



Orange County Fire Authority
AGENDA STAFF REPORT

Board of Directors Meeting
March 28, 2019

Agenda Item No. 5A
Discussion Calendar

City of Irvine - Settlement Agreement

Contact(s) for Further Information

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Summary

This agenda item is submitted for approval of the proposed Settlement Agreement between the Orange County Fire Authority (OCFA) and the City of Irvine to strengthen the OCFA's partnership with Irvine and enhance our system of regional fire and emergency services on behalf of all members.

Prior Board/Committee Action

Not Applicable.

RECOMMENDED ACTION(S)

Approve and authorize the Board Chair to sign the proposed Settlement Agreement between the Orange County Fire Authority and the City of Irvine.

Impact to Cities/County

The proposed Settlement Agreement enhances the stability of OCFA's financial structure, it maintains the Irvine service-area intact as a significant central portion of OCFA's operational jurisdiction, and it enhances regional services for all members served by the OCFA.

Fiscal Impact

Ongoing annual expenditures pursuant to the Agreement total \$2,668,000 beginning FY 2019/20 and continuing through FY 2029/30. The Agreement also includes one-time expenditures of \$21 million, of which \$19.5 million is already set-aside in OCFA reserves. Upon approval of this Agreement, these funding requirements will be included in the upcoming FY 2019/20 Proposed Budget. Details relating to the cost impacts are provided in Attachment 1.

Background

On June 27, 2018, the City of Irvine provided OCFA with a Notice of Withdrawal seeking the initiation of good faith negotiations relative to its future membership with the OCFA. Staff representatives from both the City of Irvine and OCFA have engaged in discussions to formulate a negotiated agreement. Discussions progressed in a very collaborative manner, with both parties focused on enhancing regional services beneficial to the City of Irvine and all members of the Fire Authority.

We are pleased to present the attached Settlement Agreement (Attachment 2). This Agreement will benefit the citizens of Orange County, and enhance services provided throughout OCFA's jurisdiction. Highlights of the Agreement are as follow:

- Irvine’s Notice of Withdrawal will be deemed rescinded upon approval of the Settlement Agreement by both parties.
- Funding for a joint police-fire training facility will be provided to allow for coordinated training and enhanced collaboration between law enforcement services and fire/emergency services. As the OCFA continues to grow, the need for additional training space has become a significant unmet need. This facility will provide much-needed classroom space, along with an additional Emergency Operations Center centrally located in the County, a driver-training course, and many other aspects that are key to the training needs for both police and fire.
- Additional security will be provided for OCFA’s pension program through establishment of a 115 Trust with deposits of \$2 million per year, dedicated solely for future application to OCFA’s pension liability.
- Public safety communications capabilities will be enhanced among public safety personnel through installation of bi-directional amplifiers in nine strategic locations where current radio communications are inadequate and unreliable. This enhancement not only improves our police and fire personnel’s ability to deliver services through improved communications, but also increases personnel safety and the safety of their operations.
- Funding will be provided to establish a state-of-the-art Fire Safety and Emergency Operations Advanced Technology Program that utilizes remote-operated drones to assist fire and emergency response personnel in a variety of ways such as fire suppression/fire prevention and real-time monitoring during fire or other emergency incidents.
- Additional annual service enhancements under this Agreement include funding of a Community Emergency Response Team (CERT) coordinator and OCFA-provided training of Irvine Police Department officers for Emergency Medical Technician skills.

Upon approval of this Agreement by the OCFA Board of Directors, we anticipate that the Agreement will then be considered by the Irvine City Council for approval in early April.

Attachment(s)

1. Financial Impacts
2. Settlement Agreement

**Orange County Fire Authority
Settlement Agreement
City of Irvine**

Financial Impacts

	Cost per Enhancement Concept	Ongoing Cost/Year	One-Time Costs
1.	Joint Police-Fire Training Facility & EOC	\$0	\$20,500,000
2.	Pension Funding – Annual Deposits to 115 Trust:	\$2,000,000	\$0
3.	Bidirectional Amplifiers	\$0	\$500,000
4.	OCFA Training of IPD EMTs	\$50,000	\$0
5.	Public Safety CERT Coordinator	\$118,000	\$0
6.	Drone Program	\$500,000	\$0
OCFA's Annual Financial Contribution		\$2,668,000	
OCFA's Total Financial Contribution (over 11 years)		\$29,348,000	\$21,000,000
Total Projected Payments = \$50,348,000			

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT (this “**Agreement**”) is dated as of March 28, 2019 (“**Effective Date**”), by and between the ORANGE COUNTY FIRE AUTHORITY, a California Joint Powers Authority (“**Authority**”), and THE CITY OF IRVINE, a California charter city (“**Irvine**”). Authority and Irvine are sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties.**”

RECITALS

A) Authority was originally formed in 1995, with the execution of a Joint Powers Agreement (“**Original JPA Agreement**”) entered into among the County of Orange (“**County**”) and multiple cities within Orange County (including Irvine) 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.

