

SAN CLEMENTE
**AMENDED FIRE SERVICES AND EMERGENCY MEDICAL
SERVICES AGREEMENT**

THIS AGREEMENT is entered into this first day of July, 2004, by and between the ORANGE COUNTY FIRE AUTHORITY, a Joint Powers Agency (hereinafter called the "OCFA") and the CITY OF SAN CLEMENTE, a municipal corporation and General Law City in the County of Orange, (hereafter referred to as "City").

RECITALS

- A. City is located wholly within the County of Orange.
- B. City is legally obligated to provide fire protection services within its boundaries.
- C. OCFA is the successor entity to the County of Orange Fire Department and City has chosen to be a member of and contract with the OCFA for the provision of fire protection services within City's boundaries.
- D. The original Fire Services and Emergency Medical Services Agreement between the parties was adopted July 27, 2000 and amended, effective July 1, 2001.
- E. The parties to the original Agreement desire to change the staffing of OCFA Truck 59 assigned to the City from three (3) positions to four (4).

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

1. Definitions. As used herein, the following terms shall have the following meaning:

(a) "Amended Joint Powers Agreement" shall mean that document on file with the Clerk of the Board of Directors of the Orange County Fire Authority entitled "Amended Orange County Fire Authority Joint Powers Agreement" with signature pages executed by the Chairman of the Orange County Board of Supervisors and the respective Mayors and/or City Managers of the following cities: Aliso Viejo, Buena Park, Cypress, Dana Point, Irvine, Laguna Hills, Laguna Niguel, Laguna Woods, Lake Forest, La Palma, Los Alamitos, Mission Viejo, Placentia, Rancho Santa Margarita, San Clemente, San Juan Capistrano, Seal Beach, Stanton, Tustin, Villa Park, Westminster and Yorba Linda.

(b) "City Manager" shall mean the chief administrative and/or executive officer of the City, appointed by the City Council.

2. Membership. City shall be a member of OCFA and shall be subject to all the provisions, conditions, benefits, obligations and liabilities set forth in the "Amended Orange County Fire Authority Joint Powers Agreement" ("Amended Joint Powers Agreement") as that Agreement may be further amended from time to time, unless otherwise provided herein.

3. Service Provided.

(a) OCFA shall provide to City fire suppression, fire prevention, fire investigation, emergency medical, rescue and related services, hazardous materials response, hazardous materials disclosure, and community safety and education services (collectively "Fire Services"). Services provided exclude weed abatement services.

(b) The level of service provided shall be the same as the general level of similar services provided by OCFA elsewhere within its boundaries. Any changes to such levels and method of service shall be determined by the Board of Directors and administered by the Fire Chief, who shall have direct control and supervision over the services provided pursuant to this Agreement, and who is hereby designated as the City Fire Chief and Fire Marshal.

(c) Engines and Truck Companies located within or assigned to the City are set forth in Attachment A. Prior to making any changes to assigned Engines or Truck Companies (set forth in Attachment A), the Fire Chief shall meet and confer with the City Manager. Any changes in Engine or Truck Company assignments shall be set forth in a written Memorandum of Understanding ("MOU") between the Fire Chief and the City Manager. In the event a failure to reach agreement with the Fire Chief, the City shall have the right to appeal to OCFA's Board of Directors.

(d) Section (b) shall not restrict the Board of Directors from approving OCFA related service enhancements from the structural fire fund Entitlement Fund.

(e) Upon request, City shall adopt the following ordinances and resolutions in a form and with the content as determined by the Fire Chief: (1) ambulance transport, (2) fire prevention and hazardous materials disclosure fees, and (3) the hazardous materials joint powers authority. Prior to amending such ordinances or resolutions, City shall meet and confer with the Fire Chief.

(f) In the provision of Fire Services, OCFA hereby is authorized to and may enforce applicable City codes and ordinances and collect any fees determined by City (as well as by OCFA) as well as file any claims or actions for emergency response and hazardous materials clean-up.

