

AMENDMENT NO. ONE

TO:

AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND SOUTH COUNTY FIRE AUTHORITY FOR HAZARDOUS MATERIALS EMERGENCY RESPONSE TEAM SERVICES

This is the first amendment to the Agreement between the County of San Mateo, hereafter referred to as "County", and/or "Health Services Agency"; and the South County Fire Authority, hereinafter referred to as "Contractor".:

WITNESSETH:

WHEREAS, the parties entered into an Agreement on July 27, 2004 for the Contractor to provide hazardous materials emergency response services for the County of San Mateo; and

WHEREAS, it is now necessary and desirable that the Agreement between County and South County Fire Authority be amended:

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL AGREEMENTS CONTAINED HEREIN AND THE PUBLIC SAFETY BENEFITS THAT WILL RESULT, IT IS HEREBY AGREED BY THE PARTIES THAT THE AGREEMENT IS AMENDED, AS FOLLOWS:

Section I: Section 1, "Schedules" of the Agreement is hereby deleted and replaced with the following revised Section 1:

"1. Schedules

The following schedules are hereto attached and incorporated by reference herein:

Schedule A – Services

Schedule B – Payments and Rates

Schedule A – Services – Revised June, 2006

Attachment One to Schedule A – Services – Revised June, 2006

Schedule B – Budget Process & Payments – Revised June, 2006

Attachment C – Agreement creating the Belmont San Carlos Fire District

Section II: Section 3, "Payments" of the Agreement is hereby amended as follows:

The last sentence of Section 3 is amended to read: *"In no event shall the County's total fiscal obligation under this Agreement exceed Seven Hundred Forty Thousand Dollars (\$740,000)."*

Section III: Section 4, "Term and Termination" of the Agreement is hereby amended as follows:

The second paragraph of Section 4. is amended to read: *"This Agreement may be terminated by Contractor or the Director of County Health Services or San Mateo County Sheriff, or their designees, without a requirement of good cause, upon not less than six months (180 days) written notice to the other party."*

The last two sentences of the third paragraph of Section 4. are replaced in entirety with the following language: *"Provided that Contractor continues to perform work under this Agreement in a manner satisfactory to the Director of County Health Services or the San Mateo County Sheriff, upon notice of six-month termination, Contractor shall be entitled to the final two quarters of payments as set forth in Schedule "B". Said payment shall be pro-rated by day, respectively, in the event the actual termination period is either shorter, or longer, than the specified six-month termination period."*

Section IV: Section 8, "Assignability and Subcontracting", of the Agreement is hereby amended as follows:

In light of the 2006 agreement creating the Belmont San Carlos Fire Department as a successor agency to SCFA, all references to South County Fire Authority are hereby amended to refer to the Belmont San Carlos Fire Department, the successor agency to the SCFA. A true and correct copy of the agreement creating the Belmont San Carlos Fire District is attached hereto and incorporated by reference as exhibit A."

Section V: "Schedule 'A' is hereby deleted and replaced with 'Schedule A, Revised June, 2006,' to read as follows:

SCHEDULE "A" – SERVICES - REVISED JUNE, 2006

I. Services To Be Performed By Contractor

In consideration of the payments specified in 'Schedule B – Budget Process & Payments – Revised June, 2006', Contractor shall perform the services described below in a manner consistent with the terms and provisions of this Agreement, effective July 1, 2006:

- *"The parties hereby acknowledge that improved delineation of responsibilities, cost reimbursements, terms, and administrative processes, including the role of the Countywide Emergency Services Council, as well as the additional administrative duties of the Battalion Chief as set forth in new Attachment One of this Revised Schedule "A", are desirable for the benefit of the parties, and are hereby further incorporated into this Agreement through this Revised Schedule 'A' and Revised Schedule 'B'. "*

- *Contractor is required to staff the Countywide Emergency Services Joint Powers Authority's (CES-JPA) County-wide Hazardous Materials Incident Response Team ('Team') to respond to all "hazmat" emergencies as requested by the cities participating in the CES-JPA.*
- *Contractor shall provide all firefighter personnel necessary to staff the Team. In the event of a hazardous materials incident, the Team shall be dispatched to, and will promptly assess, respond, and mitigate the incident. This may necessitate the wearing of protective equipment; use of specialized detection and mitigation tools, equipment, and supplies; entry into potentially contaminated sites; clean-up and re-packaging of hazardous materials; establishment of a hazardous materials incident command post; coordination with responding County Environmental Health Hazardous Materials Specialists; consultation with other responding public safety personnel, other city/county officials; and with appropriate dispatch personnel; decontamination of victims and Team members; and cordoning off affected areas and sites with direction/assistance to local public safety personnel.*
- *Contractor shall house and protect JPA Hazardous Materials Response vehicle(s) and specialized hazmat response equipment and supplies, and shall maintain an accurate inventory of all JPA-owned hazmat vehicles, equipment and supplies, and supply same to the County Office of Emergency Services on a designated schedule, not more often than quarterly.*
- *Contractor's hazmat team Battalion Chief shall participate in Emergency Services Council meetings and activities, as a working staff member with duties as assigned, similar to other staff including the Sheriff's Office of Emergency Services, and the County Environmental Health Hazardous Materials Program Supervisor.*
- *Contractor's hazmat team Battalion Chief shall perform hazmat team administrative duties, as set forth in the Attachment One to this Revised Schedule A, which attachment is incorporated by reference herein.*

II. Services To Be Performed By County

- *County shall provide the following direct services to Team:*
 - a) *Equipped hazardous materials response vehicle and OES command vehicle(s)*
 - b) *Routine vehicle maintenance that will keep said vehicles available for emergency response*
 - c) *Support for medical monitoring program for up to 24 members, through the JPA contractual budget*
 - d) *Employee training in hazmat site management; hazmat identification; contamination sources & mitigation; personal protection, decontamination, & clean-up procedures; equipment*

usage & diagnostic procedures; and other identified specialized training which County OES and Contractor shall mutually agree is necessary and desirable

e) *On-call County Environmental Health Hazmat Specialist response and diagnostic/handling consultation*

