

**TOWN OF SAN ANSELMO
STAFF REPORT
June 17, 2010**

For the meeting of June 22, 2010

TO: Town Council
FROM: Debra Stutsman, Town Manager
SUBJECT: Sleepy Hollow Contract

RECOMMENDATION

That Council authorize the Mayor to sign the attached Termination of Agreement between the Town of San Anselmo and the Sleepy Hollow Fire Protection District, to unwind the current agreement dated September 17, 2004, in consideration of the new "Amended and Restated JPA Agreement among Fairfax, San Anselmo and Sleepy Hollow."

BACKGROUND

Since the 1950's Sleepy Hollow has contracted with the Town of San Anselmo for fire protection services. Should the Council approve the Amended and Restated JPA Agreement, the current contract needs to be ended. The attached contract has been prepared by the Town Attorney and approved by Sleepy Hollow and would serve to end the agreement current in place as of June 30, 2010 (Attachment 2).

Respectfully Submitted,



Debra Stutsman
Town Manager

Attachments:

1. Termination of Agreement document
2. Agreement with Sleepy Hollow dated September 17, 2004

TERMINATION OF AGREEMENT

In consideration for those promises set forth in that certain AMENDED AND RESTATED JOINT POWERS AGREEMENT AMONG THE TOWN OF FAIRFAX, THE TOWN OF SAN ANSELMO AND THE SLEEPY HOLLOW FIRE PROTECTION DISTRICT FOR THE ROSS VALLEY FIRE DEPARTMENT dated July 1, 2010 ("the New Agreement"), the Town of San Anselmo and the Sleepy Hollow Fire Protection District do hereby agree to revoke and terminate their Agreement dated September 17, 2004, a true copy of which is attached hereto ("the Old Agreement"), except with respect to those rights and obligations of the parties which by their nature and intent extend beyond and survive the termination of the Old Agreement. The Town of San Anselmo and the Sleepy Hollow Fire Protection District agree that their revocation and termination of the Old Agreement will be effective immediately as of July 1, 2010, and that they waive the provisions of the Old Agreement set forth in Section 4 of that Agreement, entitled "Term," which otherwise would have required two (2) years advance notice prior to termination of the Old Agreement. As of July 1, 2010, all rights and obligations between the Town of San Anselmo and Sleepy Hollow Fire Protection District concerning the provision of fire protection, emergency medical, and related services are set forth in the New Agreement.

IN WITNESS WHEREOF, the parties hereto have signed this instrument this ____ day of _____, _____.

TOWN OF SAN ANSELMO, a municipal corporation

By: _____
Name: _____, Mayor

ATTEST:

Town Clerk

SLEEPY HOLLOW FIRE PROTECTION DISTRICT, an independent special district of the State of California

By: _____
Name: _____
Title: _____

ATTEST:

Secretary

AGREEMENT

THIS AGREEMENT ("Agreement") is made this 17th day of September, 2004 by and between the TOWN OF SAN ANSELMO ("Town") and the SLEEPY HOLLOW FIRE PROTECTION DISTRICT ("District").

In consideration of the mutual promises hereinafter made, the parties agree as follows:

1. REVOCATION OF PRIOR AGREEMENT

The agreement of June 16, 1980, as amended, between Town and District is hereby revoked.

2. SERVICES BY TOWN

Throughout the term of this Agreement, Town will provide fire suppression, fire protection, first aid emergency medical response (EMT or higher standard), hazardous materials incident response, and rescue services within the territory of District to the same standard as within Town. Station 20, located at 150 Butterfield Road, will remain open and fully staffed and equipped. For purposes of this Agreement, "open and fully staffed and equipped" shall mean (i) the twenty-four (24) hour continuous operation of Station 20 by not less than two (2) full-time uniformed personnel sufficient to permit the immediate dispatch of an effective "First Alarm Response" to all calls for services within the District on an equal-priority basis as calls for services outside of the District; (ii) the stationing and maintenance at Station 20 of equipment, materials, and supplies substantially the same in quality and quantity as currently exist, and (iii) the maintenance of Station 20 in satisfactory physical condition. Notwithstanding the foregoing, the Fire Chief shall have sole discretion as to the most effective manner of handling and responding to calls for services in the District and full authority and responsibility to determine how conflicting demands for personnel and equipment shall be met.

3. CONSIDERATION

- (a) District shall pay Town 25% of the labor (salary, benefits, reimbursable labor costs, overtime, volunteers, retirees and insurance) cost of Town's Fire Department, as budgeted in Town's final budget for fiscal years 2004-2005 and 2005-06. The District shall pay 23% of the salary (benefits, reimbursable labor costs, overtime, volunteers, retirees and insurance) cost of Town's Fire Department, as budgeted in Town's final budget for fiscal years 2006-07, 2007-08 and 2008-09. District shall be notified in writing of the sum so determined immediately following final budget adoption and no later than July 15th of each year. Payments shall be made quarterly in equal installments by September 30, December 31, March 31, and June 30. For purposes of this Agreement, "labor costs" shall not include (i) costs (including in connection therewith all attorneys' fees and costs of settlement, judgments, and payments in lieu thereof) arising from claims, disputes, or potential disputes in connection with potential or actual claims, litigation, or arbitrations pertaining to any labor dispute, layoff, or employee or volunteer claim for salary, benefits, overtime, insurance, or unemployment compensation from the Town and/or the Town's Fire Department; and (ii) any other costs or expenses which, in accordance with generally accepted accounting principles, consistently applied, would not normally be treated as labor costs by comparable municipalities and/or fire departments in the County of Marin.
- (b) By December 15 of each year, District shall be notified in writing of the actual labor cost of the Town's Fire Department for the prior fiscal year (July 1 to June 30), and the amount that is the agreed upon percentage of the actual labor costs, which comprises District's costs.

