TOWN OF FAIRFAX
STAFF REPORT

To: **Mayor, Members of the Town Council**

From: **Michael Rock, Town Manager** MR

Date: **June 2, 2010**

Subject: **Consider approving the Amended and Restated Joint Powers Agreement among the Town of Fairfax, Town of San Anselmo, and the Sleepy Hollow Fire Protection District for the Ross Valley Fire Department**

RECOMMENDATION

Review and consider approving the Amended and Restated Joint Powers Agreement among the Town of Fairfax, Town of San Anselmo, and the Sleepy Hollow Fire Protection District for the Ross Valley Fire Department.

BACKGROUND

At the May 5, 2010 Town Council meeting the Council discussed the amended and restated JPA document. Many concerns were raised by several council members on the JPA Agreement. In particular, two sections of the JPA raised major concerns for several council members. The two sections are matters requiring a unanimous vote and withdrawal rights. The proposed changes to those two sections are attached for your consideration.

Both the Town Council of San Anselmo and the Board of the Sleepy Hollow Fire Protection District have voted in support of this amended and restated JPA Agreement as presented and not including the proposed changes attached. If our Town Council approves the two proposed changes these two amendments will return to the Town Council in San Anselmo and to the Sleepy Hollow Fire Protection District Board for inclusion in the JPA Agreement.

FISCAL IMPACT

The Amended and Restated Joint Powers Agreement is neutral in regards to costs for Fairfax. The Town of Fairfax will continue to pay 30.4% of the total costs of the JPA.

ATTACHMENTS

1. Draft Amended and Restated Joint Powers Agreement
2. Proposed amendments to the Draft Amended and Restated Joint Powers Agreement
3. Legal Review of JPA Agreement from the Law Offices of John Sharp

AGENDA ITEM # 12

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

July 1, 2010

AMENDED AND RESTATED JOINT POWERS AGREEMENT

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AMENDED AND RESTATED JOINT POWERS AGREEMENT

This Amended and Restated Joint Powers Agreement (the "Agreement"), is entered into and is effective as of July 1, 2010 (the "Effective Date") by and among the Town of Fairfax, a municipal corporation ("Fairfax"), the Town of San Anselmo, a municipal corporation ("San Anselmo") and the Sleepy Hollow Fire Protection District, an independent special district of the State of California ("Sleepy Hollow"), each a "Member," and collectively referred to as the "Members," to amend and restate the prior agreement that created the Ross Valley Fire Service (the "Authority").

RECITALS

A. Fairfax, San Anselmo and Sleepy Hollow have the authority under California law to provide fire protection, emergency medical and related services within their respective jurisdictions.

B. Each of the Members is a public agency authorized and empowered to contract with all the other Members for the joint exercise of powers under the Joint Exercise of Powers Act, Sections 6500, *et seq.*, of the California Government Code (the "Act").

C. Fairfax and San Anselmo previously formed the Authority pursuant to a Joint Powers Agreement executed February 21, 1982 and subsequently amended on May 18, 1983 (as amended, the "Initial Agreement"). Under the Initial Agreement, Sleepy Hollow was not a member of the Authority, but the Authority provided services to Sleepy Hollow pursuant to a long-standing contractual arrangement between San Anselmo and Sleepy Hollow. San Anselmo collected fees for the services from Sleepy Hollow, and San Anselmo paid the Authority an amount that represented payment of Authority fees for both Sleepy Hollow and San Anselmo. Also under the Initial Agreement, Sleepy Hollow appointed one non-voting representative to the Authority Board of Directors (the "Board").

D. The Members wish to enter into this Agreement to: (i) amend and restate the Initial Agreement; (ii) include Sleepy Hollow as a full and voting Member of the Authority; (iii) modify the composition of the Board; (iv) set forth the Members' ownership rights as to the assets and reserves of the Authority; and (v) address certain other issues agreed upon among the Members.

E. Throughout its history, the Board has operated on a governance model based upon reaching consensus. It is the intent of all three Members entering this Agreement that future decisions of the Board be made by consensus whenever possible, and the governance provisions in this Agreement have been designed to implement this long-standing tradition.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Members agree as follows:

JOINT POWERS AGREEMENT

1. Authority Composition.

1.1 Initial Agreement Superseded. The Authority, initially established as of July 1, 1982 by the Initial Agreement, is hereby expanded as of the Effective Date to include as Members the parties hereto. This Agreement amends, restates and supersedes the Initial Agreement in its entirety as of the Effective Date.

1.2 Service Entity Name. The entity operated by the Authority under the name "Ross Valley Fire Service" shall henceforth be referred to as the "Ross Valley Fire Department." From and after the Effective Date, the Authority shall use reasonable efforts to utilize and operate under the name "Ross Valley Fire Department" in official communications and transactions, and to discontinue use of the name "Ross Valley Fire Service."

1.3 New Members. The Board shall have the authority to admit new Members to the Authority, at a public meeting at which the admission has been considered, which meeting shall occur after not less than sixty (60) days' advance written notice to the existing Members. The Board may set the terms and conditions for admitting new Members (either individually or generally) that it deems appropriate.

