

# **FIRST AMENDMENT TO AMENDED JOINT POWERS AUTHORITY AGREEMENT**

## **ORANGE COUNTY FIRE AUTHORITY**

This First Amendment ("Amendment") to the Amended Joint Powers Authority Agreement (herein referred to as "Agreement"), effective July 1, 2010, is made and entered into by and between the following public entities (collectively referred to as "members"): Aliso Viejo, Buena Park, Cypress, Dana Point, Irvine, La Palma, Laguna Hills, Laguna Niguel, Laguna Woods, Lake Forest, Los Alamitos, Mission Viejo, Placentia, Rancho Santa Margarita, San Clemente, San Juan Capistrano, Seal Beach, Stanton, Tustin, Villa Park, Westminster, and Yorba Linda (collectively referred to as "Cities") and the County of Orange (referred to as the "County"), each of whom is a member of the Joint Powers Authority, Orange County Fire Authority ("Authority").

### **RECITALS**

WHEREAS, the Authority 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 Responsibility Areas ("SRA"); and

WHEREAS, the County and Cities had entered into a Joint Powers Authority Agreement to form the Authority as of February 3, 1995 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; and

WHEREAS, on September 23, 1999, the members entered into an amended Joint Powers Authority Agreement ("1999 Amended Agreement") which superseded all prior agreements between the parties and is incorporated herein by reference; and

WHEREAS, the members wish to amend the 1999 Amended Agreement as set forth below and extend all other unamended terms of said Agreement.

NOW THEREFORE, the members agree to amend the 1999 Amended Agreement as follows:

### **AGREEMENT**

1. *Article IV, Sections 3.B., C. and E. are amended to read as follows:*

"B. Cash Contract Cities. As part of its annual budget process, the Authority shall determine the amounts owing from cash contract Cities. This amount shall be referred to as the "Service Charge." It shall consist solely of the annual cost for operational services (i.e., General Fund costs) consistent with the cost calculation methodology in place on the Effective Date of the Authority, or such later date as a cash contract City became a member, and will include the annual percentage change in the

cost of fire system operations. This amount shall be subject to the cap set forth in 3.E. below. The Service Charge shall not include any of the following: (1) the amortized installments of the 2010 Shortfall set forth and defined in Article IV, Section 3.B.; (2) facilities maintenance costs, as defined in Article VI, Section 1.C.; (3) vehicle replacement costs, as defined in Article VI, Section 1.D.; and (4) the Five-Year Shortfall in excess of seven and one half percent (7.5%) owed by any City as set forth in Article IV, Section 3.F. only in the first year that such payment is owed. Notwithstanding the foregoing, the cost calculation methodology shall include the cost of any proportional share of any long term debt repayment obligations. Cash contract Cities shall be billed quarterly and in arrears for services after services have been performed and such amounts are due and payable within thirty (30) days from receipt of a billing therefor.

Additionally and irrespective of the cap set forth in Article IV, Section 3.E., each cash contract City shall pay the "2010 Shortfall." The "2010 Shortfall" is the difference between the actual Authority cost of operational services to the respective cash contract City for fiscal year 2009/2010 and the capped cost of those services. Beginning July 1, 2010, each cash contract City shall pay its 2010 Shortfall by means of equal quarterly payments that will be amortized over the period of July 1, 2010 to June 30, 2020.

C. Participation in Maintenance and Replacement Programs. In addition to the cost calculation methodology set forth in Section B. above, and irrespective of the cap set forth in E. below, cash contract Cities shall pay (1) the cost of participation in the Authority's facilities maintenance program as set forth in Article VI,

Section 1.C., and (2) the cost of participation in the Authority's vehicle replacement / depreciation program as set forth in Article VI, Section 1.D.

\* \* \*

E. Cap on Annual Adjustments. Except for the costs excluded from the Service Charge as set forth in Article IV, Section 3.B. and the costs set forth in Article IV, Section 3.H. and Article VI, Section 1.B., no annual cost adjustment to the Service Charge shall exceed four and one half percent (4.5%) of the annual cost for operational services provided to the City for the preceding year. In any year in which the actual cost increase for operational services exceeds four and one half percent (4.5%), the excess amount shall be recorded (i.e., banked) and paid in a subsequent year in which the Service Charge cost adjustment is less than the four and one half percent (4.5%) cap. If only a portion of this excess amount can be paid in one year while remaining under the four and one half percent (4.5%) cap for that year, the remainder shall be carried over from year to year until it is paid in its entirety."