- *County shall provide a designated contract administrator for this Agreement, with contract oversight, budgetary support and consultation to Contractor, for the processes set forth in Revised Schedule B, provided through the County Emergency Services Council staff and said designated contract administrator.”*

Section VI: “Schedule ‘B’ is hereby deleted and replaced with ‘Schedule B, Revised June, 2006,’ to read as follows:

SCHEDULE “B” – BUDGET PROCESS & PAYMENTS - REVISED JUNE, 2006

Amount and Method of Payment – July 1, 2006 through June 30, 2007

In consideration of the services provided by Contractor in ‘Schedule A – Services - Revised June, 2006’ as set forth in this Amendment, County shall determine the annual compensation, and make payments to Contractor, through the process and in the manner hereby established below, effective July 1, 2006:

A. *The process for establishing the annual compensation to Contractor for hazardous materials emergency response (hereinafter referred to as “hazmat”) under this Agreement shall be through the existing budgetary process for the County Emergency Services Council Joint Powers Authority.*

B. *Upon notification by staff of the Emergency Services Council, which shall be in the fiscal period prior to commencement of the new fiscal year on July 1st, Contractor shall submit an annual operating budget for the South County Fire Authority (or successor agency) which shall include the following components:*

1. *A columnarized line-item Annual Operating Budget which shall include the following:*

a. *In columnar form, Contractor’s approved operating budget for the prior fiscal year; Contractor’s actual expenditures against said operating budget for the prior fiscal year; Contractor’s approved operating budget for the current fiscal year; Contractor’s estimated actual expenditures against said operating budget for the current fiscal year; and Contractors proposed operating budget for the upcoming fiscal year.*

b. *In line-item row format, the Annual Operating Budget as described above shall include the following components:*

- 1) *Firefighter hazmat assignment shift differential costs for the projected number of trained firefighters who shall serve on the hazmat team in the upcoming fiscal year, up to a maximum of 24 firefighters;*
 - 2) *The apportioned share of total employee benefit costs which is attributable to the additional hazmat shift differential, provided that said percentage apportionment of total benefit costs does not exceed 4.2% of total Contractor's benefit costs*
 - 3) *An allocation representing the increased risk assessment cost for Worker's Compensation and General Liability Insurance, for Contractor's entire services, resulting from operation of the hazmat team; provided that said allocation does not exceed 7.5% of the cost of Item b 2), above*
 - 4) *Direct annual costs for mandated physical fitness examinations for firefighters serving on the hazmat team;*
 - 5) *Direct costs for hazmat training and training-related travel for firefighters serving on the hazmat team, including the cost of training new/replacement firefighters to serve on the hazmat team, up to a maximum of four new/replacement team members per year; provided that said expense does not exceed 7.5% of the entire hazmat annual operating budget;*
 - 6) *Direct costs for services and supplies related to operation of the hazmat team, provided said expense does not exceed 10% of the entire hazmat annual operating budget;*
 - 7) *An allocation for reimbursement of Contractor's administrative costs for operation of the hazmat team, including, but not necessarily limited to: Contractor's assigned battalion chief's hazmat administrative and supervisory duties, as set forth in Schedule "A"; an allocable portion of Contractor's other battalion chiefs time for hazmat supervisory duties on other work shifts; and general Contractor's management, administration, personnel and fiscal support. Said allocation shall not exceed twenty-five percent (25%) of the combined cost of line items "b 1)" through "b 6)", above.*
2. *A proposed Capital Outlay Budget for the upcoming fiscal year, identifying replacement items of capital equipment. In identifying financial aspects of the proposed capital budget, for any major pieces of equipment, Contractor shall work with County in identifying grant opportunities to funding of same, and shall also explore lease-financing options to amortize the cost over a period of years.*
3. *A Budget Narrative which shall address the following requirements:*

- a. *Identify and discuss changes from the current year approved budget;*
- b. *Identify and discuss any significant issues which could impact Contractor's services in the near-term future;*
- c. *Provide a brief narrative description of Contractor's services for inclusion in the Emergency Services Council proposed budget;*
- d. *Provide key hazmat workload statistics and performance measure information for prior, current, and upcoming fiscal years, as determined in consultation with Emergency Services Council staff.*

C. Contractor shall submit above budget items promptly in accordance with deadlines transmitted by Emergency Services Council staff, and Contractor's designated representative(s) shall attend such staff meetings, and Emergency Services Administrative Committee and Council meetings, as are required for development, review, and presentation of the annual budget. The Emergency Services Council is the final approval authority for the Hazardous Materials Emergency Response budget.

D. Upon approval of the Emergency Services Council budget, Contractor shall submit invoices on a quarterly basis, for an amount equal to one quarter (25%) of the approved annual budget per invoice. Invoices shall be submitted at the beginning of the last month of each quarter. County shall pay Contractor for approved invoices within thirty (30) days of receipt of Contractor's invoice.

E. Extraordinary Events – should Contractor encounter excessive expenses in any quarter during the performance of duties under this contract which are the result of extraordinary events, Contractor should immediately or as soon as possible in an emergency situation, notify County in writing of the circumstances and nature of the costs, even if full accounting for said costs must necessarily follow at a later date.

1. "Extraordinary events" as used herein are defined as a hazmat response resulting from a catastrophic event such as a major natural disaster, act of terrorism, major epidemic or pandemic disease outbreak as declared by the County Public Health Director, catastrophic accident, industrial incident and other event involving the creation and/or release of large and potentially lethal or very injurious quantities of hazardous materials. Major hazmat incident responses, however significant, which remain localized and containable within a team work shift and do not result from nor create a potentially catastrophic situation, are not considered extraordinary events for purposes of this Agreement.

