

PRE-REORGANIZATION AGREEMENT

By and Among

BRANCIFORTE FIRE PROTECTION DISTRICT,

And

SCOTTS VALLEY FIRE PROTECTION DISTRICT,

And

**LOCAL AGENCY FORMATION COMMISSION
OF SANTA CRUZ COUNTY**

[Dated as of March 14, 2022]

ARTICLE 1. PARTIES AND EFFECTIVE DATE

1.1 Parties. This Pre-Reorganization Agreement (“Agreement”) is entered into by and among (i) the Branciforte Fire Protection District (“BFPD”), (ii) the Scotts Valley Fire Protection District (“SVFPD”), and (iii) the Local Agency Formation Commission of Santa Cruz County (“LAFCO”). BFPD, SVFPD, and LAFCO are sometimes referred to herein as a “Party” and collectively as the “Parties.” This Agreement is dated as of March 7, 2022, for references purposes only and will not become effective until the “Effective Date” defined in Section 1.2 below.

1.2 Effective Date. This Agreement will not become effective until the date (“Effective Date”) on which all the following have occurred: (i) this Agreement has been approved by BFPD, executed by its legally authorized officers, (ii) this Agreement has been approved by SVFPD, executed by its legally authorized officers, and (iii) this Agreement, signed by BFPD and SVFPD, delivered to LAFCO for approval and signature by the Executive Officer.

ARTICLE 2. RECITALS

2.1 BFPD Background. The Branciforte Fire Protection District was formed on January 7, 1950 and operates under the Fire Protection District Law of 1987 (“Principal Act”). BFPD encompasses nearly 9 square miles of territory and provides fire protection services to the unincorporated community known as Branciforte. It currently operates with a temporary part-time retired annuitant fire chief, three full-time firefighters and seven volunteer firefighters. BFPD operates through one fire station with a one-person crew on any given shift. The annuitant fire chief contract was approved on September 30, 2021 and is set to expire on March 14, 2022. In accordance state law, a fire district cannot operate without proper administrative oversight. Additionally, the Principal Act limits board members to act only by ordinance, resolution, or motion (Health & Safety Code Section 13856[b]).

2.2 SVFPD Background. The Scotts Valley Fire Protection District was formed on January 7, 1958 and operates under the Fire Protection District Law of 1987. SVFPD encompasses nearly 21 square miles of territory in the center of Santa Cruz County and includes the City of Scotts Valley. It currently operates with 22 full-time firefighters, 15 volunteer firefighters, three full-time Battalion Chiefs, 2 full-time and 1 part-time administrative personnel, and 1 full-time Fire Chief. SVFPD previously provided administrative and command services to BFPD under an existing contract since 2015. Under this agreement, SVFPD’s Fire Chief functioned as the Fire Chief for BFPD. The contract expired on September 30, 2021.

2.3 LAFCO Background. The Local Agency Formation Commission of Santa Cruz County is a State-mandated, independent agency with countywide jurisdiction over changes in organization and boundaries of cities and special districts including annexations, detachments, formations, consolidations, and reorganizations. LAFCOs were created by the State Legislature in 1963 in response to the rapid growth and sporadic formation of cities and special districts in California in the years following World War II.

In addition to boundary changes, LAFCOs are required by law to establish and periodically update spheres of influence for the county's cities and special districts and perform service reviews on the county's cities and special districts with the goal of increasing efficiency, maximizing existing resources, identifying cost-saving opportunities, and improving local representation. LAFCO completed a countywide fire report in October 2021 which analyzed the 13 local agencies that provide fire protection. LAFCO determined that BFPD had many infractions, inadequate staffing, internal efficiencies, and governance issues. It was recommended that BFPD develop a strategic plan to address LAFCO's findings and outline how it will be a sustainable agency or consider merging with SVFPD. Since 1995, through a combined sphere of influence, LAFCO has recommended a merger between BFPD and SVFPD to ensure that the Branciforte community receive adequate level of service and proper representation.

2.4 Proposed Reorganization. The Reorganization is contemplated by the Parties upon the terms and conditions set forth in this Agreement. The Parties anticipate proceedings will be commenced by LAFCO following the execution and adoption of a resolution by BFPD to initiate the Reorganization and the execution and adoption of this Agreement by the Parties as set forth above.