2. *Article IV, Sections 3.E.(1) and (2) are deleted.*

3. *Article IV, Section 3. F. shall be replaced with the following:*

"F. Modifications to the Service Charge. Beginning with fiscal year 2014/2015, and every five years thereafter, data will be compiled to review the actual

Authority cost for operational services for that fiscal year compared to the capped Service Charge for each cash contract City for that year. The difference between these amounts shall be referred to as the "Five-Year Shortfall."

The data will be reviewed and analyzed jointly by the City Managers' Technical Advisory Committee and City Managers' Budget & Finance Committee to confirm the amount of the Five-Year Shortfall, if any, and to determine whether that amount has exceeded the percentage thresholds set forth below which would in turn trigger an adjustment of the Service Charge. If, after reviewing the data which has been compiled, the joint Committees and the Authority cannot agree on the calculations or the data used to calculate the amount of the Five-Year Shortfall, the Authority reserves the right to retain an independent auditor to review the calculations and data. The independent auditor's results as to the calculated amount of the Five-Year Shortfall shall be final and binding.

Modifications to the Service Charge, if any, shall be as follows. If the Five-Year Shortfall is less than seven and one half percent (7.5%) of the actual annual Authority costs, for a cash contract City, no additional amounts shall be owed by the City. If any Five-Year Shortfall exceeds seven and one half percent (7.5%), a cash contract City shall pay for the portion of the shortfall necessary to reduce the shortfall below seven and one half percent (7.5%). If the Five-Year Shortfall is between seven and one half percent (7.5%) and fifteen percent (15%), the amount shall be paid in its entirety in the following fiscal year. If the Five-Year Shortfall is more than fifteen percent (15%), that amount shall be paid through equal amortized installments over the subsequent five year period. Payment of the Five-Year Shortfall in excess of seven and

one half percent (7.5%) shall be excluded from the Service Charge only in the first year in which such payment is owed. The calculated Five-Year Shortfall amount paid shall be added to the Service Charge in the subsequent years.”

4. *Article IV, Section 4.D. shall be added to read as follows:*

“D. Notwithstanding the foregoing, 50 percent of any unencumbered funds, as determined by the annual audited financial statements, shall be allocated to the Structural Fire Fund Entitlement Fund at every ten year interval beginning with fiscal year 2010/2011, unless it is determined by unanimous vote of the Directors representing structural fire fund members that a fiscal hardship would thereby result. Those monies shall be distributed in a manner consistent with the methodologies, criteria and purposes described in this Section 4.A. through 4.C. above. In the event of a finding of fiscal hardship, the 50 percent allocation shall be made during the subsequent fiscal year unless another finding of fiscal hardship is determined as described above.”

5. *Article VI, Section 1.C. is amended to read as follows:*

“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. The Authority shall carry forward unspent amounts to the next fiscal year. At the beginning of the fiscal year, said cities shall pay the Authority an

amount sufficient to bring its balance back to \$15,000 for such station (referred to below as the "Station's \$15,000 Maintenance Account").

(1) Funds shall be expended in accordance with the following procedure:

(a) Minor maintenance or repairs costing less than \$1,000 are funded through the cash contract City's base Service Charge and, therefore, shall be paid by the Authority out of its General Fund. These repairs will not be charged to the Station's \$15,000 Maintenance Account.

(b) Maintenance, repair, alteration, or improvement projects greater than \$1,000 but less than the remaining balance in the Station's \$15,000 Maintenance Account shall be paid from the Station's Maintenance Account.

(c) Maintenance, repair, alteration, or improvement projects exceeding the remaining balance in the Station's \$15,000 Maintenance Account are considered capital improvements and additional funding that is necessary to pay for such improvements shall be the responsibility of the City.

(2) At its discretion, a cash contract City with multiple fire stations may allocate all or a portion of the balance of one Station's \$15,000 Maintenance Account to another station within the City provided the balance of each station be restored to \$15,000 at the beginning of the following fiscal year."

6. *Article VII, Sections 1.A. and B. are amended to read as follows:*

"A. Term. Cities shall be members of the Authority for a 20-year term commencing July 1, 2010. For Structural Fire Fund cities, the initial 20-year term shall begin on July 1, 2010 and end on June 30, 2030. For a cash contract City, the first 20-year term shall begin on July 1, 2010, only upon the consent of such city. Cash contract Cities that do not give such approval by June 30, 2010 shall give notice of withdrawal to the Clerk of the Authority by June 30, 2010, to be effective July 1, 2010. Failure to provide such notice shall be deemed that City's consent to a 20-year term, beginning July 1, 2010 subject to the ability to withdraw after the first ten years as set forth in Section B. below.

B. Subsequent Terms. Twenty-year 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 every ten-year interval of a twenty-year term (e.g., for the first ten-year interval, notice must be given by July 1, 2018 to withdraw by June 30, 2020).

