

AGREEMENT NO. __ - __
(Agreement for _____)

THIS MEMORANDUM OF UNDERSTANDING (“Agreement”) is made and entered into this ____ day of _____, 2018, by and between the **County of Yolo**, a political subdivision of the State of California (“County”) and **West Plainfield Fire Protection District** (“District”).

W I T N E S S E T H

WHEREAS, West Plainfield Fire Protection District provides emergency services and fire prevention services within its district boundaries; and

WHEREAS, the Yolo County Airport is within District’s boundaries and receives emergency response services, fire prevention, and related services from District; and

WHEREAS, District requested financial support from County to assist with supporting its operations, which operations serve a public benefit; and

WHEREAS, County agrees to fund a 0.25 FTE Firefighter; and

WHEREAS, District understands that the County is relying upon these representations in entering into this Agreement.

NOW, THEREFORE, the County and the District agree as follows:

I. BASIC SERVICES

A. District shall continue to furnish and perform emergency response and fire prevention services to the Yolo County Airport in a manner satisfactory to the County Administrative Officer or his/her written designee (“Administrator”). Fire prevention services include weed abatement inspections and enforcement, hanger inspections, and business inspections provided to the airport or to airport customers on Yolo County Airport premises.

II. ADDITIONAL SERVICES

Intentionally left blank.

III. COMPENSATION AND REIMBURSEMENT OF EXPENSES

A. For the services described in Paragraph I above, and subject to the condition that the services have been completed in a manner satisfactory to the Administrator or his/her designee, District shall be compensated as follows:

County shall reimburse District for actual personnel costs incurred up to the maximum amount of \$15,000 per fiscal year. District shall invoice based on actual personnel costs incurred. The amount payable by County is subject to the County, State of California, and United States appropriating and approving sufficient funds.

B. The compensation set forth above includes reimbursement for all expenses incurred by District in the performance of this Agreement.

IV. METHOD OF PAYMENT

A. Within 30 days following the end of each December and June during the term of this Agreement, the District shall submit an invoice to County for the preceding six months detailing the services provided, the person(s) providing the service, the amount of time spent by each person providing the service calculated to the one-tenth of an hour and the rate per hour charged for each person providing service. If requested by the County, District shall provide any further documentation to verify the compensation and reimbursement sought by District.

B. Within fifteen (15) calendar days of the receipt of District's detailed invoice, the Administrator shall either authorize payment or advise District in writing of any concerns that the Administrator has with the invoice and any need for further documentation.

C. Within thirty (30) calendar days of the Administrator's authorization for payment of an invoice, the County Auditor-Controller shall either issue the payment or advise District in writing of any concerns that the County Auditor-Controller has with the request and any need for further documentation.

V. OWNERSHIP OF DOCUMENTS AND WORK PRODUCTS

All professional and technical documents and information developed under this Agreement, and all work products, including writings, work sheets, reports, and related data, materials, copyrights and all other rights and interests therein, shall become the property of the County, and District agrees to deliver and assign the foregoing to the County, upon completion of the services hereunder or upon any earlier termination of this Agreement. District assigns the work products, as and when the same shall arise, for the full terms of protection available throughout the world. In addition, basic data prepared or obtained under this Agreement shall be made available to the County without restriction or limitation on their use.

No additional charge may be made for any of the foregoing.

VI. RECORDS; ACCESS, RETENTION

District shall retain and make available for review by the County and its designees all records, documents, and general correspondence relating to this Agreement and the services required hereunder for a period of not less than five (5) years after receipt of final payment or until all

pending audits and proceedings are completed, whichever is later. District shall make such records available for inspection and copying by the County and its designees at any reasonable time. At least thirty (30) calendar days prior to any destruction of these records following the four years, District shall notify the Administrator. Upon such notification, the Administrator shall either agree to the destruction or authorize the records to be forwarded to the County for further retention.

VII. DISPUTES

Any dispute arising under this Agreement shall be decided by the County Administrator, or his/her designee, who shall put his or her decision in writing and mail a copy thereof to the address for the notice to District. The decision of the County Administrator shall be final.

XIII. TERM AND TERMINATION

A. The term of this Agreement shall begin on **November 1, 2018** and automatically renew each fiscal year for up to five calendar years, unless sooner terminated as hereinafter provided.

