

**AGREEMENT FOR SHARED FIRE PERSONNEL SERVICES
BETWEEN THE CITIES OF PIEDMONT AND ALBANY**

This Agreement ("Agreement") is entered into as of _____, 2011, by and between the City of Piedmont, a municipal corporation ("Piedmont"), and the City of Albany, a municipal corporation ("Albany"), collectively "Participating Agencies."

RECITALS

WHEREAS, the Participating Agencies have a desire to provide high quality and responsive Fire and Emergency Medical services to their residents at a reasonable cost; and

WHEREAS, the Participating Agencies agree that sharing of some personnel services between them will increase efficiency, save money for both communities, and provide the potential for other advantages in the delivery of services; and

WHEREAS, the Participating Agencies desire to formalize the shared delivery of fire personnel services pursuant to this Agreement.

Now therefore, the Participating Agencies agree as follows:

1. Fire Chief Services.

(a) Piedmont agrees to provide to the Participating Agencies an employee of Piedmont to perform shared Fire Chief services, on a basis of approximately one-half of each work week (approximately 20 hours per week) to be devoted to performance of Fire Chief services for Albany and approximately one-half of each work week (approximately 20 hours per week) to performance of Fire Chief services for Piedmont.

(b) The Designated Fire Chief (defined below) will provide general administration and oversight of the Albany Fire Department including but not limited to budget administration, personnel management and supervision, and similar related activities, all in accordance with the requirements and expectations of statutory law, the Albany Municipal Code, applicable Albany City regulations and the customary duties of a fire chief and as directed by the Albany City Manager.

(c) Albany's City Manager will supervise the Designated Fire Chief (defined below) on Albany matters, will provide direction to the Designated Fire Chief regarding any desired special projects or services to be performed for Albany, and will respond to personnel recommendations made by the Designated Fire Chief.

(d) Albany will provide Piedmont and its Fire Chief with all necessary regulations, policies, procedures, manuals, standard plans and specifications, project information, and other information, as well as incidental materials and supplies, work area, computer access, telephone, and other standard provisions as required to perform the Fire Chief

services desired by Albany. All such documents, notes, photographs, supplies, and reports will remain the property of Albany. In addition, Albany will provide the Designated Fire Chief up to \$750 in uniform allowance to be used to acquire Albany Fire Department Uniforms

(e) Piedmont initially designates its current Fire Chief, Edward Tubbs ("Designated Fire Chief"), to provide the shared Fire Chief services under this Agreement. Piedmont shall not assign any other person to provide those services without the written consent of Albany's City Manager. It is expressly understood and agreed by both Participating Agencies that the Designated Fire Chief may elect to terminate employment with Piedmont at any time. Should the Designated Fire Chief terminate employment with Piedmont, Piedmont agrees that both Participating Agencies shall be involved in the decision on designation of a new Fire Chief. Piedmont shall provide prompt notice of such termination to Albany, and the Participating Agencies shall, without delay, meet to discuss the procedures for identifying and, if appropriate, hiring a new Fire Chief. Additionally, if the Designated Fire Chief is unavailable to work under this Agreement for a period of more than three (3) consecutive weeks for reasons other than a scheduled vacation, Piedmont shall involve Albany in the designation of a temporary or new Fire Chief, as needed.

2. Litigation Support.

The Participating Agencies will make their employees available to testify in any litigation brought regarding work performed under this Agreement.

(a) Should Albany request that Piedmont's employees testify in litigation following the termination of this Agreement, Albany shall compensate Piedmont for employees' costs and expenses in preparing for, traveling to, and testifying in such matters at the employee's then current hourly rate of compensation, unless such litigation is brought by Piedmont or is based solely on allegations of Piedmont's negligent performance or wrongdoing.

(b) Should Piedmont request that Albany's employees testify in litigation following the termination of this Agreement, Piedmont shall compensate Albany for employees' costs and expenses in preparing for, traveling to, and testifying in such matters at the employee's then current hourly rate of compensation, unless such litigation is brought by Albany or is based solely on allegations of Albany's negligent performance or wrongdoing.

3. Payment.

Piedmont shall be compensated for providing to the Participating Agencies shared Fire Chief services as follows:

(a) Albany shall pay Piedmont an amount equal to one half of the costs of the Designated Fire Chiefs total salary and benefit package. Accordingly, Albany's financial obligation to Piedmont for services actually rendered by the Designated Fire Chief pursuant to this Agreement equates to \$133,375.72 for the term on this agreement and shall be payable in arrears in monthly installments in response to invoices from Piedmont therefor.

