



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: November 19, 2013

Agenda Item 6E

Approvals:

City Manager [Signature]

Dept. Head [Signature]

Attorney [Signature]

Finance [Signature]

Department: Finance & Administrative Services
Prepared By: Judi Vincent, Finance Manager

Subject: ***AMENDMENT TO OCFA JOINT POWERS AUTHORITY AGREEMENT-EQUITY SHARING***

Fiscal Impact: None. The City of San Clemente is a cash contract city and would not be impacted by approval of the proposed second amendment. Cash Contract members shall not be required to pay additional contributions to OCFA as a result of the equity payments described below, nor would the city be required to contribute financially in the proposed validation action.

Summary: This item is submitted to request approval of the Orange County Fire Authority's Second Amendment to the Amended Joint Powers Authority (JPA) Agreement seeking to address equity issues.

Background: The Orange County Fire Authority (OCFA) was formed in 1995 to provide regional fire protection and related services to the County of Orange and 18 member cities. Subsequent to formation, 5 additional cities have become members of the OCFA. The original JPA agreement was amended on September 23, 1999, and renewed in 2010 by the First Amendment to the Amended JPA. The Authority currently operates under the Amended JPA Agreement, as modified by the First Amendment. The term of the JPA runs through 2030, though member cities currently have the option to withdraw in 2020.

OCFA Member Payment Structures

OCFA's member agencies pay for fire services through two different pay structures. Sixteen of OCFA's 24 member agencies pay for fire services through the Structural Fire Fund and 8 members pay through Cash Contracts. The City of San Clemente is a Cash Contract member.

The Structural Fire Fund is maintained by the County of Orange and was in place prior to Proposition 13. A fire tax (included in the 1% basic levy) is collected by the County from property owners in these 16 jurisdictions, accumulated in the Structural Fire Fund, and then paid to the OCFA for fire services.

Cash Contract cities, like the City of San Clemente, were not originally part of the Structural Fire Fund prior to Proposition 13, and therefore these 8 jurisdictions do not have a fire tax as a portion of their 1% property tax levy. Instead, these 8 cities pay for fire services by contract with the Authority through payments from their General Fund. The cash contract charges are based on the Authority's annual

budget, and include a cap provision which governs the maximum amount the contract charge can increase each year.

Discussion: Renewed Equity Concerns – Structural Fire Fund

For OCFA, equity refers to the extent to which the revenue received from a member agency bears a reasonable relationship to the cost of service that a member receives. The OCFA has a long history of studying equity concerns and has implemented prior actions to address equity through the JPA.

In March 2012, the City of Irvine raised renewed concerns about equity to the OCFA Board of Directors. City representatives indicated that, lacking action to mitigate their concerns, they intended to exercise their option to withdraw from OCFA in 2020. Furthermore, the City of Irvine initiated a special study to assess the feasibility of forming an independent Fire Department. In response, the OCFA Board formed an Ad Hoc Equity Committee for the purposes of studying the equity issues. Guiding principles adhered to during discussions of potential equity solutions included the following:

- Identify a solution which is feasible within OCFA's financial framework
- Identify a solution which can be supported by OCFA member agencies, including Irvine
- Continue providing excellent service to all OCFA members
- Gain long-term organizational stability

The Equity Committee met over a period of 18 months, provided direction to staff for exploration of potential equity solutions, and ultimately approved a proposed equity model for consideration by the OCFA Board of Directors and individual member agencies.

Proposed Solution – Second Amendment to Amended JPA

The proposed solution for addressing the equity concerns is referred to as the Enhanced Hybrid Model. This model would require equity payments to be issued by OCFA to those SFF members deemed eligible under the formula. A Second Amendment to the Amended JPA would be required in order to implement this proposed solution. Key terms included in the proposed Second Amendment include:

- SFF agencies contributing more than the average share of the 1% property tax to OCFA will be eligible for equity payments
- Eligibility for equity payments will be determined annually, based on a mathematical formula prescribed in the Second Amendment
- The City of Irvine may receive additional equity payments if the amount of property tax revenue that OCFA receives from Irvine grows in excess of 3.5% annually
- For all agencies except Irvine, a five-year phase-in period will apply for the value of equity payments, in order to ease the impact on OCFA's annual budget

- Equity payments will be issued by OCFA using unrestricted sources of OCFA revenue
- SFF members and Cash Contract members not eligible for equity payments shall not be required to pay additional contributions to OCFA as a result of the equity payments
- ***Irvine must commit to remain with OCFA through 2030***

In addition to approving the above terms in the form of the Second Amendment, the OCFA Board of Directors approved two additional actions at its September 26, 2013 meeting:

1. Direct staff to pursue the delivery of in-kind services for agencies impacted by the five-year phase-in.
2. Authorize staff and General Counsel to commence a validation in the Orange County Superior Court to obtain a judicial declaration of the validity of the Second Amendment.

These actions will be pursued following approval of the Second Amendment by OCFA's individual member agencies, which is required by two-thirds of the members in order to become effective (16 of OCFA's 24 member agencies).

Validation Action

The concept to pursue a validation action resulted from a recommendation made by the OCFA's City Managers. The court validation process would determine the validity of using unrestricted revenue sources in the OCFA's budget for issuance of equity payments back to member agencies; and if the JPA amendment is determined to be valid, future challenges to the legality of the amendment would be precluded.

OCFA's General Counsel has advised that the appropriate time for submittal of this request to the court is after the Second Amendment to the Amended JPA becomes an enforceable contract, which is upon approval by 2/3 of OCFA's individual member agencies. In addition, OCFA's General Counsel indicated that member agencies may authorize their City Attorney to join in supporting the OCFA's validation action, if desired.

OCFA and the City of Irvine plan to carry the workload to prepare, file and advance the validation in court. Supporting the validation means that San Clemente will be named along with OCFA and the City of Irvine as petitioners in the case to show county-wide interest in validating the amended JPA agreement. The City of San Clemente will not be asked for separate contributions to fund the validation action.

Summary

There are numerous benefits to be achieved with this proposed equity solution:

- Keeps all OCFA members together

- Provides long-term organizational stability
- Addresses the equity concerns presented by the City of Irvine
- Achieves financial feasibility within OCFA's financial framework
- Protects SFF and Cash Contract members not eligible under the formula from financial impacts.

Recommended

Action: STAFF RECOMMENDS THAT the City Council

1. Approve and direct the City Manager to execute the submitted Second Amendment to the Amended Orange County Fire Authority JPA Agreement (Attachment 1), and
2. Authorize the City Attorney to join in supporting the OCFA's validation action, when filed, seeking to obtain a judicial declaration of the validity of the Second Amendment to the Amended JPA Agreement.

Attachments: **1. Second Amendment to Amended Orange County Fire Authority Joint Powers Authority Agreement**

Notification: Sherry Wentz, Clerk of the Orange County Fire Authority.

**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:

$$\mathbf{\$179,768,901.52 / \$1,555,063,907.61 = 0.115602}$$

(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:

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

(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:

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

(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.

CITY OF SAN CLEMENTE

Dated: _____

By: _____

Pall Gudgeirsson
City Manager

ATTEST:

Joanne Baade
Deputy City Clerk

NOTICE TO CITY TO BE GIVEN TO:

City Manager
City of San Clemente
100 Avenida Presidio
San Clemente, CA 92672

Phone: (949) 361-8322
Fax: (949) 361-8283

APPROVED AS TO FORM:

Rutan & Tucker

By: _____

Jeffrey Goldfarb
City Attorney

[Signatures Continued on Page 29]