2. In the event of a perceived or potential major hazmat event, an Incident Working Group shall make a decision as to whether the trigger event is determined be an "extraordinary event." Said Incident Working Group shall

consist of the County Environmental Health Hazmat Program Supervisor; the OES Director; Contractor's Hazmat Battalion Chief; the Fire Chief of the impacted City or unincorporated area or designated on-site fire incident commander; and the County Contract Administrator for this agreement, or temporary designee.

3. The working group as defined above shall have the authority, in the event they determine that an incident is an "extraordinary event", to authorize the incurring of extraordinary response expenses as necessary to address the incident, up to a period of 24 hours. Said expenses may be over and beyond the standard level of reimbursement established under this Agreement. As soon as is practical, and prior to the conclusion of the initial 24-hour response period, the appropriate County, City, and OES managers, or designees, shall be notified, and any determination as to the need for further activities beyond the initial maximum 24-hour period established by the Incident Working Group, including incurring of further extraordinary expenses by Contractor, shall be mutually determined by said managers, in such consultative manner as they deem appropriate for the incident.

4. Should an extraordinary event occur, Contractor will, as soon as is possible and practical, document the excess expenses which have been incurred. County agrees to conference in good faith with Contractor at the earliest practical opportunity, for the purpose of mutually reviewing expenses and determining the most expeditious process for reimbursement of Contractor's documented expenses. It is understood by the parties that in such event, the Emergency Services Council will need to be promptly notified and must approve the amount and method of reimbursement.

F. Any other emergent costs or reimbursement requests, including resolution of any prior-year issues, which are related to this Agreement, must be reviewed and mutually agreed upon by all parties, to wit: County, Contractor, and the Emergency Services Council, and documented by way of a Side Letter signed by all parties.

Section VII: In all other terms and particulars, the Agreement between County and Contractor shall remain unchanged.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their signatures:

COUNTY OF SAN MATEO

By: _____
President, Board of Supervisors

Date: _____

ATTEST:

Clerk of Said Board

Date: _____

SOUTH COUNTY FIRE AUTHORITY

By: 
SCFA Chair or Designee

Date: 9-8-2006

ATTACHMENT ONE TO "SCHEDULE A – SERVICES - REVISED JUNE, 2006"

Administrative Duties of Hazmat Battalion Chief

Emergency Response

Respond to all calls for hazmat response service which occur annually during the assigned Hazmat Battalion Chief's duty shift - includes response to emergencies and incident management of scene. (Contractor's remaining two shift Battalion Chiefs will respond to all hazmat calls received annually during their respective shifts.) Be available for consultation to Contractors' other two Battalion Chiefs for specialized handling & response questions & concerns that may arise in response to significant hazmat incidents.

Manage Team Equipment & Gear

Manage hazmat team equipment needs and plan future/replacement needs
Develop and provide specifications for all hazmat specialized equipment
Order approved capital equipment; take possession of said equipment and perform all activities required to bring new equipment to a state of readiness
Inventory and order tools, specialized clothing/gear and small equipment for team as needed
Assess and manage maintenance requirements for all existing team equipment, clothing and gear
Organize multi-agency attendance for equipment demonstrations
Stay current with new developments, equipment, products and services as relate to hazmat response operations

Ongoing Management

Manage requests from team members to replace and upgrade equipment
Manage daily activities as they relate to hazmat operations (staffing, training, purchases, maintenance, etc.)
Coordinate annual physical examinations of team members
Assist in recruitment and provide orientation for new team members
Plan for hazmat team meetings; establish agenda, schedule and chair team meetings
Stay current with statutory changes, new legislation or technical requirements as relate to hazmat operations in San Mateo County / Statewide

Liaison Duties

Serve as primary liaison with County Environmental Health Hazardous Materials Unit Supervisor
Serve as South County Fire Authority staff member for Countywide Emergency Services Council activities
Attend meetings as required, and respond to requests for information or brief reports related to hazmat team activities
Serve as liaison with Fire Authority management and communicate important policy, budget, projects, or other information originating from the Emergency Services Council promptly to authority management
Assist in researching, developing and preparing annual hazmat operating budget and any requested capital equipment budget per Schedule B
Attend meetings and assist in presenting annual budget to the Emergency Services Administrative Committee and Council
Assist in communicating and resolving any billing or other contractual issues, in coordination with County Environmental Health and/or the Emergency Services Council financial manager
Serve as liaison to, and attend meeting as required, with San Mateo County Bomb Squad,

SWAT Team, Public Safety Dispatch Services
Attend meetings as directed by Authority management, to address hazmat issues, with the San Mateo County Fire Chief's Association

Training

Manage and coordinate all hazmat-related team training activities
Establish contacts/plan for in-house training and contracts for outside professional training
Coordinate IEC – refresher training; Military, Coast Guard, San Francisco Airport, and other training programs
Ensure team compliance with legal training requirements

Special Events

Receive and manage annual requests for hazmat-related special event functions including:
“show-and-tell” demonstrations, training sessions, public education events, school events, etc.
Assist Emergency Services Council staff in coordination of fire & hazmat participation in the annual County Emergency Preparedness Day

**AMENDED AND RESTATED JOINT EXERCISE OF POWERS
AGREEMENT FOR THE
BELMONT-SAN CARLOS FIRE DEPARTMENT**

**AMENDED AND RESTATED JOINT EXERCISE OF POWERS
AGREEMENT FOR THE BELMONT-SAN CARLOS FIRE DEPARTMENT**

THIS JOINT EXERCISE OF POWERS AGREEMENT ("Agreement"), is made and entered as of the ___ day of _____, 2006 by and between the City of San Carlos ("San Carlos") a general law city and Belmont Fire Protection District ("Belmont"), a fire-protection district, each duly organized and existing in the County of San Mateo, State of California under the constitution and laws of the state and individually or collectively called Member or Members.

