



**City of Sacramento
City Council**

915 I Street, Sacramento, CA, 95814
www.CityofSacramento.org

Meeting Date: 1/10/2012

Report Type: Consent

Title: Agreement: Fire Protection Service of Natomas Fire Protection District

Report ID: 2012-00038

Location: District 1, 3, 4 and Sacramento County

Recommendation: Pass a motion authorizing the City Manager, or his designee, to execute an agreement for the Sacramento Fire Department to provide fire protection services within the Natomas Fire Protection District, attached hereto as Exhibit A and incorporated by reference.

Contact: Ray S. Jones, Fire Chief, (916) 808-1601, Fire Department

Presenter: None

Department: Fire

Division: Fire Suppression

Dept ID: 12001221

Attachments:

1-Description/Analysis

2-Agreement with Natomas Fire Protection District (Exhibit A)

City Attorney Review

Approved as to Form
Lan Wang
1/4/2012 1:10:28 PM

City Treasurer Review

Reviewed for Impact on Cash and Debt
Russell Fehr
12/19/2011 1:13:02 PM

Approvals/Acknowledgements

Department Director or Designee: Ray Jones - 12/29/2011 12:28:36 PM



Description/Analysis

Issue: The City of Sacramento and the Natomas Fire Protection District initially entered into an agreement in 1984 for the City to provide fire protection services within the District. The contractual arrangement has been mutually beneficial and has proven to be an efficient and effective way to provide fire protection services within the District. It is recommended that the City and District continue the contractual relationship and extend the term for five (5) years to expire on June 30, 2016.

Policy Considerations: Authorization of this agreement is consistent with City Council policy to collaborate with regional partners to enhance the quality of life.

Environmental Considerations: This report concerns administrative activities that will not have a significant effect on the environment, and does not constitute a "project" as defined by the California Environmental Quality Act (CEQA) [CEQA Guidelines Sections 15061 (b)(3); 15378 (b)(2)].

Sustainability: There are no sustainability considerations as listed in the Sustainability Master Plan applicable to approving the agreement between the City and Natomas Fire Protection District.

Commission/Committee Action: This agreement is scheduled to be presented to the County of Sacramento Board of Supervisors for their approval on the morning of January 10, 2012.

Rationale for Recommendation: The contract between the City and Natomas Fire Protection District has been in place for approximately twenty-seven (27) years in which fire service has been provided by the Sacramento Fire Department. The Natomas District is a dependent fire district with no advisory board or staff. The County Board of Supervisors is the Governing Board of the District. This report recommends that the City and District continue the contractual relationship and extend the term of the agreement for five (5) years. All other terms and provisions would remain the same.

Financial Considerations: The City will continue to provide fire protection services to the District's fire service area in exchange for compensation provided by the district's property tax revenue stream, and will be paid over to the City after property tax administration fees and audit fees are paid.

Based on information provided by the County of Sacramento, the projected revenue for FY2011/12 is 1.85 million dollars.

The revenue collected in prior fiscal years is as follows:

- FY2008/09 = 2.05 million dollars
- FY2009/10 = 2.1 million dollars
- FY2010/11 = 1.9 million dollars

During this time, the call volume has varied 3.3% within the Natomas Fire Protection District.

Emerging Small Business Development (ESBD): This report does not involve the procurement of goods or services.

AGREEMENT

This Agreement is made and entered into this _____ day of January, 2012, by and between the City of Sacramento, a chartered city of the State of California (hereafter "City") and the Natomas Fire Protection District, a dependent fire district created under the laws of the State of California (hereafter "District").

RECITALS

WHEREAS, City and District entered into an agreement in August, 1984, for the City to provide fire protection services within the District (City Agreement No. 84-037); and

WHEREAS, on June 21, 1994, City and District entered into a first amendment to City Agreement No. 84-037 (City Agreement No. 84-037-1), on June 22, 2004, City and District entered into a second amendment to City Agreement No. 84-037 (City Agreement No. 84-037-2), and on June 8, 2006, City and District entered into a third amendment to City Agreement No. 84-037 (City Agreement No. 84-037-3); and

WHEREAS, City Agreement No. 84-037, as modified by the first amendment, second amendment, and third amendment to City Agreement No. 84-037 is referred to as the "Original Natomas Fire Protection Services Agreement" and is attached as Attachment "A";

WHEREAS, the term of the Original Natomas Fire Protection Services Agreement expired on June 30, 2011 and the City has continued to provide fire protection services

to the same level as required under the Original Natomas Fire Protection Services Agreement without an agreement with District; and

WHEREAS, City and District agree that the provision of fire protections services to the District by City under the Original Natomas Fire Protection Services Agreement has been mutually beneficial and has proven to be an efficient and effective way to provide fire protection services within the District; and

WHEREAS, City and District desire to enter into this Agreement, which is a retroactive to July 1, 2011, on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, City and District agree as follows:

1) Parties

City is a chartered city of the State of California and its charter permits the City Council to enter into contracts on behalf of City with governmental agencies, including special districts, for various purposes including the provision of fire protection services.

