

**AMENDED ORANGE COUNTY FIRE AUTHORITY
JOINT POWERS AGREEMENT**

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**AMENDED ORANGE COUNTY FIRE AUTHORITY
JOINT POWERS AGREEMENT**

This amended Agreement is made this 23rd day of September, 1999 by and between the following public entities (collectively, the "members"), BUENA PARK, CYPRESS, DANA POINT, IRVINE, LAGUNA HILLS, LAGUNA NIGUEL, LAKE FOREST, LA PALMA, LOS ALAMITOS, MISSION VIEJO, PLACENTIA, SAN CLEMENTE, SAN JUAN CAPISTRANO, SEAL BEACH, STANTON, TUSTIN, VILLA PARK, WESTMINSTER AND YORBA LINDA (collectively, the "Cities") and the COUNTY OF ORANGE (the "County").

RECITALS

A. County operates the Orange County Fire Department (the "Fire Department"), which presently provides fire protection, prevention and suppression services and related and incidental services to Cities, as well as to the unincorporated area of the County and State areas of responsibility ("SRA").

B. County agrees that Cities require additional policy input into and direction over the costs of such services and use of structural fire fund taxes levied therefor.

C. Cities and County have studied and discussed policy input and cost control for over three years and have determined that creation of a joint power entity to administer fire service operations and delivery serves their needs for policy input and cost control.

D. Each member is a public agency as defined by Government Code Section 6500 et seq. and is authorized and empowered to contract for the joint exercise of powers common to each member.

E. The members now wish to jointly exercise their powers to provide for mutual fire protection, prevention and suppression services and related and incidental services, including but not limited to, creation, development, ownership and operation of programs, facilities, and funds therefor through the establishment of the "Orange County Fire Authority" (the "Authority").

NOW, THEREFORE, in consideration of the mutual promises set out, the parties agree as follows:

AGREEMENT

ARTICLE I.

POWERS AND PURPOSES

1. **Authority Created.** The Authority is formed by this Agreement pursuant to the provisions of Article 1, Chapter 5, Division 7, Title I (commencing with Section 6500) of the Government Code of the State of California. The Authority shall be a public entity separate from the parties hereto and its debts, liabilities and obligations shall not be the debts, liabilities and obligations of its members.

2. **Purpose of the Agreement; Common Powers to be Exercised.** Each member individually has the statutory ability to provide fire suppression, protection, prevention and related and incidental services including but not limited to emergency medical and transport services, and hazardous materials regulation, as well as providing facilities and personnel for such services. The purpose of this Agreement is to jointly exercise the foregoing common powers in the manner set forth herein.

3. **Effective Date of Formation.** The Authority shall be formed as of February 3, 1995, or such later date as agreed to in writing by all the members (the "Effective Date"), provided that the Authority has met the insurance requirements set forth in Article VI., Section 4. D. below and has become enrolled as a member in the Orange County Employees Retirement System (OCERS).

4. **Powers.** Pursuant to and to the extent required by Government Code Section 6509, the Authority shall be restricted in the exercises of its powers in the same manner as is a general law city. The Authority shall have the power to do any of the following in its own name:

- A. To exercise the common powers of its members in providing fire suppression, protection, prevention and related and incidental services.
- B. To make and enter into contracts, including contracts with its members; notwithstanding, the Authority may not enter into real property development agreements.
- C. To assume Fire Department contracts relating to fire suppression, protection, prevention and related and incidental services.
- D. To determine compensation and working conditions and negotiate contracts with employees and employee organizations.
- E. To employ such agents, employees and other persons as it deems necessary to accomplish its purpose.

- F. To lease, acquire, hold and dispose of property.
- G. To invest surplus funds.
- H. To incur debts, liabilities, or obligations, provided that all long term bonded indebtedness, certificates of participation or other long-term debt financing require the prior consent of the members as set out in Article IV. hereof.
- I. To sue and be sued in its own name.
- J. To apply for grants, loans, or other assistance from persons, firms, corporations, or governmental entities.
- K. To use any and all financing mechanisms available to the Authority, subject to the provisions of Article IV. hereof.
- L. To prepare and support legislation related to the purposes of the Agreement.

- M. To lease, acquire, construct, operate, maintain, repair and manage new or existing facilities as well as to close or discontinue the use of such facilities.
- N. To levy and collect payments and fees for services, provided that paramedic or ambulance user fees shall be approved by the member(s) affected.
- O. To impose new special taxes or assessments as authorized by law to the extent allowed by law, and in coordination with the underlying jurisdiction.
- P. To provide related services as authorized by law.
- Q. To contract for the services of attorneys, consultants and other services as needed.
- R. To purchase insurance or to self-insure and to contract for risk management services.

