

**MEMORANDUM OF UNDERSTANDING REGARDING
FIRE PROTECTION SERVICES FOR VINEYARD AT DEER
CREEK PROJECT**

This Memorandum of Understanding (this "MOU") is made and entered as of this ____ day of September, 2019 (the "Effective Date"), by and between the East Contra Costa Fire Protection District, a California independent special district ("District"), and GBN Partners LLC, a California limited liability company ("GBN").

RECITALS

A. The District was formed in 2002 to provide fire protection, rescue and emergency services to the Cities of Brentwood and Oakley and portions of unincorporated Contra Costa County, including over 249 square miles of land and serving about 115,000 residents.

B. The District's goal is to provide fire protection and emergency response services to its service area in a manner consistent with National Fire Protection Association ("NFPA") standards.

C. Lack of revenue currently presents a significant barrier to the District providing service that meets NFPA standards.

D. The District's Strategic Plan acknowledges a present need to reduce response times for emergency services throughout the District and ensure the financial stability and sustainability of the District through strategies such as securing funds to maintain or improve response times and service levels, and improve the transportation network and emergency access, which funds may come from local and district wide development fees for fire and emergency services, community facilities districts, a benefit assessment being contemplated by the District, and other sources.

E. The District's policy is to work with developers in its service area to ensure that new development does not contribute to existing service deficits and generates sufficient revenue to support service for the development.

F. The District is analyzing the viability of pursuing a districtwide benefit assessment in 2020 to generate additional funding to reduce existing service deficits ("Benefit Assessment").

G. GBN holds an option to acquire approximately 815 acres located in Contra Costa County, north of Balfour Road and adjacent to the municipal boundaries of the City of Brentwood (the "City") but outside of the City's urban limit line ("Property"). GBN desires to develop the Property with a residential community to be known as "The Vineyards at Deer Creek" (the "Project") consisting of up to 2400 homes, of which approximately 80% will be age restricted active senior living, which will likely require higher levels of emergency response services.

H. Certain legislative approvals required to develop the Project, including adjusting the City's urban limit line to bring the Property within the territorial boundaries of the City, will be submitted to the voters of the City for approval in November, 2019 as City of Brentwood Measure L, filed with the City in April, 2019 ("Measure L").

I. Measure L includes several road and safety improvements on or near the Property that will improve local transportation networks and access for emergency response. These improvements include the extension of American Avenue consisting of its continuation west and north to create a second intersection with Balfour Road, the widening of certain portions of Balfour Road, and the extension of water lines for emergency services. The Project will also generate roadway impact fee revenue which will fund improvements that offset the impacts of the Project and improve emergency access, which may include roadway improvements on Deer Valley Road.

J. The Project will provide increased revenue to the District over time through the existing property tax structure due to the increase in current assessed value resulting from the Project construction. The total amount of property tax revenue ("Projected Tax Revenue") for the District from the Project, at buildout, is currently estimated to be about \$2-2.5 million annually in 2019 dollars.

K. The District and GBN have stipulated that, although the Project itself will generate only a portion of the demand for services to be provided by a new station, and notwithstanding the substantial Projected Tax Revenue expected by District, GBN is willing to contribute a total of over eleven million dollars (\$11 million) through (i) construction of a new station at an estimated cost of \$6.5 million (subject to escalation), and (ii) payment of \$4.5 million for equipment, training and other costs required for initial deployment of the new station. GBN is also willing to establish a community facilities district or other financing mechanism ("CFD") to provide a portion of the funds needed for the operation of a new station, all as more fully set forth below.

L. The Parties desire to collaborate on additional ways to generate sufficient revenue for the District to provide long-term service to the community consistent with NFPA standards both during construction and after buildout of the Project.

Now, therefore, District and GBN hereby set forth the following mutual understandings:

1. Goals and Understandings

- 1.1 The District and GBN have agreed that the Project will contribute more than its share of funding to assist the District in reaching its goal of providing fire protection and emergency medical services to the community at levels consistent with NFPA 1710 and the City's General Plan ("Target Level Service").

