

**Approvals:**City Manager JMDept. Head BS

Attorney _____

Finance JV

AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: July 7, 2015

Department: Finance and Administrative Services
Prepared By: Judi Vincent, Finance Manager JV

Subject: Third Amendment to OCFA Joint Powers Authority Agreement

Fiscal Impact: None.

Summary: This agenda item is submitted to request approval of the Orange County Fire Authority's Third Amendment to the Amended Joint Powers Authority Agreement to eliminate alternate directors.

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, 6 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, which provided for a term that runs through 2030. In 2013, OCFA's members approved a Second Amendment to the Amended JPA which amended several provisions to promote financing equity among the members.

Purpose of the Third Amendment

Since formation of the OCFA in 1995, the JPA Agreement has provided for each member agency to have representation on the Board of Directors. This provision was key to the formation of the OCFA, as discussed in an early feasibility study in 1991 regarding the formation of a regional Orange County Fire agency, which stated:

"Provide equal agency representation on a governing board, regardless of participant size, to address cost, expenditure, equity, and service level issues."

In addition to providing for each member agency to appoint a representative to act as its Director on the OCFA Board, the JPA Agreement also provides for each member agency to appoint an alternate to act in each Director's absence.

At the June 23, 2015 OCFA Board Meeting, AB1217, which would reduce member agency representation on the OCFA Board, was discussed. A majority of the Board concluded that representation of every member agency on the Board remains critically important; however, a majority of the Board also concluded that the provision for alternate Directors could be eliminated. OCFA's primary Directors have a long history of good attendance at Board meetings. When a Director is occasionally unable to attend, they rarely request their alternate to attend on their behalf since the alternate may be less informed on the complex or sensitive topics for consideration.

As a result of this dialogue, the OCFA Board of Directors directed its General Counsel to (1) draft a proposed amendment to the JPA Agreement which would eliminate alternate directors, and (2) after OCFA Board approval of the form of the amendment, submit the proposed amendment to the governing bodies of OCFA's member agencies for actual approval. Per this direction, OCFA's General Counsel drafted the Third Amendment, amending Article II, Sections 2 and 5 of the 1999 Amended JPA Agreement. The OCFA Board of Directors approved the form of the amendment at a Special Meeting on July 1, 2015.

In order to become effective, the Third Amendment must be approved by at least two-thirds (i.e. 16 of 24) of the member agencies' governing bodies. Staff is requesting the City Council to approve the Third Amendment.

Recommended

Action:

STAFF RECOMMENDS THAT the City Council

1. Adopt the submitted Resolution Approving the Third Amendment to the Amended Orange County Fire Authority JPA Agreement and authorizing execution of the Amendment

Attachments:

1. Resolution
2. Third Amendment to Amended Joint Powers Authority Agreement

Notification:

Sherry Wentz, clerk of the Orange County Fire Authority

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING THE THIRD AMENDMENT TO THE ORANGE COUNTY FIRE AUTHORITY AMENDED JOINT POWERS AUTHORITY AGREEMENT, AND AUTHORIZING ITS EXECUTION

WHEREAS, the Orange County Fire Authority (OCFA) is a California Joint Powers Authority that was formed in 1995 to provide regional fire protection and related services to the County of Orange and its member cities; and

WHEREAS, the original Joint Powers Authority (JPA) Agreement was amended by an "Amended Joint Powers Authority Agreement" ("Amended JPA Agreement") on September 23, 1999, and the Amended JPA Agreement was subsequently amended in 2014; and

WHEREAS, the City of San Clemente, California is a member of the OCFA and is represented on the OCFA Board by a Director selected by the San Clemente City Council; and

WHEREAS, in addition to appointing a Director on the OCFA Board, the Amended JPA Agreement provides for each member to also appoint an alternate to act in the Director's absence; and

WHEREAS, the OCFA Board has requested that the City Council consider the attached "Third Amendment to Amended Joint Powers Authority Agreement" to eliminate alternate Board members; and

WHEREAS, when a Director is occasionally unable to attend, they rarely request their alternate to attend on their behalf since the alternate may be less informed on the complex or sensitive topics for Board consideration;

NOW, THEREFORE, The City Council of the City of San Clemente does hereby resolve as follows:

THAT the Council approves and authorizes the execution of the Third Amendment to the Orange County Fire Authority Amended Joint Powers Authority Agreement.

PASSED AND ADOPTED this ____ day of _____, 2015.

ATTEST:

City Clerk of the City of
San Clemente, California

Mayor of the City of San
Clemente, California

6-m-3

STATE OF CALIFORNIA)
 COUNTY OF ORANGE) §
 CITY OF SAN CLEMENTE)

I, JOANNE BAADE, City Clerk of the City of San Clemente, California, do hereby certify that Resolution No. _____ was adopted at a regular meeting of the City Council of the City of San Clemente held on the _____ day of _____, 2015, by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this _____ day of _____, 2015.

 CITY CLERK of the City of
 San Clemente, California

Approved as to form:

 City Attorney

6-m-4

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

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

RECITALS

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

WHEREAS, the County and several of the Cities entered into a Joint Powers Authority Agreement to form the Authority as of February 3, 1995 pursuant to the provisions of Article 1, Chapter 5, Division 7, Title I (commencing with Section 6500) of the Government Code of the State of California ("Joint Powers Statutes"); and

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

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

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

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

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

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

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

AGREEMENT

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

2. **Designation of Directors.** Each member by resolution of its governing body shall designate and appoint one representative to act as its Director on the Authority Board of Directors (the "Board"), except the County whose Board of Supervisors shall appoint two representatives to act as its Directors. Each representative shall be a current elected member of the governing body. Each Director shall hold office until the selection of a successor by the appointing body. ~~Each member shall also appoint an alternate to act in each Director's absence. Each alternate shall be a current elected representative of the governing board of the member. Each Director and alternate shall serve at the pleasure of his or her appointing body and may be removed at any time, with or without cause, at the sole discretion of that appointing body. Any vacancy shall be filled in the same manner as the original appointment of a Director and/or alternate. With approval of the Board, a Director or alternate may be reimbursed for reasonable expenses incurred in the conduct of the business of the Authority.~~

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

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

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