2. Governance.

2.1 Board of Directors. The Authority shall be governed by a Board of Directors (the "Board") which shall formulate and set policy and exercise the powers set forth in this Agreement to accomplish its purpose. The Board shall consist of six (6) voting individuals (each a "Director"), two (2) of whom shall be appointed by and serve at the pleasure of the Fairfax Town Council, two (2) of whom shall be appointed by and serve at the pleasure of the San Anselmo Town Council, and two (2) of whom shall be appointed by and serve at the pleasure of the Board of Directors of the Sleepy Hollow Fire Protection District; provided, however, that each Director shall be an elected or appointed Town Council or governing body member of the Member by whom he or she is appointed.

2.2 Alternates. Each Member shall also appoint an alternate to serve in a Director's place at any meeting of the Board. Any such alternate shall be an elected or appointed Town Council or governing body member of that Member.

2.3 Meetings of the Board.

a. **Conducting Meetings.** The Board shall hold regular meetings at least quarterly and may adopt such procedures and resolutions for conducting such meetings and other business as the Board deems appropriate. All meetings of the Board including, without limitation, regular, adjourned regular, and special meetings shall be called, noticed and conducted in accordance with the provisions of the Ralph M. Brown Act, Sections 54950 *et seq.* of the California Government Code.

b. **Quorum.** The presence of a majority of the Directors including at least one (1) Director representing each Member shall constitute a quorum for the transaction of Authority business. Less than a quorum may adjourn or continue meetings from time to time.

c. **Board Officers.** The Board shall have a President to preside at and conduct all meetings and a Vice President who shall succeed the President and preside in absence of the President. The offices of President and Vice President shall be filled annually in a manner to be determined by resolution.

d. **Voting; Decision-making.** Each Director or his or her alternate shall be entitled to one (1) vote. Any decision of the Board shall require a minimum of four (4) votes to be effective, subject to the following:

(i) **Unanimous.** Any change in a Member's cost-sharing percentage (as set forth in Section 8, below), or any revision of the adopted budget that results in an increase in the annual Member's contribution, or any decision with respect to fire station service levels (as set forth in Section 9, below) shall require the unanimous vote of the full Board.

(ii) **Multi-Member Majority.** All other actions of the Board shall require a majority vote of the Board, which majority must include at least one (1) vote by a Director from each Member, *except* in compliance with the following:

(A) If a motion fails because the majority does not include at least one (1) vote by a Director from each Member, then any Director may reintroduce that motion at the next Board meeting.

(B) If at the second (2nd) consecutive Board meeting where the motion is introduced the majority again does not include at least one (1) vote by a Director from each Member, then the motion may be reintroduced by any Director at the next meeting.

(C) At the third (3rd) consecutive Board meeting where the motion is introduced, the motion may be passed on a simple majority vote *without* requiring that the majority include at least one (1) vote by a Director from each Member *unless* the minority votes opposing the motion are cast by Directors from not less than two (2) *different* Members. The intent of this Subsection 2.3(d)(ii)(C) is to preclude any single Member from blocking passage of such a motion unless at least one (1) Director representing another Member joins in voting to oppose the motion.

3. Powers and Duties of Authority.

3.1 Powers. The powers of the Authority to be exercised by or under direction of the Board shall include:

a. Setting policies.

b. Adopting an annual budget.

c. Employing personnel, consultants, advisors and independent contractors, setting parameters for labor negotiations, and ratifying labor agreements.

d. Entering into contracts, leases and other agreements, which may include a contract for administrative and fiscal services and a contract with a Certified Public Accountant for annual audit services, and may include mutual aid or automatic response agreements or contracts for service to other jurisdictions.

e. Applying for, receiving and disbursing grants, loans or other aids from any private or public agency.

f. Setting fees for service where permitted by law.

g. Receiving, disbursing and investing funds.

h. Purchasing and holding title to property, subject to the limitations of Section 10 hereunder.

i. Issuing revenue bonds pursuant to California Government Code Section 6540, *et seq.*

j. Obtaining in its own name all necessary permits, licenses, opinions and rulings.

k. Expending funds of the Authority only for the purpose of carrying out the provisions of this Agreement as they now exist or may hereafter be amended. Such powers shall be exercised in the manner provided in the Act subject only to such restrictions as set forth in this Agreement or other applicable law.

l. Suing and being sued in its own name.

m. Carrying out and enforcing all of the provisions of this Agreement.

n. Other powers and duties incidental to those enumerated herein.

