CA 94588

Station 3
3200 Santa Rita Road
Pleasanton, CA 94588

Station 4
1600 Oak Vista Way
Pleasanton, CA 94566

Station 5
1200 Machado Place
Pleasanton, CA 94566

Training Center
3301 Busch Road
Pleasanton, CA 94566

Livermore Real Property

Station 6
4550 East Avenue
Livermore, CA 94550

Station 7
951 Rincon
Livermore, CA 94550

Station 8
5750 Scenic Avenue
Livermore, CA 94550

Station 9
1919 Cordoba Street
Livermore, CA 94550

Station 10
330 Airway Boulevard
Livermore, CA 94550

LPFD Authority

LPFD Headquarters Building
3560 Nevada Street
Pleasanton, CA 94566

ATTACHMENT F
INSURANCE REQUIREMENTS

Types of Insurance

The Joint Powers Authority (JPA) shall maintain the following insurance, as recommended by the Risk Manager providing risk management services to the Authority:

1. Commercial General Liability, including operations, products, and completed operations, as applicable;
2. Automobile Liability;
3. Workers' Compensation and Employer's Liability;
4. Professional Liability/Errors and Omissions;
5. Pollution Liability; and
6. Directors and Officers.

The Authority may provide required coverage by participating in a California Joint Powers insurance program. Such participation shall be approved by the City Councils of Livermore and Pleasanton.

Deductibles and Self-Insured Retention

All self-insured retentions (SIR) must be disclosed to Risk Management for approval and shall not reduce the limits of liability. Policies containing any self-insured retention (SIR) provision shall provide, or be endorsed to provide, that the SIR may be satisfied by either the named insured or the Cities of Livermore and Pleasanton. The Cities of Livermore and Pleasanton reserve the right to obtain a full certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII and accepted to do business in the State of California, unless otherwise acceptable to the Cities of Livermore and Pleasanton.

Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The Cities of Livermore and Pleasanton, their officers, officials,

employees, and designated volunteers are to be covered as additional insureds for liability arising out of activities performed by or on behalf of the Joint Powers Authority; or automobiles owned, leased, hired or borrowed by the JPA. The coverage shall contain no special limitations on the scope of protection afforded to the Cities of Livermore and Pleasanton, their officers, officials, employees, or volunteers.

2. The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. The additional insured coverage under the JPA's policy shall be primary and non-contributory and will not seek contribution from the Cities' insurance or self-insurance and shall be at least as broad as ISO Form CG 20 10 04 13. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the Cities of Livermore and Pleasanton before the Cities' own insurance or self-insurance shall be called upon to protect it as a named insured.
3. Any failure to comply with reporting or other provisions of the policy, including breaches of warranties, shall not affect coverage provided to the Cities of Livermore and Pleasanton, their officers, officials, employees, or volunteers.
4. The JPA's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party before expiration of the policy unless notice is delivered in accordance with policy provisions.
6. It shall be a requirement under this agreement that any available insurance proceeds broader than, or in excess of, the specified minimum insurance coverage requirements and/or limits shall be available to the additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named Insured; whichever is greater.
7. Certificate Holder section of the insurance certificate should read: City of Livermore, 1052 S. Livermore Avenue, Livermore, CA 94550 AND the City of Pleasanton, 123 Main Street, Pleasanton, CA 94566.

Verification of Coverage

The Joint Powers Authority shall furnish certificates of insurance and endorsement(s) effecting coverage to the Cities of Livermore and Pleasanton for approval. The endorsements shall be on forms acceptable to the Cities of Livermore and Pleasanton. All certificates and endorsements are to be received and approved by the Cities of Livermore and Pleasanton before the agreement is executed. The Cities of Livermore and Pleasanton reserves the right to require complete and certified copies of all insurance policies required by this Agreement.