B. Should either party fail to substantially perform its obligations in accordance with this Agreement, the other party may notify the defaulting party of such default in writing and provide not less than thirty (30) days to cure the default. Such notice shall describe the default, and shall not be deemed a forfeiture or termination of this Agreement. If such default is not cured within said thirty day period (or such longer period as is specified in the notice or agreed to by the parties), the party that gave notice of default may terminate this Agreement upon not less than fifteen (15) days advance written notice. In the event of such termination based upon District default, the County reserves the right to purchase or obtain the supplies or services elsewhere, and District shall be liable for the difference between the prices set forth herein and the actual cost thereof to the County. The foregoing notwithstanding, neither party waives the right to recover damages against the other for breach of this Agreement.

C. This Agreement is subject to the County, the State of California and the United States appropriating and approving sufficient funds for the activities required of the District pursuant to this Agreement. If the County's adopted budget and/or its receipts from the State of California and the United States do not contain sufficient funds for this Agreement, the County may terminate this Agreement by giving ten (10) days advance written notice thereof to the District, in which event the County shall have no obligation to pay the District any further funds or provide other consideration and the District shall have no obligation to provide any further services pursuant this Agreement. If the County terminates the Agreement pursuant to this subparagraph, the County will pay District in accordance with this Agreement for all services performed to the satisfaction of the Administrator before such termination and for which funds have appropriated as required by law.

D. This Agreement may be terminated for any reason or no reason by either party at any time during its term, by giving 30 days' written notice to the other party.

E. If District, or any of its officers, agents, employees, contractors, subcontractors, volunteers or five percent owners, becomes excluded, debarred or suspended from participation in Federally or State funded programs, the County may terminate this Agreement by giving ten (10) days advance written notice thereof to the District.

F. Upon termination of this Agreement or suspension of work by either County or District, District shall furnish to County all documents and drawings prepared under this Agreement, whether complete or incomplete. In the event of termination for any reason, reproducible copies of all finished or unfinished documents, drawings, maps, models, photographs, and reports prepared by District shall become the sole and exclusive property of Yolo County and District shall be entitled to receive compensation for any work completed on such documents and other materials determined by the Administrator to be of satisfactory quality and within the terms and conditions of this Agreement. All creative work undertaken by District such as sketches, copy, dummies and all preparatory work for which District is not compensated by the County shall remain the sole and exclusive property of the District.

G. During and following the term of this Agreement, District shall not use, distribute or otherwise circulate any of the materials developed pursuant to this Agreement and for which District was compensated by the County without the express written permission of the Administrator.

IX. APPLICABLE LAWS

A. In the performance of the services required by this Agreement, District shall comply with all applicable Federal, State, and County statutes, ordinances, regulations, directives and laws. This Agreement is also subject to any additional restrictions or conditions that may be imposed upon the County by the Federal or State government.

B. This Agreement shall be deemed to be executed within the State of California and construed in accordance with and governed by the laws of the State of California. Any action or proceeding arising out of this Agreement shall be filed and resolved in a California State court located in Woodland, California. District waives any removal rights it might have under State or Federal law.

X. NON-DISCRIMINATION IN SERVICES AND BENEFITS

District certifies that any service provided pursuant to this Agreement shall be without discrimination based on color, race, creed, national origin, religion, sex, age, sexual preferences, or physical or mental disability in accordance with all applicable Federal, State and County laws and regulations and any administrative directives established by the County Board of Supervisors or the County Administrative Officer. For the purpose of this Agreement, distinctions on the grounds of color, race, creed, national origin, religion, sex, age, sexual preferences, or physical or mental disability include but are not limited to the following: denying a participant any service or

benefit which is different, or is provided in a different manner or at a different time from that provided to other participants under this Agreement; subjecting a participant to segregation or separate treatment in any way in the enjoyment or any advantage or privilege enjoyed by others receiving any service or benefit; treating a participant differently from others in determining whether the participant has satisfied any admission, enrollment quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any service or benefit; and the assignment of times or places for the provision of services.

XI. DISTRICT'S RESPONSIBILITIES

A. District shall exercise all of the care and judgment consistent with good practices in the performance of the services required by this Agreement.

B. With the exception that this section shall in no event be construed to require indemnification by District to a greater extent than permitted under the public policy of the State of California, District shall indemnify, defend and hold harmless the County of Yolo, officers, agents, employees and volunteers from and against any and all claims, damages, demands, losses, defense costs, expenses (including attorney fees) and liability of any kind or nature arising out of or resulting from performance of the work, provided that any such claim, damage, demand, loss, cost, expense or liability is caused in whole or in part by any negligent or intentional act or omission of the District, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. District and/or any subcontractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this agreement for the full period of time allowed by law. The defense and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement.