7. *Article VII, Section 1.F. shall be added to read as follows:*



"F. Negotiation of Terms Upon Notice of Withdrawal. Upon providing notice of withdrawal, a cash contract City may negotiate with the Authority regarding modifications to its payment obligation. If the City and the Authority are unable to reach agreement regarding modified payment terms, the balance of any shortfall that may have accumulated during a City's ten-year period of membership shall be paid upon withdrawal."

8. *Article VII, Section 3 is amended to read as follows:*

"3. Withdrawal of County. County shall be a member of the Authority for a term of twenty years beginning on July 1, 2010 and continuing to June 30, 2030. 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."

9. *All terms and conditions contained in this Amendment are incorporated by this reference into the Agreement. This Amendment modifies the Agreement only as expressly set forth above. This Amendment does not modify, alter, or amend the Agreement in any other way whatsoever.*

**SECOND AMENDMENT TO AMENDED ORANGE COUNTY FIRE AUTHORITY  
JOINT POWERS AGREEMENT**

This Second Amendment ("Second Amendment") to the Amended Joint Powers Authority Agreement is made and entered into by and between the following public entities (collectively referred to as "members"): Aliso Viejo, Buena Park, Cypress, Dana Point, Irvine, La Palma, Laguna Hills, Laguna Niguel, Laguna Woods, Lake Forest, Los Alamitos, Mission Viejo, Placentia, Rancho Santa Margarita, San Clemente, San Juan Capistrano, Santa Ana, Seal Beach, Stanton, Tustin, Villa Park, Westminster, and Yorba Linda (collectively referred to as "Cities" and individually as "City") and the County of Orange (referred to as the "County"), each of whom is a member of the Joint Powers Authority, Orange County Fire Authority ("the Authority"). This Second Amendment requires the approval of two thirds of the members to go into effect, and it shall be effective when executed by a sixteenth member; provided that if a sixteenth member has not executed this Second Amendment by June 30, 2014, then it shall be void and shall not go into effect.

**RECITALS**

WHEREAS, the Authority presently provides fire protection, prevention and suppression services and related and incidental services (collectively, "Fire Services") to Cities as well as to the unincorporated area of the County and State Responsibility Areas ("SRA"); and

WHEREAS, the County and several of the Cities entered into a Joint Powers Authority Agreement to form the Authority as of February 3, 1995 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 ("Joint Powers Statutes"); and

WHEREAS, pursuant to the Joint Powers Statutes the members are authorized to jointly provide for the methods of the provision of Fire Services, including the method of financing the provision of Fire Services; and

WHEREAS, on September 23, 1999, the members entered into an amended Joint Powers Authority Agreement ("1999 Amended Agreement") which superseded all prior agreements between the members and is incorporated herein by reference; and

WHEREAS, pursuant to the 1999 Amended Agreement the members provided for the provision of Fire Services and the joint financing of Fire Services; and

WHEREAS, on July 1, 2010, the members entered into the First Amendment to the Amended Joint Powers Agreement ("First Amendment") which amended several provisions of the 1999 Amended Agreement; and

WHEREAS, on April 20, 2012, the City of Santa Ana joined the Authority and became a party to the 1999 Amended Agreement and the First Amendment; and

WHEREAS, the members wish to amend the 1999 Amended Agreement and the First Amendment as set forth below to modify their joint financing of the Fire Services to promote financing equity among the members, to preserve the existing membership, to better assure future revenues that will continue to support the provision of high quality of Fire Services throughout the Authority's service area, and retain all other unamended terms of the 1999 Amended Agreement and First Amendment.

**NOW THEREFORE**, the members agree to amend the 1999 Amended Agreement and First Amendment as follows:

## AGREEMENT

1. *Article IV, Section 3, Subdivision A shall be amended to read as follows:*

A. Structural Fire Fund; Cash Contract Cities. County receives Structural Fire Fund property taxes ("SFF") from the unincorporated area and from properties located within the following member Cities: Irvine, Dana Point, Laguna Hills, Laguna Woods, Laguna Niguel, La Palma, Mission Viejo, San Juan Capistrano, Villa Park, Yorba Linda, Cypress, Los Alamitos, Lake Forest, Rancho Santa Margarita, and Aliso Viejo. These cities and the County together make up the "SFF Jurisdictions." On behalf of the cities from which the County receives 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. The member Cities which the County does not receive SFF are Santa Ana, Stanton, Tustin, Buena Park, Placentia, Westminster, Seal Beach, and San Clemente (collectively, "Cash Contract Cities").