B) The Original JPA Agreement was superseded by an amended Joint Powers Agreement (“**Amended JPA Agreement**”) on September 23, 1999. The Amended JPA Agreement has since been amended as follows: on July 1, 2010, the then-members of the Authority entered into the First Amendment to the Amended JPA Agreement (“**First Amendment**”); on April 20, 2012, the City of Santa Ana joined the Authority and became a party to the Amended JPA Agreement and the First Amendment (“**Santa Ana Addition**”); on November 18, 2013, the then-members of the Authority entered into the Second Amendment to the Amended JPA Agreement (“**Second Amendment**”), but the Second Amendment was subsequently invalidated by judicial decision and is therefore inoperative; on July 14, 2015 the then-members of the Authority entered into the Third Amendment to the Amended JPA Agreement (“**Third Amendment**”); and on February 5, 2019 the then-members of the Authority entered into the Fourth Amendment to the Amended JPA Agreement (“**Fourth Amendment**”). Hereinafter, the Amended JPA Agreement, as modified by the First Amendment, the Santa Ana Addition, the Third Amendment, and the Fourth Amendment is referred to as the “**JPA Agreement.**”

C) On June 27, 2018, Irvine gave notice to Authority of its intent to withdraw from Authority, as authorized by Article VII, Section 1(B)(1) of the JPA Agreement (“**Withdrawal Notice**”).

D) Following issuance of the Withdrawal Notice, Irvine and Authority have engaged in extensive negotiations focused on their shared interests in enhancing fire safety, decreasing future pension liabilities, and pursuing operational efficiencies by jointly developing and utilizing facilities and services that meet their mutual needs.

E) California Government Code section 6503.1 requires that property taxes allocated to Authority may only be appropriated for expenditure for purposes directly related to, and in furtherance of, providing fire prevention, fire suppression, emergency medical services, hazardous materials response, ambulance transport, disaster preparedness, rescue services, and related administrative costs (collectively “**Fire Protection Purposes**”). As described

hereinbelow, the financial contributions required by this Agreement will be used for Fire Protection Purposes.

AGREEMENT

NOW, THEREFORE, in view of the foregoing recitals and in consideration of the following terms, conditions and covenants, Irvine and Authority agree as follows:

1. **Joint Police-Fire Training Facility:** Irvine shall plan, develop, construct, operate and maintain a joint training center, which shall include a joint emergency operations center (collectively “**Joint Training Facility**”). Irvine will contribute the land, use the Joint Training Fund to design, construct, furnish and own, and shall operate and maintain the real property (land, buildings, and fixtures) that comprises the Joint Training Facility. In exchange for the use of the Joint Training Facility as described in **Attachment A** hereto (the “Authority Joint Training Facility Uses”) Authority will contribute Twenty Million Five Hundred Thousand Dollars (\$20,500,000) (“**Joint Training Fund**”) to be used by Irvine toward the design, construction, furnishing of, and the provision of fixtures or equipment for facilities for, the Joint Training Facility. The process for the planning, design, construction, use, operation, and maintenance of the Joint Training Facility shall be as follows:

a. **Site Selection.** Irvine shall diligently pursue identification of a site within Irvine’s municipal boundaries suitable for establishment of the Joint Training Facility.

i. Irvine and Authority shall collaborate in determining site-suitability criteria for the Joint Training Facility.

ii. Irvine shall be responsible, at no cost to Authority, for making a suitable site available for the construction and operation of the Joint Training Facility.

b. **Design Phase.** Irvine and Authority shall collaborate in the design of the Joint Training Facility to ensure that it will meet their respective public safety and emergency responder personnel training needs. One Million Dollars (\$1,000,000) of the Joint Training Fund (“**Design Allocation**”) shall be reserved for engagement by Irvine of engineers and other design professionals to assist in the creation of design documents, through construction drawings, of the Joint Training Facility (“**Design Documents**”).

i. The Design Documents shall be sufficiently detailed to allow for a competitive bidding process for the construction of the Joint Training Facility.

