

Metro Cities Fire Authority

FOURTH AMENDED

JOINT POWERS AGREEMENT

This Fourth Amended Joint Powers Agreement, dated for purpose of identification the 1 day of July, 2019 is made by and effective when fully executed by authorized representatives of all of the following public entities:

- A. City of Anaheim ("Anaheim");
- B. City of Brea ("Brea");
- C. City of Fountain Valley ("Fountain Valley");
- D. City of Fullerton ("Fullerton");
- E. City of Huntington Beach ("Huntington Beach");
- F. City of Newport Beach ("Newport Beach"); and
- G. City of Orange ("Orange").

RECITALS

A. The Parties to this Agreement each provide fire protection, fire prevention, rescue, emergency medical and related administrative services within their respective boundaries.

B. The Parties have determined that joint use of a central communications network and record keeping system reduces the administrative costs that would otherwise be incurred by each Party in providing fire suppression, emergency medical assistance, rescue service, and related services.

C. The Parties have determined that the costs associated with maintaining the staff and equipment necessary to operate a Communications Center should be funded by the Parties through a formal Joint Powers Agreement with costs apportioned to reflect the extent to which the Parties utilize the emergency Communications Equipment and staff.

D. The Parties have determined that joint use of a central communications network and record keeping system is also intended to foster cooperation among the Parties in the form of a separate written automatic aid agreement to consider the provision of emergency services by the closest available unit and to serve as a vehicle for evaluating other opportunities for joint operations.

E. The Parties each have the power and authority to perform, and contract with one another pursuant to the Joint Exercise of Powers Act (Section 6500 et. seq. of the Government Code) for the performance of the duties and functions that form the basis of this Agreement.

F. The Parties have the power to contract with other agencies for communications services, equipment and related items.

G. The Parties entered into the initial Joint Powers Agreement on the 1st day of July 1996. The First Amended Joint Powers Agreement is dated June 23, 1997, the Second Amended Joint Powers Agreement is dated December 7, 2000 and the Third Amended Joint Powers Agreement is dated July 1, 2013. The Parties wish to further amend said Agreement in its entirety through this Fourth Amended Agreement.

THE PARTIES AGREE AS FOLLOWS:

CHAPTER I

DEFINITIONS

1.1 Definitions

For the purpose of this Agreement, the words or terms specified herein shall have the following meanings:

A. "Administrator" shall mean the Communications Manager or equivalent position of the City of Anaheim.

B. "Agreement" shall mean collectively the initial Joint Powers Agreement dated July 1, 1996, the First Amended Joint Powers Agreement Dated June 23, 1997, the Second Amended Joint Powers Agreement dated December 7, 2000, the Third Amended Joint Powers Agreement dated July 1, 2013, and this Fourth Amended Joint Powers Agreement.

C. "Authority" shall mean the Joint Powers Authority known as the Metro Cities Fire Authority, created by this agreement pursuant to the Joint Exercise of Powers Act (Section 6500 et. seq. of the Government Code).

D. "Board" is the governing body of the Authority.

E. "Board Member" shall mean the voting Member or alternate appointed by the governing body of each Member Agency to represent said agency on the Board.

F. "Capital Improvement Project" shall mean the acquisition of any piece of Communications Equipment or the funding of any Communications Center related project that requires an expenditure of \$30,000.00 or more.

G. "Capital Outlay" shall mean the acquisition of any piece of Communications Equipment or the funding of any Communications Center related project that requires an expenditure of \$500.00 or more but less than \$30,000.00.

H. "Communications Center" shall mean that portion of any structure or physical facility that houses Communications Equipment and/or Communications Center Staff.

I. "Communications Equipment" shall mean all electronic equipment, including telephones, telephone lines, radios, computers and software located within, or connected to, the Communications Center and utilized for the fire or rescue-related emergency communications or records management of any of the Parties.

J. "Member" shall mean any public entity that is a Member upon the effective date of this Agreement or becomes a Party to this Agreement pursuant to the provisions of Section 9.1.

K. "Recorded Incident" shall mean any call for service dispatched within the jurisdiction of a Member's fire department that generates an incident number through any emergency Communications Facility used by any Member during any relevant period prior to the effective date of this Agreement and through the Communications Center upon the effective date of this Agreement or at such time as the Communications Center begins operation pursuant to this Agreement.

L. "Communications Center Staff" or "Staff" shall mean all personnel of the City of Anaheim performing services related to the operations and maintenance of the Metro Cities Communication Center, or such agency or individual as may be appointed by the Board to perform these functions.

M. "Fiscal Year" shall mean the twelve-month period commencing July 1st and concluding June 30th.

N. "Subscriber Agency" means each of the public agencies that are not Members of the Joint Powers Authority that wish to contract with Metro Cities Joint Powers Authority to receive communication services, equipment and related items and contribute to the cost of operating and administering this Joint Powers Authority by executing a subscriber agreement in a form approved by the Board.