3.2 Duties of the Authority. The services provided by the Authority to the public within the Members' respective jurisdictions, and to those persons, agencies and/or entities who may contract with the Authority for such services, shall include:

a. Coordination of public safety response of fire and emergency medical services in connection with fire safety, life safety and the release of hazardous materials and regulated substances.

b. Fire prevention services, including fire safety inspections, fire code permit issuance and fire and building code plan reviews for new construction, tenant improvements and fire protection systems.

c. Enforcement of the respective fire codes adopted by Members.

d. Fire station maintenance subject to Section 9, below, and repairs of tools, equipment and vehicles owned and/or utilized by the Authority.

e. Hydrant services including testing, maintenance and repair of public fire hydrants; supervision of testing and maintenance of private fire hydrants; and annual testing and maintenance of Sleepy Hollow's portable fire pumps.

f. Coordination of personnel, equipment, resources, communications and mutual/automatic aid with surrounding jurisdictions.

g. Management and supervision of staff needed to carry out the services provided, including a comprehensive personnel training program,

h. Conducting and/or coordinating appropriate emergency preparedness and public education programs.

i. Such other services as may be added in the future by resolution of the Board.

4. Limitations on Powers.

4.1 Reserved Powers. Legislative, administrative and quasi-judicial powers not delegated to the Authority by this Agreement are reserved to the respective Town Councils or governing body, as the case may be, of the Members.

4.2 Members' Restrictions. Exercise of the common powers enumerated in Section 3.1 above shall be subject to such restrictions as exist for each Member independently.

4.3 Liability and Co-Obligations of Authority. The debts, assets, liabilities and obligations of the Authority shall be solely the debts, assets, liabilities and obligations of the Authority and not of its members.

4.4 Bond Obligations. If any bonds are issued by the Authority and remain outstanding, the Members benefiting from the bonds may not withdraw from the Authority until the bonds have been paid or adequate provision has been made for such payment.

4.5 Reorganization. No Member shall, without the written consent of each of the other Members, which consent may be granted or denied in such Member's sole discretion, seek or support via petition or otherwise any jurisdictional reorganization under the Cortese-Knox-Hertzberg Local Government Reorganization Act, Sections 56000, *et seq.*, of the California Government Code, as amended, or otherwise, that could result in the annexation, detachment, merger, consolidation, division, or dissolution of any of the Members of the Authority.

5. Personnel.

5.1 Executive Officer. The office of an Executive Officer shall rotate between the Town Managers of Fairfax and San Anselmo for two (2) year terms, or such other term as may be determined by the Board.

5.2 Fire Chief. The Fire Chief shall be appointed by and serve at the pleasure of the Board, shall report to the Board through the Executive Officer, and shall be compensated as determined by the Board.

5.3 Other Employees. All other employees shall be appointed by the Chief in accordance with such rules and regulations as adopted by the Board.

6. Fiscal Year; Annual Budget.

6.1 Fiscal Year. The Authority's fiscal year shall be the twelve (12) month period commencing each July 1 and ending on the following June 30.

6.2 Annual Budget. The Authority shall operate only under an approved and adopted fiscal year budget that includes appropriations for salaries and benefits, services and supplies, capital expenditures and reserves. The Authority may not operate at a deficit.

6.3 Budget Process. Not later than June 1st of each year, the Executive Officer and the Fire Chief shall recommend to the Board a budget for the ensuing fiscal year. Not later than June 15th of each year, the Board shall adopt a budget for the ensuing fiscal year. The annual budget may not be modified or amended after approval except pursuant to the terms of Section 2.(d) above.

6.4 Control and Accounting. The Executive Officer and the Fire Chief shall control and account for all expenditures under the adopted budget.

6.5 Certain Fire Station Costs Excluded. In accordance with Section 9, below, the budget shall not include costs of replacement or reconstruction of any Fire Station owned by one of the Members, which costs shall remain the separate responsibility of the owning Member.

7. Annual Contributions.

7.1 Obligations; Notifications. Annually the Members shall pay to the Authority in care of its fiscal agent their respective Percentage Shares of the Authority's adopted budget and of approved increases therein, if any, in accordance with the formula set forth in Section 8 below. Not later than June 15 of each year, the Board shall notify each Member of its Percentage Share for the following year.

7.2 Monthly Payments. Each Member shall pay an amount equal to one-twelfth (1/12th) of its annual Percentage Share on the first day of each month, beginning on the Effective Date. The Board may set a different payment schedule to provide for adequate cash flow for operations and maintenance expenses and/or capital expenditures, as needed.

8. Cost Sharing.

8.1 Members' Percentage Shares Established. All costs shall be fairly and equitably allocated among all Members. The Members hereby acknowledge and agree that the Percentage Shares in this Section 8.1 represent such a fair and equitable allocation as of the Effective Date. As of the Effective Date, the cost sharing shall be as follows:

San Anselmo	Fifty-two and Nine Tenths Percent (52.9%)
Fairfax	Thirty and Four Tenths Percent (30.4%)
Sleepy Hollow	Sixteen and Seven Tenths Percent (16.7%).

8.2 Adjustments of Percentage Shares. For fiscal year 2013-2014 and not more frequently than every three (3) years thereafter, the Percentage Shares set forth in Section 8.1, above, shall be reviewed by the Board and adjusted pursuant to the requirements of Section 2.3(d)(i) above, if warranted by changes in the Members' relative population sizes, number of structures, assessed values, service calls, or other relevant factors.