District is a duly established and existing fire protection district and a legal entity existing pursuant to the Health and Safety and Government Codes of the State of California. District is a dependent fire district with Board of Commissioners which has been delegated and has authority from the Board of Supervisors of Sacramento County pursuant to Health and Safety Code Section 13884 to act as agent in managing the

affairs of District. The Board of Supervisors of Sacramento County is the Governing Board of the District.

The execution of this Agreement is specifically authorized pursuant to Section 55632 of the Government Code and Section 13052.5 of the Health and Safety Code.

2) Term of Agreement; Effective Date

This retroactive Agreement shall have an effective date of July 1, 2011, and shall remain in force until June 30, 2016.

3) Purpose and Intent of Parties

This Agreement is consistent with the desires of both parties to continue to provide efficient fire protection within District, and will serve the purposes of the public safety, convenience, economy, and general welfare.

It is the intention of the parties that City shall provide fire protection service to District's fire service area, in exchange for compensation for providing such service, as hereinafter described.

District shall retain its existence as an entity for purposes of governing the operation of District, ensuring compliance with the terms of this Agreement, and receipt, accounting, and disbursement of tax revenues to which District is entitled, or is eligible to receive.

4) City Obligations

a. Fire Protection Service

City agrees to continue fire protection service to District at least at the same level as presently provided by City under the Original Natomas Fire Protection Services Agreement. Provided, however, that as and when additional urban or industrial development occurs in an area within the District, City will provide District with a level of fire protection service to that area comparable to similar areas located within the City. A map of the District boundaries for purposes of providing such services is shown in Attachment "B", attached hereto and made a part hereof. The rendition of said service, the standards of performance, the discipline of employees, and other matters incident to the performance of such services, and the control of personnel shall remain with City. City shall furnish all equipment, maintenance, supplies, and personnel necessary to perform the fire protection service. Prior to moving the location of a fire station or closure of a station, City shall conduct a public hearing for the purpose of receiving and addressing citizen concerns, if any, regarding maintenance of fire protection service.

b. Enforcement Authority

District shall take all necessary legal steps, including amendment of the Sacramento County codes, required to transfer and delegate to City full legal authority to enforce all applicable Uniform Fire Codes together with the County of Sacramento fire regulations; weed abatement ordinances; Uniform Building Code; and any other state and local laws, rules and regulations which District is authorized by law to enforce. Appeals of enforcement actions by City shall be appealable to the Governing Board as provided in the Sacramento County Code.

c. Periodic Reports

City shall provide to District semi-annual written and, if requested, oral reports on fire prevention and suppression activities, and emergency medical services, conducted by the City within District. The oral report, if requested, shall be given by a responsible fire service administrator.

5) District Obligations

a. Payment to City

For each City fiscal year during the term of this Agreement, District shall pay to City one hundred percent (100%) of the revenues (including rollover and contingencies) received by the District for that fiscal year less necessary expenditures. The determination of each year's necessary expenditures shall be made by the Board of Supervisors acting as the Board of Directors of the Natomas Fire Protection District and an approved budget adopted June 30 preceding the fiscal year for which payment is to be made. It is anticipated that necessary expenditures will include, but not be limited to, property tax collection costs, audit costs and Sacramento County Executive administration costs. Any increase over annual expenditures shall require City approval which shall not be unreasonably withheld. Any dispute over a proposed budget expenditure may be submitted to final and binding arbitration. The arbitrations shall be conducted in accordance with the rules and regulations of the American Arbitration Association. The payment shall be made fifty percent (50%) by each January 15 and fifty percent (50%) by each June 30. Additionally, ninety percent (90%) of any District

fund balances as of June 30, 2011 and every June 30 thereafter, shall be paid to City. Such payment shall be made by September 30 each year.

For example, if total revenues received by the District for 2010-11 were \$2 million and necessary expenditures were \$100,000, then payment to the City for 2010-11 would be \$1.9 million (\$2 million - \$100,000).