- 1.2 The District and GBN have agreed, as and to the extent more fully set forth below, that the Project's share of funding to the District for the construction and initial deployment of a new station should be equal to eleven million dollars (\$11 million) in present dollars, inclusive of (i) \$4.5 million for equipment, training and other costs associated with the initial deployment of a new station and (ii) \$6.5 million towards the construction of a new station (subject to escalation as described below) (the "GBN Capital Contribution").
- 1.3 The District and GBN have also agreed, as and to the extent more fully set forth below, that GBN will establish the CFD to generate certain additional funds to cover costs associated with service to the Property (as defined below, the "GBN Operating Cost Contribution"). The GBN Capital Contribution and the GBN Operating Cost Contribution are sometimes collectively referred to herein as the "GBN Funding Share".
- 1.4 The Parties mutually desire to work together, and with the City and other third parties, to identify and pursue additional sources of funding, to supplement the GBN Funding Share and the Projected Tax Revenue, towards the operation of the District, which additional sources may include the Benefit Assessment.

2. Construction and Deployment of New Station

- 2.1 As described above, and subject to the specific provisions set forth below, the GBN Capital Contribution will include four and a half million dollars (\$4.5 million) to be used by the District for equipment, training and other costs associated with the initial deployment of a new station, which amount shall be paid as follows:
 - 2.1.1 Within 5 days of the date of recordation of the first final map for the Project (the "Final Map Recordation Date"), GBN will pay to the District the amount of one million dollars (\$1 million).
 - 2.1.2 Upon issuance of building permit for each of the first one thousand, five hundred (1,500) residential dwellings units in the Project (exclusive of assisted living and other commercially-designated residential uses) ("RDUs"), GBN shall pay to District a per-RDU fee in the amount of \$2,333.33 (i.e., equal to a total of \$3.5 million). The fee will adjust annually in accordance with the average of the San Francisco-Oakland-San Jose Consumer Price Index as determined by the US Department of Labor (CPI) and the California Construction Cost Index, commencing on the anniversary of the earlier of (i) the date of the first final map approval for the Project; or (ii) September 1, 2021.
 - 2.1.3 Any and all funds received by the District under Section 2.1.2 shall be deposited in a separate and segregated interest-bearing account, and shall not be used by District for any purpose other than those described in Section 2 above. Nothing herein prevents the District from utilizing the funds in this account for other purposes so long as the funds are repaid with interest.
 - 2.1.4 The District acknowledges and agrees that, although Measure L (if approved) would permit the construction of up to 2,400 RDUs, the actual number of RDUs to be constructed will be determined during the planning

and mapping processes, and that GBN has no obligation to seek approval of any particular number of RDUs or to construct such RDUs at any particular pace.

- 2.1.5 The District agrees to request that the City waive GBN's payment of fire facility impact fees for up to 2400 RDUs on the Property for ten years. If the City declines to waive such fees, the District will (i) pay to GBN an amount equal to any and all such fees paid to the City of Brentwood for the Project up to \$4.5 million, subject to escalation as described in Section 2.1.2, within 10 days of proof of payment or (ii), at District's election, provide to GBN a credit against GBN's obligations under this Section 2.1.
- 2.2 GBN agrees to commence construction of a new station at the time of issuance of building permit for the 601st RDU in the Project, as follows:
 - 2.2.1 As a part of the GBN Capital Contribution, GBN shall construct a new station according to a design provided by the District which, except as otherwise set forth below, shall be similar to the District's Station 53 located at 530 O'Hara, Oakley, CA.
 - 2.2.2 The terms and conditions of construction and dedication shall be set forth in an improvement agreement to be entered into by and between GBN and the District prior to the initiation of construction (the "Improvement Agreement"), which Improvement Agreement will provide that, among other things, (i) District will provide at its cost any and all furnishings and equipment needed to deploy and operate the new station; and (ii) GBN post performance and payment bonds for construction of the new station at levels contemplated by the Subdivision Map Act.
 - 2.2.3 Construction of the new station must be complete within two years following commencement of construction, unless delayed due to District request or action. The Improvement Agreement will include a provision providing that, subject to force majeure as provided below, failure to substantially complete construction of the new station (i.e., subject to punch list items) within two years following initiation of vertical construction will be subject to liquidated damages in an amount to be determined, but which shall be between \$250 to \$500 per day. Notwithstanding the foregoing, the date by which construction of the new station must be commenced and completed shall be extended by a period of time equal to the number of days during which commencement or completion of construction is delayed beyond the reasonable control of the GBN by strikes, lock-outs and other labor difficulties, Acts of God, inclement weather, failure or inability to secure materials or labor, changes in local, state or federal laws or regulations, any development moratorium or any action of other public agencies that regulate land use, development or the provision of services prevents, prohibits or delays construction of the new station, enemy action, civil disturbances, wars, terrorist acts, fire, unavoidable casualties, litigation involving or related to the new station, or any other cause beyond the reasonable control of GBN which substantially interferes with commencement or completion of construction. In the event of any such delay, GBN shall not be prevented from securing building permits for, or constructing or delivering for occupancy, more than 600 RDUs in the Project.