- (c) The labor costs paid by District shall be adjusted for actual labor cost reimbursements received by the Town from other agencies including, but not limited to (i) State Office of Emergency Services reimbursements of labor costs paid by the Town in providing disaster assistance in cases of catastrophic emergencies; (ii) Ross Valley Paramedic Authority reimbursements of incremental costs paid by the Town in providing paramedic (rescue engine) response; (iii) County of Marin reimbursements of costs paid by the Town to provide fire services to the Oak Manor and Meadow Club areas; and (iv) reimbursement income received for building plan checks and reviews.
- (d) If the amount paid by District the prior fiscal year as based on budgeted costs is greater than the agreed upon percentage of the actual labor costs, the difference shall be considered excess payment and shall be deducted from the payment owed to Town on December 31. If the amount paid by District the prior fiscal year as based on budgeted costs is less than the agreed upon percentage of the actual labor costs, the difference shall be added to the payment owed to the Town on December 31.

4. TERM

This Agreement shall commence September 30, 2004 and continue until September 30, 2009. Thereafter, this Agreement shall continue indefinitely for successive two (2) year terms unless terminated by:

- (a) Written notice by either party to the other party first given on or before June 30th of any year, effective no sooner than June 30th two years thereafter, provided, however, that by mutual agreement of the parties the two (2) year waiting period may be waived, or
- (b) A jurisdictional reorganization under the Cortese-Knox-Hertzberg Local Government Reorganization Act, as amended, affecting both parties, provided, however, that (i) no such reorganization shall be effective sooner than two years after the date the reorganization is

initiated; and (ii) the Town shall not seek or support, without District consent, via petition or otherwise, any reorganization that could result in the merger, consolidation, or dissolution of the Sleepy Hollow Fire Protection District.

5. TERMINATION OF JPA

In the event that the Town or the Town of Fairfax withdraws from the Ross Valley Fire Service Joint Powers Authority Agreement (the "JPA") or the JPA is terminated for any reason, the District shall not be required to share in any economic losses or detriment arising therefrom and shall not be responsible for any of debts or contractual obligations of the Ross Valley Fire Service, the Town, or the JPA.

6. ENTIRE AGREEMENT

This instrument constitutes the entire agreement between the parties, and may be altered, amended or revoked only by an instrument in writing duly executed by both parties.

7. FILING

This Agreement shall be filed with the San Anselmo Town Clerk and the Marin County Auditor.

8. SEVERABILITY

If any provisions of this Agreement or its application are held invalid, then the remainder of this Agreement shall remain in effect, and the Town and the District shall jointly seek an arrangement having a legal and economic effect which will be as similar as possible to the invalid provisions.

9. THIRD PARTIES

This Agreement is entered into for the benefit of the Town and the District only and shall confer no benefits, direct, implied or incidental, nor to give rise to any rights in, any third party.

10. NOTICES

All notices or other communications under this Agreement shall be deemed to have been given at the time of delivery if personally delivered

or three (3) calendar days after the time of mailing if sent by first class mail, postage prepaid.


11. INDEMNIFICATION

The Town agrees to indemnify and hold the District and its officers, directors, employees, agents, representatives, and contractors (each a "District Indemnitee") harmless from and against any and all claims, actions, losses, damages, liability, costs, and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by a District Indemnitee in any claim or action between the Town and a District Indemnitee, between a District Indemnitee and any third party, or otherwise arising out of or in connection with the Town's provision of services to the District pursuant to this Agreement or any breach of any of the Town's covenants, representations, warranties, or obligations set forth in this Agreement, provided, however, that the Town's obligation of indemnification shall not extend to the percentage of a third party claimant's damages or injuries or the settlement amount attributable to the District's negligence or other fault, breach of contract or warranty, or strict liability imposed upon the District as a matter of law. The District shall promptly notify the Town of all claims and proceedings related thereto of which the District becomes aware.

IN WITNESS WHEREOF, the parties have signed this Agreement the day and year first hereinabove written.

TOWN OF SAN ANSELMO

BY



Paul Chignell, Mayor

ATTEST:



Barbara Chambers, Town Clerk

Barbara Chambers, Town Clerk

SLEEPY HOLLOW FIRE PROTECTION DISTRICT

By Frank J. Berto
Frank J. Berto, Chair

Thomas J. Finn
Thomas J. Finn, Board Member

George B. Szabo
George B. Szabo, Board Member

ATTEST:

Thomas J. Finn
Thomas J. Finn, Secretary