In no event shall the payment calculated in accordance with this paragraph exceed the District's appropriation limitation specified by Article XIII B of the California Constitution. Provided, however, that the City shall be furnished with and have the right to approve appropriation limitation calculations prior to alteration of the formula calculation specified by this paragraph.

The City shall have the right to inspect all financial records of the District and the District shall have the right to inspect all financial records of the City.

b. District Assets

In consideration of City performing all of its obligations under the Original Natomas Fire Protection Services Agreement and obligations hereunder:

(1) District, under the Original Natomas Fire Protection Services Agreement, transferred to City title to the assets specified in Exhibit "F" and all of District's rights, title and interest in the equipment lease contained in Exhibit "J" of the Original Natomas Fire Protection Services Agreement.

The motorized fire equipment in Exhibit "F" and equipment in Exhibit "J" transferred to City by District which is less than twenty (20) years old at the date of termination of this Agreement shall be returned to District. Any other personal property

and equipment transferred to City and which is still in service at the date of termination shall be returned to District.

During the term of this Agreement City shall maintain the equipment transferred to City hereunder in good condition and repair, reasonable wear and tear excepted.

(2) Real Property

(i) Fire Station Number 1. District, under the Original Natomas Fire Protection Services Agreement, assigned to City District's lease on Station Number 1, attached hereto as Exhibit "G" of the Original Natomas Fire Protection Services Agreement, and City assumed all obligations thereunder. The District's lease on Station Number 1 expired on March 13, 1989 and was followed by a City lease with Reclamation District 1000, included hereto as Attachment "C", which expires on March 12, 2014.

(ii) Fire Number Station 2. District, under the Original Natomas Fire Protection Services Agreement, conveyed to City title to the real property and improvements described as set forth in Exhibit "H" of the Original Natomas Fire Protection Services Agreement and constituting Fire Station Number 2.

(iii) Unimproved Real Property. District, under the Original Natomas Fire Protection Services Agreement, conveyed to City title to the unimproved real property described in Exhibit "I" of the Original Natomas Fire Protection Services Agreement. Prior to improving such real property, City shall obtain approval of District.

Upon termination of this Agreement for any reason, the real property conveyed to City shall be forthwith reconveyed to District, and City if requested by

District shall meet and confer in good faith with Reclamation District 1000 and reach agreement on assignment from City to District of City's lease on Station Number 1 unless the lease has previously expired. Provided, however, that if on the effective date of termination any of such parcels or real property is located within City, then City shall retain title to that parcel and the improvements thereon. Provided further that if as of the effective date of termination City has improved the unimproved property described in Exhibit "I", then District shall reimburse City for the reasonable value of such improvements as a precondition to conveyance of the said property to District.

If City during the term of this Agreement determines to purchase or obtain title to or a lease upon a parcel of real property within the District with the intent to provide a substitute or additional fire house for the District, then City and District shall meet and confer in good faith and reach agreement on the disposition of each property in the event of termination of this Agreement, together with any other related issues.

6) Notice

Any notice, demand, request, consent, or approval that either party hereto may or is required to give the other pursuant to this Agreement shall be in writing and shall be either personally delivered or sent by mail, addressed as follows:

TO CITY

TO DISTRICT

Name: _____

Name: Troy Givans

Title: _____

Title: Interim Manager
Economic Development
Division

Address: _____

Address: 700 H Street, Suite 7640
Sacramento, CA 95814

Either party may change the address to which subsequent notice and/or other communications can be sent by giving written notice designating a change of address to the other party, which shall be effective upon receipt.

7) Indemnifications

A. Indemnification by District. District shall defend, indemnify and hold harmless CITY, its City Council, officers, directors, agents, employees, and volunteers from and against all demands, claims, actions, liabilities, losses (including injury and death), damages, and costs, including reasonable attorneys' fees, arising out of or resulting from the performance of the agreement, caused in whole or in part by the negligent or intentional acts or omissions of District, its Board of Directors, officers, directors, agents, employees, consultants, contractors, subcontractors, or volunteers.

B. Indemnification by CITY. CITY shall defend, indemnify, and hold harmless District, its Board of Directors, officers, directors, agents, employees, and volunteers from and against all demands, claims, actions, liabilities, losses (including injury and death), damages and costs, including reasonable attorneys' fees, arising out of or resulting from the performance of the agreement, caused in whole or in part by the negligent or intentional acts or omissions of CITY, its City Council, officers, directors, agents, employees, consultants, contractors, subcontractors, or volunteers.