- 2.2.4 If the District determines that the most appropriate location of the new station is on the Property, GBN agrees to dedicate to the District (upon completion of construction) a parcel of 1.5-2 acres at a location consistent with GBN's overall development plans for the Project, which location shall be subject to the District's approval, which may not be unreasonably withheld or delayed and, in any event, must be provided within thirty (30) days following request by GBN. No later than ninety (90) days following receipt of notice from GBN that GBN is preparing a tentative subdivision map for approval by the City, but not earlier than July 1, 2020, District shall notify GBN in writing of its election as to whether or not the new station will be located on the Property. If District fails to so notify GBN within such 90-day period, District shall be deemed to have waived its right to locate the new station on the Property. If GBN is required to construct the new station on property other than the Property, District shall acquire such property using its own funds (i.e., GBN shall have no liability relative to property acquisition) and provide all necessary construction licenses, easements and permits.
- 2.2.5 The cost of construction of the new station is presently estimated at \$6.5 million, subject to annual adjustment on the anniversary of the date of this MOU, in accordance with the average of the CPI and the California Construction Cost Index (the "Adjusted Estimate"). If, prior to the start of construction, GBN believes that the cost to construct the new station, as detailed in the plans provided by the District, will exceed the Adjusted Estimate, the parties agree to meet and confer in good faith on value engineering propositions or design changes, and use their best efforts, to reduce the projected cost to a level that is at or below the Adjusted Estimate.
- 2.3 The GBN Operating Cost Contribution shall be funded through a Project-specific CFD, or other mechanism determined by GBN and reasonably acceptable to the District, which CFD or other mechanism will include a tax or assessment with a rate and method of apportionment intended to generate not less than \$650 per built lot per year which amount will be adjusted annually in accordance with the average of CPI and the California Construction Cost Index, which adjustment shall commence on the first anniversary date of the establishment of the CFD or other mechanism. GBN agrees to establish the CFD prior to issuance of the first occupancy permit for any RDUs in the Project. The rate and method of apportionment for the CFD will provide for a dollar for dollar reduction in per-lot taxes or assessments equal to any amount imposed by District under the Benefit Assessment or any other districtwide revenue measure imposed by the District within ten years of establishment on the Property of the CFD or other mechanism.
- 2.4 It is the Parties' intent that the Project will not be required to generate funding in addition to that identified in this MOU. Not in limitation of the foregoing, the District will use its best efforts at all times, both independently and in coordination with the City and other land use jurisdictions, to secure enforceable commitments from other new developments (i.e., those within its service area that will benefit directly or indirectly from construction and operation of the new station) to contribute funding for the District's capital needs at levels proportionate to that being provided by GBN hereunder.

2.5 Not in limitation of the provisions of Section 2.4 above, the Parties agree to work together and with third parties, including the City and other developers, to identify and secure funding mechanisms to generate ongoing revenue for the District sufficient for the District to provide Target Level Service. GBN further agrees to support District revenue measures to secure additional funding for fire protection and emergency response services throughout the District, including, but not limited to, the Benefit Assessment, provided such measures are consistent with the letter and spirit of this MOU.

3. Other Commitments.

3.1 The District stipulates, acknowledges and agrees that the commitments stated in this MOU, if effectuated, will (i) effectively and fully mitigate the impacts of the Project relating to fire protection and emergency response services; and (ii) adequately support the goal of achieving Target Level Service for the District's entire service area.

3.2 Within three days of the District's approval of this MOU, District shall, in writing, supplement its public comments on City of Brentwood's draft environmental impact report on the Project and notify the City that the concerns raised by District in its letter have been addressed as set forth in the stipulations described in Section 3.1 above.