(g) The Division Chief assigned to the City, or his or her designee, shall attend City Council meetings, commission meetings and City staff meetings when requested by the City Manager and shall provide the City with any and all reports or documents pertaining to the City upon reasonable request by the City Manager.

(h) For the second through fourth years of this Amended Fire Services and Emergency Medical Services Agreement (FY 2001/02 – FY 2003/04), the fourth position on Engine 60 shall be filled using overtime firefighters. In the fifth year (FY 2004/05), one shift will be filled with a regular firefighter and the remaining two shifts will be filled using overtime. In the sixth year (FY 2005/06), two shifts will be filled with regular firefighters and one shift will be filled using overtime. In the seventh year (FY 2006/07), all three shifts will be filled with regular firefighters. The above notwithstanding, City shall have the right at any time to direct OCFA to operate Paramedic Engine 60 with only three positions, to the extent that such a directive is not prohibited by any MOU between OCFA and the Orange County Professional Firefighters Association IAFF Local 3631. Such three-position operation shall be implemented by OCFA within thirty (30) days of City having provided written notice to the OCFA Board of Directors of the City's decision to have the Paramedic Engine(s) operate with three (3) positions. Upon implementation, the City's cost of Fire Service shall be recalculated to reflect the reduced cost of operating the Paramedic Engine(s) with three (3) positions rather than four (4).

(i) Effective July 1, 2004, a fourth paramedic position shall be added to Truck 59.

4. Payment.

(a) In consideration of the provision of Fire Services, City shall pay to OCFA such amounts determined by the terms of Article IV. and Article VI. of the Amended Joint Powers Agreement. Notice of estimated charges shall be mailed to City by March first of each year and notice of final charges shall be mailed to City by June first of each year.

(b) City shall participate in OCFA's vehicle rotation, replacement, and preventative maintenance programs, subject to the cap on annual adjustments set forth in Article IV. of the Amended Joint Powers Agreement.

(c) Upon City withdrawal from OCFA, funds paid by the City as its share of the vehicle replacement/depreciation program shall be refunded to the City less the actual costs incurred by OCFA for the purchase, repair, maintenance, or replacement of the apparatus included in the vehicle replacement/depreciation program.

(d) In addition to the costs incurred by City under Section 4(a) and (b) above, and pursuant to Article IV., Section 3, Paragraph H of the Amended Joint Powers Agreement, City shall pay the cost of the additional resources provided to City under Section 3 (h) and 3 (i) above. Such costs shall be calculated as follows:

(1) For fiscal year 2001/02 the cost of the additional resources as defined in Section 3 (h) shall be \$274,232.

(2) For fiscal years 2002/03 and 2003/04, the annual cost for the additional resources as defined in Section 3 (h) shall be based on the projected overtime costs for each respective year.

(3) For fiscal year 2004/05 through 2006/07, the annual costs for additional resources as defined in Section 3 (h) shall be calculated by adding the cost for overtime positions and the cost for regular firefighter positions. Overtime cost shall be based on the projected overtime costs for each respective year. Regular firefighter position costs shall be based on the incremental company cost for each respective year.

(4) For fiscal year 2004/05 the cost for additional resources as defined in Section 3 (i) shall be calculated as follows:

(a) Due to the lead-time required to fill a regular post-position, from July 1, 2004 through September 30, 2004, the cost shall be based on the projected overtime costs to fill the position.

(b) Beginning October 1, 2004 a regular post-position will be added to Truck 59 and the cost shall be based on the incremental company cost for a paramedic post-position.

(c) The incremental company cost for a paramedic post-position shall be calculated for the entire fiscal year 2004/05 for purposes of subparagraph (5) below.

(5) Costs incurred for regular firefighter and paramedic positions shall be added to the base service charge in the following year and subject to the cap on annual adjustments pursuant to Article IV., Section 3, Paragraph E of the Amended Joint Powers Agreement. Overtime costs shall not be added to the base service charges and shall not be considered in calculating the cap on annual adjustments.