2.5 Parties Consensus. The Parties understand that the Reorganization as contemplated in this Agreement is essential to the plan for providing services required by LAFCO in its consideration of the Reorganization application.

NOW, THEREFORE, in consideration for the promises and mutual covenants set forth herein, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 3. TERMS

3.1 BFPD Obligations.

3.1.1 Resolution of Initiation. BFPD shall continue to diligently pursue the approval of the Reorganization Application following the adoption of a Resolution of Initiation on Monday, March 7, 2022.

3.1.2 Application. BFPD shall submit a signed application, with a copy of the adopted resolution, within 30 days of this enacted Agreement to begin the LAFCO process.

3.1.3 Consent. BFPD hereby irrevocably consents to the Reorganization pursuant to the terms of this Agreement and the Reorganization Application submitted pursuant to Section 3.1.2. BFPD shall cooperate in every reasonable way with the requests of LAFCO. Said cooperation shall include, but not be limited to, the filing of all necessary applications, plans, and any other documentation or information required by SVFPD, LAFCO or any public agency associated with the Reorganization process.

3.1.4 Interim Fire Chief Expenses. BFPD hereby agrees to fund the identified governmental entity, existing BFPD firefighter personnel, or consulting firm for services as the temporary, interim supervisory position, whether as a fire chief, executive director, general manager, or district administrator. Invoices from the identified governmental entity, existing BFPD firefighter personnel, or consulting firm will be submitted as specified in the agreement between the parties. If an existing BFPD firefighter is hired as an interim fire chief, policies and procedures clearly defining the role of the BFPD Board and the BFPD interim fire chief as part of this Reorganization must be adopted within 30 days of this enacted Agreement. Any rules and regulations, outlined in the policies and procedures as part of this Reorganization, that are not met or completed shall be a breach of this Agreement. Any termination or expiration of the services from the identified governmental entity, existing BFPD firefighter personnel, or consulting firm shall be a breach of this Agreement.

3.1.5 Community Outreach. BFPD hereby agrees to coordinate with the Parties to co-host community forums, whether in-person or virtual, to educate the Branciforte community about the Reorganization process. Such forums shall be hosted collaborative with the following representatives: (1) BFPD's interim fire chief, executive director, general manager, or district administrator and no more than two board members, (2) SVFPD's fire chief and no more than two board members, (3) LAFCO's Executive Officer and no more than two Commissioner.

3.1.6 Agreement Not to Challenge or Support Challenge. The Parties shall not file lawsuits or to directly or indirectly support litigation filed by others, either as a party, through financial contributions, providing staff support, or by failing to aggressively defend such litigation, that challenges the adequacy of the Reorganization.

3.2 SVFPD Obligations.

3.2.1 Support. SVFPD may provide administrative and operational support throughout the Reorganization process, including but not limited to, payroll and billing services. Additionally, SVFPD may provide additional assistance if requested by BFPD. Such request must be mutually agreed upon by SVFPD's fire chief and BFPD's interim fire chief, executive director, general manager, or district administrator.

3.2.2 Consent. SVFPD hereby irrevocably consents to the Reorganization pursuant to the terms of this Agreement and the Reorganization Application submitted pursuant to Section 3.1.2. SVFPD shall cooperate in every reasonable way with the requests of LAFCO. Said cooperation shall include, but not be limited to, the filing of all necessary applications, plans, and any other documentation or information required by LAFCO or any public agency associated with the Reorganization process.

3.2.3 Agreement Not to Challenge or Support Challenge. The Parties shall not file lawsuits or to directly or indirectly support litigation filed by others, either as a party, through financial contributions, providing staff support, or by failing to aggressively defend such litigation, that challenges the adequacy of the Reorganization.

3.3 LAFCO Obligations.

3.3.1 Application. LAFCO shall process the application submitted by BFPD in accordance with the CKH Act.

3.3.2 Support. LAFCO may provide guidance and assistance to the Parties regarding the LAFCO process, including but not limited to, fulfilling the statutory requirements under the CKH Act. Additionally, LAFCO may provide administrative assistance if requested by BFPD. Such services include but are not limited to assisting with board meetings, community forums, or other outreach efforts.

