

RESOLUTION NO. 47-2023

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFICA APPROVING THE
AGREEMENT BETWEEN THE CITY OF SOUTH SAN FRANCISCO AND THE CITY OF
PACIFICA FOR POLICE COMMUNICATION SERVICES**

WHEREAS, on September 1, 2011, the City of South San Francisco and City of Pacifica entered into agreement whereby the City of South San Francisco agreed to provide certain police communication services to the City of Pacifica;

WHEREAS, on January 23, 2014, the City Council of the City of Pacifica adopted a resolution accepting the First Amendment to the Agreement Between the City of South San Francisco and City of Pacifica to provide certain police communication services to the City of Pacifica;

WHEREAS, on February 27, 2017, the City Council of the City of Pacifica adopted a resolution accepting the Second Amendment to the Agreement Between the City of South San Francisco and the City of Pacifica to provide certain police communication services to the City of Pacifica;

WHEREAS, on April 13, 2020, the City Council of the City of Pacifica adopted a resolution accepting the Third Amendment to the Agreement Between the City of South San Francisco and the City of Pacifica to provide certain police communication services to the City of Pacifica;

WHEREAS, the City of South San Francisco has provided competent police communication services in accordance with the agreement, and the agreement is set to expire on June 30, 2023;

WHEREAS, the City of South San Francisco and the City of Pacifica desire to enter into a new agreement, with a 3% increase each year, expiring on June 30, 2026;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Pacifica, California, that the City Manager of the City of Pacifica is authorized to execute on behalf of the City of Pacifica the attached hereto as Exhibit A, including any extensions or amendments thereof and any subsequent contract with the City of South San Francisco in relation thereto.

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PASSED AND ADOPTED at a regular meeting of the City Council of the City of Pacifica, California, held on the 22nd day of May, 2023, by the following vote:

AYES, Councilmembers: *Beckmeyer, Bier, Bigstyk, Botes, Vaterlaus*

NOES, Councilmembers: *n/a*

ABSENT, Councilmembers: *n/a*

ABSTAIN, Councilmembers: *n/a*

Tygaris T Bigstyk

Tygaris Twyrls Bigstyk, Mayor

ATTEST:

Sarah Coffey

Sarah Coffey, City Clerk

APPROVED AS TO FORM:

Michelle Kenyon

Michelle Kenyon, City Attorney

Exhibit A

AGREEMENT BETWEEN THE CITY OF SOUTH SAN FRANCISCO AND
THE CITY OF PACIFICA FOR POLICE COMMUNICATIONS SERVICES

This Police Communications Services Agreement ("Agreement") is entered into on _____, 2023, by and between the CITY OF SOUTH SAN FRANCISCO, hereinafter referred to as "SSF" and the CITY OF PACIFICA, hereinafter referred to as "PACIFICA." (together sometimes referred to as the "Parties")

RECITALS

WHEREAS, SSF desires to furnish police communications services to PACIFICA through the utilization of SSF facilities and staff; and

WHEREAS, SSF is willing to furnish said services to PACIFICA for a mutually agreed cost; and

WHEREAS, the Parties to this Agreement have determined that the computer-aided dispatch and records management systems belonging to the Parties are compatible and will be an effective method of communications and record keeping for both Parties; and

WHEREAS, it is necessary and desirable that the parties enter into this Agreement as set forth below;

NOW, THEREFORE, in consideration of the recitals and mutual obligations contained herein, SSF and PACIFICA agree as follows:

1. Description of Services

- (a) SSF will provide PACIFICA with the following services: telephone answering and personnel notification, including status keeping, activity reporting and database inquiries in response to PACIFICA police operational needs. SSF will be responsible for answering PACIFICA's non-emergency administrative telephone calls outside of normal weekday PACIFICA office hours which are defined as Monday, Tuesday, Thursday, Friday 8:30 am to 5:00 pm and Wednesday 8:30 am to 7:30 pm.
- (b) SSF will provide PACIFICA with the services described in Paragraph (a) above 24-hours per day, 7-days per week, 365-days per year beginning on _____.
- (c) SSF shall cause all emergency and non-emergency telephone calls and two-way radio traffic related to PACIFICA to be recorded. The recordings shall be retained by SSF for a minimum of one hundred (100) days following the date of the call or message. SSF shall provide excerpts of these recordings to PACIFICA upon request.
- (d) SSF shall provide and maintain computer hardware and system software at the SSF communications center to support PACIFICA computer aided dispatching and automated records management. PACIFICA, at its own expense, shall procure the necessary compatible application software for computer aided dispatching and automated records management. Further, PACIFICA shall be

responsible for paying any and all recurring software maintenance fees for all software that it has purchased and/or licensed in connection with this Agreement.