(b) Any proposed adjustment by Piedmont to this financial obligation during the term of this Agreement shall be submitted to Albany for prior approval at least 60 days prior to the effective date of said adjustment.

4. Term of Agreement

The services provided under this agreement shall commence on April ____ 2011 and shall end on April ____ 2012. It is agreed that each Participating agency will provide a written report no later than January 15, 2012 on their satisfaction with the services provided under this Agreement.

5. Termination

At any time and without cause, a Participating Agency may terminate the whole or any part of its participation in this Agreement by giving sixty (60) days written notice to the other Participating Agency prior to the termination date. Each participating agency shall make a reasonable effort to resolve any issues of concern or dispute prior to notice of termination.

6. Indemnification.

(a) When the Designated Fire Chief is directing Albany Fire Department activities, Albany is responsible for the costs of defense and any liability arising out of the Designated Fire Chief's services to the extent required by applicable law. In the event of a dispute as to whether applicable law requires Albany to provide indemnity and a defense to the Designated Fire Chief, such dispute shall be resolved between Albany and the Designated Fire Chief and Albany shall indemnify and defend Piedmont from and against any obligation to defend and indemnify the Designated Fire Chief that may otherwise be required of Piedmont as the employer of the Designated Fire Chief or by virtue of this Agreement.

When the Designated Fire Chief is directing Piedmont Fire Department activities, Piedmont is responsible for the costs of defense and any liability arising out of the Designated Fire Chiefs services to the extent required by applicable law. In the event of a dispute as to whether applicable law requires Piedmont to provide indemnity and a defense to the Designated Fire Chief, such dispute shall be resolved between Piedmont and the Designated Fire Chief and Piedmont shall indemnify and defend Albany from

and against any obligation to defend and indemnify the Designated Fire Chief that may otherwise be required of Albany by virtue of this Agreement.

(b) When the Designated Fire Chief is directing both Participating Agencies' departments and in the event that Piedmont and Albany are concurrently negligent relative to the alleged injuries or damages giving rise to the claim, then the liability and costs of defense relative to any and all such claims shall be apportioned under California's law of comparative negligence.

(c) Other than expressly provided for in Section 6(a) in this Agreement, no Participating Agency shall be responsible for the acts or omissions of the other Participating Agency's officers or employees, nor shall any Participating Agency incur any liability arising out of the services of any other Participating Agency's officers or employees. Accordingly, the Participating Agencies hereby expressly agree to waive the pro rata risk allocation contained in Government Code section 895.6.

7. Not a Joint Venture or Joint Powers Authority.

The Participating Agencies intend by this Agreement to establish only a cost sharing arrangement of the Participating Agencies with regard to shared Fire Chief services and do not intend to create a joint powers agency, partnership, joint venture, or joint enterprise of any kind.

8. No Third Party Beneficiary.

This Agreement is only for the benefit of the Participating Agencies as corporate entities and shall not be construed as or deemed to operate as an agreement for the benefit of any third party or parties, and no third party or parties shall have any right of action or obtain any right to benefits or position of any kind for any reason whatsoever.

9. Notices.

All notices required or permitted to be given under this Agreement shall be in writing and mailed postage prepaid by certified or registered mail to the appropriate address indicated below.

Piedmont:	City Administrator City of Piedmont 120 Vista Avenue Piedmont, California 94611
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| Albany:

____ City Manager
City of Albany
1000 San Pablo Avenue
Albany, California 94706

10. Waiver.

No failure on the part of any Participating Agency party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that any Participating Agency may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of a subsequent breach of the same or any other provision of this Agreement.

11. Amendment.

No modification, waiver, mutual termination, or amendment of this Agreement is effective unless made in writing and signed by all of the Participating Agencies.

12. Disputes.

In any dispute over any aspect of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs.

13. Governing Law.

This Agreement, regardless of where executed, shall be governed by and construed to the laws of the State of California. Venue for any action regarding this Agreement shall be in the Superior Court of the County of Alameda.

14. Entire Agreement.

This Agreement constitutes the complete and exclusive Statement of the Agreement between the Participating Agencies. No terms, conditions, understandings or agreements purporting to modify or vary this Agreement, unless hereafter made in writing and signed by each Participating Agency to be bound, shall be binding on any of the Participating Agencies.

IN WITNESS WHEREOF, the Participating Agencies have executed this Agreement as of the date indicated on page one (I).

City of Piedmont
A municipal corporation of the State of California

City of Albany
A Municipal corporation of the State of California

By: _____
Mayor

By: _____
Mayor

ATTEST:

ATTEST:

By: _____
City Clerk

By: _____
City Clerk

Approved as to Form:

Approved as to Form:

By: _____
City Attorney

By: _____
City Attorney