- S. To adopt rules, regulations, policies, bylaws and procedures governing the operation of the Authority.
- T. To determine the compensation of Directors.

ARTICLE II.

ORGANIZATION

1. **Membership.** The members of the Authority shall be the original parties hereto which have not withdrawn from the Authority, and such other cities as may join the Authority after execution of this Agreement. New members may join on the terms and conditions set out in Article VII. hereof.

2. **Designation of Directors.** Each member by resolution of its governing body shall designate and appoint one representative to act as its Director on the Authority Board of Directors (the "Board"), except the County whose Board of Supervisors shall appoint two representatives to act as its Directors. Each representative shall be a current elected member of the governing body. Each Director shall hold office until the selection of a successor by the appointing body. Each member shall also appoint an alternate to act in each Director's absence. Each alternate shall be a current elected representative of the governing board of the member. Each Director and alternate shall serve at the pleasure of his or her appointing body and may be removed at any time, with or without cause, at the sole

discretion of that appointing body. Any vacancy shall be filled in the same manner as the original appointment of a Director and/or alternate. With approval of the Board, a Director or alternate may be reimbursed for reasonable expenses incurred in the conduct of the business of the Authority.

3. **Principal Office.** The principal office of the Authority shall be the Fire Department's Water Street headquarters or as may be otherwise designated by the Authority from time to time.

4. **Meetings.**

A. The first and organizational meeting of the Authority shall be held at its principal office on the Effective Date. At that meeting, the Board may determine whether to adopt a rotation system of two (2) and four (4) year terms to provide for increased continuity on the Board and shall classify themselves into any groups selected.

B. The Board shall meet at the principal office of the Authority or at such other place as may be designated by the Board. The time and place of the regular meetings of the Board shall be determined by resolution adopted by the Board, and a copy of such resolution shall be furnished to each party hereto. All Board meetings, including regular, adjourned and special meetings, shall be called, noticed and held in

accordance with the Ralph M. Brown Act, Section 54950, et seq. of the Government Code (the "Brown Act") as it may be amended from time to time.

5. **Quorum; Voting.** A majority of the Directors shall constitute a quorum for the purpose of the transaction of business relating to the Authority. Each Director, or alternate in the absence of any voting Director, shall be entitled to one vote. Unless otherwise provided herein, a vote of the majority of those present and qualified to vote shall be sufficient for the adoption of any motion, resolution or order and to take any other action deemed appropriate to carry forward the objectives of the Authority.

6. **Executive Committee.** The Board shall select from among its members an Executive Committee, one member of which shall be a County Supervisor, and shall designate the functions to be performed by the Executive Committee, as allowed by law.

7. **Officers.** The Board shall elect from among its members a chair and vice-chair and thereafter at the first meeting in each fiscal year the Board shall elect or re-elect a chair and vice-chair. In the event that the chair or vice-chair ceases to be a Director, the resulting vacancy shall be filled in the same manner at the next regular meeting of the Board held after such vacancy occurs. In the absence or inability of the chair to act, the vice-chair shall act as chair. The chair, or in his or her absence the vice-chair, shall preside at and conduct all meetings of the Board. In the absence of the

chair and vice-chair, the Board shall elect a chair *pro tempore* to preside at and conduct the meeting. The Board shall also appoint a clerk of the Authority.

8. **Minutes.** The clerk of the Authority shall provide notice of, prepare and post agendas for and keep minutes of regular, adjourned regular, and special meetings of the Board, and shall cause a copy of the minutes to be forwarded to each Director. The clerk will otherwise perform the duties necessary to ensure compliance with the Brown Act and other applicable rules or regulations.

9. **Rules.** The Board may adopt from time to time such bylaws, rules and regulations for the conduct of its affairs that are not in conflict with this Agreement, as it may deem necessary.

10. **Fiscal Year.** The Authority's fiscal year shall be July 1 of each year, or in the year of its formation, the Effective Date, to and including the following June 30.

11. **Assent of Members.** The assent or approval of a member in any matter requiring the approval of the governing body of the member shall be evidenced by a copy of the resolution of the governing body filed with the Authority.

12. **Committees.** The Board may establish standing or ad hoc committees or subcommittees composed of Board members, staff and/or the public to make recommendations on specific matters.

