

**AGREEMENT BETWEEN THE CITY OF MODESTO AND THE SALIDA
FIRE PROTECTION DISTRICT FOR THE ALLOCATION OF DISTRICT
REVENUE RESULTING FROM THE ANNEXATION OF
PROPERTY(IES) WITHIN THE WOODGLEN RESIDENTIAL NEIGHBORHOOD AND
FUTURE ANNEXATIONS TO THE CITY**

September 13, 2022

This agreement ("Agreement") is entered into as of _____ by and between the City of Modesto, a California charter city ("CITY") and the Salida Fire Protection District ("DISTRICT"), a California special district organized and governed by the Fire Protection Law of 1987 (California Health & Safety Code Section 13800, et.seq.).

RECITALS

This Agreement is made with reference to the following facts:

- A. DISTRICT is responsible for fire suppression and prevention within the territory governed by this Agreement and receives the District Revenue, as defined herein, generated within the DISTRICT boundaries.
- B. CITY and DISTRICT desire to enter into this Agreement to allocate District Revenues in the event of Annexation of the territory covered by this Agreement to the CITY.
- C. CITY and DISTRICT agree it is in the best interest of the public that the area subject to annexation receives fire and life safety services jointly from CITY and DISTRICT.
- D. CITY and DISTRICT agree it is the intent of both parties, and in the overall public interest, to ensure both agencies receive sufficient District Revenues to provide adequate levels of fire and emergency services within the affected Territory and are able to provide assistance to other fire protection agencies in a cooperative manner.
- E. It is agreed that an equitable sharing of future District Revenue from the Affected Territory will benefit the overall organization of fire protection agencies and their cooperative ability to provide adequate emergency services.

NOW THEREFORE the CITY and DISTRICT hereby agree as follows:

1. Effect of Recitals.

The foregoing recitals set forth the intent of the CITY and DISTRICT in entering into this Agreement.

2. **Definitions.**

2.1 "Affected Territory" means any territory within the boundaries of the District that are annexed into the City without detachment from the District.

2.2 "Annexation" means the annexation, inclusion, attachment, or addition of territory to a city or district. Government Code Section 56017.

2.3 "Detachment" means the detachment, de-annexation, exclusion, deletion, or removal of any portion of the territory of that city or district. Government Code Section 56033.

2.4 "Change of Organization" means an Annexation to, or detachment from a city or district. Government Code Section 56021.

2.5 "District Revenues" shall mean any allocation of the property tax due the District from the Affected Territory. It shall also include any District special tax as authorized by Health & Safety Code Section 13911, any District special tax as authorized by Health & Safety Code Section 13912, any District special tax for fire protection as authorized by Health & Safety Code Section 13913, any District assessment for fire suppression service as authorized by Health & Safety Code Section 13914, and District assessments to finance capital improvements as authorized by Health & Safety Code Section 13915 and any fee authorized by Health & Safety Code Section 13916 for services of the District levied on an interested party and other public agency, except the City, within the Affected Territory. District Revenues shall not include grants, gifts, bequests or litigation or insurance recoveries.

2.6 "Effective Date" means the date at which the Annexation of Affected Territory into the City. This is the date the Annexation is recorded by the Stanislaus LAFCO staff, unless a different Effective Date is set forth in the LAFCO resolution approving the Change of Organization.

2.7 "Fiscal Year" means July 1 of any given year- June 30 of the next year utilized for property tax purposes.

2.8 "Woodglen Area" means that territory defined in the Woodglen Residential Neighborhood Annexation for which a change of organization or reorganization is proposed or ordered. The Woodglen Area includes the APN Nos. identified in Exhibit A . The Woodglen Area shall be Affected Territory under this Agreement except where explicitly specified otherwise.

2.9 Upon the Effective Date of the Annexation of the Affected Territory to the CITY, the amount of District Revenue generated from the Affected Territory in the fiscal year in which the Effective Date occurs shall be designated as the "Base District Revenue".

3. **Effect of Annexation on Affected Territory.**

Upon the annexation of Affected Territory to the CITY, CITY and DISTRICT will jointly be responsible for fire suppression and prevention within the Affected Territory, and all future annexations. The CITY and DISTRICT will meet in good faith and develop a response model that ensures both entities respond to the affected area. The Affected Territory(ies) will not be Detached from DISTRICT.

4. **Allocation of DISTRICT Revenue to CITY.**

The DISTRICT shall retain the Base District Revenue for the entire fiscal year in which the Effective Date falls. The Parties acknowledge that this will likely result in CITY providing joint fire and life safety services with DISTRICT in the Affected Territory for a period of several months prior to the City receiving any share of District Revenues. In the first Fiscal Year following the Effective Date, and in each Fiscal Year thereafter, City shall receive one hundred percent (100%) of District Revenues actually received by District in excess of the Base District Revenue. In the first Fiscal Year during which District Revenues exceed two times the Base District Revenue, and in each Fiscal Year thereafter, the amount of District Revenue actually received by DISTRICT in excess of two times Base District Revenue shall be split evenly (50%/50%) between DISTRICT and CITY.