O. "Treasurer" shall mean the Finance Director of the City of Anaheim, or his or her designee, who shall hold the office in accordance with Government Code Section 6505.6, and shall perform the duties as authorized in Section 6505 et seq of the Government Code.

CHAPTER II

SPECIAL CONSIDERATIONS

This chapter establishes the rationale for the provisions relating to funding, administration and decision making.

2.1 Communications Center

The Metro Cities Fire Authority Communications Center, located at 201 S. Anaheim Boulevard, Anaheim, CA, was constructed and is owned by the City of Anaheim. Ownership of the real property and facility housing the Metro Cities Communications Center will remain solely the City of Anaheim. The Board may change the location of the Communications Center.

2.2 Communications Equipment

A. Title to equipment purchased jointly on behalf of the Authority, existing as of the date of termination or at the end of its useful life, shall vest with the Authority and shall be disposed of as outlined in Section 10.2. An inventory of such equipment shall be maintained by the Administrator.

B. After the effective date of this agreement, title to communications equipment purchased for the Communications Center separately by individual Members of the Authority shall vest only with those individual Members contributing to the purchase of said equipment. Such equipment shall be identified as part of a fixed asset inventory system, which inventory shall be maintained by the Administrator. Title to this equipment existing as of the date of termination or at the end of its useful life shall vest with those individuals purchasing said equipment and shall be disposed of as outlined in Section 10.2

CHAPTER III

PURPOSE AND POWERS

3.1 Authority Created

This Agreement creates a Joint Powers Authority known as the Metro Cities Fire Authority. The Authority is formed pursuant to the provisions of Article 1, Chapter 5, Division 7 of Title I of the Government Code of the State of California (The Joint Exercise of Powers Act). The Authority shall be considered a public entity separate and apart from the Members. Within thirty (30) days after the effective date of this Agreement and after any amendment, the Authority shall cause a notice of such Agreement or amendment to be prepared and filed with the Office of the California Secretary of State containing the information required by Government Code 6503.5.

3.2 Common Powers

Each Party has the common power to, inter alia:

A. Provide fire protection, fire suppression, fire prevention, emergency medical, rescue and related services;

B. Maintain an effective communications and emergency dispatch system to facilitate and support fire protection, fire suppression, rescue and emergency medical services;

C. Employ and train personnel to perform emergency equipment communication and dispatch services, communication facility maintenance and the purchase of Communications Equipment.

3.3 General Purpose

The primary purpose of this Agreement is to provide for the operation, upgrade, maintenance and repair of the Communications Center and Communications Equipment. This

Agreement is intended to provide a formal mechanism by which the Authority can fund these activities to provide the highest possible level of emergency communications services.

3.4 Powers

The Authority through its Board shall have the power, in its own name, to do any of the following:

- A. To jointly exercise the common powers of the Members;
- B. To make and enter into contracts, including but not limited to, contracting with other public agencies for services, equipment and related items to those agencies;
- C. To retain the services of fire suppression specialists, emergency communications consultants, and such other persons with specialized knowledge or ability capable of assisting the Members in achieving the purposes of this Agreement;
- D. To acquire, hold or dispose of property by any lawful means, including, without limitation, gift, and purchase for sale;
- E. To incur debts, liabilities or obligations, subject to the limitations specified in this Agreement and, to the extent permitted by law, borrow funds on a temporary basis to meet operational expenses until expected revenue are available;
- F. To the extent permitted by law, to enter into equipment lease agreements or lease-purchase agreements or other financial arrangements extending beyond the current budgetary cycle, necessary or convenient to the operation of the Authority (hereinafter collectively "lease") so long as the agreement contains substantially the following provisions:

"The Authority receives its funds on an annual budgetary cycle from its individual Members. The Authority agrees to use its best efforts to obtain authorization and appropriation of funds from its individual Members to pay lease payments due under this Agreement, including, without limitation, the inclusion in its budget request for each fiscal year during the term of this Agreement a request for adequate funds to meet in full its obligations hereunder. The Board may terminate this Agreement in the event funds are not appropriated or appropriations are withdrawn or withheld upon thirty (30) days' written notice. Termination under this provision shall not constitute a default or breach. The Authority shall not be obligated to pay any additional lease payments but shall, after written notice from Lessor, deliver the Equipment to Lessor or its assignee. Lessor acknowledges that the individual Members shall not be liable for the debts of the Authority."

- G. The Authority empowers the Board to enter into leases, agreements and similar transactions that require the Authority to indemnify the person with whom the Board is contracting, so long as the exposure to liability under such indemnification is approved by the Risk Manager of Anaheim and by Legal Counsel of the Authority and so long as the maximum exposure to liability under such transaction does not exceed One Million Dollars (\$1,000,000.00).

H. To receive gifts, contributions, grants, and donations of property, funds, services and other forms of assistance from any person, firm, entity, corporation or public agency;

I. To sue and be sued in its own name;

J. To apply for any grant or grants offered in conjunction with any Federal, State or local program that is in any way related to the purpose of this Agreement;

K. To adopt rules, regulations, policies, by-laws and procedures governing the operation of the Authority;

L. To exercise any other power in the manner and according to the methods provided by applicable laws, rules or regulations, subject only to the restrictions on the manner of exercising such powers that may be applicable to the City of Anaheim.