13. **Additional Officers and Employees; Contract Services.**

A. Pursuant to Government Code Sections 6505.5 and 6505.6, the Board shall appoint an officer or employee of the Authority, an officer or employee of a member public agency or a certified public accountant to hold the offices of treasurer and auditor for the Authority. Such person or persons shall possess the powers of and shall perform the treasurer and auditor functions for the Authority required by Government Code Sections 6505, 6505.5, and 6505.6, including any subsequent amendments thereto. Pursuant to Government Code Section 6505.1, the clerk of the Authority and the auditor and treasurer shall have charge of certain property of the Authority. The treasurer and auditor shall assure that there shall be strict accountability of all funds and reporting of all receipts and disbursements of the Authority. The treasurer, auditor and clerk of the Authority shall be required to file an official bond with the Board in an amount which shall be established by the Board. Should the existing bond or bonds of any such officer be extended to cover the obligations provided herein, said bond shall be the official bond required herein. The premiums on any such bonds attributable to the coverage required herein shall be appropriate expenses of the Authority.

B. The Board shall appoint general counsel and special counsel to the Authority to serve as necessary.

C. The Board may contract with a member to provide necessary administrative services to the Authority as appropriate. Any administrative duties also may rotate from year to year.

ARTICLE III.

TRANSFER OF FIRE OPERATIONS

1. **List of Assets and Liabilities.** An up-to-date list of all Fire Department personnel, employment agreements, pension agreements, assets (including but not limited to real property, equipment, Fire Department reserves, contracts and deposits) and all known liabilities (including but not limited to tort and workers' compensation cases and claims) shall be prepared by the transition team during the transition referred to in Article VIII. below.

2. **Transfer of County Assets and Liabilities.** Effective as of the date of Authority formation, County shall transfer to the Authority all assets and liabilities of the Fire Department, exclusive of the Weed Abatement and Hazardous Materials Program Office and their personnel (the Asset Transfer), as further set out in this Article.

A. Personnel. The parties agree that the Authority is the successor employer to the County by operation of law, including for retirement and pension purposes. On the Effective Date, each and every employee of the Fire Department shall become an employee of the Authority on exactly the same terms and conditions as set forth in the County's existing Memoranda of Understanding ("MOU's"), employment agreements and all other applicable employment rules, regulations, ordinances and resolutions. The Board shall forthwith adopt and ratify such MOU's, employment agreements, and employment rules, regulations, ordinances and resolutions for each of the Authority employees and shall take such other and further actions as authorized and necessary to implement this subparagraph A. The Board also shall take all necessary steps to confirm continuation of membership in the County's 1937 Act Retirement system on the same terms and conditions.

B. Assets. All Fire Department assets, including and not limited to real property, including the Fire Headquarters complex located at 180 South Water Street in Orange (but excepting the four deactivated fire stations located at 1502 South Greenville Street, Santa Ana; 12962 Dale Street, Garden Grove; 521 North Figueroa Street, Santa Ana; and 31411 La Matanza Street, San Juan Capistrano) and personal property and equipment and apparatus, whether or not located at fire stations, the Fire Headquarters complex, on equipment or otherwise shall transfer to the Authority in their "as is" condition as of the Effective Date. As part of the consideration for the County's Asset Transfer and contribution to the Authority of its SFF from the unincorporated area,

the Authority shall assume the Fire Department's obligation for payment of \$14.5 million to the County for purchase of Fire Department assets. The parties acknowledge that \$8.2 million remains owing, and that the Authority shall make a \$4.1 million payment by June 30, 1995 and a \$4.1 million payment by June 30, 1996.

C. Reserves. All Fire Department reserves, including the Fire Department's Fund 130 contingency, as shown in the County's 1994-95 Final Budget, shall transfer, unencumbered, to the Authority as of the Effective Date.

D. Contracts. Except for the SRA agreement with the California Department of Forestry and Fire Protection ("CDF"), all existing County agreements and contracts involving the Fire Department or its personnel, including but not limited to contracts with Structural Fire Fund and cash contract Cities, mutual aid agreements, automatic aid agreements, County island agreements, and entry, access and roadwork agreements, shall be assigned to the Authority as of the Effective Date, with any service or obligation to be provided or performed thereafter by the Authority. A list of all such contracts shall be developed during the transition period. The Authority agrees to assume all of County's obligations, duties and liabilities under said agreements and contracts. With respect to contracts between County and the Structural Fire Fund Cities and cash contract Cities, each City member hereby agrees to the assignment to the Authority and agrees to release County as of the Effective Date from any further obligations to any City member under said contracts upon assignment. As part of the

consideration for the County's Asset Transfer and contribution to the Authority of its SFF from the unincorporated area, the Authority agrees to subcontract with County for the provision of services to all areas within the County which have been designated as SRAs or enter into another arrangement on such terms as are acceptable to the CDF and the County. As additional consideration for the County's Asset Transfer and contribution of its SFF from the unincorporated area, the Authority further agrees to contract with the County for the Authority's provision of services to the County's unincorporated areas and for the Authority's provision of aircraft rescue fire fighting service to John Wayne Airport.