8.3 New Member Adjustment of Percentage Shares. The Percentage Shares set forth in Section 8.1, above, may also be revised at any time by the Board by unanimous vote to accommodate the addition, if any, of new members or consolidations between Members,

8.4 Termination Adjustment of Percentage Shares. In the event that a Member gives notice to withdraw from the Authority in accordance with Section 13c, below, the remaining Members shall promptly enter into negotiations to determine the Percentage Shares for the remaining Members following that Member's withdrawal.

9. Fire Stations.

9.1 Ownership. The existing fire stations shall remain in the ownership of the respective Towns, but the Authority shall have the custody, use and control of them during the term of this Agreement.

9.2 Fire Station Maintenance.

a. **Maintenance by Towns.** Subject to Section 9.2 c. below, the respective Town owning each fire station shall be responsible for the maintenance, repair, replacement and improvements to the building structure, mechanical systems, electrical, plumbing and exterior infrastructure (i.e., roof coverings, driveway, etc.). The Towns are not responsible for (i) the maintenance or repair of any systems that have been installed by the Authority and are unique to fire service operations (e.g., hose dryer, radio systems, computer network, etc.), and (ii) the cost of performing any of such maintenance or repairs caused by the negligence of the Authority or its employees, agents, servants, licensees, contractors or invitees.

b. **Maintenance by Authority.** The Authority shall be responsible for routine maintenance of the fire station, interior decorating, landscaping and fire alarm system. The Authority is also responsible for the maintenance, repair, replacement, and improvements of the telecommunication systems and all systems that have been installed by the Authority and are unique to fire service operations (e.g., hose dryer, radio systems, computer network, etc.).

c. **Sleepy Hollow Contribution for Station 20**. Sleepy Hollow shall contribute up to $10,000 per fiscal year to San Anselmo to match funds contributed by San Anselmo, which funds together shall be utilized exclusively for the maintenance, repair and replacement of the building structure, mechanical systems, electrical, plumbing and exterior

infrastructure (i.e., roof coverings, driveway, etc.) of Fire Station 20 at 150 Butterfield Road, San Anselmo ("Station 20"). In the event that the full $10,000 is not required for the maintenance, repair and replacement of Station 20 in a particular fiscal year, Sleepy Hollow shall be required to submit only the amount necessary for budgeted maintenance. At each fiscal year-end, any unspent matching contributions by Sleepy Hollow may be carried forward to the next fiscal year to be utilized exclusively for the maintenance, repair and replacement of Station 20 or they may be returned to Sleepy Hollow. San Anselmo shall retain full discretion over when and how the funds will be expended with respect to Station 20 in accordance with Section 9 a. above.

9.3 Casualty Damage. If any fire or other casualty (whether insured or uninsured) renders all or any portion of a fire station unsuitable for safe and healthy occupancy, then the Town owning the fire station shall, with reasonable promptness after the occurrence of such damage, estimate the time that will be required to substantially complete the repair and restoration and shall notify the Authority in writing of such estimate promptly upon its completion. The owning Town shall then proceed with reasonable promptness and diligence to complete the repair and restoration of the fire station to its condition as existed prior to such casualty, subject to zoning laws and building codes then in effect. The Authority acknowledges that the owning Town shall be entitled to the full proceeds of any insurance coverage for damage to the fire stations, whether carried by the Town or the Authority, except for those proceeds of the Authority's insurance (including endorsements, if any) of its own losses such as personal property coverage. In no event shall the Authority be entitled to any compensation or damages from the owning Town for loss of use of the whole or any portion of a fire station or for any inconvenience or annoyance occasioned by any such damage, destruction, rebuilding, or restoration of a fire station or access thereto, except to the extent business interruption or similar insurance coverage is provided.

9.4 Certain Service Levels. The Authority's three fire stations will be routinely open, fully staffed and equipped for 24 hour continuous operation by not less than two (2) full-time sworn trained firefighters. Notwithstanding the foregoing, the Fire Chief shall have the sole discretion as to the most effective manner of handling and responding to calls for service. This includes positioning both equipment and staffing among the fire stations to meet conflicting demands. Consequently, the Members acknowledge that there may be times when equipment or personnel may not be available from all three fire stations.

10. Other Capital Assets.

10.1 Existing Capital Assets. The capital assets listed in Exhibit A attached hereto and incorporated herein by reference (collectively, the "Existing Capital Assets") shall remain the property of Fairfax and San Anselmo with the ownership thereof apportioned thirty and four tenths percent (30.4%) to Fairfax and sixty-nine and six tenths percent (69.6%) to San Anselmo. In the event of a termination of this Agreement or the withdrawal of Fairfax or San Anselmo from this Agreement, the Existing Capital Assets shall revert to Fairfax and San Anselmo in the ownership proportions so stated. Notwithstanding the foregoing, the Authority shall be responsible for operation, maintenance and repairs as to Existing Capital Assets.