CHAPTER IV

ORGANIZATION

4.1 Membership

The Members of this Authority shall be the public entities which executed this Agreement or a subsequent amendment and have not withdrawn from, or had membership in the Authority terminated, as provided in Section 9.2 and Section 9.3.

4.2 Board

A. The Board shall consist of one (1) voting Member and one (1) alternate appointed by the governing body of each Member Agency.

B. Each Board Member shall hold office from the first meeting of the Board after appointment and shall serve at the pleasure of their appointing authority.

C. A Board Member or alternate shall not receive compensation, but may be reimbursed by the Authority for expenses reasonably incurred while performing duties required by this Agreement, and as further specified and limited by resolution of the Board.

4.3 Principal Office

The principal office of the Authority shall be 201 South Anaheim Boulevard, Suite 302 in the City of Anaheim, County of Orange. The Board has the full power and authority to change the principal office from one location to another within the County of Orange.

4.4 Meetings

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 regular meetings of the Board shall be determined by resolution. Regular, adjourned and special meetings of the Board shall be called,

noticed and conducted in accordance with the Ralph M. Brown Act or other relevant open meeting law.

4.5 Quorum

A majority of the Board (or the alternate for any absent voting Member) shall constitute a quorum for the purpose of transacting business relating to the Authority, subject to the provisions of Sections 7.1 and 7.5.

4.6 Powers and Limitations

All of the powers of the Authority are reserved to it and may be exercised by the Board, unless otherwise limited by law. Each Board Member, or alternate in the absence of any voting Member, shall be entitled to one vote and, except as expressly provided in this Agreement, including Sections 7.1 and 7.5, the affirmative vote of the majority of those present and qualified shall effect adoption of any motion, resolution, order or action the Board deems appropriate.

4.7 Minutes

The secretary of the Authority shall provide notice of, prepare and post agendas for, and keep minutes of, each regular, adjourned and special meeting of the Board. The secretary shall send a copy of the minutes to each Board Member and otherwise perform the duties necessary to ensure compliance with provisions of law including, without limitations, any applicable "open meeting law" such as the Ralph M. Brown Act.

4.8 Rules

The Board may adopt rules and regulations for the conduct of its affairs that are not in conflict with this Agreement.

4.9 Officers

The Board shall select a chairperson and vice chairperson from its Members and shall appoint a secretary who may, but need not, be a Member of the Board. The Finance Director of the City of Anaheim shall hold the office of Treasurer and auditor, in accordance with Government Code Section 6505.6, and shall perform the duties as authorized in Section 6505 et seq. of the Government Code. The Treasurer shall cause an independent audit to be made by a Certified Public Accountant in compliance with Section 6505 of the Government Code. The Certified Public Accountant shall be annually appointed by the Board. The Treasurer shall keep all revenues of the Authority in a separate account, and, if available, an interest bearing account, and otherwise perform the duties and responsibilities of that office as specified in Sections 6505 et seq. of the Government Code. Any surplus funds not immediately needed may be invested in accordance with the investment policy annually adopted by the Board, as required by Government Code Section 53646, and consistent with Government Code Sections 53601, 53635, 16429.1 and 53684, as may be amended. The chairperson, vice chairperson and secretary shall hold office for a period of one year, or until a successor is appointed. The Board shall reorganize annually at its first meeting of the new fiscal year.

4.10 Bond

The Treasurer, auditor and such other persons who may have access to, or handle, any revenue of the Authority shall be required to file an official bond in an amount determined by the Board and consistent with the provisions of Section 6505.1 of the Government Code. This bonding requirement shall be satisfied if an existing bond is extended to cover the duties required by this Agreement. The costs of complying with the requirements of this Section shall be considered an administrative expense of the Authority.

4.11 Status of Officers and Employees

In accordance with the Joint Exercise of Powers Act, all of the privileges and immunities from liability, exemptions from laws, ordinances and rules, and all pension, relief, disability, workers compensation and other benefits which apply to the activities of officers, agents, or employees of any of the Member's agency when performing their respective duties or functions for that agency, shall apply to each of them to the same degree and extent while engaged in the performance of any activity, function or duty pursuant to this Agreement.

4.12 Fair Political Practices Act

The Members of the Board and alternates shall be considered public officials within the meaning of the Fair Political Practices Act of 1974, as amended, and its regulations, for the purposes of financial disclosure, conflict of interest and other requirements of such Act and regulations, subject to contrary opinion or written advice of the California Fair Political Practices Commission.

CHAPTER V

BASIC SERVICES

5.1 Communications Center - Operations

A. The Communications Center shall be maintained and operated by the Authority, pursuant to this Agreement, for the use and benefit of all Members. The Communications Manager, or equivalent position, of the City of Anaheim shall be the Administrator of the Communications Center so long as Anaheim operates and administers the Communications Center.