ii. The Design Documents shall include, at a minimum, all facilities needed to provide the Authority Joint Training Facility Uses described in Attachment A, as the same may be amended in writing approved by the Authority’s Fire Chief and Irvine’s Police Chief. Any amendments to the Authority Joint Training Facility Uses that involve funding from the Joint Training Fund: (a) shall be consistent with

Government Code section 6503.1; and (b) shall be approved in writing by the Fire Chief; and (c) shall be approved by the Authority Board of Directors if they will cause the Joint Training Fund or Authority's other financial contributions toward the Joint Training Facility collectively to exceed \$20,500,000. Irvine may include additional facilities in the Joint Training Facility beyond those needed for Authority Joint Training Facility Uses provided the additional facilities are at Irvine's sole expense and do not conflict with the Authority Joint Training Facility Uses.

iii. The Design Documents shall provide design that fits within the following budget parameters (which shall include appropriate contingency reserves): No more than Eighteen Million Five Hundred Thousand Dollars (\$18,500,000) from the Joint Training Fund will be utilized for construction, furniture, fixtures, and equipment for, and operation and maintenance of, the Joint Training Facility; and no more than One Million Dollars (\$1,000,000) from the Joint Training Fund shall be utilized for construction, furniture, fixtures, and equipment for, operation and maintenance of, a joint emergency operations center. Nothing in this Agreement shall be interpreted to restrict Irvine's use of its own funding and funding from sources other than Authority in the site acquisition, design, construction, furnishing of, or the provision of fixtures or equipment for, the Joint Training Facility. Nothing in this Agreement shall be interpreted to require Irvine's use of its own funding and/or funding from sources other than Authority in the design, construction, furnishing of, or the provision of fixtures or equipment for, the Joint Training Facility.

iv. Either Irvine or Authority may pursue enhancements beyond the facilities needed for the Authority Joint Training Facility Uses described in Attachment A to meet additional needs, so long as the Party requesting the enhancement separately contributes the incremental additional costs associated therewith (the "**Costs of Enhancements**").

v. Irvine shall be responsible for engaging all contractors and professionals necessary to create the Design Documents ("**Design Contracts**"), and Irvine shall share with Authority all plans and associated documents generated pursuant to the Design Contracts.

vi. Upon execution of the Design Contracts, Authority shall pay to Irvine the Design Allocation. Irvine shall use the Design Allocation exclusively (i) to make payments on the Design Contracts, and (ii) for other expenses related to design of the Joint Training Facility as mutually agreed upon by duly authorized representatives of Irvine and Authority.

vii. If, upon completion of the design of the Joint Training Facility, the Design Allocation is not fully expended, then any remaining Design Allocation funds shall be transferred to the Construction Fund (defined below).

c. Joint Use Understanding. Concurrent with their review of the Design Documents, Authority's Fire Chief and Irvine's Police Chief shall establish a

mutually acceptable joint use understanding, pursuant to which the parameters and guidelines for the shared use of the Joint Use Facility will be established (“**Joint Use Understanding**”). The uses addressed in the Joint Use Understanding shall include, but not be limited to, the Authority Joint Training Facility Uses described in Attachment A, as the same may be amended in writing approved by the Authority’s Fire Chief and Irvine’s Police Chief.

i. The goal of the Joint Use Understanding shall be to maximize the utility of the Joint Training Facility to both Authority and Irvine, and to advance the Parties’ shared objective to ensure the first-rate training and readiness of public safety personnel.

ii. In recognition of their respective contributions (*i.e.*, the Joint Training Fund on the part of the Authority, and the real property contribution, other design and construction funds (in Irvine’s sole and absolute discretion), and operations and maintenance responsibilities on the part of Irvine), each Party’s training needs shall receive equal consideration in formulating the Joint Use Understanding.

iii. The Joint Use Understanding shall provide for a review and (if necessary) revision to the joint use parameters on a periodic basis, to (i) ensure that each Party’s evolving training needs are considered and accounted for in the Joint Use Understanding, and (ii) make modifications as necessary to maximize the utility and value of the Joint Use Facility to each Party.

d. Construction Phase. Upon the completion of Design Documents that are mutually acceptable to Authority and Irvine, Irvine shall commence a public bidding process for the construction of the Joint Training Facility. Irvine shall be responsible for conducting the bid process, and shall be the contracting agency on the resulting construction contract.

i. Irvine and Authority shall jointly review bid proposals for the Joint Training Facility, and the bid to let the construction contract shall only be awarded upon the mutual agreement of duly authorized representatives of Irvine and Authority. Without otherwise limiting the discretion of either Party, Irvine and Authority may each, in their sole and absolute discretion, elect to reject any bid proposal that proposes construction of the Joint Training Facility if the amount bid exceeds the forecasted Construction Fund (defined below) amount.