E. Records. Any and all business records and files, whether computer records, hard copy, microfilm or fiche, historical data, rosters, personnel records, organizational charts, job descriptions, deeds, easements, equipment logs, warranties, manuals and so forth, necessary or helpful to provide services shall be transferred by the County to the Authority during the transition period.

3. **Authority Assumption of Liability.** In further consideration for the County's Asset Transfer and contribution of its SFF from the unincorporated area, the Authority shall assume responsibility for any and all loss, litigation, liability, injury, damage, claim, demand, and tort or workers' compensation incidents that occur on or after the Effective Date. The County shall retain responsibility and liability for any and all such incidents that occur prior to the Effective Date and shall retain all risk management

reserves that have been set aside for such prior incidents. The Authority may contract with the County to receive risk management services on such terms as agreed to by the Authority and the County. Notwithstanding, the Authority acknowledges that it shall not be entitled to become a member of the County's self-insurance pool without the County's written consent.

ARTICLE IV.

FUNDING OF FIRE OPERATIONS

1. **General Budget.** Within sixty (60) days after the first meeting of the Board, a general budget for the first fiscal year shall be adopted by the vote of a majority of all of the Directors. The initial budget and each succeeding budget shall include, but not be limited to, the following: (a) the general administrative expenses, operating expenses and necessary reserves of the Authority to be incurred during the period covered by the budget; and (b) the allocation of costs among the members of the Authority in the amounts necessary to cover the budget items set out in 1. (a) above. Thereafter, at or prior to the last meeting of the Board for each fiscal year, a general budget shall be adopted for the ensuing fiscal year or years by a vote of at least a majority of all of the Directors of the Board. A written budget performance report shall be presented to the Board.

2. **Expenditures for the Approved Budget.** All expenditures within the designations and limitations of the approved general budget shall be made on the authorization of the Board for general budget expenditures without further action. No expenditures in excess of those budgeted shall be made without the approval of a majority of all of the Directors of the Board.

3. **Contributions for Budgeted Amounts.**

A. **Structural Fire Fund.** County receives Structural Fire Fund ("SFF") from the unincorporated area and all member Cities except Stanton, Tustin, San Clemente, Buena Park, Placentia, Westminster and Seal Beach. On behalf of the cities receiving SFF, and the unincorporated area, County shall pay all SFF it receives to the Authority to meet budget expenses and fund reserves in accordance with the County's normal tax apportionment procedures pursuant to the California Revenue and Taxation Code and the County's tax apportionment schedules.

B. **Cash Contract Cities.** As part of its annual budget process, the Authority shall determine amounts owing from cash contract Cities. Such amounts are due and payable within thirty (30) days of receipt of a billing therefor. Subject to the cap set forth in 3. E. below, the Authority shall make an adjustment in annual costs for its service to cash contract Cities to reflect the annual percentage change in the cost of fire system operations consistent with the cost calculation methodology in place on the Effective Date of the Authority, or the date they became members. Notwithstanding the

foregoing, the cost calculation methodology shall include the cost of any proportional share of any long term debt repayment obligations.

C. Participation In Maintenance and Replacement Programs. In addition to the cost calculation methodology set forth in B. above, and subject to the cap set forth in E. below, cash contract Cities shall pay (i) the cost of participation in the Authority's facilities maintenance program as set forth in Article VI., Section 1. C., (ii) the cost of participation in the Authority's vehicle replacement/depreciation program as set forth in Article VI., Section 1. D., and (iii) the cost of participation in the Authority's equipment replacement/depreciation program as set forth in Article VI., Section 1. D.

D. Responsibility For Capital Improvements. In addition to the cost calculated in B. and C. above, and irrespective of the cap in E. below, cash contract Cities shall be responsible for making Authority-required capital improvements to City-owned stations or facilities, as set forth in Article VI., Section 1. B. A capital improvement shall be any improvement or repair in excess of \$15,000.

E. Cap on Annual Adjustments. Except for the costs set forth in H. below and in Article VI., Section 1. B., no annual cost adjustment shall exceed three and a half percent (3.5%) in fiscal years 2000-2001 through 2004-2005, and four percent (4%) for the next five fiscal years, of the total charges for the preceding year. The determination of each city's annual adjustments shall be made as follows:

(1) For Placentia, Seal Beach, Stanton and Tustin:

(a.) The prior year's charge shall be adjusted by an amount which represents the percentage change in the cost of fire system operations as set forth in 3. B. above.