- (e) SSF shall provide and maintain sufficient telephone equipment to accommodate the PACIFICA E911, 7-digit emergency telephone lines, and administrative business lines.
- (f) PACIFICA shall be responsible for the non-recurring and recurring cost of its telephone lines and any equipment required to extend its telephone lines to the SSF police communications center.
- (g) SSF shall provide and maintain radio console equipment within the SSF police communications center to effect radio transmissions to and from the SSF police communications center to the PACIFICA field units.
- (h) SSF shall provide recording equipment to log and record incoming and outgoing radio and telephone transmissions related to this Agreement.
- (i) SSF shall make the services of its telecommunications engineering and police technology team available to design the radio and telephone systems required to provide the services identified herein. If the telecommunications engineering and police technology team costs increase during this Agreement, the Parties will meet to agree upon an additional amount to be paid by Pacifica sufficient to cover the increased costs.
- (j) PACIFICA and SSF shall jointly maintain and update a computerized geographic information file, with each party focusing on streets and premise data in its own jurisdiction.
- (k) SSF will complete all functions of the warrant process for PACIFICA. These duties include, but are not limited to, new warrant entries, warrant updates and warrant due diligence.

2. Operational Responsibilities

- (a) The SSF Communications Center shall be under the direction and management control of SSF's Chief of Police. Matters concerning communications procedures, operations, complaints, requests for changes and/or similar operational matters provided for under this Agreement and specifically related to PACIFICA shall be approved by PACIFICA's Chief of Police and submitted to the SSF Chief of Police or his/her designee for consideration.
- (b) SSF shall provide sufficient working space and facilities at the SSF police communications center for SSF personnel and equipment to provide the services described in this Agreement. SSF, in its sole discretion, shall determine the quantity and classification of employees required to provide the services to PACIFICA contemplated under this Agreement.
- (c) SSF shall, during the term of this Agreement, be the employer to all SSF personnel and shall be solely responsible for providing direction to personnel. PACIFICA shall have no ability to direct or control SSF personnel as to the method which the Services are provided to PACIFICA. SSF shall be solely responsible for all compensation and benefits, including retirement benefits, owed to SSF personnel.

3. Compensation for Services

- (a) PACIFICA shall pay SSF the amounts detailed below as compensation for services provided during each fiscal year beginning July 1, 2023, and ending on June 30, 2026. SSF shall invoice PACIFICA in advance on a quarterly basis beginning on July 1, 2023, in an amount equal to ¼ of annual amount due. Pacifica shall remit in full within 45 days of receiving an invoice from SSF.

2023-2024	2024-2025	2025-2026
\$719,168	\$740,743	\$762,965

- (b) In the event SSF and PACIFICA agree that additional employees must be hired by SSF in order to implement this Agreement and have agreed on the costs associated with those additional hires, PACIFICA shall pay SSF an amount equal to the cost of the additional employees hired by SSF to fulfill its obligations under this Agreement.
- (c) Upon mutual agreement, PACIFICA may request SSF to provide additional police communications services for special events at the rate of \$85 per hour per employee with a minimum of four (4) hours per event. PACIFICA must schedule special events with SSF at least thirty (30) days in advance of the event date.

4. Term

SSF shall furnish the agreed-upon services as set forth above for a period of three (3) years, commencing July 1, 2023, and expiring June 30, 2026. This Agreement may be extended for up to a three (3) year period if mutually agreed by SSF and PACIFICA in writing.

5. Waiver/Immunities

- (a) Waiver.

PACIFICA is responsible for damages to or loss of its property and waives its right to sue SSF for any damages to or loss of its property or injury to its personnel that may occur in responding to communication services pursuant to this Agreement, except for loss of PACIFICA'S property or injury to PACIFICA'S personnel that is caused by the gross negligence or willful misconduct of SSF.

- (b) Immunities.

By entering into this Agreement, neither Party waives any of the immunities provided by the California Government Code or other applicable provisions of law.

6. Termination of Agreement

This Agreement may be terminated in accordance with the following:

- (a) Termination Without Cause

Notwithstanding any other provision of this Agreement, at any time and without cause, the Parties to this Agreement shall have the right, in their sole discretion, to terminate this Agreement by giving ninety (90) days' written notice to the other Party.

(b) Termination for Cause

Notwithstanding any other provision of this Agreement, if either Party fails to perform or cure any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violates any of the terms of this Agreement, the other Party may immediately terminate this Agreement by giving written notice of such termination, stating the reason for the termination. The termination shall become effective on the last day of the quarter in which the written notice of termination is provided.

(c) Ability to Cure

In the event of any alleged failure to perform any terms or conditions of this Agreement, the Party alleging such breach shall give the other Party notice in writing specifying the nature of the breach and the manner in which said breach or default may be satisfactorily cured, and the Party in breach shall have thirty (30) days following such notice ("**Cure Period**") to cure such breach. During the Cure Period, the Party charged shall not be considered in default for purposes of termination or institution of legal proceedings. The failure of any Party to give notice of any breach shall not be deemed to be a waiver of that Party's right to allege any other breach at any other time.