B. To provide for such maintenance and operations, the City of Anaheim will, through use of City of Anaheim employees, provide all services required to operate, maintain and administer the Communications Center. The Authority shall pay the actual costs of such operation and administration, plus an administrative overhead fee. The costs of such operation and administration, including administrative overhead, shall be borne by each Member according to its fair share percentage as determined pursuant to Section 6.1 hereof.

C. The Board is empowered to develop policy to establish the service levels for the Communications Center operation and maintenance.

D. Communications Center employees shall be governed by the same personnel rules, regulations, Memoranda of Understanding, administrative regulations and other related matters as apply to other employees of the City of Anaheim. Recruitment, position classifications and descriptions, hiring, discipline, promotion, and other employee-related functions shall be determined solely by the City of Anaheim.

E. Anaheim will determine the procedures and standards of selection for employment and promotion, direct its employees, take disciplinary action, relieve its employees from duty for legitimate reasons, maintain the efficiency of communications operations, determine the methods, means and personnel by which it will meet the service levels established by the Authority.

F. Anaheim may elect to discontinue providing services for the operation and administration of the Communications Center by giving notice of such election in writing to the Board a minimum of six (6) months prior to such cessation. In the event of such discontinuance by Anaheim, the Board may appoint another Member as the administrator or contract with another provider of such services. Should Anaheim's services as operator and administrator of the Communications Center terminate, use of the City of Anaheim's facilities shall also terminate unless a separate use/rental agreement is approved. Anaheim's election to discontinue providing services set forth herein does not constitute Withdrawal from the Authority.

G. The Board may elect to terminate Anaheim's services as operator and administrator of the Communications Center by giving notice of such election in writing to Anaheim a minimum of six (6) months prior to the date of such termination. In the event of such termination, the Board may appoint another Member as the administrator or contract with another provider of such services. Such termination of Anaheim's services does not in and of itself constitute either Withdrawal or Termination of Anaheim from the Authority. Should Anaheim's services as operator and administrator be terminated by the Board, use of the City of Anaheim's facilities shall also terminate unless a separate rental/use agreement is approved.

H. Each Member acknowledges that the City of Anaheim owns the property (land and facility) on which the Communications Center is situated at the time of the formation of the Authority. Rental costs, depreciation and other factors relating to use of this property are not currently included in either the administrative overhead fee or the costs of services provided by Anaheim.

5.2 Maintenance of Equipment

A. The Authority through its Board shall maintain and repair all Communications Equipment, including, without limitation, telephones, radios, computers, hardware, software, electrical systems and all related mechanical devices or facilities other than equipment which Members are required to install pursuant to provisions of Subsection C.

B. The Authority through its Board shall purchase new or used Communications Equipment as necessary to replace existing equipment or upon a determination

by the Board that new or additional Communications Equipment will facilitate emergency communications.

C. As a condition to receiving emergency communications services, each Member shall install and maintain, the following equipment in each fire station, rescue facility, or related mobile unit as maintained by the Member:

1. A station direct telephone line and an Alpha/Numeric pager or wireless device for each unit.
2. A station vocal or paging line and speaker originating at the Communications Center.
3. A minimum of two emergency telephone reporting trunk lines terminating at the Communications Center.
4. One mobile data computer terminal or status message device in each operating fire company or rescue unit.
5. Other equipment which the Board determines to be necessary to maintain an effective communications network.

Each Member shall pay the costs of installing, maintaining and repairing the Communications Equipment it is required to provide pursuant to this Paragraph. All maintenance and repair of hardware and Communications Equipment which are physically connected to the Communications Center shall be coordinated through the Communications Center Management.

D. Subject to prior Board approval, any Member may install special Communications Equipment or extra telephonic equipment provided the installing Member pays all the equipment and installation costs. The Board may approve Member's requests for installation of special equipment only on a finding that neither the Authority nor any Member will incur any additional cost and that installation of the equipment will have no adverse impact on emergency communication capability.

E. Each Member shall provide the Authority through the Administrator with mapping and related emergency dispatching information necessary for the efficient deployment of fire units and manpower. Each Member shall continually update mapping and deployment information and provide this information to the Authority through the Administrator and each Member as appropriate.

F. Each Member shall be responsible to provide a back-up emergency dispatch system to provide alternative emergency communication services within that Member's jurisdiction in the event Communications Center systems at the Communications Center are disabled or inoperative.

5.3 Services To and Reimbursement From Subscriber Agencies

A. Public entities in Orange County may receive communication services, equipment and other items (hereinafter "communication services") from this Authority by executing a Subscription Agreement in the form approved by the Board and by paying the annual fee and/or other costs, as determined by the Board. Agencies which desire to participate as Subscriber Agencies must sign the Subscription Agreement prior to receiving services or sharing equipment or other items, and must pay their fee by July 30 of the fiscal year for which subscription is desired. Subscription Agreements shall renew automatically from year to year unless otherwise specified in the Agreement. Agencies which subscribe for an entire fiscal year may, at their option, elect to pay their fee in four equal installments due and owing on or before July 30, October 1, January 1 and April 1. Agencies which choose to become Subscriber Agencies after the commencement of the fiscal year must sign the Subscription Agreement and pay the full amount of the fee prior to seeking services. Fees for subsequent fiscal years, may be revised by the Board.