10.2 Authority Capital Assets. All replacements of Existing Capital Assets and all capital assets acquired by the Authority from and after the Effective Date (collectively, the

"Authority Capital Assets") shall be purchased by the Authority, and the Members shall have ownership proportions in accordance with the Percentage Shares set forth in Section 8.1, above. The Authority shall maintain the Existing Capital Assets and the Authority Capital Assets and monitor their conditions so as to replace or reconstruct them in accordance with the Authority's minimum requirements based on latest technology. The Authority may undertake revenue bond financing pursuant to California Government Code Sections 6540, *et seq.*, to acquire Authority Capital Assets.

11. Indemnification; Insurance.

11.1 Indemnification of Members. The Authority shall defend, indemnify and hold harmless the Members, each Director, and each Member's respective Council or governing board members, officers, agents and employees, from any and all claims, losses, damages, costs, injuries and liabilities of every kind arising directly or indirectly from the conduct, activities, operations, acts, and omissions of the Authority under this Agreement.

11.2 Authority Requirements. Authority shall maintain membership in one or more insurance pooling joint powers agencies established pursuant to the Act for purposes of workers compensation, public liability and property insurance (as to Authority Capital Assets and the Existing Capital Assets), and shall establish and maintain such self-insurance retention or other reserves as are required by said agencies.

11.3 Fire Station Coverage. As to the fire stations, each owning Town shall at all times throughout the term of this Agreement maintain adequate property/casualty insurance, updated annually.

12. Service to Other Jurisdictions.

Service to other jurisdictions or entities may be provided (a) by contract; (b) by amendment of this Agreement to add an additional Member or Members in accordance with Section 1.3 above; and/or (c) in accordance with the Marin County Mutual Aid Plan and the State of California Mutual Aid Plan.

13. Term; Termination; Withdrawal.

13.1 Term. This Agreement shall commence on the Effective Date and shall continue in full force and effect for an indefinite term until terminated as set forth below.

13.2 Termination. This Agreement may be terminated only by (a) a unanimous vote of the Board and a written agreement of all of the Members made on or before June 30th of any year, effective no sooner than the June 30th two (2) years thereafter, or (b) a jurisdictional reorganization under California law affecting any of the Members; provided, however that in all cases the Authority shall make proper provisions for the winding up of the Authority's affairs.

13.3 Effect of Termination. If upon termination the responsibility for fire protection reverts to the individual Members, the remaining moneys and assets of the Authority including, but not limited to, the Existing Capital Assets, the Authority Capital Assets, the Ending Fund Balance, and any reserves of the Authority to be established, shall be apportioned and distributed

to the Members in proportion to the applicable cost-sharing percentages; provided, however, that (i) said distribution may be deferred by the Board in whole or in part for a reasonable period as a reserve to meet liabilities known and unknown, and (ii) the Authority shall continue to exist for the purpose of disposing of all claims and performing all other functions necessary to wind up the Authority's affairs. Thereafter, the Authority shall be dissolved.

13.4 Withdrawal. Any Member may terminate its participation in this Agreement and withdraw from the Authority upon written notice to the other Members first given on or before June 30th of any year, effective no sooner than June 30th two (2) years thereafter.

a. Payments Upon Withdrawal. If a Member terminates its participation in this Agreement and withdraws from the Authority, it shall pay its Percentage Share of the Authority's costs for which it is responsible to pay up to the effective date of its termination and withdrawal. In addition, a withdrawing Member shall also pay its Percentage Share of (i) the Authority's remaining unpaid costs and debts as budgeted for the two (2) relevant fiscal years related to any and all tangible and intangible Authority property including, but not limited to, costs of equipment, leases, facilities, improvements, etc., (ii) any bonded indebtedness of the Authority incurred prior to the date of withdrawal, (iii) any unpaid contributions assessed against the Authority by the California Public Employees' Retirement System ("CalPERS") relating to the period during which the terminating Member was a Member, (iv) any unpaid contributions in connection with post-employment benefits other than pensions ("OPEB") as part of compensation for services rendered by Authority employees, and (v) the actual costs associated with its withdrawal including, but not limited to, Authority staff time required to change existing services and systems. All payments due under this Section 13.4(a) shall be paid not later than ninety (90) days following the date of termination and withdrawal.

b. Effect of Withdrawal. Termination of and withdrawal from this Agreement by any Member shall not be construed as a completion of the purpose of this Agreement, and shall not require the repayment or return to the remaining Members of all or any part of any contributions, payments, or advances made by the Members until this Agreement is rescinded or terminated as to all Members. Except as expressly provided otherwise in this Agreement, the Board shall have the reasonable discretion and authority to determine how to address any claims of ownership and/or possession of any Authority property by a withdrawing Member, provided, however, that if there is a good faith dispute regarding whether such property is owned by the Authority or by the withdrawing Member, such Member may bring an appropriate action in a court of law or equity to determine such ownership.