ii. Immediately upon entering into the construction contract, the Parties shall make the following contributions to a fund, to be administered by Irvine, for the construction the Joint Training Facility (“**Construction Fund**”). First, Authority shall contribute the remaining balance of the Joint Training Fund, *i.e.*, Eighteen Million Five Hundred Thousand Dollars (\$18,500,000), to the Construction Fund. Second, Irvine shall contribute any unused portion of the Design Allocation to the Construction Fund. Third, Authority shall contribute the Costs of Enhancements it has requested pursuant to Section 1(b)(iv), above, to the Construction Fund. Last, Irvine shall contribute the Costs

of Enhancements it has requested pursuant to Section 1(b)(ii), above, to the Construction Fund.

iii. Irvine shall administer the construction contract for the Joint Training Facility, and cause payments to be made to the contractor from the Construction Fund. In no event shall there be any additional construction cost to Authority and/or Irvine without the prior written consent of the Party bearing such additional cost.

e. Operations Phase. Irvine shall own the Joint Training Facility, and shall be responsible, at no cost to Authority, for the operation and maintenance of the Joint Training Facility; provided, however, that Authority shall be responsible for (i) the direct costs of its training activities and operations, as conducted pursuant to the Joint Use Understanding, (ii) replacement of all equipment (other than building fixtures, which shall be Irvine's responsibility) used in Authority's training activities, and (iii) any damages to the Joint Training Facility beyond normal wear and tear resulting from Authority's actions at the Joint Training Facility. There shall be no facility use charges to Authority for the use of the Joint Training Facility consistent with the Joint Use Understanding, as amended.

f. Duration and Assignability of Rights: The Joint Use Understanding shall remain effective and binding until it is reasonably determined by Irvine that major refurbishing and/or major reconstruction of the Joint Training Facility is necessary, but in no case for a period of time less than fifty (50) years from its completion of construction ("**Expiration Date**"). If Authority ceases to exist (*i.e.*, it is dissolved or terminated under State Law) prior the Expiration Date, then the Joint Use Understanding shall be assignable at the discretion of Authority to a single successor governmental agency, or, with the approval of Irvine, which approval shall not be unreasonably withheld, to more than one successor governmental agency, provided that the successor agency(ies) provides fire protection services to the then-remaining Structural Fire Fund agencies. Any assignment of the Joint Use Understanding is subject to the prior approval of Irvine, which approval shall not be unreasonably withheld, conditioned, denied, or delayed. Any assignment of the Authority's interest in the Joint Use Agreement, whether to one or multiple successors, shall not impair or reduce Irvine's rights under the Joint Use Agreement.

g. Determination of Appropriate Expense. Authority finds and determines that the funding contributed toward the Joint Training Facility pursuant to this Agreement, and the resulting availability of the Authority Joint Training Facility Uses, will enhance Authority personnel's level of training and preparedness to provide public safety services and, therefore, the expenditure required by this Section 1 and its subsections is an appropriate use of Authority funds for Fire Protection purposes. Authority further finds and determines that it could not acquire land, construct, and operate an equivalent training facility and emergency operations center for an amount comparable to or less than the Joint Training Fund, and that the Joint Training Facility creates efficiencies and synergies that benefit Authority and Irvine in ways that would not exist if each Party separately pursued the design, construction, use, and operation of joint training facilities and emergency operations centers.

2. **Drone Program For Enhanced Fire Detection for All Authority Members.** Authority will pay to Irvine Five Hundred Thousand Dollars (\$500,000) per fiscal year (“**Drone Program Payment**”), and Irvine shall utilize the Drone Program Payment, as follows:

a. *Establishment of Program.* Irvine shall establish and operate a program under which Irvine personnel will use drones to monitor open space areas in Irvine, though the drones will also be available upon request to monitor open space or active fires or other hazards and disasters throughout Authority’s jurisdictional boundaries. The central objective of the program will be the detection, monitoring, assessment and prevention of fires and other hazards and disasters within Authority’s purview, and the acquisition of high altitude, time-sensitive information enabling improved coordination of responses thereto (“**Drone Program**”).

i. Irvine and Authority shall coordinate regarding preferred, optimal, and essential (i) periods during which the Drone Program should operate, (ii) routes to be utilized by drones to maximize effectiveness of the Drone Program, and (iii) additional locations within Authority’s jurisdiction that require or would benefit from monitoring by the Drone Program. Irvine and Authority shall further coordinate to establish joint protocols for the use of drones during fire or other disaster/hazard events, so as to maximize the use of information obtained from the drones to alleviate threats to the public health and safety.