B. The Board may terminate any or all Subscription Agreements by giving the affected Agency or Agencies ninety (90) days prior written notice.

C. Revenue from Subscriber Agencies shall be allocated as directed by the Board.

D. Subscriber Agencies are not parties to this Agreement, but rather are subject to separate Subscription Agreements, and as such, they are not voting members of this Authority.

CHAPTER VI

FUNDING AND ADMINISTRATION

6.1 Funding

Each Member shall pay a portion of the costs incurred by the Authority in providing the services described in Section 5.1. Each Member's share of the costs incurred by the Authority shall be based upon that Member's "fair share percentage" which shall be determined in accordance with the provisions of this Section. The number of Recorded Incidents attributable to each Member represents the most equitable basis for determining that Member's share of the costs incurred by the Authority.

- A. The contribution of each Member shall be based upon the number of Recorded Incidents attributable to each Member within their own jurisdiction, divided by the Recorded Incidents attributable to all Members, during the calendar year preceding the fiscal year for which that Member's fair share percentage is being calculated. Once determined for any fiscal year, the Member's fair share percentage shall remain unchanged. The following is the formula pursuant to which the fair share percentage will be calculated:

RECORDED INCIDENTS

ATTRIBUTABLE TO A MEMBER (DIVIDED BY)

RECORDED INCIDENTS

ATTRIBUTABLE TO ALL MEMBERS (EQUALS)

MEMBERS FAIR SHARE PERCENTAGE

B. Each Member's contribution to the budget shall be determined by multiplying that Member's fair share percentage by the amount of the budget or budgetary component.

C. The Administrator, or his or her designee, shall invoice each Member Agency that agency's total fair share percentage of the budget in accordance with a payment schedule set by Resolution of the Board.

D. Final year-end adjustments of Members' costs representing the difference between estimated annual expenditures and actual annual expenditures shall be calculated by no later than the last day of January of the following fiscal year or after certification of the annual audit whichever occurs first. If a Member Agency wishes such credits to be either paid to each Member Agency or credited to that Member agency's Member Specific Communications Equipment replacement component fund as outlined in Section 7.2.A.5, that Member's representative on the Board shall notify the Treasurer of such election by no later than the last day of January of the following fiscal year.

If no Member Agency has made such an election by the last day of January of the following fiscal year, the Treasurer shall deposit all year-end credits into the Communications Equipment capital reserve account by the last day of January of the following fiscal year, as outlined in Section 7.2.A.4.

If any Member agency by the last day of January of the following fiscal year elects either payment of the year-end credit or deposit of such credit into its Member Specific Communications Equipment replacement component, the remaining Members shall either be paid the year-end credit or elect to deposit the credit into their Member Specific Communications Equipment replacement component in accordance with policies and procedures established by Resolution of the Board.

6.2 Administrative Services

A. Anaheim shall provide the Administrative Services required for operation of the Communications Center, and management and administration of the personnel within, for an administrative fee of twelve percent (12%) of the Communications Center operations and capital outlay and the Member specific communications operations components of the budget, as outlined in Sections 7.1.A.1 and 7.1.A.2. Administrative Services includes, but is not limited to

general accounting of funds received and disbursed, preparation of invoices to Members, preparation of documents relative to any grant program, routine legal counsel and services from various departments within the City of Anaheim as may be necessary from time to time, including but not limited to Human Resources and Labor Management Departments, Finance Department, Purchasing, and such other functions as may be required by this Agreement or the provisions of any law including, without limitation, the Joint Exercise of Powers Act.

B. Anaheim's City Attorney's Office will serve as general counsel to the Authority to provide routine legal counsel services required from time to time. Extraordinary legal services (for example, Anaheim's time and expense or the expense for outside counsel in connection with a lawsuit against the Authority, its officers, agents, employees, representatives and volunteers providing services to the Authority) constitute additional expenses and are not covered by the administrative overhead.

6.3 Emergency Repairs

In the event the Communications Center or Communications Equipment suffers damage which interferes with emergency communications services and requires emergency repairs, the Administrator is authorized without prior Board approval to expend the funds to have the necessary emergency repairs made so that services are resumed as soon as possible. Prior Board approval shall be obtained whenever practical.

6.4 Capital Improvements-Funding

In the event the Communications Center or Communications Equipment suffers damage and the cost of repairs exceeds sums designated for repair in that component of the budget and any reserve fund, the Administrator shall promptly solicit bids for the repair of damage from at least three (3) responsible firms. The Administrator shall then present said bids to the Board to award the contract to the lowest responsible bidder and to direct the accepted responsible bidder to make the repairs as soon as possible. Expenditures shall be approved in accordance with Section 7.2B, approval of which shall require the positive consent of the number of Member agencies necessary to represent a minimum of Fifty-One Percent (51%) of the fair share participation in the Authority. Each Member shall pay its estimated fair share percentage of the repairs within 30 days after the award of the contract.