C. Any subcontractors must agree to be bound to District and the County of Yolo in the same manner and to the same extent as District is bound to the County of Yolo under this Agreement. All subcontractor must further agree to include the same requirements and provisions of this Agreement, including the indemnity and Insurance requirements, with any Sub-subcontractor to the extent they apply to the scope of the sub-subcontractor's work.

In providing any defense under this section, District shall use counsel reasonably acceptable to the County Counsel.

XII. WORKERS' COMPENSATION

District shall provide workers' compensation coverage as required by State law, and prior to commencing services pursuant to this Agreement shall file the following statement with the County in a form substantially as set forth below.

WORKERS' COMPENSATION CERTIFICATE

I am aware of the provisions of Section 3700 of the Labor Code that require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing any services required by this Agreement.

The person executing this certificate on behalf of District affirmatively represents that she/he has the requisite legal authority to do so on behalf of District, both the person executing this Agreement on behalf of District and District understand that the County is relying on this representation in entering into this Agreement.

XIII. NOTICE

A. All notices shall be deemed to have been given when made in writing and delivered or mailed to the respective representatives of County and District at their respective addresses as follows:

District: West Plainfield Fire Protection District
 Attn: President
 24901 County Road 95
 Davis CA 95616

County: County of Yolo
 County Administrator's Office
 Attn: Airport Manager
 625 Court Street, Room 202
 Woodland CA 95695

B. Any party may change the address to which such communications are to be given by providing the other parties with written notice of such change at least fifteen (15) calendar days prior to the effective date of the change.

C. All notices shall be effective upon receipt and shall be deemed received through delivery if personally served or served using facsimile machines, or on the fifth (5th) day following deposit in the mail if sent by first class mail.

XIV. CONFLICT OF INTEREST

A. District shall comply with the laws and regulations of the State of California and County regarding conflicts of interest, including, but not limited to, Article 4 of Chapter 1, Division 4, Title 1 of the California Government Code, commencing with Section 1090, and Chapter 7 of Title 9 of said Code, commencing with Section 87100 including regulations promulgated by the California Fair Political Practices Commission.

B. District covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of District's obligations and responsibilities hereunder. District further covenants that in the performance of this Agreement, no person having any such interest shall be employed. This covenant shall remain in force until District completes performance of the services required of it under this Agreement.

C. District agrees that if any fact comes to its attention that raises any question as to the applicability of any conflict of interest law or regulation, District will immediately inform the County and provide all information needed for resolution of the question.

XV. COVENANT AGAINST CONTINGENT FEES

District warrants that it has not employed or retained any company or person, other than a bona fide employee working for District, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making this agreement. For breach or violation of this warranty, the County shall have the right to annul this agreement without liability, or in its discretion to deduct from the agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

XVI. AUDITS

A. District shall be subject to examination and audit by the State or the County, or both, throughout the term of this Agreement and thereafter for a period of three years from the date that final payment is made pursuant to this Agreement. This does not preclude access to records by County, State, the Comptroller General of the United States, or any of their authorized representatives, as otherwise provided by this Agreement, the State contract, or State or Federal laws and regulations. District agrees that County and/or State has the right to review, obtain, and copy all records pertaining to the performance of this Agreement, and agrees to provide County and/or State with any and all relevant information requested.

B. Any and all books, records, and facilities maintained by District related to services provided under this Agreement may be audited, inspected and copied at any time during normal business hours. Unannounced visits may be made at the discretion of the County or State. Employees who might reasonably have information related to such records may be interviewed. All expenditures of State and federal funds furnished to District pursuant to this Agreement are subject to audit by County, State and/or Federal representatives. Such audits shall consider and build upon external independent audits performed pursuant to audit requirements of the Office of Management and Budget (OMB) Circular A-133 as described in Paragraph C below.

C. Should District expend \$500,000 or more in Federal funds during any fiscal year,

District shall furnish County a certified copy of an Audit Report from an independent CPA firm covering the District's preceding fiscal year of January 1 through December 31. This Audit shall be performed in accordance with OMB Circular A-133 and conducted in accordance with generally accepted government auditing standards as described in Government Auditing Standards (1994 Revision), and provided in a form satisfactory to the Administrator.

District shall provide this Audit Report no later than July 31 of each year. In the event that this Agreement expires or is terminated on a date other than December 31, District shall provide County such an Audit Report covering the preceding period of January 1 through the date of expiration or termination no later than July 31 after the date of expiration or termination. District shall ensure that audit work papers supporting the report are retained for a period of three (3) years from the date of the audit report, and longer if notified by the State or County to extend the retention period, and are made available to the State and/or County upon request.