3.3 The Parties agree to work together and with the City to further define the commitments stated in this MOU and to incorporate the commitments in additional agreements throughout the development process.

3.4 In the event that Measure L does not pass, or is defeated by judicial challenge or for any other reason does not become effective, the commitments in this MOU automatically terminate and will have no further force or effect.

4. Miscellaneous

4.1 Assignment. To the extent GBN's obligations under this MOU are incorporated into a subsequent agreement between the City and GBN (e.g., pre-annexation agreement, development agreement) that includes provisions relating to assignment, GBN may assign this MOU using provisions in such subsequent agreement. Otherwise, GBN may assign its rights and obligations under this agreement to any party acquiring an interest in all or a portion of the Project, subject to prior approval of the District, which may not be unreasonably withheld and which will be granted if such party has adequate financial capacity to fulfill the obligations of this MOU and experience in residential or commercial development.

4.2 Indemnification. GBN shall indemnify, reimburse, and hold harmless the District and its officers, agents and employees (the "District Parties") from and, if requested, shall defend them, using legal counsel reasonably acceptable to District against any and all loss, cost, damage, injury, liability, and claims to or by third parties ("Losses") arising or resulting directly or indirectly out of (i) the adoption or implementation of this MOU; (ii) any failure by GBN (or its agents, employees or contractors) to comply with any federal, state or local laws in connection with the construction of the new station; (iii) any accident, bodily injury, death, personal injury or loss of or damage to property occurring on the Property (or off-site if the

with respect to the terms and conditions of this Agreement. Nothing contained in this MOU or in any document executed in connection with this MOU shall be construed as making District and Developer joint venturers or partners.

- 4.7 Severability. If any terms or provision(s) of this MOU or the application of any term(s) or provision(s) of this MOU to a particular situation, is (are) held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this MOU or the application of this MOU to other situations, shall remain in full force and effect unless amended or modified by mutual consent of the Parties provided that, if the invalidation, voiding or enforceability would deprive either District or GBN of material benefits derived from this MOU, or make performance under this MOU unreasonably difficult, then District and GBN shall meet and confer and shall make good faith efforts to amend or modify this MOU in a manner that is mutually acceptable to District and GBN.
- 4.8 No Waiver. No delay or omission by either Party in exercising any right or power accruing upon noncompliance or failure to perform by the other Party under any of the provisions of this MOU shall impair any such right or power or be construed to be a waiver thereof. A waiver by either Party of any of the covenants or conditions to be performed by the other Party shall be in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought, and any such waiver shall not be construed as a waiver of any succeeding breach or non-performance of the same or other covenants and conditions hereof.
- 4.9 Third Party Beneficiaries. Except as otherwise provided herein, District and GBN hereby renounce the existence of any third party beneficiary to this MOU and agree that nothing contained herein shall be construed as giving any other person or entity third party beneficiary status.
- 4.10 Controlling Law, Venue, Attorneys Fees. This MOU and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this MOU shall be held exclusively in a state court in the County of Contra Costa, California, or the U.S. District Court for the Northern District of California. If any legal proceeding should be instituted by either of the Parties to enforce the terms of this MOU or to determine the rights of the Parties under this MOU, the prevailing party in said proceeding may recover, in addition to all court costs, reasonable legal fees. This Section shall survive the termination of the Agreement.
- 4.11 Entire Agreement. This MOU constitutes the complete and exclusive statement of agreement between the District and GBN regarding the subject of this MOU. All prior written and oral communications, including correspondence, drafts, memoranda, and representations regarding the subject of this MOU, are superseded in total by this MOU. Nothing herein affects the validity of any reimbursement agreements entered into by the Parties. This MOU may be modified or amended only by a written document executed by both Parties.
- 4.12 Counterparts. This MOU may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the Parties when at least one copy hereof has been signed by each Party hereto.

In witness whereof, District and GBN have executed this MOU as of the date first written

above.

East Contra Costa Fire Protection District
a California independent special district

Signed: _____
Brian Helmick, Fire Chief

APPROVED AS TO FORM

Signed: _____
Shayna van Hoften, District Counsel

GBN Partners LLC
a California limited liability company

Signed: _____

Its: _____