WITNESSETH:

WHEREAS, each of the Members is legally responsible for the provision of fire protection services within its respective jurisdiction; and

WHEREAS, the Joint Exercise of Powers Act (Government Code 6500 et seq, the Act) provides that two or more public agencies may by agreement jointly exercise any powers common to the parties to the agreement and may by that agreement create an entity which is separate from the parties to the agreement; and

WHEREAS, pursuant to the Joint Exercise of Powers Agreement dated July 1, 1979, the Members formed the "South County Fire Protection Authority," a joint powers authority created pursuant to the Act; and

WHEREAS, the Members each delivered notice to the other of its intention to terminate the South County Fire Authority as of June 30, 2006; and

WHEREAS, as a result of lengthy negotiations, the Members both desire to continue receiving their fire services from a restructured joint powers authority (JPA); and

WHEREAS, by this Agreement, the Members desire to amend and restate the prior joint powers agreement and to set forth new terms and conditions governing the management, operation, and financing of what will be called the Belmont-San Carlos Fire Department and to exercise the powers described herein and as provided by law.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions. For the purposes of this Agreement, the following words shall have the following meanings:

“Act” means the Joint Exercise of Powers Act of the State of California, California Government Code Sections 6500 et seq., as they now exist or may hereafter be amended.

“Area” means the combined aggregate jurisdictional service areas of the Members as they now exist and as they may hereafter be modified by annexation of territory to or exclusion of territory from the boundaries of either of the Members. The combined aggregate service areas of the Members as they now exist are delineated on the map attached hereto as Exhibit A and hereby made a part of this Agreement.

“Agreement” means this Joint Exercise of Powers Agreement.

“Belmont” means the Belmont Fire Protection District, a subsidiary district of the City of Belmont duly organized and existing in the County under the Constitution and laws of the state.

“Board of Directors” or “Board” means the governing body of the Department.

“Bonds” means bonds, notes or other obligations of the Department issued pursuant to any provision of law which may be used by the Department for the authorization and issuance of bonds, notes or other obligations.

“Bond interest and redemption expenses” means those sums of money required to be expended by the Department from any bond interest and redemption fund to be established and maintained by the Department for the payment of principal of and interest on bonds (if any) issued pursuant to this Agreement.

“Bond Law” means Article 2 of the Act, as now or hereafter amended, or any other law hereafter legally available for use by the Department in the authorization and issuance of bonds to finance needed public facilities or services.

“Controller” means the Controller of the Department designated pursuant to Section 4.8 of this Agreement.

“County” means the County of San Mateo, State of California.

“Department” means the Belmont-San Carlos Fire Department, the joint powers authority established by this Agreement as authorized by Government Code Section 6503.5.

“Fiscal year” means the period from July 1st to and including the following June 30th, or such other period as the Board may specify by resolution.

“Funding Effective Date” means the date on which payment is first due to the Department as shown on a bill, if one revenue measure is proposed by the Department, or the later of the first due dates as shown on bills, if measures are proposed by each of the Members.

“Joint Facilities” means all existing fire-protection facilities, equipment, resources and property to be managed and operated by the Department pursuant to Sections 2.2 and 5.4 hereof, and, if and when acquired or constructed, any improvements and additions thereto and any

additional facilities or property acquired or constructed by the Department or either of the Members.

“Major Decision” is defined in Section 4.2 of this Agreement.

“Measure” or “Measures” means a revenue measure proposed in the twelve months following the effective date of this Agreement by the Department or two revenue measures, one proposed by each Member in the twelve months following the effective date of this Agreement, to assist the Members in funding their financial obligations to the Department under this Agreement. If two revenue measures are proposed, “success of the measure” shall mean successful approval of both measures within the twelve months following the effective date of this Agreement as specified in Section 2.3.

“Member” means each party to this Agreement.

“Operating Fund” is defined in Section 5.4 of this Agreement.

“Party” means a Member.

“San Carlos” means the City of San Carlos, a municipal corporation and general law city duly organized and existing in the County under the constitution and laws of the state.

“Secretary” means the secretary of the Department appointed pursuant to Section 4.7 of this Agreement.

“State” means the State of California.

“Treasurer” means the Treasurer of the Department designated pursuant to Section 4.8 of this Agreement.

ARTICLE II

GENERAL PROVISIONS

Section 2.1. Belmont-San Carlos Fire Department. (a) Pursuant to Section 6503.5 of the Act, the parties hereby recognize and confirm the continued existence of a public entity separate and independent from the Parties hereto, hereafter to be known as the “Belmont-San Carlos Fire Department,” pursuant to the terms and conditions set forth in this Agreement.

(b) Within thirty (30) days after the effective date of this Agreement and after any amendment, the Department shall cause a notice of such Agreement or amendment to be prepared and filed with the office of the California Secretary of State containing the information required by California Government Code Section 6503.5.

(c) Within ten (10) days after the effective date of this Agreement, the Department shall cause a statement of the information concerning the Department, required by California Government Code Section 53051, to be filed with the office of the California Secretary of State

and with the County Clerk, amending and clarifying the facts required to be stated pursuant to subdivision (a) of Government Code Section 53051.

Section 2.2. Purpose. The purpose of the Department is to exercise the common powers of the Members to manage, operate and maintain the Joint Facilities and to implement the financing, acquiring and constructing of additions and improvements to the Joint Facilities to provide the Area with efficient and economical fire protection service, and, if necessary, to issue and repay Bonds of the Department. Each of the Members is authorized to exercise all such powers (except the power to issue and repay revenue Bonds of the Department) pursuant to its organic law and the Department is authorized to issue and provide for the repayment of Bonds pursuant to the provisions of the Bond Law or other applicable law.

Section 2.3. Effective Date. This Agreement shall be effective as of July 1, 2006.

Section 2.4. Term. This Agreement shall continue in effect until such time as all of the following have occurred: (i) all Bonds, if any, and the interest thereon issued by the Department under the Bond Law, the Act or other applicable law have been paid in full or provision for such payment shall have been made, (ii) the Department and the Members shall have paid all sums due and owing pursuant to this Agreement or pursuant to any contract executed pursuant to this Agreement, and (iii) dissolution has occurred pursuant to Section 3.4.