2. *Article IV, Section 4 shall be deleted in its entirety and replaced with the following new Section 4.*

4. Equity. The following calculations and actions shall be performed by the Authority each fiscal year:

**A. Over-Funded Structural Fire Fund (SFF) Jurisdictions.**

(1) The total estimated property tax revenue levied and allocated to the Authority, prior to accounting for delinquencies, and including secured, unsecured, nonoperating utility (SBE), and homeowner's exemptions shall be determined ("Total SFF Revenue Figure"). For the FY 2012/13 this amount was stated as \$179,768,901.52 in the Auditor-Controller Report titled

*"AT68AD-73 Orange County Auditor Controller Accumulation of Combined Prior Year Levy and Current Year ATI" as the "Total SFF Revenue Figure."*

(2) The total Assessed Value, net of successor agency former project area incremental value, for all SFF jurisdictions shall be determined (the "Total AV Figure"). For the FY 2012/13 this amount was stated as \$155,506,390,761 in the Auditor-Controller report titled *"AT04VC-74 Orange County Auditor Controller District Values Used to Set Tax Rates"* and was identified as the "Total L&I (Land and Improvements), Total Secured and Unsecured Value for the Orange County Fire Authority Total Jurisdiction."

(3) The Total AV Figure shall be multiplied by 1% (the basic levy tax rate) to determine the total value of the 1% basic levy for all SFF Jurisdictions for the fiscal year (the "SFF Basic Levy Figure"). For reference, in FY 2012/13, this calculated figure was \$1,555,063,907.61.

(4) The Total SFF Revenue Figure shall be divided by the SFF Basic Levy Figure for the same fiscal year and expressed as a percentage. The resulting percentage shall be referred to as the "Average SFF Rate" for the fiscal year. For reference, in FY 2012/13 the Average SFF Rate was 11.56%. The 2012/13 calculation is as follows:

$$\$179,763,001.52 / \$1,555,063,907.61 = 0.115602$$

(5) A "Jurisdictional SFF Rate" shall be determined for each SFF Jurisdiction as follows:

- a. The total property tax revenue allocated from all tax rate areas in the SFF Jurisdiction to the Authority, prior to accounting for delinquencies, and including secured, unsecured, utility (SBE), and homeowner's exemptions, but excluding revenue on successor

agency incremental value in tax rate areas assigned to former redevelopment agencies, shall be determined ("Jurisdictional SFF Revenue Figure"). By way of example, for FY 2012/13 this determination would be made by (1) taking, for each tax rate area in the SFF Jurisdiction, the total assessed value of the tax rate area as reported in the Auditor Controller TRA Summary Detail Reports for the secured, unsecured, SBE, and homeowner's exemptions, (2) multiplying the total assessed value by 1%, and (3) multiplying the product by the Authority's share of the general levy tax rate in the tax rate area as stated in the "Auditor Controller Report AT68AH71 Section 99 Factor Report by TRA," which would yield property tax revenue allocated from that tax rate area to the Authority. This calculation would be made for all tax rate areas within the SFF Jurisdiction, and the results would be added together to yield the Jurisdictional SFF Revenue Figure.

- b. The total Assessed Value, net of successor agency former project area incremental value (AV), for the SFF Jurisdiction shall be determined (the "Jurisdictional AV Figure").
- c. The Jurisdictional AV Figure shall be multiplied by 1% to determine the total value of the 1% basic levy of the SFF Jurisdiction for the fiscal year (the "Jurisdictional Basic Levy Figure").
- d. The Jurisdictional SFF Revenue Figure shall be divided by the Jurisdictional Basic Levy Figure for the

same fiscal year and expressed as a percentage. The resulting percentage shall be referred to as the "Jurisdictional SFF Rate" for the fiscal year.

(6) For those SFF Jurisdictions whose Jurisdictional SFF Rate is greater than the Average SFF Rate ("the Over-Funded SFF Jurisdictions"), a Jurisdictional Equity Adjustment Payment ("JEAP") shall be calculated using the data sources cited above and the following formula:

$$(\text{Jurisdictional SFF Rate} \times \text{Jurisdictional AV Figure} \times 0.01) - (\text{Average SFF Rate} \times \text{Jurisdictional AV Figure} \times 0.11)$$

(7) The JEAPs calculated in subdivision (6) shall be paid by the Authority in two equal payments in December and April each fiscal year, provided that the Authority has received its distribution of property tax revenues in or before such months.