CHAPTER VII

BUDGETARY PROVISIONS

7.1 Annual Budget

The Board shall adopt an annual budget pursuant to this Agreement and procedures adopted by the Board.

A. A preliminary draft of the budget shall be presented to the Members by the last business day in January of each year for their review. Said budget shall be submitted to the Board for consideration and adoption. Budget adoption shall require positive consent of the

number of Board Members necessary to represent a minimum of Fifty-One Percent (51%) of the fair share participation in the Authority.

7.2 Special Budgetary Consideration

A. The budget adopted by the Board shall include but not be limited to:

1. A Communications Center operations and capital outlay component, which shall provide for the personnel, maintenance and operations support, and capital acquisitions necessary for the joint operation of the Communications Center as described in Section 5.1 and 5.2.

2. A Member(s) specific communications operations component, which shall provide for the maintenance and operation of the Member specific Communications Equipment described in Section 5.2 (C). A Board Member may make deposits to and request disbursements from this component, in accordance with the written policies and/or procedures of the Board.

3. A Capital Improvement Project component, which shall provide for the acquisition or replacement of major Communications Equipment items or fund major Communications Center related projects.

4. A Communications Equipment capital reserve component, which shall be deposited into a common designated reserve account designed to defray future replacement costs of major components of the Communications Equipment.

5. A Member(s) specific Communications Equipment replacement component, which shall be deposited into a Member specific designated reserve account designed to defray future replacement costs of Member specific Communications Equipment. A Board Member may make deposits to and request disbursements from this component, in accordance with the written policies and/or procedures of the Board.

6. If the Board elects to establish a liability reserve fund component as provided for in Chapter VIII, the amount of the fund, and the amount of annual contribution to the fund, shall be those amounts established by the Board.

B. Except as provided in Section 6.3, the contributions of Members shall be used to defray the costs and expenses associated with the budget. Special assessment(s) that do not exceed ten percent (10%) of the annual budget may be made by the Board through a budgetary amendment. Special assessments that exceed ten percent (10%) of the annual budget may be levied by the Board provided that prior approval of the legislative body of each Member is first obtained.

C. Each Member's annual contribution to the budget shall be determined by adding the following:

(i) Communications Center operations component, less the amount identified in the City of Anaheim budget for facility rental, multiplied by that Member's fair share percentage;

(ii) That portion of the Member's Specific Operations Component attributable to that Member's specific Communications Equipment;

(iii) The Capital Improvement Project component multiplied by that Member's fair share percentage;

(iv) A Communications Equipment Capital reserve component multiplied by that Member's fair share percentage;

(v) That portion of the Member's specific Communications Equipment replacement component attributable to that Member;

(vi) That Member's share of the administrative expenses which shall be calculated by multiplying the amount of reimbursement by that Member's share of the communications operations and Member specific operations component of the budget; and

(vii) The cost of risk financing, as provided for in Section 8.2, multiplied by that Member's fair share percentage.

7.3 Disbursements

The Treasurer shall draw checks in accordance with policies and/or procedures established by Resolution of the Board. A summation of such payments shall be presented to the Board as part of the Treasurer's quarterly report.

7.4 Accounts

All funds shall be placed in accounts and the receipt, transfer or disbursement of funds during the term of this Agreement shall be accounted for, in accordance with generally accepted accounting principles applicable to governmental entities. There shall be strict accountability for all funds. All interest earnings, revenues and expenditures shall be reported quarterly to the Board.

7.5 Expenditures Within Approved Annual Budget

All expenditures shall be within the limitations of the approved annual budget or as amended by the Board. Amendments to the approved annual budget shall require positive consent of the number of Member agencies necessary to represent a minimum of Fifty-One Percent (51%) of the fair share participation in the Authority.

CHAPTER VIII

LIABILITY/INSURANCE

8.1 Liabilities

The debts, liabilities and obligations of the Authority shall not be considered the debts, liabilities or obligations of any Member, except as otherwise provided in this Chapter.

8.2 Indemnification/Hold Harmless

A. The Authority shall defend, indemnify and hold harmless each Member, its officers, agents, employees, representatives and volunteers from and against any loss, injury, damage, claim, lawsuit, liability, expense, or damages of any kind or nature arising out of or in connection with the performance of services pursuant to this Agreement. The Authority shall finance its obligation pursuant to this Subsection by establishing a liability reserve fund, by purchasing commercial insurance, by joining a joint powers insurance authority (JPIA), and/or by requiring that assessments be paid by each Member pursuant to this Subsection. In the event that the Authority's financial obligations to indemnify, defend and hold harmless, pursuant to this Subsection, exceed the liability reserve fund and the proceeds from any applicable insurance or JPIA coverage maintained by the Authority (hereinafter "Unfunded Liability"), each Member hereby agrees to indemnify and hold harmless the Authority for such deficiency in accordance with the following: In the event an Unfunded Liability arises, the contribution of each Member shall be in an amount equal to the total Unfunded Liability multiplied by that Member's percentage of the budget as specified in Section 6.1.