C. Comparative Fault. It is the intention of District and CITY that the provisions of this indemnification be interpreted to impose on each party responsibility to the other for the acts omissions of their respective officers, directors, employees, volunteers, Board of Directors, City Council, consultants, contractors, and subcontractors. It is also the intention of District and CITY that, where fault is determined to have been contributory, principles of comparative fault will be followed and each party shall bear the proportionate cost of any damage attributable to the fault of the party, its officers, directors, agents, employees, volunteers, Board of Directors, City Council, consultants, contractors, and subcontractors.

This indemnity shall survive the termination or expiration of the Agreement.

8) Compliance with Laws

City and District shall observe and comply with all applicable Federal, State, and Sacramento County laws, regulations and ordinances. This Agreement shall be

deemed to have been executed and to be performed within the State of California and shall be construed and governed by the internal laws of the State of California. Any legal proceedings arising out of or relating to this Agreement shall be brought in Sacramento County, California.

9) Licenses, Permits, and Contractual Good Standing

- A. City shall possess and maintain all necessary licenses, permits, certificates and credentials required by the laws of the United States, the State of California, County of Sacramento and all other appropriate governmental agencies, including any certification and credentials required by District. Failure to maintain the licenses, permits, certificates, and credentials shall be deemed a breach of this Agreement and constitutes grounds for the termination of this Agreement by District.

- B. City further certifies to District that it and its principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, State or Sacramento County government contracts. City certifies that it shall not contract with a Subcontractor that is so debarred or suspended.

10) Performance Standards

City shall perform its services under this Agreement in accordance with the industry and/or professional standards applicable to fire protection services.

11) City Personnel

- A. It is understood and agreed that City employees are independent to the District. City's assigned personnel shall not be entitled to any benefits payable to employees of Sacramento County. Sacramento County is not required to make any deductions or withholdings from the compensation payable to City personnel under the provisions of this agreement, City hereby indemnifies and holds Sacramento County harmless from any and all claims that may be made against District based upon any contention by any third party that an employer-employee relationship exists by reason of this agreement.
- B. If, in the performance of this agreement, any third persons are employed by City, such person shall be entirely and exclusively under the direction, supervision, and control of City. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by City, and the District shall have no right or authority over such persons or the terms of such employment.
- C. It is further understood and agreed that as an independent contractor and not an employee of Sacramento County, neither the City nor City's assigned personnel shall have any entitlement as a Sacramento County employee, right to act on behalf of Sacramento County in any capacity whatsoever as agent, nor to bind Sacramento County to any obligation whatsoever. City shall not be covered by worker's compensation; nor shall City be entitled to compensated sick leave,

vacation leave, retirement entitlement, participation in group health, dental, life and other insurance programs, or entitled to other fringe benefits payable by the Sacramento County to employees of Sacramento County.

- D. It is further understood and agreed that City must issue W-2 and 941 Forms for income and employment tax purposes, for all of contractors assigned personnel under the terms and conditions of this agreement.

12) Conflict of Interest

- A. City and City's officers and employees shall not have a financial interest, or acquire any financial interest, direct or indirect, in any business, property or source of income which could be financially affected by or otherwise conflict in any manner or degree with the performance of services required under this Agreement.
- B. City shall comply with all certification and disclosure requirements prescribed by Section 319, Public Law 101-121 (31 U.S.C. § 1352) and any implementing regulations.
- C. If services under this Agreement are funded with state funds granted to District, City shall not utilize any such funds to assist, promote or deter union organization by employees performing work under this Agreement and shall comply with the provisions of Government Code Sections 16645 through 16649.

13) Insurance or Self-Insurance

Each party, at its sole cost and expense, shall carry insurance-or self-insure – its activities in connection with this Agreement, and obtain, keep in force and maintain, insurance or equivalent programs of self-insurance, for general liability, workers compensation, property, professional liability, and business automobile liability adequate to cover its potential liabilities hereunder. Each party agrees to provide the other (30) days' advance written notice of any cancellation, termination or lapse of any of the insurance or self-insurance coverages. Failure to maintain insurance as required in this Agreement is a material breach of contract and may be grounds for termination of the Agreement.