(b.) Any difference between that amount and the amount of increase allowable under the applicable cap shall then be applied to the City's financial obligation under the Authority's facilities maintenance program.

(c.) Any difference between the sum of those two amounts and the amount allowable under the applicable cap shall next be applied to the City's financial obligation under the Authority's equipment replacement/depreciation program.

(d.) Any difference between the sum of those three amounts and the amount of increase allowable under the applicable cap shall then be applied to the City's financial obligation under the Authority's vehicle replacement/depreciation program.

(2) For Buena Park, San Clemente and Westminster:

(a.) The prior year's charge, exclusive of vehicle replacement/depreciation costs, shall be adjusted by an amount which represents the percentage change in the cost of fire system operations as set forth in 3. B. above.

(b.) Any difference between that amount and the amount of increase allowable under the applicable cap shall then be applied to the City's financial obligation under the Authority's facilities maintenance program.

(c.) Any difference between the sum of those two amounts and the amount allowable under the applicable cap shall next be applied to the City's financial obligation under the Authority's equipment replacement/depreciation program.

(d.) Effective July 1, 2000, said cities shall continue to participate in the Authority's vehicle replacement/depreciation program on the terms and conditions in effect June 30, 2000; provided however, that the amount of any subsequent adjustment to an immediately preceding year's vehicle replacement/depreciation charge, when added to the adjustments set forth in a., b. and c. above, shall not exceed the applicable cap on the total charges for the preceding year.

F. Cost Basis For Next Year's Adjustment. The total annual adjustment, with the applicable cap set forth herein, shall constitute the basis for next year's annual adjustment.

G. Expiration of Cap. Notwithstanding any other provision of this Agreement, the Board of Directors, by two-thirds vote of all Directors, may adopt a new cost calculation methodology and/or a new cap for cash contract Cities, and/or a different membership term for all members, pursuant to Article VII., Section 1. B., to be operative July 1, of the first year of the next succeeding term. Any such changes must be adopted by board action no later than July 1, of the last year of the then current term.

H. New Resources To Cash Contract Cities. Notwithstanding the foregoing provisions, whenever new resources are committed to a cash contract City, the member shall pay the incremental company cost for such resources. The additional resources and increased cost shall not be implemented without consent of the member.

I. John Wayne Airport. Service levels and charges therefore for aircraft rescue firefighting services to John Wayne Airport shall be agreed upon by the Authority and the member having fire service jurisdiction.

J. Termination. Failure by any member to make payments when due constitutes grounds for expulsion from the Authority. Prior to expulsion, the Authority

shall provide written notice of its intention to expel such member if payment is not received within thirty (30) days of the date of such notice. Repeated failure to make payments when due shall constitute grounds for expulsion and/or imposition of an Authority-determined late fee. Alternatively, or in addition to the remedies set forth herein, the Authority may bring legal action to collect unpaid amounts.

4. **Equity.** Annually after the conclusion of each fiscal year and consideration of the audited financial statements for that year, and after consideration of the Authority's financial needs, the Board of Directors in its sole discretion shall determine whether sufficient unencumbered funds from that fiscal year are available for additional services or resources to Structural Fire Fund members. In the event the Board determines that (1) such funds are available, (2) a distribution is warranted, and (3) that it is appropriate to do so, it shall allocate those funds, or any portion thereof, to a restricted Structural Fire Fund Entitlement fund, as follows:

- A. The Authority shall use the general methodology employed in Model 2A of the 1999 Final Report by the Davis Group regarding "Equity Issues Related to the Financing of OCFA Services" to determine the relative status of Structural Fire Fund members as follows: A base period comparison for each member of cost to serve, on the one hand, and Structural Fire Fund contributions and cash contract charges, on the other, will be established, taking into account, the three-year average of consumption, population and

assessed valuation for the immediately preceding three fiscal years. Upon a two-thirds vote of all Directors representing Structural Fire Fund members, a different methodology may be used to determine the relative status of Structural Fire Fund members.

- B. The above-mentioned base period status of Structural Fire Fund members shall be compared to all members, without regard to the 10% variance factor in the Davis study.
- C. Those Structural Fire Fund members whose Structural Fire Fund revenues were greater than the cost to serve, based on the base period comparison in A. above, shall receive a pro rata allocation from the Entitlement fund, based on the relative amounts by which, respectively, those Structural Fire Fund revenues exceeded said cost to serve. In no event shall a Structural Fire Fund member receive allocations that exceed the average amount by which such revenues exceeded said cost to serve during the applicable base period.