5. Annexations. In the event of any City annexation of territory within the Structural Fire Fund, the level of Structural Fire Fund and redevelopment revenues existing at the time of the annexation shall continue to pass through to OCFA as compensation for the services provided pursuant to the Amended Joint Powers Agreement, unless otherwise agreed to by the parties hereto. As used herein, "level of Structural Fire Fund and redevelopment" shall mean the amount of such revenues existing at the time of annexation, adjusted by any diminution or growth in value occurring thereafter. It is the intent of the parties that City annexations not have an adverse financial effect on OCFA. Annexations that do not result in additional OCFA service demand and, therefore require no additional OCFA resources, will not result in additional charges to City as a result of said annexation.

6. Indemnification.

(a) OCFA shall defend, indemnify and hold harmless the City and its officers, employees, agents and representatives with respect to any loss, damage, injury, claim, demand, litigation or liability and all expenses and costs relating thereto (including attorneys fees) arising out of or in any way related to acts or omissions of OCFA, its officers, employees or agents in the performance of services pursuant to this Agreement.

(b) City shall defend, indemnify and hold harmless OCFA and its officers, employees, agents and representatives with respect to any loss, damage, injury, claim, demand, litigation or liability and all expenses and costs relating thereto (including attorneys fees) arising out of or in any way related to acts or omissions of City, its officers, employees or agents.

(c) The provisions of this Section 6 shall survive termination or expiration of this Agreement.

(d) For purposes of this Section 6, the Fire Chief shall be deemed to be an officer, employee, agent and representative of OCFA, and not of City.

7. Incident Management. City shall provide any and all support necessary to ensure overall effective scene management on hazardous or toxic material spill incidents including, but not limited to, the following:

- Coordination of crowd and traffic control
- Police liaison to OCFA incident commander
- Coordination of City Public Works personnel responses
- Coordination of responses by approved professional toxic materials recovery firms under contract to City
- The provision of on-scene technical advice through the services of the City Hazardous Materials Program Advisor
- Evacuate the area recommended by OCFA

8. Independent Contractor. City shall not be liable for the direct payment of any wages or other compensation of any officer, employee, or agent of OCFA performing any services under this Agreement. City shall not be liable to any officer, employee, or agent of OCFA for any sickness or injury incurred by such person in the course of performing services under this Agreement, except to the extent set forth in Section 6. OCFA shall be solely responsible for all personnel actions relating to OCFA employees utilized in the performance of this Agreement. The employees of OCFA shall not be deemed employees of City as a result of this Agreement, except as

necessary pursuant to Penal Code Section 1463 *et seq.* for cities to obtain their statutory share of fire revenues.

9. Term and Termination. The term of this Agreement shall be July 1, 2000 through and including June 30, 2010. Subsequent terms shall be as provided in Article VII. of the Amended Joint Powers Agreement. Adoption of this Agreement by City by July 1, 2000 shall constitute City's consent to said 10-year term, within the meaning of Article VII. of the Amended Joint Powers Agreement. This Agreement may be terminated in accordance with the provisions of the Amended Joint Powers Agreement.

10. Miscellaneous.

(a) This Agreement shall be interpreted in a manner complementary to the Amended Joint Powers Agreement, in its current form or as that Agreement may be further amended from time to time. Save and except for Section 6 herein, in the event of any conflict, the Amended Joint Powers Agreement, in its current form or as it may be further amended, shall govern.

(b) This Agreement may be amended only in writing by both parties.

(c) No waiver of any term or condition shall be a continuing waiver thereof, except by written agreement of the parties.

(d) In the event the State of California assumes financial responsibility for State Responsibility Areas within City boundaries, OCFA shall be entitled to receive any and all State funds provided therefore.