(d) Payment Upon Termination

Upon termination of this Agreement, PACIFICA shall, within thirty (30) days of termination, pay SSF any outstanding balance for services or materials provided by SSF.

7. **Notices**

All notices, demands, requests, consents, approvals, waivers, or communications ("Notices") that either party desires or is required to give to the other party or any other person shall be in writing and either personally served or sent by prepaid postage, first class mail. Notices shall be addressed as appears below for each party except if either party gives notice of a change of name or address, notices to the giver of that Notice shall thereafter be given as demanded in that Notice.

SSF: City of South San Francisco
City Manager
400 Grand Avenue
South San Francisco, CA 94080

PACIFICA: City of Pacifica
City Manager
170 Santa Maria Avenue
Pacifica, CA 94044

8. **Relationship of Parties**

Both parties agree and understand that the services performed under this Agreement are performed as an independent contractor, and that neither party's employees acquire any of the rights, privileges, powers, or advantages of the other party's employees. No pension rights of PACIFICA or SSF employees will be affected by this Agreement.

9. Confidential Law Enforcement Information

PACIFICA shall provide SSF with proof of eligibility to access State and Federal automated criminal justice databases. PACIFICA shall provide SSF identifying information on its employees that require access to said databases to facilitate SSF maintaining computerized security tables that allow or prohibit access. SSF may restrict access from view by PACIFICA if SSF deems it necessary to protect the security of its employee information. SSF and PACIFICA shall be individually responsible for complying with State and Federal training requirements for employees related to criminal justice databases. PACIFICA shall be responsible for proper use of criminal justice information disseminated to it by SSF. PACIFICA agrees to indemnify and hold harmless SSF in the event of misuse of confidential information by PACIFICA users.

10. Hold Harmless, Indemnification

- (a) PACIFICA shall defend, save harmless and indemnify SSF, its officers and employees from any and all claims which arise out of the terms and conditions of this Agreement and which result from the negligent acts or omissions of PACIFICA, its officers, employees and contractors.
- (b) SSF shall defend, save harmless, and indemnify PACIFICA, its officers and employees from any and all claims for injuries or damage to persons and/or property which arise out of the terms and conditions of this Agreement and which result from the negligent acts or omissions of SSF, its officers, employees and contractors.
- (c) In the event of concurrent negligence of SSF, its officers and/or employees, and PACIFICA, its officers and/or employees, then the liability for any and all claims for injuries or damage to persons and/or property which arise out of terms and conditions of this Agreement shall be apportioned according to the California theory of comparative negligence.
- (d) This section shall include, without limitation, any actions, claims, suits, demands, and liability of every name, kind, and description brought for, or on account of injuries to or death of any person, including PACIFICA or SSF, or damage to property of any kind whatsoever and to whomsoever belonging.
- (e) The duty to indemnify and hold harmless as set forth herein shall include the duty to defend as set forth in Civil Code Section 2778.

11. Radio Systems

PACIFICA shall own and operate its police radio system and be solely responsible for its procurement, maintenance, and replacement. This includes receivers, transmitters, voter/comparators, and associated equipment. PACIFICA shall maintain its radio

equipment in a manner that will allow clear reception that is free from static and interference.

SSF shall own and operate its police communications dispatch equipment and be solely responsible for its procurement, maintenance, and replacement. This includes dispatch console electronic equipment, logging recorder, computer servers and associated equipment. SSF shall use this equipment to provide radio dispatch service to PACIFICA.

12. Ownership of Computerized Data

Both parties acknowledge that automated law enforcement records information for SSF and PACIFICA will be comingled in a single computer database owned and managed by SSF. SSF agrees to allow PACIFICA to electronically copy its records for the purpose of maintaining its own archive without additional cost to PACIFICA.

13. Assignability and Subcontracting

Neither party may assign the benefits nor delegate the duties set forth in this Agreement.

14. Insurance

Both parties shall maintain sufficient insurance, self-insurance, or a combination thereof to comply with the following requirements, and, if requested, each party shall furnish the other party with certificates of insurance evidencing the required coverage. Thirty (30) days' notice must be given, in writing as set forth in this Agreement of any pending change in the limits of liability or of any cancellation or modification of the policy.