(8) The JEAP payments in subdivision (6) shall be made according to the following phase-in schedule:

<u>Fiscal Year</u>	<u>Irvine</u>	<u>Other Jurisdictions</u>
FY 2013/14	100%	0%
FY 2014/15	100% (a)	25%
FY 2015/16	100% (b)	50%
FY 2016/17	100%	75%
FY 2017/18 and thereafter	100%	100%

a. The timing of payment for FY 2014/15 will be dependent on the Authority's Adopted Budget. If the General Fund is balanced in the Adopted Budget (Operating Revenues are equal to, or greater than, operating expenses), then 100% of the calculated JEAP will be paid to the City of Irvine as identified by the above schedule. (For purposes of this Agreement "Operating Revenues" includes Unrestricted General Fund Revenues and SFF revenues. If the General Fund is not

balanced, as defined above, then 25% of the calculated JEAP will be paid to the City of Irvine in FY 2014/15, and the remaining 75% will be paid to the City of Irvine no later than FY 2016/17. This delayed payment, if any, will be paid in addition to calculated JEAPs due and payable in the subsequent fiscal year(s) and shall not include interest.

b. The timing of payment for FY 2015/16 will be dependent on the Authority's Adopted Budget. If the General Fund is balanced in the Adopted Budget (operating revenues are equal to, or greater than, operating expenses), then 100% of the calculated JEAP will be paid to the City of Irvine as identified by the above schedule. If the General Fund is not balanced, as defined above, then 50% of the calculated JEAP will be paid to the City of Irvine in FY 2015/16, and the remaining 50% will be paid to the City no later than FY 2017/18. This delayed payment, if any, will be paid in addition to calculated JEAPs due and payable in the subsequent fiscal year(s) and shall not include any interest.

(9) Neither Cash Contract Cities nor SFF jurisdictions that are not determined to be Over-Funded SFF Jurisdictions by these calculations shall receive any JEAP, nor will they be required to make additional payments to the Authority due to these calculations. Annual service charges for Cash Contract Cities shall not be increased as a result of the JEAPs paid pursuant to this Section 4.

**B. Additional Equity Adjustment for SFF Revenue from the City of Irvine.** The following calculations and actions shall be performed by the Authority each fiscal year:

(1) Beginning with Fiscal Year 2013/14, the City of Irvine shall receive an additional JEAP equal to the amount, if any, that the



Jurisdictional SFF Revenue Figure for the City of Irvine, net of the JEAP payment calculated in Section 4.A(6), exceeds that year's corresponding annual Not-To-Exceed amount ("NTE") as set forth in Section 4.B(2) below.

(2) The NTE for Fiscal Year 2013/14 shall be the amount of base SFF revenue that the Authority received from properties located within the City of Irvine jurisdiction in the Fiscal Year 2012/13, which was \$59,635,863, plus 3.5%. The NTE shall increase each fiscal year by 3.5%. The NTE for each fiscal year from 2013/14 to 2029/30 for the City of Irvine is therefore as follows:

<b>FY 2013/14 SFF Revenue NTE:</b>	<b>\$59,635,863 X 1.035 = \$61,723,118</b>
<b>FY 2014/15 SFF Revenue NTE:</b>	<b>\$61,723,118 X 1.035 = \$63,883,427</b>
<b>FY 2015/16 SFF Revenue NTE:</b>	<b>\$63,883,427 X 1.035 = \$66,119,347</b>
<b>FY 2016/17 SFF Revenue NTE:</b>	<b>\$66,119,347 X 1.035 = \$68,433,524</b>
<b>FY 2017/18 SFF Revenue NTE:</b>	<b>\$68,433,524 X 1.035 = \$70,828,697</b>
<b>FY 2018/19 SFF Revenue NTE:</b>	<b>\$70,828,697 X 1.035 = \$73,307,701</b>
<b>FY 2019/20 SFF Revenue NTE:</b>	<b>\$73,307,701 X 1.035 = \$75,873,471</b>
<b>FY 2020/21 SFF Revenue NTE:</b>	<b>\$75,873,471 X 1.035 = \$78,529,042</b>
<b>FY 2021/22 SFF Revenue NTE:</b>	<b>\$78,529,042 X 1.035 = \$81,277,558</b>
<b>FY 2022/23 SFF Revenue NTE:</b>	<b>\$81,277,558 X 1.035 = \$84,122,273</b>
<b>FY 2023/24 SFF Revenue NTE:</b>	<b>\$84,122,273 X 1.035 = \$87,066,553</b>
<b>FY 2024/25 SFF Revenue NTE:</b>	<b>\$87,066,553 X 1.035 = \$90,113,882</b>
<b>FY 2025/26 SFF Revenue NTE:</b>	<b>\$90,113,882 X 1.035 = \$93,267,868</b>
<b>FY 2026/27 SFF Revenue NTE:</b>	<b>\$93,267,868 X 1.035 = \$96,532,243</b>
<b>FY 2027/28 SFF Revenue NTE:</b>	<b>\$96,532,243 X 1.035 = \$99,910,872</b>
<b>FY 2028/29 SFF Revenue NTE:</b>	<b>\$99,910,872 X 1.035 = \$103,407,753</b>
<b>FY 2029/30 SFF Revenue NTE:</b>	<b>\$103,407,753 X 1.035 = \$107,027,024</b>