3.3.3 Interim Fire Chief. The Commission hired the Fire Reorganization Consulting, LLC (“Fire Consultant”) on March 2, 2022 to help LAFCO staff with fire-related projects. Concurrently with approval of this Agreement, BFPD has or may contract with the Fire Consultant to provide interim administrative services at the hourly rate as specified in the agreement between the parties. LAFCO agrees that the Fire Consultant shall not provide services to LAFCO regarding the Reorganization if hired for the temporary, interim supervisory position, whether as a fire chief, executive director, general manager, or district administrator. If the Fire Consultant is not hired for the temporary, interim supervisory position, whether as a fire chief, executive director, general manager, or district administrator, then the Fire Consultant, with LAFCO’s approval, may provide assistance to the identified interim fire chief throughout the Reorganization process.

ARTICLE 4. REORGANIZATION

4.1 Reorganization. For purposes of this Agreement, a Reorganization is defined as the dissolution of Branciforte Fire Protection District and the concurrent annexation of the dissolved area into Scotts Valley Fire Protection District. In accordance with the CKH Act, all assets and liabilities, revenues and expenditures, facilities and apparatuses, district files and records, and other identified items will be transferred over to SVFPD following the Reorganization’s date of recordation.

4.2 New Benefit Assessment Consideration. If determined by Branciforte Fire Protection District and/or Scotts Valley Fire Protection District, the residents of the Branciforte community will have an opportunity to vote on whether to support a new special tax to keep the Branciforte Fire Station open with a two-person crew minimum. This election will be conducted during the November 2022 General Election, unless the Parties agree on a different date. If the new special tax fails, the Reorganization will continue with an alternative designation for the Branciforte Fire Station.

4.3 Timing. The effective date of the Reorganization will be the Certificate of Completion’s recordation date.

ARTICLE 5. DAMAGES

5.1 Remedies. Subject to the limitations herein, in the event of a breach of this Agreement, the non-breaching party may at its option institute legal action to cure, correct, or remedy such breach, enjoin any threatened or attempted violation, or enforce the terms of this Agreement by specific performance. In the event of any breach of this Agreement, the non-breaching party shall have the right to pursue against the breaching party, any and all remedies that are available at law or at equity for breach of contractual obligation, provided however, that in no event shall BFPD have the right to sue SVFPD or LAFCO or any SVFPD or LAFCO officials, employees, contractors or agents for damages or monetary relief arising out of the SVFPD's or LAFCO's default of its obligations set forth in this Agreement, the Parties agreeing that declaratory and injunctive relief, mandate, and specific performance shall be BFPD's sole and exclusive judicial remedy. The prevailing party in any such litigation shall be entitled to its attorney's fees and costs.

ARTICLE 6. GENERAL PROVISIONS

6.1 Duration. This Agreement will remain in place until the Reorganization is finalized. If BFPD, SVFPD, and/or LAFCO decide to oppose, deny, withdraw, or stop the Reorganization process, then the Agreement will be terminated. This LAFCO does not and cannot warrant LAFCO's approval of the Reorganization.

6.2 Attorney's Fees. In the event that any Party brings any legal action to interpret or enforce any provision of this Agreement, the prevailing Party in that action shall be entitled to receive, in addition to all other available relief, costs of litigation and reasonable attorneys' fees, including expert witness fees, costs and fees incurred on appeal and in enforcing any judgment which may be rendered on the underlying action.

6.3 No Third Party Beneficiaries. Except as provided in Section 6.10, the Parties expressly acknowledge that they do not intend, by their execution of this Agreement, to benefit any person or entities not signatory to this Agreement. Except as provided by Section 6.10, no person or entity not a signatory to this Agreement will have any rights or causes of action against the Parties, or any combination thereof, arising out of or due to the Parties' entry into this Agreement.

6.4 Governing Law. This Agreement shall be interpreted and enforced in accordance with the provisions of California law, without regard to conflicts of laws provisions. Any litigation shall be held in a court of competent jurisdiction located in Santa Cruz County, California.

6.5 Notice. Unless otherwise permitted by this Agreement, all notices to be given shall be in writing and may be made by personal delivery, certified mail, postage prepaid and return receipt requested. Mailed notices shall be addressed to the Parties at the addresses listed below, but each party may change the address by written notice in accordance with this paragraph. Receipt will be deemed made as follows: notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated on receipt or region.