14. Entire Agreement.

This Agreement, together with its Exhibits (which are incorporated herein by reference) constitutes the entire agreement among the Members as to the subject matter hereof, and may be altered or amended only by an instrument in writing duly executed by the Members.

15. Successors.

This Agreement shall be binding upon and shall inure to the benefit of successors to the Members hereto.

16. Modification or Suspension.

This Agreement may be amended only by a written agreement executed by all Members. In the event State or Federal laws or regulations enacted after the Effective Date, prevent or preclude compliance with one or more provisions herein, such provision shall be modified or suspended only to the extent necessary to comply with such laws or regulations.

17. Severability.

If any term or provision of this Agreement shall to any extent be determined by a court of competent jurisdiction to be invalid or unenforceable for any reason, the remaining terms or provisions of this Agreement are intended to be independently valid and enforceable to the full extent permitted by law.

18. Governing Law.

This Agreement shall be construed and interpreted in accordance with the laws of the State of California.

19. Headings.

The section headings and titles contained in this Agreement are for the convenience of reference only and are not intended to define, limit or describe the scope of any provision of this Agreement.

20. Consent.

Whenever any consent or approval is required by this Agreement, such consent or approval shall not be unreasonably withheld, conditioned or delayed, except as otherwise specifically set forth herein.

21. Enforcement by Authority.

The Authority is hereby authorized to take or seek any or all legal or equitable actions or remedies permitted by law to enforce this Agreement. Venue shall be in the Superior Court of the County of Marin, California.

22. Execution in Counterparts.

This Agreement may be executed on behalf of the respective Members in one or more counterparts, all of which collectively shall constitute one document and agreement.

23. Transition Provisions.

23.1 Ending Fund Balance. The total fund balance of the Authority existing as of June 30, 2010, plus a one-time payment of $93,500 from Sleepy Hollow made on or before the Effective Date (the "Sleepy Hollow Fund Balance Contribution"), shall become the beginning fund balance of the expanded Authority as of the Effective Date, and Members shall have

ownership proportions therein in all fund balances of the Authority in accordance with their Percentage Shares set forth in Section 8.1.

23.2 Sleepy Hollow Obligations and Limitations for Pre-Existing Financial Liabilities.

a. **Limitations.** Except as provided in Section 23.2 b. and c. below, Sleepy Hollow shall not assume, and shall not be deemed to have assumed, or be in any way liable for or subject to or have any obligation for or with respect to, any liabilities or obligations of the Authority of any kind, nature, or description whatsoever, whether absolute, accrued, contingent, known, unknown, or otherwise, that were incurred by the Authority prior to the Effective Date.

b. **Payment of Ongoing Costs of Pre-Existing Financial Liabilities.** Sleepy Hollow acknowledges that the Authority has preexisting obligations for periods before the Effective Date under the defined benefit plans of the Ross Valley Fire Service and its predecessor fire departments relating to post-employment retirement, disability, and/or death benefits payable to any participant, whether vested or unvested (collectively, "Pre-2010 Retirement Benefit Obligations") and may have other pre-existing financial liabilities that arose without fault of the Authority in the regular course of business and that will have to be paid in the regular course of business ("Other Pre-Existing Financial Liabilities"). The parties agree that unpaid taxes, breach of contract claims or environmental claims shall not be deemed Other Pre-Existing Financial Liabilities. Sleepy Hollow acknowledges that its share of the Pre-2010 Retirement Benefit Obligations and Other Pre-Existing Financial Liabilities (together, the "Sleepy Hollow Pre-2010 Share") shall be set in accordance with Sleepy Hollow's Percentage Share as set forth pursuant to Article 8 as part of the ongoing costs of the Authority.

c. **Indemnification.** Notwithstanding Sleepy Hollow's obligation under Section 23.3b to pay the Sleepy Hollow Pre-2010 Share, Sleepy Hollow shall have no liability to any third party for the Pre-2010 Retirement Benefit Obligations or the Other Pre-Existing Financial Liabilities that exceed the Sleepy Hollow Pre-2010 Share. Fairfax and San Anselmo jointly and severally agree to defend, indemnify and hold harmless Sleepy Hollow from and against any and all losses, claims, damages, liabilities, obligations, deficiencies, fines, penalties, expenses (including, without limitation, reasonable attorneys' fees), judgments, settlements, or costs in enforcing such right of indemnification arising out of, based upon, or in connection with the Pre-2010 Retirement Benefit Obligations or the Other Pre-Existing Financial Liabilities to the extent that those obligations or liabilities exceed the then-applicable Sleepy Hollow Pre-2010 Share.

d. **Reduced Sleepy Hollow Payments Under Certain Circumstances.** Notwithstanding Subsection 13.4 b., if any Member withdraws from the Authority or this Agreement is terminated (each, a "Reduction Event"), then the Sleepy Hollow Pre-2010 Share shall be reduced in accordance with the following formula:

(i) If the Reduction Event is effective prior to June 30, 2011, then the Sleepy Hollow Pre-2010 Share shall be Zero Percent (0%);