ii. The Drone Program shall be designed so that it shall not infringe upon the privacy rights of citizens.

iii. Drones in the Drone Program shall bear no OCFA identifications, including, without limitation, logos, unless otherwise directed by the Fire Chief.

b. *Payment Process and Use of Drone Program Payments.* Irvine shall certify on or prior to July 1, 2019 that it has established and budgeted for the Drone Program, and that the total anticipated costs of personnel (salary and benefits), equipment, space, and other directly associated expenses (“**Drone Program Costs**”) is at least Five Hundred Thousand Dollars (\$500,000) per year.

i. The annual Drone Program Payment shall be due on July 1 of each fiscal year beginning on July 1, 2019 and ending on July 1, 2029; provided, however, that if Irvine has not provided the certification required by Paragraph 2(b) on or prior to June 1 of any year, then the first Drone Program Payment shall not be due to Irvine until thirty (30) days after Irvine provides such certification.

ii. Irvine shall use the Drone Program Payment exclusively to cover Drone Program Costs.

iii. On or prior to May 1 of each year beginning on May 1, 2020 and ending on May 1, 2030, Irvine shall certify to Authority the amount of the Drone Program Costs (i) incurred during the then-current fiscal year, and (ii) reasonably anticipated to be incurred prior to the close of the then-current fiscal year (collectively, the “**Annual Total Drone Program Costs**”). If the Annual Total Drone Program Costs are less than Five Hundred Thousand Dollars (\$500,000), the difference between those two figures will be deducted from the subsequent year’s Drone Program Payment.

c. *Determination of Appropriate Expense.* Authority finds and determines that the funding of the Drone Program pursuant to this Agreement enhances Authority’s fire and other disaster prevention, preparedness, assessment, and response capabilities and arson deterrent, and therefore, the expenditure required by this Section 2 and its subsections is an appropriate use of Authority funds for Fire Protection purposes.

3. **Funding of Bi-Directional Amplifiers for Improved Public Safety Communications Capabilities.** Authority will pay to Irvine Five Hundred Thousand Dollars (\$500,000) (“**Emergency Communications Payment**”), and Irvine shall use the Emergency Communications Payment, as follows:

a. *Payment Timing.* Authority shall reimburse Irvine in the amount of the Emergency Communications Payment upon documentation that the Amplifiers have been installed and are operating.

b. *Use of Payment.* Irvine shall utilize the Emergency Communications Payment solely for the purchase and installation of bi-directional amplifiers at nine (9) locations within Irvine’s municipal boundaries.

i. The bi-directional amplifiers are designed and intended, and shall be used, to improve public safety communications capabilities among public safety personnel including but not limited to Irvine and Authority personnel.

c. *Determination of Appropriate Expense.* Authority finds and determines that the funding of bi-directional amplifiers pursuant to this Agreement enhances the emergency communications, preparedness and response capabilities for Authority and one of Authority’s member agencies and, therefore, the expenditure required by this Paragraph 3 is an appropriate use of Authority funds for Fire Protection purposes.

4. **Authority Training of Irvine Police Department Emergency Medical Technicians.** Authority personnel shall provide Irvine Police Department (“**IPD**”) personnel with emergency medical technician (“**EMT**”) training at a cost to Authority of Fifty Thousand Dollars (\$50,000) per fiscal year, as follows:

a. *Coordination of Training Needs.* IPD personnel and Authority personnel shall coordinate regarding EMT training needs for IPD personnel, and shall reasonably cooperate in scheduling EMT training sessions.

b. Provision of Training to IPD Personnel. Authority personnel shall provide EMT training as requested by IPD personnel; provided, however, that Authority shall not be required to provide additional EMT training sessions to IPD personnel to the extent the costs to Authority in providing such training exceeds Fifty Thousand Dollars (\$50,000) per fiscal year. Unused training sessions will not carry over to a future fiscal year. Authority may, in its sole discretion, voluntarily agree to provide EMT training to IPD personnel at a cost to Authority in excess of Fifty Thousand Dollars (\$50,000) per fiscal year.

c. Date of Commencement of Obligation. The obligation to provide EMT training upon request as set forth in this Section 4 shall commence on the latter of (i) July 1, 2019 and (ii) the date that IPD identifies personnel that are either specifically employed to serve as EMTs for Irvine or that have EMT functions integrated into their job duties. The obligations to provide EMT training as set forth in this Section 4 shall expire on June 30, 2030.

d. Suspension of Obligation. The obligation to provide EMT training as set forth in this Section 4 shall be suspended if, at any time between the commencement and the expiration of the EMT training obligation, IPD suspends or terminates its utilization of EMT-trained personnel. If Authority's EMT training obligation is suspended under this Section 4(e), it shall resume if and when IPD elects to resume utilization of EMT-trained personnel.

e. Determination of Appropriate Expense. Authority finds and determines that the funding of EMT training to IPD personnel pursuant to this Agreement enhances emergency medical preparedness and response capabilities within the service area of the Authority and, therefore, the expenditure required by this Paragraph 4 is an appropriate use of Authority funds for Fire Protection purposes.