D. Should an Audit Report or any State or County audit determine that District has misspent funds and been overpaid based on the requirements of this Agreement and applicable laws and regulations, County shall demand repayment from District in the amount of such audit findings and withhold any payment otherwise due under this Agreement until District repays such amount. District shall repay County such amount within sixty (60) days of the date of the County's demand for repayment. Should District fail to repay County within sixty (60) days of the date of County's demand for repayment, the County may offset the amount due from District against any amounts that would otherwise be due from the County to District pursuant to this Agreement or any other agreement or source.

E. Any failure or refusal by District to permit access to any facilities, books, records or other information required to be provided to the State &/or the County by this Agreement &/or the State contract shall constitute an express and immediate breach of this Agreement.

XVII. ASSIGNMENT AND SUBCONTRACTS

The services and obligations required of District under this Agreement are not assignable in whole or in part. In addition, District shall not subcontract any portion of the services required of District by this Agreement without the express written consent of the Administrator. If any portion of the services required of District are subcontracted, the subcontractor(s) shall maintain the same insurance as required of District by this Agreement and District shall be fully responsible to the County for all work undertaken by subcontractors.

XVII. STATUS OF DISTRICT

A. It is understood and agreed by all the parties hereto that District is an independent contractor and that no relationship of employer-employee exists between the County and District. Neither District nor District's assigned personnel shall be entitled to any benefits

payable to employees of the County. District hereby indemnifies and holds the County harmless from any and all claims that may be made against the County based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement or any services provided pursuant to this Agreement.

B. It is further understood and agreed by all the parties hereto that neither District nor District's assigned personnel shall have any right to act on behalf of the County in any capacity whatsoever as an agent or to bind the County to any obligation whatsoever.

C. It is further understood and agreed by all the parties hereto that District must issue any and all forms required by Federal and State laws for income and employment tax purposes, including W-2 and 941 forms, for all of District's assigned personnel.

XIX. AMENDMENT

This Agreement may be amended only by written instrument signed by the County and District.

XX. WAIVER

The waiver by the County or any of its officers, agents or employees or the failure of the County or its officers, agents or employees to take action with respect to any right conferred by, or any breach of any obligation or responsibility of this Agreement shall not be deemed to be a waiver of such obligation or responsibility, or subsequent breach of same, or of any terms, covenants or conditions of this Agreement.

XXI. AUTHORIZED REPRESENTATIVE

The person executing this Agreement on behalf of District affirmatively represents that she/he has the requisite legal authority to enter into this Agreement on behalf of District and to bind District to the terms and conditions of this Agreement. Both the person executing this Agreement on behalf of District and District understand that the County is relying on this representation in entering into this Agreement.

XXII. PUBLIC RECORDS ACT

Upon its execution, this Agreement (including all exhibits and attachments) shall be subject to disclosure pursuant to the California Public Records Act.

XXIII. ADDITIONAL PROVISIONS

A. Where there is a doubt as to whether a provision of this document is a covenant or a condition, the provision shall carry the legal effect of both. Should the County choose to excuse any given failure of District to meet any given condition, covenant or obligation (whether precedent or subsequent), that decision will not be, or have the legal effect of, a waiver of the legal effect in subsequent circumstances of either that condition, covenant or

obligation or any other found in this document. All conditions, covenants and obligations continue to apply no matter how often County may choose to excuse a failure to perform them.

B. Except where specifically stated otherwise in this document, the promises in this document benefit the County and District only. They are not intended to, nor shall they be interpreted or applied to, give any enforcement rights to any other persons (including corporate) which might be affected by the performance or non-performance of this Agreement, nor do the parties hereto intend to convey to anyone any “legitimate claim of entitlement” with the meaning and rights that phrase has been given by case law.

C. This Agreement is not intended to, and shall not be construed to, create any right on the part of a third party to bring an action to enforce any of its terms.

D. District is solely responsible for full and timely compliance with all local, state, and federal laws and regulations pertaining to completion of the services described herein. County’s sole obligation under this Agreement is to provide funding to District in the amount, time, and manner specified herein.

E. For purposes of this Agreement, “fiscal year” shall mean the period commencing on July 1 and ending on June 30.

XXIV. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the County and District and supersedes all prior negotiations, representations, or agreements, whether written or oral. In the event of a dispute between the parties as to the language of this Agreement or the construction or meaning of any term hereof, this Agreement shall be deemed to have been drafted by the parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any party to this Agreement.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first set forth above.

DISTRICT

By: _____

COUNTY OF YOLO

By: _____

Patrick Blacklock
County Administrator

Approved as to Form:
Philip J. Pogledich, County Counsel

By:  _____
Carrie Scarlata, Assistant County Counsel