5. **Annual Transfer of Funds from DISTRICT to CITY.**

In the first Fiscal Year following the Effective Date and in each Fiscal Year thereafter, the DISTRICT shall transfer to CITY, within 60 days of the end of the fiscal year, the amount of District Revenue owed to CITY in accordance with Section 4 above.

6. **Support for Annexation to the City.**

DISTRICT agrees not to oppose or attempt to frustrate any future Annexation(s) of Territory to the CITY and CITY agrees to not request Detachment of any Territory from the DISTRICT, in any Change of Organization or reorganization proceeding before LAFCO. The CITY and DISTRICT agree that all future annexations will result in a tax revenue sharing allocation as outlined in section 4 above.

7. **Assurances on Use of Revenue.**

CITY recognizes that District Revenues transferred to it by this Agreement could have been appropriated by DISTRICT to meet public safety service demands. CITY agrees to utilize its share of the District Revenues to provide fire prevention and life safety services within the Affected Territory(ies). City agrees to ensure funds it receives pursuant to this Agreement will be available to benefit the Affected Territory(ies), under mutual aid or other cooperative agreements.

8. **No Restriction on District or City Discretion.**

Nothing in this Agreement is intended or shall be construed to limit or restrain DISTRICT or CITY's independent discretion to make budgetary, legislative or staffing decisions regarding levels of service that it deems necessary for overall safety and welfare of the Affected Territory(ies).

9. **Term of Agreement and Termination.**

The Agreement shall become effective after approval by the governing board of the both the City and District and on the date first written above. The Agreement may be terminated only upon the mutual written agreement of the parties, or upon a material breach of this Agreement by either party and a failure of the breaching party to correct such breach after notice and a reasonable opportunity to cure..

10. **Renegotiation Due to Change in Law.**

In entering into this Agreement, the parties mutually assume the continuation of the existing statutory scheme for the allocation and distribution of available District Revenue to the District. Accordingly, it is mutually understood and agreed that should changes in law occur that materially affect the terms of this Agreement, or should the District's authorization to collect any type of District Revenue that it collects as of the effective date of this Agreement terminate, the parties shall meet to attempt to resolve any difficulties that are thereby created. "Materially Effect" as used in this Agreement shall include but not be limited to a decrease in District Revenue of five percent (5%) in any single Fiscal Year and only applies to a change in law, not a change in the facts serving as the basis for this Agreement. Any party contending this section applies shall give written notice pursuant to this section, which notice shall include an explanation of the reasons for the request to meet and attempt to resolve any claim of Material Effect. If, after 180 days of good faith negotiations, the Parties are unable to agree upon a resolution, either Party may terminate this agreement with 90 days written notice.

11. **Modification.**

This Agreement may be modified or amended only by a writing duly authorized and executed by CITY and DISTRICT.

12. **Administrative and Ministerial Action.**

CITY and DISTRICT, will insofar as is legally possible, fully carry out the intent and purposes hereof, if necessary, by administrative and ministerial action independent of their legislative power.

13. **Integration.**

This Agreement is intended to be an integrated agreement and supersedes any and all previous negotiations, proposals, commitments, writings and understandings of any nature whatsoever between CITY and DISTRICT as to the subject matter of this Agreement.

14. **Notice.**

All notices, requests, determinations or other correspondence required or allowed by law or this Agreement to be provided by the parties shall be in writing and shall be deemed given and received when delivered to the recipient by certified mail or by facsimile transmission at the following addresses:

Fire Chief
Modesto Fire Department
409 12th Street
Modesto, CA 95354

Fire Chief
Salida Fire Protection District
P.O. Box 1335
Salida, CA 95368

City Manager
City of Modesto
1010 10th Street, Ste. 6100
Modesto, CA 95354

District Counsel
Law Offices of William D. Ross
400 Lambert Ave.
Palo Alto, CA 94301

15. Dispute Resolution.

Any dispute arising out of or relating to the interpretation or application of this Agreement, or any District Revenue or Base District Revenue calculation hereunder shall be submitted to the respective Fire Chiefs of CITY and DISTRICT for resolution. If the dispute is not resolved there, it may be submitted to mediation upon mutual agreement of CITY and DISTRICT. In the event the dispute is not settled by the Fire Chiefs and/or in mediation, within six months after one party gives the other party notice in accordance with this Agreement of the dispute, the matter shall be submitted to final and binding arbitration before one arbitrator in Modesto. The arbitrator will be chosen from a panel of three proposed by the American Arbitration Association by alternate strikes. Arbitration may be requested by either party.

This Agreement to arbitrate shall be specifically enforceable under the jurisdiction of the Superior Court of the State of California in Stanislaus County, but any award rendered by the arbitrator may be entered in any court having jurisdiction. This section shall result in the conclusive, final and binding resolution of arbitrable claims between the parties. Arbitration shall proceed according to the "fast track" rules of the American Arbitration Association then in effect. DISTRICT and CITY shall have the right to take no more than three (3) depositions apiece as a matter of right, without regard to the "fast track" rules. The arbitrator shall apply the substantive law of California.