ARTICLE III

POWERS AND OBLIGATIONS OF DEPARTMENT

Section 3.1. General Powers. The Department shall have the power in its own name to exercise any and all common powers of its Members reasonably related to the purposes of the Department, including, but not limited to, the powers to:

- (a) Seek, receive and administer funding from any available public or private source, including grants or loans under any available federal, state and local programs for assistance in achieving the purposes of the Department;
- (b) Contract for the services of engineers, attorneys, planners, financial and other necessary consultants;
- (c) Make and enter into any other contracts;
- (d) Employ agents, officers and employees;
- (e) Acquire, lease, construct, own, manage, maintain, dispose of or operate (subject to the limitations herein) any buildings, works or improvements;
- (f) Acquire, hold, manage, maintain, or dispose of any other property by any lawful means, including without limitation gift, purchase, eminent domain, lease, lease-purchase, license or sale;

(g) Incur all authorized debts, liabilities, and obligations, including issuance and sale of bonds, notes, certificates of participation, bonds authorized pursuant to the Marks-Roos Local Bond Pooling Act of 1985, California Government Code Sections 6584 et seq. (as it now exists or may hereafter be amended) or any other legal authority common to the Members and such other evidences of indebtedness, subject to the limitations herein; and

(h) Receive gifts, contributions and donations of property, funds, services and other forms of financial or other assistance from any persons, firms, corporations or governmental entities; and

(i) Sue and be sued in its own name; and

(j) Seek the adoption or defeat of any federal, state or local legislation or regulation necessary or desirable to accomplish the stated purposes and objectives of the Department; and

(k) Adopt rules, regulations, policies, bylaws and procedures governing the operation of the Department;

(l) To invest any money in the treasury pursuant to California Government Code Section 6505.5 that is not required for the immediate necessities of the Department, as the Department determines is advisable, in the same manner and upon the same conditions as local agencies, pursuant to Section 53601 of the California Government Code as it now exists or may hereafter be amended;

(m) Carry out and enforce all the provisions of this Agreement; and

(n) Exercise all other powers not specifically mentioned herein, but common to Members, and authorized by California Government Code Section 6508 as it now exists or may hereafter be amended

Section 3.2. Specific Powers and Obligations.

(a) Audit. The records and accounts of the Department shall be audited annually by an independent certified public accountant and copies of such audit report shall be filed with the State Controller, the County Auditor, and shall be provided to each Member no later than fifteen (15) days after receipt of such audit reports by the Department.

(b) Securities. The Department may use any statutory power available to it under the Act and any other applicable laws of the State of California, whether heretofore or hereinafter enacted or amended, for issuance and sale of any revenue bonds or other evidences of indebtedness necessary or desirable to finance the exercise of any power of the Department, and may borrow from any source including, without limitation, the federal government, for these purposes.

(c) Liabilities. The debts, liabilities and obligations, whether contractual or non-contractual, of the Department shall be the debts, liabilities and obligations of the Department alone, and not the debts, liabilities and obligations of the Members.

(d) Hold Harmless and Indemnification. To the fullest extent permitted by law, the Department agrees to save, indemnify, defend and hold harmless each Member from any liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorneys fees and costs, court costs, interest, defense costs, and expert witness fees, where the same arise out of, or are in any way attributable in whole or in part, to negligent acts or omissions of the Department or its employees, officers or agents or the employees, officers or agents of any Member while acting within the course and scope of an agency relationship with the Department.

(e) Manner of Exercise. For purposes of California Government Code Section 6509, the powers of the Department shall be exercised subject to the restrictions upon the manner of exercising such powers as are imposed upon the City of San Carlos, a general law city.

(f) Review of Agreement. This Agreement shall be reviewed every four (4) years by the Members, but its terms and conditions may be reviewed more frequently whenever the Members agree to do so.

Section 3.4. Dissolution of Department.

(a) Notice. If the Measure is not successful, either Member can dissolve the Department effective June 30, 2007 by giving written notice prior to December 31, 2006. If the Measure is successful, the Department shall dissolve, and its assets be distributed in accordance with the provisions of this Agreement, upon written notice by either Member of its intention to dissolve the Department, provided that such notice shall be given eighteen (18) months prior to the date of dissolution.

(b) Distribution of Funds and Property. If either Member gives notice of its intent to dissolve the Department pursuant to Section 3.4(a) above, any remaining funds, property or other assets of the Department, including all revenues generated by the Measure, following discharge of all debts, liabilities and obligations of the Department, shall be distributed to the Members. The formula used to pay off any remaining unfunded liabilities at the time of dissolution, as well as to divide the assets, shall be (i) equal shares between or among the Members until the Funding Effective Date or (ii) the average of the annual funding formulas that have been in effect from the Funding Effective Date through the fiscal year in which notice of intent to dissolve the Department is given. If Belmont gives notice of its intent to dissolve the Department prior to July 1, 2016, it shall also make payments to San Carlos as shown in the schedule attached hereto as Exhibit B. The Members acknowledge that the real property used by the Department as of the effective date of this Agreement is owned by the Members and will not be distributed according to this formula, but shall remain vested in the Member which owns each parcel.

ARTICLE IV

ORGANIZATION, GOVERNANCE AND FUNCTIONS OF DEPARTMENT

Section 4.1. Governing Board. (a) The Board shall govern the District in accordance with this Agreement and shall have two (2) Boardmembers per Member. Two (2) Board members shall be appointed by the legislative body of each Member from among the members of

that legislative body. Each Boardmember shall serve for a term of one calendar year, although a Boardmember may be removed during his or her term or reappointed for multiple terms at the pleasure of the appointing authority.

(b) All voting power of the Department shall reside in the Board.

(c) Each Boardmember shall cease to be a member of the Board when such member ceases to hold office on the legislative body of the Member that appointed him or her. Vacancies shall be filled by the respective appointing Member in the same manner as initial appointments.