Allocations from the Entitlement fund may thereafter be used for Board-approved and Authority-related service or resource enhancements to such Structural Fire Fund members.

No Structural Fire Fund member will be required to make additional payments for service on account of equity. No Structural Fire Fund member will be entitled to receive cash payments or reimbursements on account of equity.

5. **Approval of Bonded Indebtedness.** By a two-thirds vote of all members, the Authority may authorize the issuance of any long term bonded indebtedness. Any cash contract City that withdraws pursuant to Article VII. shall, after ceasing to be a member of the Authority, not be responsible for payment of its proportional share of any bonded indebtedness approved by the Authority. Short-term tax anticipation notes with a one-year (or shorter) term may be authorized by a majority vote of all of the directors of the Board.

6. **Authority Cooperation.** The Authority agrees to fully cooperate with each of the members in pursuing federal and state claims for emergency response reimbursements.

ARTICLE V.
ACCOUNTING AND AUDITS

1. **Accounting Procedures.** Full books and accounts shall be maintained for the Authority in accordance with practices established by, or consistent with, those utilized by the Controller of the State of California for like public entities. In particular, the Authority's auditor and treasurer shall comply strictly with requirements governing joint powers agencies, Article 1, Chapter 5, Division 7, Title 1 of the Government Code of the State of California (commencing with Section 6500).

2. **Audit.** The records and accounts of the Authority shall be audited annually by an independent certified public accountant and copies of the audited financial reports, with the opinion of the independent certified public accountant, shall be filed with the County Auditor, the State Controller and each member within six (6) months of the end of the fiscal year under examination.

ARTICLE VI.
PROPERTY RIGHTS

1. **Vehicles, Equipment, Facilities and Property.**

A. **Ownership.** Except as provided herein, all real and personal property, including but not limited to, facilities constructed, installed, acquired or leased by the Authority, apparatus and equipment, personnel and other records and any and all

reserve funds shall be held in the name of the Authority for the benefit of the members of the Authority in accordance with the terms of this Agreement. Fire stations that are owned by Cities shall be leased to the Authority for one dollar (\$1.00) per annum.

B. Capital Improvements. Capital improvements to cash contract city-owned stations or facilities, within their jurisdictions, shall be the responsibility of each member. Such capital improvements may be required by the Authority upon a determination by the Authority, after good faith consultation with a member agency, that such improvements are needed to protect the health, safety or welfare of Authority employees or to maintain the station in a state of operational readiness. Capital improvements to stations owned by the Authority shall be the responsibility of the Authority. For cash contract Cities, the construction of new stations or facilities, within and primarily benefiting their jurisdictions, shall be the responsibility of each city. Such construction shall meet reasonable standards and specifications prescribed by the Fire Chief.

C. Maintenance and Repairs. Each cash contract City shall make an initial payment to the Authority of \$15,000 for each fire station within its jurisdiction for maintenance and repairs not included in the original cost calculation methodology. The Authority shall carry forward unspent amounts to the next fiscal year. At the beginning of each fiscal year, said cities shall pay the Authority an amount sufficient to bring its balance back to \$15,000 for each such station.

D. Equipment and Vehicle Replacement/Depreciation Programs. Cash contract Cities shall participate in funding the Authority's equipment and vehicle replacement/depreciation programs. Such programs shall be administered fairly and equitably by the Authority and in accordance with Generally Accepted Accounting Principles.

2. **Disposition of Assets Upon Termination.** The Authority may vote to terminate this Agreement, or termination will occur if only one member is left in the Authority. If termination occurs, all surplus money and property of the Authority shall be conveyed or distributed to each member in proportion to all funds provided to the Authority by that member or by the County on behalf of that member during its membership, whether Structural Fire Fund or cash contract amounts. Each member shall execute any instruments of conveyance necessary to effectuate such distribution or transfer. In any such distribution, the amount of Structural Fire Fund derived from each incorporated or unincorporated city areas shall be considered as received from that member in the same manner as cash contract payments have contributed to surplus assets.

3. **Liabilities.** Except as otherwise provided herein, the debts, liabilities and obligations of the Authority shall be the debts, liabilities or obligations of the Authority alone and not of the parties of this Agreement.

4. **Indemnification and Insurance.**

A. Except as provided in Article VI., Section 4. E. below, from and after the Effective Date, the Authority shall defend, indemnify and hold harmless the County and each of the Cities and their officers, employees, agents and representatives with respect to any loss, damage, injury, claim, demand, litigation or liability and all

expenses and costs relating thereto (including attorneys' fees) arising out of or in any way related to the performance of services pursuant to this Agreement.