5. Authority Funding of Full Time Community Emergency Response Team Coordinator. Authority will pay to Irvine One Hundred Eighteen Thousand Dollars (\$118,000) per fiscal year ("**CERT Funding Payment**"), and Irvine shall use the CERT Funding Payment toward the costs of one Irvine-employed full time Community Emergency Response Team ("**CERT**") Coordinator, as follows:

a. CERT Coordinator Services. The CERT Coordinator shall provide services designed to educate and train volunteers about disaster preparedness and basic disaster response skills, including fire safety, light search and rescue, team organization, and disaster medical operations. Because CERT is a nation-wide program, utilization of the CERT Coordinator's services will provide a consistent approach to volunteer training that professional responders can rely on during disaster situations, which allows professional responders to focus on more complex tasks.

b. Certification of CERT Coordinator Establishment. Irvine shall certify on or prior to July 1, 2019 that it has established and budgeted for a CERT Coordinator position, and that the total anticipated costs of that individual's salary, benefits,

and other directly associated expenses (“**CERT Coordinator Costs**”) is at least One Hundred Eighteen Thousand Dollars (\$118,000) per fiscal year.

c. Payment Timing. The annual CERT Funding Payment shall be due on July 1 of each year beginning on July 1, 2019 and ending on July 1, 2029; provided, however, that if Irvine has not provided the certification required by Paragraph 5(b) on or prior to June 1, 2019, then the first CERT Funding Payment shall not be due to Irvine until thirty (30) days after Irvine provides such certification

d. Use of Payment. Irvine shall use the CERT Funding Payment exclusively toward the costs of a full time CERT Coordinator, including the costs of that individual’s salary, benefits, and other directly associated expenses (“**CERT Coordinator Costs**”).

i. On or prior to May 1 of each year beginning on May 1, 2020 and ending on May 1, 2030, Irvine shall certify to Authority the amount of the CERT Coordinator Costs (i) incurred during the then-current fiscal year, and (ii) reasonably anticipated to be incurred prior to the close of the then current fiscal year (collectively, the “**Total CERT Coordinator Costs**”). If the Total CERT Coordinator Costs are less than One Hundred Eighteen Thousand Dollars (\$118,000), the difference between those two figures will be deducted from the subsequent year’s CERT Funding Payment.

e. Determination of Appropriate Expense. Authority finds and determines that the funding of the CERT Coordinator pursuant to this Agreement enhances the Authority’s disaster preparedness and response capabilities and is likely to reduce demands for Authority services resulting from large-scale disasters, and, therefore, the expenditure required by this Paragraph 5 is an appropriate use of Authority funds for Fire Protection purposes.

6. **Accelerated Pension Pay Down Through Structural Fire Fund Equity Fund.** Authority will pay Two Million Dollars (\$2,000,000) per year (“**115 Trust Payment**”) into an Internal Revenue Code section 115 trust (“**115 Trust**”) to be established with the Public Agency Retirement Services, or the Orange County Employees Retirement System, or such other administrator as Irvine and Authority agree upon (for ease of reference, the alternative administrators are referred to herein as the “**Trust Administrator**”), which shall be applied to pay down a specific portion of Authority’s unfunded pension liability, as follows:

a. Establishment of 115 Trust. On or prior to July 1, 2019, Authority shall establish the 115 Trust with the Trust Administrator. The Trust Administrator shall administer the 115 Trust.

b. 115 Trust Payments. The annual 115 Trust Payment shall be due on July 1 of each fiscal year beginning on July 1, 2019 and ending on July 1, 2029; provided, however, that if Authority has not funded eighty-five percent (85%) of its unfunded pension liability as determined by OCERS (“**UAAL Funding Target**”) by June 30, 2020, then the

required 115 Trust Payment shall be reduced to One Million Five Hundred Thousand Dollars (\$1,500,000) per fiscal year, until Authority achieves the UAAL Funding Target. The \$500,000 reduction shall be contributed to the OCFAs “snowball” plan to reduce OCFA’s UAAL. The first 115 Trust Payment of \$2 million due on July 1, 2019 shall not be reduced, however, even if the UAAL Funding Target has not yet been funded.