(3) In any fiscal year in which the Jurisdictional SFF Revenue Figure for the City of Irvine, net of the JEAP calculated in Section 4.A(6), is greater than the NTE provided in Section 4.B.(2), the excess revenue shall be paid to the City of Irvine as an additional JEAP.

(4) Payment of this additional JEAP shall be made by the Authority to the City of Irvine in two equal payments in December and April of each fiscal year, provided that the Authority has received its distribution of the SFF in such months.

(5) Neither Cash Contract Cities nor SFF jurisdictions other than Irvine shall receive any additional JEAP as described in this Section 4.B., nor will they be required to make additional payments to the Authority due to these calculations or payments. Annual service charges for Cash Contract Cities shall not be increased as a result of the JEAPs or additional JEAPs paid pursuant to this Section 4.

**C. Sources of JEAP Funds; Remedies; Amendment.**

(1) Payments of JEAPs shall be made to the Over-Funded SFF jurisdictions from unrestricted revenues of the Authority (the "Unrestricted OCFA General Fund Revenues") provided that the use of said Unrestricted OCFA General Fund Revenues is not prohibited by any Federal or State law or regulation nor would the use violate the terms or restrictions contained in any grant or other agreement restricting the use of the designated revenue sources. For purposes of clarity, JEAPs shall be paid from the annual service charges paid by the Cash Contract Cities as well as from other non-property tax sources of unrestricted funds. SFF are restricted funds and shall not be used to pay JEAPs. No Cash Contract City annual service charges shall be increased to pay JEAPs.

(2) If a legal challenge is brought challenging this Second Amendment, the JEAPs shall continue to be calculated as provided in this Second Amendment. The Authority shall open a separate account into which the JEAPs shall be deposited, which shall bear interest at the same rate as the Authority's other authorized investments. The Authority shall provide an

accounting to the Over-Funded SFF Jurisdictions upon each JEAP deposit. The JEAPs so deposited into this account shall remain there until the resolution of the legal challenge. If this Second Amendment remains valid after the resolution of such legal challenge, all of the funds accumulated in such account shall be paid, with accrued interest, to the Over-Funded SFF Jurisdiction(s) and the Authority shall provide an accounting therefore.

(3) The City of Irvine may, notwithstanding Article VII, Section 1 of the 1999 Amended Agreement as amended by the First Amendment and this Second Amendment, withdraw from the Authority by transmitting written notice of its withdrawal to the Clerk of the Authority. Such notice shall provide at least two years' notice of the withdrawal, but the notice period may be more than two years, at the City of Irvine's discretion. The withdrawal shall be effective upon the expiration of the notice period in the notice of withdrawal, although in no case may the City of Irvine withdraw before June 30, 2020. This withdrawal provision applies to the following situations only: (1) a final judgment is entered declaring this Second Amendment to be void or otherwise affects a material term of this Second Amendment and the time in which to appeal such final judgment has passed; (2) the members approve any modification to this Second Amendment which the City of Irvine does not vote to approve; (3) there is a change in state legislation which prevents or reduces the payment of JEAPs to the City of Irvine as prescribed by this Second Amendment; or (4) the Authority materially breaches this Second Amendment. This provision shall not be interpreted to limit the remedies otherwise available to the City of Irvine if the Authority otherwise fails to make payment of the JEAPs when it is authorized to do so under this Second Amendment.

(4) This Second Amendment can only be amended if approved by two-thirds of the members of the Authority.

3. Article VII, Sections 1.A. and B. are deleted in their entirety and replaced with the following:

A. Term. Cities shall be members of the Authority for a 20-year term commencing July 1, 2010. For Structural Fire Fund cities, the initial 20-year term shall begin on July 1, 2010 and end on June 30, 2030. For a Cash Contract City, the first 20-year term shall begin on July 1, 2010, only upon the consent of such City. Cash contract Cities that do not give such approval by June 30, 2010 shall give notice of withdrawal to the Clerk of the Authority by June 30, 2010, to be effective July 1, 2010. Failure to provide such notice shall be deemed that City's consent to a 20-year term, beginning July 1, 2010 subject to the ability to withdraw after the first ten years as set forth in Section B. below.