B. The Authority, its officers, agents, contractors, employees, representatives, Staff, and volunteers (hereinafter, for the purposes of Subsection 8.2.B and 8.3, collectively referred to as "Emergency Dispatchers"), shall not be liable, in any manner, to any Member, or to an officer, official, or employee of any Member, for any loss, injury, damage, claim, lawsuit, liability, expense, or damages which may be incurred by, or brought against a Member which is providing any type of emergency response service undertaken by any Member pursuant to a call, dispatch, or instruction (by whatever name called) issued by, or on behalf of, the Emergency Dispatcher, regardless of whether or not such liability may have arisen, in whole or in part, by the negligent acts, conduct, or omissions of one or more of the Emergency Dispatchers.

C. Each Member shall assign to the Authority its rights, title, and interest to recover damages from any third party, to the extent that the Authority has met its obligations to such Member pursuant to this Section 8.2.

D. Should any Member utilize the Communications Center for its own individual purposes, outside the scope of the Authority, such Member shall indemnify, defend, and hold harmless the Authority and other Members from all claims, demands, actions, liability, or damages of any kind or nature, arising out of such use.

E. No provision of this Agreement shall be construed as to require any party to obtain or maintain liability or other insurance coverage not otherwise required by law.

8.3 Waiver

Except as provided in Section 8.2, each Member waives and gives up any claim against, or right to sue, the Authority, or its respective officers, employees, Staff, agents, contractors, representatives or volunteers for any loss, damage or injury that arises out of, or is any way related to, such Member providing any type of emergency response service pursuant to a call, dispatch, or instruction issued by, or on behalf of, the Emergency Dispatcher, regardless of whether or not such liability may have arisen, in whole or in part, by the negligent acts, conduct or

omissions of one or more of the Emergency Dispatchers. This waiver extends to liability for bodily injury or property damage that may be sustained by any Member or its officers, employees, contractors, or agents, and which was proximately caused, in whole or in part, by the negligent act, conduct or omission of the Authority, its respective officers, employees, Staff agents, contractors, representatives or volunteers. However, this waiver does not extend to bodily injury or property damage caused by an unlawful, fraudulent or willful act or omission of the Authority or its officers or employees.

CHAPTER IX

ADMISSION AND WITHDRAWAL OF MEMBERS

9.1 New Members

Public entities may become Members in the Authority upon such terms and conditions as may be specified by the Board. New Members shall pay a surcharge to be determined by the Board at the time of application.

9.2 Withdrawal

A Member may withdraw from the Authority at the end of any fiscal year and terminate its rights and obligations pursuant to this Agreement by giving written notice of its intention to terminate to the secretary of the Board no later than December 31 prior to the termination of the fiscal year in which the Member intends to withdraw. The written notice shall be accompanied by a resolution or minute order of the legislative body of the Member specifying its intent to withdraw from the Authority. Withdrawal of a Member, however, shall not relieve the withdrawing Member of its proportionate share of any debts or other liabilities incurred by the Authority prior to the effective date of such withdrawal, or any liabilities imposed upon or incurred by the Member pursuant to this Agreement prior to the effective date of such withdrawal, and such withdrawal shall result in the forfeiture of all rights and claims of the withdrawing Member to any repayment of contributions or advances or other distribution of funds or property after withdrawal, including distribution in the event of termination of the Authority, except Member Specific Communication Equipment, provided the withdrawing Member pays all costs of removal.

9.3 Breach

The Board shall have the authority to terminate the membership of any Member in the event the Member materially breaches its duties pursuant to this Agreement. For the purposes of this Section, the term "material breach" shall include, without limitation, a failure to fund the budget in accordance with the Chapter VI, the failure to make any contribution or pay any assessment when due, and the failure to defend or indemnify other Members as required in Chapter VIII. The Board shall give the Member notice of the breach and the right to cure the breach within thirty (30) days of the notice. In the event the Member fails to cure the breach within thirty (30) days, the Board shall have the right to immediately terminate the membership. Termination of the membership of a Member for breach shall not relieve the terminated Member of its proportionate share of any debts or other liabilities incurred by the Authority prior to the effective date of such termination, or any liabilities imposed upon or incurred by the Member pursuant to this Agreement prior to the effective date of such termination. However, such termination shall result in the

forfeiture of all rights and claims of the terminated Member to any repayment of contributions or advances or other distribution of funds or property after termination, including distribution in the event of termination of the Authority, except Member Specific Communication Equipment, provided the terminating Member pays all costs of removal.