(ii) If the Reduction Event is effective on or after June 30, 2011 and prior to June 30, 2012, then the Sleepy Hollow Pre-2010 Share shall be One and Eighty-Six One Hundredths Percent (1.86%);

(iii) If the Reduction Event is effective on or after June 30, 2012 and prior to June 30, 2013, then the Sleepy Hollow Pre-2010 Share shall be Three and Seventy-Two One Hundredths Percent (3.72%);

(iv) If the Reduction Event is effective on or after June 30, 2013 and prior to June 30, 2014, then the Sleepy Hollow Pre-2010 Share shall be Five and Fifty-Eight One Hundredths Percent (5.58%);

(v) If the Reduction Event is effective on or after June 30, 2014 and prior to June 30, 2015, then the Sleepy Hollow Pre-2010 Share shall be Seven and Forty-Four One Hundredths Percent (7.44%);

(vi) If the Reduction Event is effective on or after June 30, 2015 and prior to June 30, 2016, then the Sleepy Hollow Pre-2010 Share shall be Nine and Three Tenths Percent (9.3%);

(vii) If the Reduction Event is effective on or after June 30, 2016 and prior to June 30, 2017, then the Sleepy Hollow Pre-2010 Share shall be Eleven and Sixteen One Hundredths Percent (11.16%);

(viii) If the Reduction Event is effective on or after June 30, 2017 and prior to June 30, 2018, then the Sleepy Hollow Pre-2010 Share shall be Thirteen and Two One Hundredths Percent (13.02%);

(ix) If the Reduction Event is effective on or after June 30, 2018 and prior to June 30, 2019, then the Sleepy Hollow Pre-2010 Share shall be Fourteen and Eighty-Eight One Hundredths Percent (14.88%);

(x) If the Reduction Event is effective on or after June 30, 2019, then the Sleepy Hollow Pre-2010 Share shall be Sixteen and Sixty-Seven One Hundredths Percent (16.7%);

provided, however, that if any Member's Percentage Share shall be adjusted in accordance with this Agreement for any reason, then Sleepy Hollow's liability for Pre-2010 Retirement Benefit Obligations may be revised to reflect the respective adjustments in the Members' Percentage Shares.

[Signatures appear on next page.]

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

TOWN OF FAIRFAX, 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

EXHIBIT A

Existing Capital Assets

Fire Engines – with full complement of equipment

- 1988 Pierce Dash
- 1995 Pierce Saber All Wheel Steer
- 1997 International Type III
- 2000 Pierce Saber All Wheel Steer
- 2003 Pierce Saber All Wheel Steer

Staff and Utility Vehicles – with full complement of equipment:

- 1980 GMC Brigadier Transport
- 2001 Chevrolet Impala
- 2002 Chevrolet Tahoe
- 2004 Chevrolet Silverado
- 2008 Chevrolet Tahoe
- 2008 Chevrolet Silverado

Mobile Live Fire Training Unit

- 2003 International Code Services (ICS) Mobile Live Fire Trainer

Self Contained Breathing Apparatus (SCBA)

- Interspiro Spiromatic 4530 SCBA (26)
- Interspiro 4500 psi SCBA air cylinder (63)

Radio equipment

- Station radio – Motorola Astro (6)
- Station ringdown system – Moscad-L (3)
- MERA mobile radio – Motorola Spectra W9 (10)
- Highband mobile radio – Kenwood (9)
- MERA portables radio – Motorola XTS-5000R (18)
- Highband portables radio – Bendix King (22)
- Mobile Display Computer (6)

Fire Hose

- 4" NCR supply hose – 5,500 feet, 110 lengths
- 3" N-Dura supply hose – 600 feet, 12 lengths
- 2.5" N-Dura attack hose – 5,700 feet, 114 lengths
- 1.75 N-Dura attack hose – 6,450 feet, 129 lengths

Structure Firefighting Protective Clothing

- Morning Pride firefighter turnouts (33)
- Globe G-Xtreme firefighter turnouts (20)

Defibrillators

- Medtronic Lifepak 1000 Defibrillator (4)

Other Equipment

- Washer Extractor
- Diesel Exhaust System (3)
- Bauer Breathing Apparatus Compressor
- Station air compressors (3)
- Welder – Millermatic 180
- Bullard T-4 thermal imagers (3)
- Rice fire hose tester
- Washer/dryers – washers (4), dryer (3)
- Ready Rack Turnout Locker (16)
- Weather monitoring station (2)
- International Code Council (ICS) fire extinguisher trainer

Computers

- Computer workstation (14)
- Laptop (3)
- Server (2)

Office Equipment

- Desk sets (9)
- Conference table with chairs
- Training table (6)
- Phone system
- Kyocera Mita Copier (2)
- Hp Color Laser Printer

Station Furnishing

- Dayroom furnishings
- Bed and mattress (30)

Exercise Equipment

- Treadmill (3)

- Stairmaster (2)
- Exercise bike (3)
- Free Motion F7.8 optical (1)
- Weight set (3)

Note: In addition to this exhibit, the Department maintains a detailed inventory and depreciation schedule of all capital items.