B. Subsequent Terms. Twenty-year 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 every ten-year interval of a twenty-year term (e.g., for the first ten-year interval, notice must be given by July 1, 2018 to withdraw by June 30, 2020).

(2) Notwithstanding the preceding subsection (B)(1), in exchange for the JEAPs described in Article IV, Section 4, the City of Irvine shall not have the option to withdraw in 2020, except as provided in Article IV, Section 4(C)(3), or if the number of withdrawing Cash Contract Cities in 2020 reduces the unrestricted general fund revenues of the Authority to the point that the JEAPs can no longer be made. In the event that the number of withdrawing Cash Contract Cities in 2020 reduces the unrestricted general fund revenues of the Authority to the point that the JEAPs can no longer be made, the City of Irvine will be notified in writing by the Authority of this

condition as soon after July 1, 2018 as practicable, and in no event later than January 1, 2019. In that event, the City of Irvine will be able to withdraw in 2020 by providing written notice of such withdrawal no later than July 1, 2019. For purposes of clarity, the City of Irvine shall have the option to withdraw in 2030 and every ten years thereafter by complying with the notice provisions in subsection (B)(1) above.

*4. This Second Amendment amends, as set forth herein, the 1999 Amended Agreement and the First Amendment and except as specifically amended herein, the 1999 Amended Agreement and the First Amendment shall remain in full force and effect. To the extent there is any conflict between this Second Amendment and the 1999 Amended Agreement and First Amendment, the terms and conditions contained in this Second Amendment shall control.*

Overtaken by Court  
March 15, 2016

**THIRD AMENDMENT TO AMENDED JOINT POWERS AUTHORITY AGREEMENT  
ORANGE COUNTY FIRE AUTHORITY**

This Third Amendment ("Third Amendment") to the Amended Joint Powers Authority Agreement is made and entered into by and between the following public entities (collectively referred to as "members"): Aliso Viejo, Buena Park, Cypress, Dana Point, Irvine, La Palma, Laguna Hills, Laguna Niguel, Laguna Woods, Lake Forest, Los Alamitos, Mission Viejo, Placentia, Rancho Santa Margarita, San Clemente, San Juan Capistrano, Santa Ana, Seal Beach, Stanton, Tustin, Villa Park, Westminster, and Yorba Linda (collectively referred to as "Cities" and individually as "City") and the County of Orange (referred to as the "County"), each of whom is a member of the Joint Powers Authority, Orange County Fire Authority ("the Authority").

**RECITALS**

WHEREAS, the Authority presently provides fire protection, prevention and suppression services and related and incidental services (collectively, "Fire Services") to Cities as well as to the unincorporated area of the County and State Responsibility Areas ("SRA"); and

WHEREAS, the County and several of the Cities entered into a Joint Powers Authority Agreement to form the Authority as of February 3, 1995 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 ("Joint Powers Statutes"); and

WHEREAS, pursuant to the Joint Powers Statutes the members are authorized to jointly provide for the methods of the provision of Fire Services, including the method of financing the provision of Fire Services; and

WHEREAS, on September 23, 1999, the members entered into an amended Joint Powers Authority Agreement ("1999 Amended Agreement") which superseded all prior agreements between the members and is incorporated herein by reference; and

WHEREAS, on July 1, 2010, the members entered into a First Amendment to the Amended Joint Powers Agreement ("First Amendment") which amended several provisions of the 1999 Amended Agreement; and

WHEREAS, on April 20, 2012, the City of Santa Ana joined the Authority and became a party to the 1999 Amended Agreement and the First Amendment; and

WHEREAS, on November 18, 2013, the members entered into the Second Amendment to the Amended Joint Powers Agreement ("Second Amendment") which amended several provisions of the 1999 Amended Agreement. Litigation has been filed by the County challenging the validity of the Second Amendment, and the litigation remains unresolved as of the date of this Third Amendment;

WHEREAS, the parties wish to adopt this Third Amendment to eliminate alternative Board directors;

NOW THEREFORE, the members agree to amend the 1999 Amended Agreement as follows:

#### **AGREEMENT**

1. *Article II, Section 2 of the 1999 Amended Agreement shall be amended to read as follows:*

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.

2. *Article II, Section 5 of the 1999 Amended Agreement shall be amended to read as follows:*

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.