c. Attribution of 115 Trust Payment to Authority Members. Sub-accounts (or equivalent) shall be established within the 115 Trust, to attribute on a pro-rata basis portions of each 115 Trust Payment to each Structural Fire Fund member (as defined in Article IV, Section 3.A. of the JPA Agreement) whose Structural Fire Fund revenues were greater than the cost of providing fire services during the prior fiscal year (as generally defined in Article IV, Section 4.C. of the JPA Agreement). In determining the amount by which a Structural Fire Fund member’s costs of providing fire services exceeded Structural Fire Fund revenues, the Parties shall utilize the calculation methodology set forth in Article IV, Section 4 of the JPA Agreement.

For illustrative purposes, *if* during the prior fiscal year there were three (3) Structural Fire Fund members where tax revenues contributed to the Authority were greater than the cost of providing fire services (“**Contribution in Excess of Cost**”), *and* the amounts of Contribution in Excess of Cost were Seven Million Dollars (\$7,000,000) for “Jurisdiction A,” Two Million Dollars (\$2,000,000) for “Jurisdiction B,” and One Million Dollars (\$1,000,000) for “Jurisdiction C”, *then* the pro rata contributions into the 115 Trust sub-accounts would be attributed as follows: One Million Four Hundred Thousand Dollars (\$1,400,000), *i.e.*, seventy percent (70%) of the 115 Trust Payment for Jurisdiction A; Four Hundred Thousand Dollars (\$400,000), *i.e.*, twenty percent (20%) of the 115 Trust Payment for Jurisdiction B; and Two Hundred Thousand Dollars (\$200,000), *i.e.*, ten percent (10%) of the 115 Trust Payment for Jurisdiction C. (Such pro rata amounts will vary from fiscal year to fiscal year as the Contribution in Excess of Cost varies.)

d. Annual Reporting. Funding of the 115 Trust and attribution of the portions of the 115 Trust Payment to subaccounts for individual Structural Fire Fund members pursuant to Section 6(c) will be reported annually with the Authority’s annual liability report.

e. Use of 115 Trust Upon Dissolution of Authority.

i. If Authority is dissolved in the manner described in Government Code section 6508.2, then as part of the dissolution process Authority shall apportion retirement liabilities among all of the Authority’s member agencies as specified in Government Code section 6508.2 (“**Apportionment Calculation**”). The amounts deposited into the 115 Trust and attributed by subaccounts to specific Structural Fire Fund members (“**115 Trust Contributing Member**”) shall not be utilized in making the Apportionment Calculation. Upon completion of the Apportionment Calculation, the 115 Trust shall be liquidated

and the amounts in the 115 Trust attributed to each 115 Trust Contributing Member shall be used toward the satisfaction of the portion of liability assigned to such 115 Trust Contributing Member through the Apportionment Calculation.

- ii. *If* the amount deposited in the 115 Trust and attributed to a 115 Trust Contributing Member exceeds the portion of the retirement liability attributed to that 115 Trust Contributing Member by the Apportionment Calculation (“**Excess Amount**”), *then* the Excess Amount shall be contributed to satisfy all or a portion of the retirement liability allocated to the 115 Trust Contributing Member with the next-largest remaining allocation of unfunded retirement liability (“**115 Trust Benefitting Member**”). The 115 Trust Benefitting Members’ responsibility for any remaining liabilities will be increased and/or its rights to the disposition of assets on termination of the Authority (pursuant to Section 2 of the JPA Agreement) shall be decreased in an amount equal to the Excess Amount. Correspondingly, the 115 Trust Contributing Member’s responsibility for any remaining liabilities will be decreased and/or its rights to disposition of assets on termination of the Authority (pursuant to Section 2 of the JPA Agreement) shall be increased in an amount equal to the Excess Amount.
- iii. *If* all or a portion of the funds in the 115 Trust remain after all retirement liabilities apportioned to all Authority members are satisfied, *then* Authority and each 115 Trust Contributing Member shall separately negotiate in good faith to either (i) apply the remaining amount in the 115 Trust to future pension and retirement obligations attributable to each 115 Trust Contributing Member, or (ii) assign the remaining 115 Trust funds to a successor fire protection agency in exchange for a corresponding reduction in the 115 Trust Contributing Member’s liabilities or an increase in the 115 Trust Contributing Members rights to the disposition of the Authority’s assets.