B. Except as provided in Article VI., Section 4. E. below, from and after the Effective Date, the Authority shall defend, indemnify and hold harmless the County and each of the County's officers, employees, agents and representatives with respect to any loss, damage, injury, claim, demand, litigation or liability and all expenses and costs relating thereto (including attorneys' fees) arising out of or in any way related to any Fire Department contract or agreement assumed by or otherwise transferred to the Authority.

C. Except as provided in Article VI., Section 4. E. below, from and after the Effective Date, the Authority shall defend, indemnify and hold harmless the County and each of the County's officers, employees, agents and representatives with respect to any loss, damage, injury, claim, demand, litigation or liability and all expenses and costs relating thereto (including attorneys' fees) arising out of or in any way related to any Fire Department asset to be transferred to the Authority, including but not limited to real property, personal property, equipment and apparatus.

D. From and after the Effective Date, the Authority shall maintain during the term of this Agreement, workers' compensation insurance as required by law and, in addition, general comprehensive liability insurance in the minimum limit of

\$5,000,000 combined single limit per occurrence and annual aggregate. Each of the Authority members shall be named as an additional insured on the general comprehensive liability policy. Alternatively, the Authority may self-insure. Prior to the Effective Date, the Authority shall provide the County with certificates of insurance or proof of self-insurance evidencing the coverage referred to in this Section 4. D. Such insurance is a condition precedent to performance under this Agreement, and until the Authority obtains insurance as provided for in this Section 4. D., performance under this Agreement is excused and no member shall have any right against any other member in equity or law.

E. From and after the Effective Date, the County shall defend, indemnify and hold harmless the Authority and each City member and their officers, employees, agents and representatives with respect to any loss, damage, injury, claim, demand, litigation or liability and all expenses and costs relating thereto (including attorneys' fees) arising out of the Fire Department's actions or omissions prior to the Effective Date hereof which are related to the provision of fire services or to the administration of Fire Department contracts, facilities, sites or assets, and which may include past, present or ongoing, or any future release of any hazardous material, hazardous substance or hazardous waste as defined under state and federal law or regulation. The Authority and the Cities agree that the County's obligations under this Section 4. E. shall only apply to costs, losses, damage, injuries, claims, demands,

litigation or liabilities for which a written claim has been received by the County prior to February 3, 2000.

F. Notwithstanding Article VI., Section 4, the members agree that no immunity available to the County or the Cities under state or federal law or regulation shall be waived with respect to any third party claim.

ARTICLE VII.

WITHDRAWAL AND ADDITION OF MEMBERS

1. City Member Withdrawal.

A. Initial Term. Cities shall be members of the Authority for an initial 10-year term. For Structural Fire Fund cities, the initial 10-year term shall begin on July 1, 2000 and end on June 30, 2010. For a cash contract City, the first 10-year term shall begin on July 1, 2000, only upon the consent of such city. Cash contract Cities that do not give such approval by July 1, 2000 shall give notice of withdrawal to the Clerk of the Authority by July 1, 2000, to be effective July 1, 2001. Failure to provide such notice shall be deemed that city's consent to a 10-year term, beginning July 1, 2000.

Provided however, that the Cities of Stanton, Westminster and Buena Park may withdraw from the Authority by giving notice of withdrawal to the Clerk of the Authority by December 31, 2000, to be effective December 31, 2001. Failure to provide

such notice shall be deemed that city's consent to a 10-year term beginning July 1, 2000.

Notwithstanding the foregoing paragraph, those three cities shall give notice of their respective intentions within thirty (30) days of completion of any study undertaken to consider creation of any alternative fire service organization.

Notwithstanding Article IX., Section 4., this Agreement shall not be amended prior to December 31, 2000.

No Authority time or funds shall be spent negotiating service levels with those three cities prior to such city's decision to remain members of the Authority.

B. Subsequent Terms. Membership terms shall automatically renew, on the same terms and conditions as the prior term, and with the same cap in effect in the last year of the prior term, except under the following circumstances:

(1) Any city may give notice of withdrawal by transmitting written notice of such withdrawal to the clerk of the Authority prior to July 1 of the second to last year of any term.

(2) If the Board, by two-thirds vote of all Directors, adopts a new cost calculation methodology and/or a new cap for cash contract Cities, pursuant to Article IV., Section 3. G., then those cities shall have until June 30 of the last year of the

then current term to give written notice to the clerk of the Authority of their intent to renew.

(3) If the Board, by two-thirds vote of all Directors, adopts a different minimum membership term pursuant to Article IV., Section 3. G., then cities shall have until June 30 of the last year of the then current term to give written notice to the clerk of the Authority of their intent to renew.