(d) The legislative body of each Member shall appoint an alternate member of the Board who shall serve in the absence of either Boardmember representing the Member for which the alternate is appointed. Alternates have no voting power other than when serving for an absent Boardmember.

Section 4.2. Major Decisions; Tie Votes. Major decisions are approval or amendment of an annual budget, approval or amendment of labor agreements, declaring impasse in labor negotiations, approving changes in the level of service during a fiscal year from the levels specified in the approved budget, issuing a Bond or incurring any other debt in excess of \$100,000_[nw1] which is not expected to be repaid within twelve months, and accepting another public agency as a Member. The Board may not take final action on Major Decisions without the prior consent of all Members following a recommendation to those Members by the Board. The Board may refer items other than Major Decisions to the Members for review and direction prior to taking action if the Board so desires and shall refer to the Members any decision as to which a tie persists among the Boardmembers for 60 days as provided in Section 7.2 below.

Section 4.3. Compensation and Expense Reimbursement. All Board members shall receive a stipend per meeting attended as the Member's voting representative upon the enactment of a resolution of the Board to authorize such stipends. Each Board member shall be reimbursed for reasonable and necessary expenses actually incurred in the conduct of the Department's business, pursuant to an expense reimbursement policy established by the Board in full accordance with all applicable statutory requirements_[nw2].

Section 4.4. Voting. All actions of the Board shall require the vote of at least three (3) Board members present and voting. Board members may not cast proxy or absentee votes. Each member shall have an equal vote. Tie-breaking procedures are specified in Section 7.2 below.

Section 4.5. Conflicts of Interest.

(a) Political Reform Act. Board members shall be considered "public officials" within the meaning of the Political Reform Act of 1974, as amended, and its regulations, for purposes of financial disclosure, conflict of interest and other requirements of such Act and regulations, subject to a contrary opinion or written advice of the California Fair Political Practices Commission. The Department shall adopt a conflicts of interest code in compliance with the Political Reform Act.

(b) Levine Act. Board members are “officials” within the meaning of California Government Code Section 84308 et seq., commonly known as the “Levine Act,” and subject to the restrictions of such act on the acceptance, solicitation or direction of contributions.

Section 4.6. Board Meetings

(a) Time and Place. The Board shall meet at the principal office of the Department, or at such other place designated by the Board if notice is provided in the manner of notice of an adjourned meeting under the Ralph M. Brown Act, California Government Code Section 54950 et seq. The time and place of regular meetings of the Board shall be designated by resolution adopted by the Board, a copy of which shall be furnished to each Member at least ten (10) days prior to the next such regular meeting.

(b) Call and Conduct. All meetings of the Board shall be called and conducted in accordance with the provisions of the Ralph M. Brown Act and other applicable law.

(c) Quorum. Three (3) Board members shall constitute a quorum of the Board required to conduct the business of the Department.

(d) Rules. The Board may adopt from time to time such bylaws, rules, and regulations for the conduct of meetings of the Board and of the affairs of the Department as are consistent with this Agreement and other applicable law.

(e) Minutes. The Secretary shall cause minutes of all meetings of the Board to be drafted and mailed to each Member promptly after each meeting. Upon approval by the Board, such minutes shall become a part of the official records of the Department.

Section 4.7. Officers. (a) The Board shall elect a Chair and Vice-Chair from among its members, and shall appoint a Secretary who may, but need not, be a member of the Board. The Chair and Vice-Chair shall serve for a term of one year or such other period of time as may be designated in rules or bylaws established by the Board. The officers shall perform the duties normal to said offices as described below.

(b) Chair. The Chair shall preside over all meetings of the board and shall sign all contracts on behalf of the Department, except contracts that the Board may authorize the Fire Chief or another officer, agent or employee of the Department to sign. The Chair shall perform such other duties as may be imposed by the Board in accordance with law and this Agreement.

(c) Vice-Chair. The Vice-Chair shall act, sign contracts and perform all of the Chair’s duties in the absence of the Chair.

(d) Secretary. The Secretary shall countersign contracts signed on behalf of the Department, and shall be the official custodian of all records of the Department. The Secretary shall attend to such filings as required by applicable law. The Secretary shall perform such other duties as may be imposed by the Board.

Section 4.8. Controller and Treasurer. The Finance Director of Belmont and City Treasurer of Belmont are hereby respectively designated as the Controller and Treasurer of the

Department. The Treasurer shall be the depository and shall have custody of all of the accounts, funds and money of the Department from whatever source. The Controller and the Treasurer shall perform the duties and functions and shall assume the obligations and authority set forth in Sections 6505 and 6505.5 of the Act and shall ensure that there shall be strict accountability of all funds and reporting of all receipts and disbursements of the Department. The Board may appoint other persons possessing the qualifications set forth in Government Code Section 6505.5 to either or both of these offices with the approval of all Members.

Section 4.9. Legal Advisor. The Board shall appoint a legal advisor for the Department who shall perform such duties as may be prescribed by the Board. Subject to such provisions of the Rules of Professional Conduct and other law as may apply, the City Attorney of San Carlos or the General Counsel of Belmont may serve as Legal Advisor for the Department.

Section 4.10. Fire Chief. The Board shall hire, evaluate, and terminate the Fire Chief, who shall be the chief executive officer of the Department and shall report to the Board. The Fire Chief shall have the power to hire, evaluate and discharge all subordinate employees of the Department. The Fire Chief shall consult with the City Managers of Belmont and San Carlos on every Major Decision prior to presentation of these items to the Board for action but any alleged failure to do so shall have no effect on the validity of action taken provided that the Major Decision is approved by the Board and the Members as required by this Agreement.

Section 4.11. Finance and Human Resources. The Department shall contract with Belmont for finance and human resources services. These services shall be evaluated during each review of this Agreement as provided for in Section 3.2(f), or when directed by the Board. Upon any such review, Belmont and San Carlos may each submit a proposal for the Board's consideration and, if neither does so, the Board may contract with another qualified public or private entity to provide those services or retain staff to provide those services directly. A Member providing these services shall give the Department and the other Members six (6) months' written notice of its intention to cease providing these services^[nw3].