If to BFPD:

Branciforte Fire Protection District
2711 Branciforte Drive
Santa Cruz, CA 95065

If to SVFPD:

Scotts Valley Fire Protection District
7 Erba Lane
Scotts Valley, CA 95066

If to LAFCO:

Local Agency Formation Commission of Santa Cruz County
701 Ocean Street, Room 318-D
Santa Cruz, CA 95060

6.6 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall constitute an original.

6.7 Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements, either written or oral, express or implied.

6.8 Further Acts. The Parties agree to execute such additional documents and to take such further actions as are reasonably necessary to accomplish the objectives and intent of this Agreement.

6.9 Waiver. The failure of any Party to insist upon strict compliance with any provision of this Agreement or to exercise any right or privilege provided herein, or any Party's waiver of any breach hereunder unless in writing, shall not relieve any other Party of any of obligations hereunder, whether of the same or similar type. The foregoing shall be true whether the waiving Party's actions are intentional or unintentional.


6.10 Authorization to Execute. The signatories to this Agreement warrant that they have been lawfully authorized by their respective Parties to execute this Agreement on their behalf. Upon request, the Parties shall deliver all applicable bylaws, resolutions, or other documents evidencing the signatories' legal authority to execute this Agreement on behalf of the respective Parties.

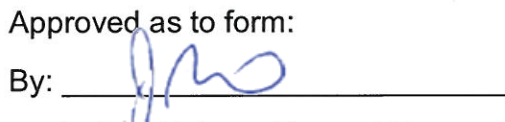
6.11 Severability. If any provision or clause of this Agreement or any application of it to any person, firm, organization, partnership or corporation is held invalid, such invalidity shall not affect other provisions of this Agreement which can be given effect without the invalid provision or application. To this end, the provisions of this Agreement are declared to be severable.

6.12 Compliance with other Rules and Regulations. BFPD and SVFPD shall comply with all other applicable rules and regulations of LAFCO and all other public agencies having jurisdiction over the Reorganization area. This Agreement does not abrogate, limit or modify any other of Parties' rights which are provided by common law, statute, ordinance or regulation.

6.13 Lack of Reorganization. In the event that BFPD does not dissolve and concurrently annex into SVFPD, the Parties are not bound by the obligations of this Agreement and the Parties retain any of their respective pre-Reorganization rights and duties as local governmental entities. Such inaction may result in BFPD from being able to operate as a special district due to the legal requirements under its Principal Act, the Brown Act, and other state mandates.

"LAFCO"
By: 
Joe Serrano, Executive Officer
Date: 3/14/22

"BFPD"
By: 
Pat O'Connell, Board President
Date: 3-14-22

Approved as to form:
By: 
Joshua Nelson, General Counsel
Date: 4/15/2022

Approved as to form:
By: _____
Travis Cochran, General Counsel
Date: _____

"SVFPD"
By: _____
Russ Patterson, Board President
Date: _____

Approved as to form:
By: _____
Phillip A. Passafuime, General Counsel
Date: _____

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"LAFCO"

By: _____

Joe Serrano, Executive Officer

Date: _____

"BFPD"

By: _____

Pat O'Connell, Board President

Date: _____

Approved as to form:

By: _____

Joshua Nelson, General Counsel

Date: _____


Approved as to form:

By: _____

Travis Cochran, General Counsel

Date: _____

"SVFPD"

By:  _____

Russ Patterson, Board President

Date: 4/13/2022

Approved as to form:

By:  _____

Phillip A. Passafuime, General Counsel

Date: 4-13-22

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"LAFCO"

By: _____

Joe Serrano, Executive Officer

Date: 3/14/22

"BFPD"

By: _____

Pat O'Connell, Board President

Date: _____

Approved as to form:

By: _____

Joshua Nelson, General Counsel

Date: _____

Approved as to form:

By: _____

Travis Cochran, General Counsel

Date: 3/24/22

"SVFPD"

By: _____

Russ Patterson, Board President

Date: _____

Approved as to form:

By: _____

Phillip A. Passafuime, General Counsel

Date: _____