14) Subcontracts/Assignment

- a) City shall obtain prior written approval from District before subcontracting any of the services delivered under this Agreement. City remains legally responsible for the performance of all contract terms including work performed by third parties under subcontracts. Any subcontracting will be subject to all applicable provisions of this Agreement. City shall be held responsible by District for the performance of any subcontractor whether approved by District or not.
- b) This Agreement is not assignable by City in whole or in part, without the prior written consent of District.

15) Interpretation

This Agreement shall be deemed to have been prepared equally by both of the parties, and the Agreement and its individual provisions shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

16) Disputes

In the event of any dispute arising out of or relating to this Agreement, the parties shall attempt, in good faith, to promptly resolve the dispute mutually between themselves. Pending resolution of any such dispute, City shall continue without delay to carry out all its responsibilities under this Agreement unless the Agreement is otherwise terminated in accordance with the Termination provisions herein. District shall not be required to make payments for any services that are the subject of this dispute resolution process until such dispute has been mutually resolved by the parties. If the dispute cannot be resolved within 15 calendar days of initiating such negotiations or such other time period as may be mutually agreed to by the parties in writing, either party may pursue its available legal and equitable remedies, pursuant to the laws of the State of California. Nothing in this Agreement or provision shall constitute a waiver of any of the government claim filing requirements set forth in Title 1, Division 3.6, of the California Government Code or as otherwise set forth in local, state and federal law.

17) Termination

Either party may terminate this Agreement upon the substantial failure of performance by the other party, provided such terminating party first transmits written

notice of intent to terminate to the party failing to perform and allows such party a reasonable opportunity to cure or correct said failure of performance

18) Prior Agreements

This Agreement constitutes the entire contract between City and District regarding the subject matter of this Agreement. Any prior agreements, whether oral or written, between City and District regarding the subject matter of this Agreement are hereby terminated effective immediately upon full execution of this Agreement.

19) Amendments

This Agreement may be amended only by written instrument, signed by both City and District as authorized by action of their respective governing boards.

20) Duplicate Counterparts

This Agreement may be executed in duplicate counterparts. The Agreement shall be deemed executed when it has been signed by both parties.

21) Saving Clause

In the event that any part of this Agreement is declared invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be and remain in full force and effect unless the deletion of the invalid or unenforceable portion frustrates the purpose and intent of this Agreement.

22) Authority to Execute

Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement for or on behalf of the parties to this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized.

23) Future Merger/Consolidation

In the event that District lawfully wholly merges or consolidates into City through annexation or otherwise, or in the event that District ceases to exist as a Fire Protection District and City assumes liability for provision of fire protection services within the area shown in Attachment "B", then on the effective date of an such action or event this Agreement shall have no further force and effect; and,

- a) The Natomas-P.E.R.S. Agreement shall be merged with the City-P.E.R.S. Agreement if such merger has not already occurred, and the parties shall take such other steps as P.E.R.S. may require at that time. Provided, however, that District shall not modify its agreement with P.E.R.S. during the term of this Agreement without specific written permission of City first having been obtained.
- b) District shall transfer to City any fund balances or reserves in its accounts.
- c) The parties shall make a good faith effort to reach agreement on all other matters necessary or convenient to the completion of the merger or consolidation transaction, and shall reduce their agreement on all issues to a fully executed agreement.

24) Natomas Public Employees' Retirement System (P.E.R.S.) Agreement

The Parties agree that the District has no further responsibility under the Natomas Public Employees' Retirement System (P.E.R.S.) Agreement. The parties further agree that the City is responsible to P.E.R.S. for any unfunded liability rights or obligations of the District to P.E.R.S.

25) Approval of Board of Supervisors

The parties agree and understand that this agreement requires approval of the Board of Supervisors of the County of Sacramento, and that this agreement shall be of no force and effect unless and until it is so approved.

26) Reopener

Upon mutual agreement of City and District, the parties shall meet and discuss revisions or additions to the terms of this Agreement, and shall endeavor in good faith to reach agreement on said matters.

Provided, however, in the event of a State Legislature change in the amount of or method of allocation of special district augmentation fund money, the parties shall meet and discuss revisions or additions to the terms of this Agreement, and shall endeavor in good faith to reach agreement on said matters.

Dated: January _____, 2012

CITY OF SACRAMENTO,
SACRAMENTO,
A municipal corporation

NATOMAS FIRE DISTRICT

By _____

John Shirey
City Manager

By _____

Navdeep S. Gill
Chief Operations Officer

Approved as to form:

Reviewed and Approved:

By _____

Lan Wang
Deputy City Attorney

By _____

Diane McElhern
Deputy County Counsel