Section 4.12. Additional Officers and Consultants. The Board may appoint any additional officers deemed necessary or desirable. Such additional officers also may be officers or employees of a Member or of the Department. The Board may also retain such other consultants or independent contractors as may be deemed necessary or appropriate to carry out the purposes of this Agreement.

Section 4.13. Bonding Requirements. The officers or persons designated to have charge of, handle, or have access to any funds or property of the Department shall be so designated and empowered by the Board. Each such officer or person shall be required to file an official bond with the Department in an amount established by the Board. Should the existing bond or bonds of any such officer or persons be extended to cover the obligations provided herein, said bond shall be the official bond required herein. The premiums on any such bonds attributable to the coverage required herein shall be appropriate expenses of the Department. If it is prudent to do so, the Department may procure a blanket bond on behalf of all such officers and persons.

Section 4.14. Status of Officers and Employees. All of the privileges and immunities from liability, exemption from laws, ordinances and rules, all pension, relief, disability, worker's

compensation, and other benefits which apply to the activity of officers, agents, or employees of the Department when performing their respective functions within the territorial limits of a Member shall apply to them to the same degree and extent while engaged in the performance of any of their functions and duties under the provisions of this Agreement and Chapter 5 of Division 7 of Title 1 of the California Government Code, commencing with Section 6500. However, none of the officers, agents or employees appointed by the Board shall be deemed to be employed by any of the Members or to be subject to any of the requirements of such Members by reason of their employment by the Department.

Section 4.15. Committees. The Board may create permanent or ad hoc committees to give advice to the Board of Directors on such matters as may be referred to such committee by the Board. Qualified persons shall be appointed to such committees by the Board and each such appointee shall serve at the pleasure of the Board. All regular, adjourned and special meetings of such committees shall be called and conducted in accordance with the applicable requirements of the Ralph M. Brown Act, Government Code Section 54950 et seq., as it now exists or may hereafter be amended, and all other applicable law.

ARTICLE V

OPERATIONS AND FACILITIES

Section 5.1. Principal Office. (a) The principal office of the Department shall initially be the current offices maintained by the South County Fire Protection Authority in the City of San Carlos. The Department may establish another principal office from time to time by resolution of the Board.

(b) The Department shall initially lease space for its principal office from San Carlos. This lease shall be evaluated during each review of this Agreement as provided for in Section 3.2(f), or when directed by the Board. Upon any such review, Belmont and San Carlos may each submit a proposal for the Board's consideration and, if neither does so, the Board may arrange to lease space from another landlord. A Member providing space shall give the Department and the other Members six (6) months written notice of its intention to cease providing that space^[nw4].

Section 5.2. Assumption of Responsibilities by the Department. As soon as practicable after the effective date of this Agreement, the Members shall appoint their representatives to the Board and the Fire Chief shall give notice of an organizational meeting of the Board. At said meeting the Board shall provide for its regular meetings, shall elect a Chair and Vice-Chair, and shall appoint a Secretary as prescribed in Article IV. The Fire Chief shall give notice of an organization meeting of the Board annually thereafter.

Section 5.3. Delegation of Powers; Transfer of Records, Accounts, Funds and Property. Each of the Members hereby delegates to the Department the power and duty to maintain, operate, manage and control all of the fire protection facilities, equipment, resources and property of the former South County Fire Protection Authority, and of each of the respective Members within their territorial jurisdictions, as well as those a Member or the Department may acquire in the future, including without limitation all fire stations, land, buildings and fire-fighting equipment, and to employ the necessary personnel and to do any and all other things

necessary or desirable to provide continued, efficient, and economical fire protection services to the Area. The facilities managed by the Department as provided in this paragraph constitute the Joint Facilities.

Section 5.4. Joint Fire Protection Maintenance and Operation Fund; Reserves and Capital. The Board shall assume responsibility and control over the joint fire protection maintenance and operation fund (herein called the "Operating Fund") previously established by the South County Fire Protection Authority. Upon the organization of the Board, the Department shall assume responsibility for the improvement, alteration, maintenance and operation of the Joint Facilities and shall pay all personnel, contractual, and administrative expenses of the Department and all maintenance and operation costs of the Joint Facilities from that fund. Each of the Members shall pay into that fund its share of these costs of the Department as set forth in Article VI of this Agreement. The Department shall establish reasonable reserves and undertake appropriate capital projects to maintain the Joint Facilities as approved by the Members via annual budgets.

Section 5.5. Existing Scope of Joint Facilities and Services. Upon commencement of this Agreement, each Member shall have two (2) fire stations within its jurisdiction with a paramedic company at each location. Changes in the number of stations and the provision of paramedic and fire safety services at each station shall be specified in the annual budget, approval of which is a Major Decision.

ARTICLE VI

REVENUE MEASURE; BUDGET; FUNDING FORMULA AND OTHER FINANCIAL PROVISIONS

Section 6.1. Revenue Measure. Before December 31, 2006, the Department or its Members will propose a Measure to assist the Members to fund the Department.

Section 6.2. Annual Budget. (a) The Department shall adopt, as a Major Decision, an annual budget for each fiscal year. No expenditures may be made by or on behalf of the Department unless authorized by a budget or budget amendment approved as a Major Decision.

(b) For fiscal year 2006-2007, the Members agree that the Authority's preliminary annual budget shall be Thirteen Million Dollars (\$13,000,000) for the determination of the Measure. The Board will develop a more detailed comprehensive budget for Fiscal Year 2006-2007 after receipt of the final engineer's report for the Measure.

