

# **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23, 1999, the members entered into an amended Joint Powers Authority Agreement (“1999 Amended Agreement”) which superseded all prior agreements between the parties and is incorporated herein by reference; and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.”

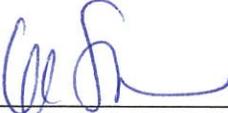
8. *Article VII, Section 3 is amended to read as follows:*

“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.*

CITY OF VILLA PARK

Dated: 3 | 10 | 2010

By:   
Lori Sassoon  
City Manager

ATTEST:

  
Jarad Hildenbrand  
City Clerk

NOTICE TO CITY TO BE GIVEN TO:

City Manager  
City of Villa Park  
17855 Santiago Blvd.  
Villa Park, CA 92861

Phone: (714) 998-1500  
Fax: (714) 998-1508

APPROVED AS TO FORM:

Rutan & Tucker

By:   
City Attorney

***[Signatures Continued on Page 31]***