9.4 Penalties

Notwithstanding Section 9.3, and without waiving any other remedies available by law or through this Agreement, the Board shall adopt policies and procedures imposing penalties for failure of any Member to pay any amounts due under this Agreement.

CHAPTER X

TERMINATION AND DISPOSITION OF ASSETS

10.1 Termination

The Authority shall continue to exercise the joint power specified in this Agreement until termination of this Agreement. This Agreement shall terminate if six (6) or more Members give the Authority written notice of their intention to withdraw as specified in Section 9.2 or if the Members mutually agree to terminate this Agreement. No termination of the Authority shall occur until all of its debts, liabilities, and obligations and other evidence of indebtedness are paid or adequate provision for such payment is made in accordance with the resolution of the Authority. No termination of the Authority shall occur which is contrary to the language, spirit or intent of any contract or agreement entered into by the Authority with the U.S., the State of California, or any department, administration or agency of either.

10.2 Distribution of Property

A. All capital equipment purchased as part of this Agreement, shall be assigned an "operating life" by the Board. The Board shall also designate equipment which is critical or non-critical to the operation of the facilities. Upon termination of this Agreement, all capital equipment either functioning within its operating life or beyond, shall be appraised by an independent appraiser and equipment designated as critical may be purchased first by the City of Anaheim and then by any Member Agency who is interested and who, having submitted a sealed bid, is the highest bidder. Such sealed bid shall not be lower than the appraised value. Non-critical capital equipment may be purchased by any Member Agency based on procedures adopted by the Board. Capital equipment not purchased by Member agencies, shall be sold to the public at appraised value or at public auction. The proceeds of all sales shall be paid to each Member pursuant to their fair share percentage as determined for the most recent fiscal year.

B. Upon termination of this Agreement, all capital equipment purchased prior to this Agreement, as specified in Section 2.2.A through 2.2.F shall be returned to the Member or Members holding title to the equipment.

C. In the event of termination of the Authority, any remaining funds, property or other assets of the Authority, following discharge of all debts, liabilities and obligations of the Authority, shall be distributed to the Members for any un-reimbursed advances, contributions, or

in-lieu contributions made or given to the Authority by such Members, and distributed to all Members on the same basis as the annual distributions to Members under this Agreement.

CHAPTER XI

MISCELLANEOUS

11.1 Amendments

Except for Sections 6.2, 7.1, 7.5, 8.2 and 8.3, this Agreement may be amended with the approval of a majority of the Members. Amendments to Sections 6.2, 7.1 and 7.5 shall require positive consent of the number of Members necessary to represent a minimum of Fifty-One Percent (51%) of the fair share percentage as determined for the most recent fiscal year in the Authority. Amendments to Sections 8.2, 8.3 and 11.1 shall require the unanimous consent of the Members. No amendments to this Agreement may be made which would adversely affect the interests of the owner of bonds, letters of credit, or other financial obligations of the Authority.

11.2 Notice

Any notice or instrument required to be given or delivered pursuant to this Agreement shall be deemed given when personally delivered to the Member or the Authority, or deposited in the United States mail, first class postage pre-paid, and properly addressed to the principal office of the Member or the Authority.

11.3 Partial Invalidity

If one or more of the Chapters, Sections, paragraphs or provisions of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, each and all of the remaining Chapters, Sections and paragraphs shall not be affected and shall continue to be valid and enforceable to the fullest extent permitted by law, provided, the remaining Sections or provisions can be construed in substance to constitute the Agreement the Parties intended in the first instance.

11.4 Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

[Signatures appear on the following pages]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed unattested by their duly authorized officers, and to have their official seals affixed hereto as of the date first stated above.

Dated: _____

CITY OF ANAHEIM

By: _____

MAYOR

ATTEST:

APPROVED AS TO FORM:

By: _____

CITY CLERK

By: _____

CITY ATTORNEY

Dated: _____

CITY OF BREA

By: _____

MAYOR

ATTEST:

APPROVED AS TO FORM:

By: _____

CITY CLERK

By: _____

CITY ATTORNEY

Dated: _____

CITY OF FOUNTAIN VALLEY

By: _____

MAYOR

ATTEST:

APPROVED AS TO FORM:

By: _____

CITY CLERK

By: _____

CITY ATTORNEY

Dated: _____

CITY OF FULLERTON

By: _____

MAYOR

ATTEST:

APPROVED AS TO FORM:

By: _____

CITY CLERK

By: _____

CITY ATTORNEY

Dated: _____

CITY OF HUNTINGTON BEACH

By: _____

MAYOR

ATTEST:

APPROVED AS TO FORM:

By: _____

CITY CLERK

By:  _____

CITY ATTORNEY 

Dated: _____

CITY OF NEWPORT BEACH

By: _____

MAYOR

ATTEST:

APPROVED AS TO FORM:

By: _____

CITY CLERK

By: _____

CITY ATTORNEY

Dated: _____

CITY OF ORANGE

By: _____

MAYOR

ATTEST:

APPROVED AS TO FORM:

By: _____

CITY CLERK

By: _____

CITY ATTORNEY