Section 6.3. Funding Formula. Prior to the Funding Effective Date, the Members shall bear the costs of the Department equally between them. From and after the Funding Effective Date, each Member shall pay for the ongoing costs of the Department according to the following formula, to be calculated annually when the budget is prepared: a) Twenty-Five percent (25%) of costs shall be assessed among the Members in proportion to the population in each of the Member's jurisdiction as most recently determined by the U.S. Census and any intervening estimates prepared by the California Department of Finance when the Fire Chief prepares each

annual budget; b) Twenty-Five percent (25%) of costs shall be assessed among the Members in proportion to the assessed value of property in each Member's jurisdiction as most recently determined by the County Assessor when the Fire Chief prepares each annual budget; c) Fifty percent (50%) of costs shall be assessed among the Members based on the formula depicted in Exhibit C which turns on the numbers of fire stations, companies, and employees in each Member's jurisdiction.

Section 6.4. Allocation of Expenses; Generally. After the Board approves submission of an annual budget to the Members, the Fire Chief shall forward that budget to each Member for approval, along with his or her calculation of the share to be borne by each Member under the formula stated in Section 6.3 above. Following approval of the budget by the Members, which shall also constitute approval of the allocation of the budget cost as calculated by the Fire Chief, the Board shall adopt the budget approved by the Members.

Section 6.6. Expenditures Within Approved Annual Budget. All expenditures within the limitations of the approved annual budget shall be made in accordance with the rules, policies and procedures adopted by the Board.

Section 6.7. Disbursements. Warrants shall be drawn upon the approval and written order of the Board and the Board shall requisition the payment of funds only upon approval of claims, disbursements and other requisitions for payment in accordance with this Agreement and other rules, regulations, policies and procedures adopted by the Board.

Section 6.8. Accounts. All funds will be placed in the Operating Fund and the receipt, transfer, or disbursement of such funds by the Controller and the Treasurer shall be accounted for in accordance with the generally accepted accounting principles applicable to governmental entities, with strict accountability of all funds. All revenues, expenditures and status of bank accounts and investments shall be reported to the Board as frequently as the Board shall direct and, in any event, not less than annually, pursuant to procedures established by the Board.

ARTICLE VII

DISPUTE RESOLUTION

Section 7.1. Good Faith Negotiations. The Members acknowledge that differences between them and among the Boardmembers may arise from time to time and agree to make good faith efforts to resolve any such differences via good faith negotiations among the Members or Boardmembers, as the case may be. If such negotiations do not resolve a dispute, and no Member gives a notice to dissolve the Department as provided in this Agreement, then the Members shall resolve disputes in any manner permitted by law or in equity.

Section 7.2. Tie Votes. If a tie vote occurs on any matter considered by the Board, and the motion is not withdrawn by the Boardmember who made it, the matter shall appear on the agenda of at least one subsequent meeting of the Board. If the tie is not resolved by the Boardmembers within 60 days, or any shorter time determined by the Board, it shall be referred to the Members for resolution. If the Members are not able to resolve the dispute in the

reasonable determination of any of them, then any Member may resort to any other dispute resolution procedures permitted by law or in equity.

ARTICLE VIII

EMPLOYEE RELATIONS

Section 8.1. Employee Relations. The Board shall maintain as necessary Employer-Employee Relations Procedures and Personnel Rules and Regulations applicable to the Department. The Board may amend either or both items without referring the items to the Members.

Section 8.2 Annual Budget Issues. In conjunction with the annual budget process described above, the Board shall consider the following: cost allocation plan, service goals, service performance standards and labor relations agreement (MOU), unless a multi-year MOU is in place. Following Board consideration of any these items, it shall be referred to the Members for approval as a Major Decision.

Section 8.3 Bargaining. Bargaining under the Meyers-Milias-Brown Act shall proceed as set forth in this section. Employees of the Department are not employees of any Member. However, the legislative bodies of the Members shall, as provided in Government Code section 54957.6, meet in a joint closed session to instruct the Board and staff negotiators. The Board and staff negotiators shall negotiate with the representatives of the Department's employees. After tentative agreement has been reached by the negotiating team and the representatives of the Department's employees, the Board shall recommend approval of the tentative agreement by the Members as a Major Decision.

ARTICLE IX

MISCELLANEOUS

Section 9.1. Amendments. This Agreement may be amended by the Parties at any time pursuant to a written amendment executed by the Parties.

Section 9.2. Notice. Any notice required to be given or delivered by any provision of this Agreement shall be personally delivered or deposited in the U.S. Mail, registered or certified, postage prepaid, addressed to the Members at their addresses as reflected in the records of the Department, and shall be deemed to have been received by the Member to which the same is addressed upon the earlier of receipt or seventy-two (72) hours after mailing.

Section 9.3. Attorney's Fees. In the event litigation or other proceeding is required to enforce or interpret any provision of this Agreement, the prevailing party in such litigation or other proceeding shall be entitled to an award of its actual and reasonable attorney's fees, costs and expenses incurred in the proceeding.

Section 9.4. Successors. This Agreement shall be binding upon and inure to the benefit of any successor of a Member.

Section 9.5. Assignment and Delegation. No Member may assign any rights or delegate any duties under this Agreement without the unanimous written consent of all other Members and any attempt to make such an assignment shall be null and void for all purposes.

Section 9.6. Counterparts. This Agreement may be executed in one (1) or more counterparts, all of which together shall constitute a single agreement, and each of which shall be an original for all purposes.

Section 9.7. Severability. Should any part, term or provision of this Agreement be decided by any court of competent jurisdiction to be illegal or in conflict with any applicable law, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, or provisions of this Agreement shall not be affected thereby and to that end the parts, terms and provisions of this Agreement are severable.

Section 9.8. Integration. This Agreement represents the full and entire Agreement among the Members with respect to the matters covered herein.

Section 9.9. Execution. The legislative bodies of the Members have each authorized execution of this Agreement, as evidenced by the respective signatures attested below.

BELMONT FIRE PROTECTION DISTRICT

President

Attest:

Secretary

CITY OF SAN CARLOS

Mayor

Attest:

City Clerk

Exhibit A – Map of “Area”

Exhibit B – Belmont Post-Termination Payments

Exhibit C- Funding Formula