- a) **Worker's Compensation and Employer's Liability Insurance.** Both parties shall have in effect during the entire life of this Agreement Worker's Compensation and Employer's Liability Insurance, or an acceptable program of self-insurance providing full statutory coverage. In signing this Agreement, parties certify, as required by Section 1861 of the California Labor Code, that they are aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and parties will comply with such provisions before commencing the performance of the work of this Agreement.
- b) **Liability Insurance.** PACIFICA and SSF shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect it while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from PACIFICA's and SSF's operations under this Agreement, whether such operation be by itself or by any subcontractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than:

1. Comprehensive General Liability	\$ 2,000,000
2. Motor Vehicle Liability Insurance	\$ 2,000,000

15. Non-Discrimination

No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, [religious belief](#) or political affiliation be denied any benefits or subject to discrimination under this Agreement.

PACIFICA and SSF shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. PACIFICA's and SSF's equal employment policies shall be made available to either party upon request.

16. Retention of Records

Each party agrees to provide to the other party, to any federal or state department having monitoring or reviewing authority, to SSF's or PACIFICA's authorized representatives and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine and audit records and documents necessary to determine compliance with relevant federal, state, and local statutes, rules, and regulations, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed. PACIFICA shall maintain and preserve all records relating to this Agreement for a period of five (5) years from the termination date of this Agreement, or until audit findings are resolved, whichever is greater. SSF shall maintain and preserve all records relating to this Agreement in accordance with SSF's adopted records retention schedule.

17. Response to Public Records Act Requests, Subpoenas, and DOJ Audits

PACIFICA and SSF shall be individually responsible for complying with requests for records under the California Public Records Act. SSF shall provide technical assistance to PACIFICA if the request involves incident records contained in SSF's computer aided dispatch system.

The Parties agree for purposes of section 6254.5 of the California Government Code that any and all information exchanged between SSF and PACIFICA pursuant to this Agreement will be treated as confidential, that only persons authorized in writing by the SSF City Manager or the PACIFICA City Manager or their delegates shall be permitted to obtain such information, subject to all applicable laws and regulations, and that any and all information exchanged between SSF and PACIFICA pursuant to this Agreement will only be used for purposes consistent with existing law.

PACIFICA and SSF shall be individually responsible for responding to California Department of Justice audits related to the California Law Enforcement Telecommunications System (CLETS) and the Department of Justice Criminal Justice Information System (CJIS) databases. SSF shall provide technical assistance to PACIFICA to extract the necessary information from the computer aided dispatch and records management systems when requested.

18. Merger Clause

This Agreement, including any Exhibit(s) hereto constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties.

19. Controlling Law

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California.

20. Amendment

This Agreement may be amended at any time upon the written mutual approval of the Parties.

21. Severability

If any provision of this Agreement shall be held to be invalid, void or unenforceable, the validity, legality or enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

22. Waiver

A waiver by either Party of the performance of any covenant or condition herein shall not invalidate this Agreement nor shall it be considered a waiver of any other covenant or condition, nor shall the delay or forbearance by either Party in exercising any remedy or right be considered a waiver of, or an estoppel against, the later exercise of such remedy or right.

23. Remedies Cumulative

Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties hereunder are cumulative, and the exercise or failure to exercise one or more of such rights or remedies by either Party shall not preclude the exercise by it, at the same time or different times, of any right or remedy for the same default or any other default. Upon the occurrence of an event of default, the Parties may pursue all remedies at law or in equity which are not otherwise provided for in this Agreement, expressly including the remedy of specific performance of this Agreement.

24. Binding Effect

This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the Parties hereto. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor or assign of such Party who has acquired an interest in compliance with the terms of this Agreement, or under law.

25. Attorneys' Fees

In any action at law or in equity, arbitration or other proceeding arising in connection with this Agreement, the prevailing party shall recover attorneys' fees and other costs, including, but not limited to court costs and expert and consultants' fees incurred in connection with such action, in addition to any other relief awarded, and such attorneys' fees and costs shall be included in any judgment in such action.

26. Captions; Interpretation

The captions used in this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

27. Disputes

If a dispute arises between the Parties regarding performance of either Party under this Agreement, the Parties shall attempt to resolve such dispute informally by a meeting with representatives of each Party. If, after a good faith attempt by both Parties to resolve the dispute informally no resolution can be reached, the Parties may, at their sole and mutual discretion, agree to engage in mediation, the costs of which shall be divided equally between the Parties, unless otherwise agreed.

28. Counterparts

This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

29. Further Assurances

The Parties agree to execute, acknowledge, and deliver to the other such other documents and instruments, and to undertake such actions, as either shall reasonably request or as may be necessary to carry out the intent of this Agreement.

30. Time is of the Essence

Time is of the essence and is a material term for all conditions and provisions contained in this Agreement.

31. Authority

Each person executing this Agreement on behalf of one of the Parties represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such Party and that this Agreement is binding on such Party in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto by their duly authorized representatives have affixed their hands on the day and year in this Agreement first above written.

City Manager
City of South San Francisco

City Manager
City of Pacifica

ATTEST By:

ATTEST:

1665866.1