3. **Effective Date.** *This Third Amendment requires the approval of at least two thirds of the members to go into effect, and it shall be effective on the date of approval by a sixteenth member.*



## **FOURTH AMENDMENT TO AMENDED JOINT POWERS AUTHORITY AGREEMENT ORANGE COUNTY FIRE AUTHORITY**

This Fourth Amendment ("Fourth Amendment") to the Amended Joint Powers Authority Agreement is made and entered into by and between the following public entities (collectively referred to as "members"): Aliso Viejo, Buena Park, Cypress, Dana Point, Irvine, La Palma, Laguna Hills, Laguna Niguel, Laguna Woods, Lake Forest, Los Alamitos, Mission Viejo, Placentia, Rancho Santa Margarita, San Clemente, San Juan Capistrano, Santa Ana, Seal Beach, Stanton, Tustin, Villa Park, Westminster, and Yorba Linda (collectively referred to as "Cities" and individually as "City") and the County of Orange (referred to as the "County"), each of whom is a member of the Joint Powers Authority, Orange County Fire Authority ("the Authority"). This Fourth Amendment requires the approval of two thirds of the members to go into effect, and it shall be effective when approved by a sixteenth member.

### **RECITALS**

WHEREAS, the Authority presently provides fire protection, prevention and suppression services and related and incidental services (collectively, "Fire Services") to Cities as well as to the unincorporated area of the County and State Responsibility Areas ("SRA"); and

WHEREAS, the County and several of the Cities entered into a Joint Powers Authority Agreement to form the Authority as of February 3, 1995, 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 ("Joint Powers Statutes"); and

WHEREAS, pursuant to the Joint Powers Statutes the members are authorized to jointly provide for the methods of the provision of Fire Services, including the method of financing the provision of Fire Services; and

WHEREAS, on September 23, 1999, the members entered into an amended Joint Powers Authority Agreement ("1999 Amended Agreement") which superseded all prior agreements between the members and is incorporated herein by reference; and

WHEREAS, pursuant to the 1999 Amended Agreement the members provided for the provision of Fire Services and the joint financing of Fire Services; and

WHEREAS, on July 1, 2010, the members entered into the First Amendment to the Amended Joint Powers Agreement ("First Amendment") which amended several provisions of the 1999 Amended Agreement; and

WHEREAS, on April 20, 2012, the City of Santa Ana joined the Authority and became a party to the 1999 Amended Agreement and the First Amendment; and

WHEREAS, on November 18, 2013, the required number of member agencies approved the Second Amendment to the Amended Joint Powers Agreement ("Second Amendment") which amended several provisions of the 1999 Amended Agreement. However, a final court judgment subsequently invalidated the Second Amendment, so the Second Amendment became, and remains, inoperative; and

WHEREAS, on July 14, 2015, the required number of member agencies approved the Third Amendment to the Amended Joint Powers Agreement ("Third Amendment") to eliminate alternative Board Directors;

WHEREAS, the Amended Joint Powers Agreement, as amended by the First Amendment and Third Amendment, is referred to herein as the "Amended Joint Powers Agreement and Its Operative Amendments";

WHEREAS, the members wish to adopt this Fourth Amendment to the Amended Joint Powers Agreement and Its Operative Amendments to formalize the OCFA's commitment to its "snowball" accelerated pension liability paydown plan on the terms and conditions set forth herein.

NOW THEREFORE, the members agree to amend the Amended Joint Powers Agreement and Its Operative Amendments as follows:

## **AGREEMENT**

*1. Article IV of the Amended Joint Powers Authority Agreement and Its Operative Amendments is amended to add Section 7, to read as follows:*

**7. Payments to Reduce Unfunded Pension Liability.**

- A. Except as provided in subsection C, the OCFA Board shall appropriate funds in its budget annually consistent with, or greater than, the budgetary payments called for in the “snowball” accelerated pension liability paydown plan approved by the OCFA Board of Directors on September 26, 2013, and amended on November 19, 2015, November 17, 2016, and March 23, 2017.
- B. Payments will be greater than those appropriated in the OCFA’s budget annually when triggered by a Net General Fund Surplus (per the Financial Stability Budget Policy). Payments from the “Net General Fund Surplus” are hereby deemed as derived from revenues received by overfunded structural fire fund cities as determined by the equity calculation required under Article IV, Section 4 – Equity.
- C. Appropriations and payments required by subsection A and B may be reduced to the extent the Board determines, by vote approved by two-thirds of the Board, is necessary to address a fiscal hardship.
  - 1) For purposes of this section, “fiscal hardship” shall refer to a substantial reduction in OCFA anticipated revenue and/or a significant increase in anticipated expenses that are beyond the reasonable control of the OCFA Board.

*2. This Fourth Amendment amends the 1999 Amended Agreement and Its Operative Amendments, and except as specifically amended herein, the 1999 Amended Agreement And its Operative Amendments shall remain in full force and effect.*

[SIGNATURES ON FOLLOWING PAGES]