11. Lease of Fire Stations. City-owned property located at 670 Camino Los Mares, 1030 Calle Negocio, and 100 Avenida Presidio shall be leased to OCFA pursuant to the leases attached and incorporated as Attachment B. Notwithstanding any provisions of said leases to the contrary, OCFA shall pay one dollar per year for each fire station, pursuant to Article IV. of the Amended Joint Powers Agreement, and the term of all such leases shall be the same as the term of this Agreement. This Agreement constitutes a written amendment to said leases.

12. Property of Withdrawing Members. Any withdrawing member may negotiate with OCFA for return or repurchase of any and all equipment serving that member's jurisdiction. It is the intent of both parties that OCFA not be burdened with the remainder of the withdrawing City's vehicle or equipment replacement debt upon withdrawal.

13. Retiree Medical Benefits. Former City employees who retire from OCFA after maintaining ten years or more of continuous employment with OCFA will be eligible to participate in OCFA's Retiree Medical Plan. Former City employees who retire from OCFA with at least ten years combined City and OCFA service, may choose to retain their enrollment in OCFA's health plans, provided they pay the required

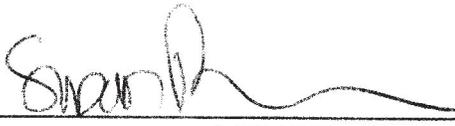
premiums. The City may establish and maintain a plan whereby the City provides funds directly to such retirees to help offset the cost of their medical plan premiums. As used herein, "retire" means active retirement at time of separation from OCFA service and does not include deferred retirement.

14. Ambulance Service Cost Reimbursement. City shall pay to OCFA the actual cost of employee salaries, employee benefits, and the services and supplies used by OCFA to provide ambulance service to the City. Notifications of estimated and final costs shall be made as provided in Section 4(a) of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first above written.

CITY OF SAN CLEMENTE

DATED: 6-15-04

By: 
MAYOR

ATTEST:

DATED: 6-15-04

By: 
CITY CLERK

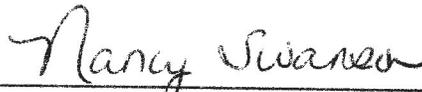
ORANGE COUNTY FIRE AUTHORITY

DATED: 6-24-04

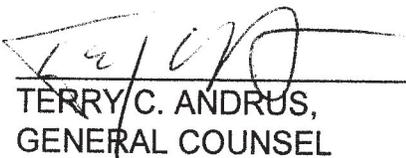
By: 
CHRIS LOWE, CHAIRMAN

ATTEST:

DATED: 6-24-04


CLERK OF THE AUTHORITY

APPROVED AS TO FORM:

 6-9-04
TERRY C. ANDRUS, DATE
GENERAL COUNSEL

**Engine and Truck Companies Located Within the City of San Clemente
(Stations Owned by the City)**

Station	Location	Engine/Truck	Staffing
50	670 Camino de los Mares, 92673	Engine Company	3
59	1030 Calle Negocio, 92673	Truck Company	4
60	100 Avenida Presidio, 92672	Engine Company	4

NOTE: This listing does not detail paramedic or other specialty assignments which are deployed on a regional basis to meet City needs pursuant to Section 3. (a) and 3. (b).

This Attachment A effective July 1, 2004.



ORANGE COUNTY FIRE AUTHORITY

P.O. Box 57115, Irvine, CA 92619-7115 • 1 Fire Authority Road, Irvine, CA 92602

Chip Prather, Fire Chief

(714) 573-6000

6-15-04
JG

June 30, 2004

City of San Clemente
ATTN: Joanne Baade
100 Avenida Presidio
San Clemente, CA 92672

Dear Joanne:

Enclosed please find two originals of the *Amended Fire Services and Medical Services Agreement* between the City of San Clemente and the Orange County Fire Authority. Please sign the documents and return one original to:

**Orange County Fire Authority
Clerk of the Authority
P.O. Box 57115
Irvine, CA 92856-9086**

If you have any questions please call me at (714) 573-6041.

Sincerely,

Nancy Swanson
Clerk of the Authority

Enclosure