The arbitrator may grant any remedy or relief deemed by the arbitrator just and equitable under the circumstances, whether or not such relief could be awarded in a court of law. The arbitrator shall be empowered to award monetary sanctions against a party for failure of cooperation in the arbitration. The arbitrator shall, in written award, allocate all the costs of the arbitration, including fees of the arbitrator and the reasonable attorney fees of the prevailing party, against the party who did not prevail. The prevailing party shall be the party in whose favor the majority of the central issues in the case are resolved.

Notwithstanding anything in this provision to the contrary, the arbitrator shall have no power to award punitive damages or other damages not measured by the party's actual damages (excluding litigation costs and fees) against any party.

This limitation of the arbitrator's powers under this Agreement shall not operate as an exclusion of the issue of punitive damages from this Agreement to Arbitrate sufficient to vest jurisdiction in a court with respect to that issue.

The parties hereby waive any rights provided by Title 9.2 of the California Code of Civil Procedure, Section 1296. The arbitrator's award shall be deemed final, conclusive and binding to the fullest extent allowed by California law.

16. Assignment.

This Agreement and its terms and conditions shall be binding upon and inure to the benefit of the parties to this Agreement and their respective administrators. This Agreement may not be assigned by either party without written consent of the other party.

17. Governing Law.

This Agreement shall be governed by the laws of the State of California without reference to its choice of law jurisprudence.

18. Severability.

If any provision of this Agreement is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severed from the remainder of the Agreement and shall not in any way impair the enforceability of any other provision of this Agreement.

19. Compliance with Applicable Law.

In providing the services required by this Agreement, CITY and DISTRICT shall observe and comply with all applicable federal, state and local laws, ordinances, codes and regulations.

20. Authority to Contract.

CITY and DISTRICT each warrant that they are respectively legally permitted and otherwise have the authority to enter into this Agreement and perform their respective obligations.

21. Third Party Beneficiaries.

Nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create any such rights.

22. No Party Deemed to be Draftsman.

The parties acknowledge and agree that this Agreement has been arrived at through negotiation and that neither party is to be deemed the party which prepared this Agreement within the meaning of Civil Code Section 1654.

23. Counterparts.

This Agreement may be executed in multiple counterparts, which may be transmitted by facsimile, each of which shall, for all purposes, be deemed an original, but which together shall constitute one and the same instrument.

24. Indemnity.

CITY agrees to indemnify, defend and hold DISTRICT harmless from and against any claims, demands, suits, damages, or liability of any kind or nature to the proportionate extent caused by the CITY's negligence or other wrongful acts arising out of or relating to CITY's performance of its fire and/or life safety services pursuant to this Agreement without regard to the availability of insurance coverage.

DISTRICT agrees to indemnify, defend and hold CITY harmless from and against any claims, demands, suits, damages, or liability of any kind or nature to the proportionate extent caused by the DISTRICT's negligence or other wrongful acts arising out of or relating to District's performance of its fire and/or life safety services pursuant to this Agreement without regard to the availability of insurance coverage.

25. Additional Insured Requirement.

DISTRICT and CITY shall each cause the other to be included as an additional insured to their insurance policies offering or potentially offering coverage for fire and/or life safety services.

IN WITNESS WHEREOF, the City of Modesto, a municipal corporation, has authorized the execution of this Agreement in duplicate by its City Manager and attestation by its City Clerk under authority of Resolution No. 2022 -369 , adopted by the Council of the City of Modesto on the ^{13th} day of September, 2022, and the Salida Fire Protection District has caused this Agreement to be duly executed in duplicate as of the Effective Date.

SALIDA FIRE PROTECTION DISTRICT

By:

DocuSigned by:
Thomas R Bert

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Tom Bert, Salida District Board Member

Dated: 9/22/2022, 2022

Federal ID # 770058689

APPROVED AS TO FORM:

By:

DocuSigned by:
William D. Ross

205B56133B93421...
William D. Ross, District Counsel

Dated: 9/20/2022, 2022

CITY OF MODESTO

By:

DocuSigned by:
Joe Lopez

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Joseph Lopez, City Manager

Dated: 9/23/2022, 2022

By:

DocuSigned by:
Joe F. Rodriguez

70E6B391269A4B3...
Joe F. Rodriguez, Risk Manager

Dated: 9/22/2022, 2022

ATTEST:

(SEAL)

By:

DocuSigned by:
Diane Nayares-Perez

B6A30B28B4A6494...
Diane Nayares-Perez, City Clerk

Dated: 9/23/2022, 2022

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APPROVED AS TO FORM:

By:

DocuSigned by:
Jose M. Sanchez

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Jose Sanchez, City Attorney

Dated: 9/22/2022, 2022