Cities that do not give the notice required by B. (2) and (3) above shall be deemed to have elected to withdraw, effective June 30 of the first year of the next succeeding term. Until the effective date of withdrawal, such cities shall be governed by the changes adopted by the Board.

C. Removal From Board After Notice of Withdrawal. In the event a notice of withdrawal is given by a city, or deemed to have been given, that city's representative shall be removed from the Board of Directors.

D. Rescission of Notice. Any notices required hereunder may be rescinded by the member with approval of the Board of Directors.

E. Property Tax Transfer Negotiations. Withdrawal by a Structural Fire Fund city may be subject to property tax transfer negotiations and such additional notices as required by applicable law.

2. **Addition of New City Members.** Notwithstanding any other provisions herein, a non-member City may join the Authority upon consent of a majority of all of the Directors of the Board and agreement to terms and conditions determined by the Board, which terms and conditions may vary from those set forth in this Agreement. A new City member may be required to transfer to the Authority its fire facilities and assets or to reimburse the Authority for a proportionate share of facilities which the new City will utilize. As a condition of membership, a city may also be required to accept responsibility for a proportion of the debts, obligations, and liabilities of the Authority from its transferred facilities, to the extent agreed upon by the Authority and the new member at the time of membership. The Authority Board may determine to waive all or part of such contribution requirements in return for an offsetting transfer of the new member's fire facilities and assets to the Authority.

3. **Withdrawal of County.** County shall be a member of the Authority for an initial 10-year term beginning on July 1, 2000 and ending June 30, 2010. Said term shall automatically renew for successive terms in accordance with and subject to the same provisions and exceptions applicable to cities in Section 1. B. and C. In the event of withdrawal, the County shall remain liable for payment of the Structural Fire Fund's

proportional share of any bonded indebtedness of the Authority incurred prior to the date of its withdrawal.

4. **Property of Withdrawing Members.** Any withdrawing member may negotiate with the Authority for return or repurchase of any and all stations and equipment serving that member's jurisdiction.

ARTICLE VIII.

TRANSITION TO AUTHORITY

The cities and County shall designate a transition team to implement the transfer of assets and liabilities hereunder, to prepare for the Authority's organizational meeting, and to direct the transition of administrative services from the County to the Authority.

ARTICLE IX.

NOTICE OF AGREEMENT

1. **Initial Notice.** Upon the Effective Date of this Agreement, the Authority shall timely file with the Orange County Clerk and the Office of the Secretary of State the information required by Government Code Sections 6503.5 and 53051.

2. **Additional Notices.** Upon any amendments to this Agreement, the Authority shall prepare and timely file with the Orange County Clerk and the Office of the Secretary of State the information required by Government Code Sections 6503.5 and 53051.

3. **Notice to Members.** Notice to members shall be deemed given when mailed to them, first class, postage prepaid, or faxed to the address/or fax number set out by their signatures.

4. **Amendment.** This Agreement may not be amended or modified except by a vote of two-thirds of all of the members; provided however, that no amendment shall change the cap, the cost calculation methodology or the length of a term, during the pendency of any term. This Agreement represents the sole and entire agreement between the parties and supersedes all prior agreements, negotiations and discussions between the parties hereto and/or their respective counsel with respect to the subject matter of this Agreement.

5. **Headings.** The headings in this Agreement are for convenience only and are not to be construed as modifying or explaining the language in the section referred to.

6. **Severability.** Should any part, term, or provision of this Agreement be determined by a court to be illegal or unenforceable, the remaining portions or provisions of this Agreement shall nevertheless be carried into effect.

7. **No Continuing Waiver.** No waiver of any term or condition of this Agreement shall be considered a continuing waiver thereof.

8. **Successors.** This Agreement shall inure to the benefit of and be binding upon any successors or assigns of the members. No member may assign any right or obligation hereunder without the written consent of a majority of all of the Directors of the Board.

9. **No Third Party Beneficiary.** The members agree that except as provided in Article IX., Section 8 above, the provisions of this Agreement are not intended to directly benefit, and shall not be enforceable by, any person or entity not a party to this Agreement.

CITY OF GARDEN GROVE

Dated: _____

Steven R. Jones
Mayor

ATTEST:

Teresa Pomeroy
City Clerk

NOTICE TO CITY TO BE GIVEN TO:

City Manager
City of Garden Grove
12222 Acacia Parkway
Garden Grove, CA 92840

Phone: (714) 741-5100
Fax: (714) 741-5205

APPROVED AS TO FORM:

Daphne M. Anneet
Special Counsel
Burke, Williams & Sorensen LP