Section 2.3d (i) re: Matters Requiring a Unanimous Vote

Unanimous. Any change in a Member's cost-sharing percentage (as set forth in Section 8, below), or any revision of the adopted budget that results in an increase in the annual Member's contribution, or any decision with respect to fire station service levels (as set forth in Section 9, below), or the making of any single expenditure of Authority funds in excess of Four Percent (4%) of the adopted operating budget of the Authority shall require the unanimous vote of the full Board.

Section 13.4 b re: Withdrawal Rights

. Effect of Withdrawal. Termination of and withdrawal from this Agreement by any Member shall not be construed as a completion of the purpose of this Agreement, and shall not require the repayment or return to the remaining Members of all or any part of any contributions, payments, or advances made by the Members until this Agreement is rescinded or terminated as to all Members. ~~Except as expressly provided otherwise in this Agreement, the Board shall have the reasonable discretion and authority to determine how to address any claims of ownership and/or possession of any Authority property by a withdrawing Member.~~ If a Member withdraws from the Authority, then, to the extent that doing so does not substantially adversely impact the Authority's ability to continue to provide fire protection services to the remaining Members, the withdrawing Member shall be entitled to its Percentage Share of the capital assets of the Authority accrued by the withdrawing Member as of the date of its withdrawal to permit the withdrawing Member to reestablish its ability to provide fire protection to its jurisdiction; provided, however, that if there is a good faith dispute regarding whether ~~such property is owned by the Authority or by the withdrawing Member~~ the Member has accrued an interest in such assets, such Member may bring an appropriate action in a court of law or equity to determine such ownership.

Law Offices of
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San Rafael, CA 94901

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john@johnsharplaw.com

Telephone: (415) 479-1645
Facsimile: (415) 479-2648

May 27, 2010

VIA EMAIL ONLY

Mayor Lew Tremaine
and Members of Town Council
c/o Michael Rock, Town Manager
City of Fairfax
142 Bolinas Road
Fairfax, CA 94930

Re: ***Ross Valley Fire Authority Draft JPA***

Dear Mayor Tremaine and Members of the Council:

I am writing at your request with reference to the proposed Amended and Restated Joint Powers Agreement pertaining to the Ross Valley Fire Service, which I am informed will be on the Council's agenda Wednesday, June 2, 2010. I have been asked to review the proposed agreement, and related materials, with reference to, in particular, the draft agreements compliance with provisions California Government Code § 6500, et seq., the "JPA statutes." In preparing this memorandum, I have reviewed the July 1, 1982 Joint Powers Agreement – Ross Valley Fire Service, the May 18, 1993 Amendment to Joint Powers Agreement – Ross Valley Fire Service, the Staff Report of May 5, 2010, and the Amended and Restated Joint Powers Agreement itself.

I have also reviewed all applicable JPA statutes and related cases, as set forth in section 6500, et seq. of the California Government Code.

The Amended and Restated Joint Powers Agreement has been drafted in conformance to the Joint Exercise of Powers Act including, without limitation, sections 6503, 6503.1, 6504, 6505, 6506, 6507, 6508, 6508.1, 6509, 6510, 6511, 6512.1, 6512.2, and 6513.

Inasmuch as the Amended and Restated Agreement substantially changes the allocation and number of votes among the Board of Directors, I pay particular attention to the Act to be certain that there is no provision of the Act which prohibits restructuring of the board and reallocation of votes as set forth in the Agreement. Although I find no

prohibition in the Act, the structure of votes, both in number per member entity and in number of votes required to take certain action, present scenarios under which the vote(s) of the Town of Fairfax can be diluted, particularly in comparison to the 1982 and 1983 Agreements. In considering the amended Agreement, the Council should be aware of this potential dilution in its voting power.

Paragraph 2.3 of the Agreement shifts the number of votes required for a quorum, and establishes a mechanism for defining majority under varying circumstances. Beyond the awkwardness of this concept, again, there are multiple circumstances under which the Town's votes will not carry the weight they did under the previous iterations of the Agreement.

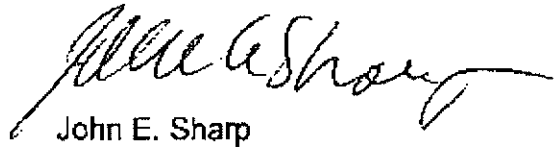
CONCLUSION

In summary, the proposed Agreement meets with the requirements of the Joint Exercise of Powers Act as drafted, but affects the Town's voting power.

Thank you for the opportunity to be of service to the Town, and I will be present at your meeting of June 2, 2010 to answer any questions the Council or others may have.

Very truly yours,

LAW OFFICES OF JOHN E. SHARP



John E. Sharp

JES/aea

cc: Judy Anderson (via email)
Jim Karpiak, Esq. (via email)