7. **Rescission of Notice of Withdrawal:** As of the Effective Date, Irvine’s Notice of Withdrawal is deemed rescinded without further action required by Irvine or Authority.

8. **Miscellaneous:**

a. **Indemnification.** Irvine shall defend, indemnify, and hold harmless Authority, its officials, employees, and agents from any and all actual or alleged claims, demands, causes of action, liability, loss, damage, or injury to property or persons, including wrongful death, whether imposed by a court of law or by administrative action of any

federal, state, or local governmental agency, arising out of or incident to any acts, omissions, negligence, or willful misconduct of Irvine, its employees, contractors, or agents in the performance of this Agreement (“**Claims**”). This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys’ fees, and related costs or expenses, and the reimbursement of Authority, its officials, employees, and/or agents for all legal expenses and costs incurred by each of them. This indemnification excludes any Claim to the extent caused by the negligence or willful misconduct of Authority.

b. Insurance. Irvine shall provide insurance to cover its rights or obligations under this Agreement, in a form and amount as determined through Irvine’s standard risk management practices. Prior to July 1, 2019, Irvine shall furnish Authority with additional insured endorsement(s) or policy language granting additional insured status to Authority, together with complete certified copies of all policies, including complete certified copies of all endorsements. All copies of policies and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf.

c. Assignment. No Party may assign this Agreement or any right or obligation hereunder without the express prior written consent of the other Party. A request for consent to an assignment may be denied for any reason or no reason; provided, however, that requests for assignment of the Joint Use Understanding shall be not be subject to this Section 8(c), and shall instead be subject to Section 1(f), above.

d. Notices. As used in this Agreement, “notice” includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder. All notices shall be in writing and shall be considered given either: (i) when delivered in person to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below; or (iii) two (2) days after deposit in the United States mail in a sealed envelope, first class mail and postage prepaid, and addressed to the recipient named below; or (iv) one (1) day after deposit with a known and reliable next-day document delivery service (such as FedEx), charges prepaid and delivery scheduled next-day to the recipient named below, provided that the sending party receives a confirmation of delivery from the delivery service provider. All notices shall be addressed as follows:

If to CITY:

City of Irvine
One Civic Center Plaza
Irvine, CA 92606-5207
Attn.: City Manager

With a copy to:

Rutan & Tucker, LLP
611 Anton Boulevard, Suite 1400

Costa Mesa, CA 92626
Attn.: Jeffrey Melching

If to AUTHORITY:

Orange County Fire Authority
1 Fire Authority Road
Irvine, CA 92602
Attn.: Fire Chief

With a copy to

Woodruff, Spradlin & Smart, APC
555 Anton Boulevard, Ste. 1200
Costa Mesa, CA 92626
Attn: David E. Kendig

Either Party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

e. Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

f. Singular and Plural. As used herein, the singular of any word includes the plural, and vice versa, as context so dictates. Masculine, feminine, and neuter forms of any word include the other as context so dictates.

g. Waiver. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, or the failure by a Party to exercise its rights upon the default of the other Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by the other Party with the terms of this Agreement thereafter.

h. Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the Party benefited thereby of the covenants to be performed hereunder by such benefited Party.

i. Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a Party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Orange, State of California, or any other court in that county, and the Parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court.

j. Further Actions and Instruments. Each of the Parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either Party at any time, the other Party shall promptly execute instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

i. Irvine hereby authorizes its City Manager to take such other actions and negotiate and execute any additional agreements as may be necessary or proper to fulfill Irvine's obligations under this Agreement. The City Manager may delegate her or his powers and duties under this Agreement to an authorized management level employee of Irvine.

ii. Authority hereby authorizes its Fire Chief to take such other actions and negotiate and execute any additional agreements as may be necessary or proper to fulfill Authority's obligations under this Agreement. The Fire Chief may delegate her or his powers and duties under this Agreement to an authorized management level employee of Authority.

k. Attorneys' Fees and Costs. If either Party to this Agreement commences an action against the other Party to this Agreement arising out of or in connection with this Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees, expert witness fees, costs of investigation, and costs of suit from the losing Party; provided, however, that the attorneys' fees awarded pursuant to this Section shall not exceed the hourly rate paid by Irvine for its City Attorney legal services multiplied by the reasonable number of hours spent by the prevailing Party in the conduct of the litigation. The court may set such fees in the same action or in a separate action brought for that purpose.

l. Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

m. Temporary Suspension of Payments for Fiscal Hardship. In the event the Authority Board of Directors finds the Authority to be in fiscal hardship by vote of two-thirds of the Board, funding for the Authority's on-going costs agreed to in Sections 2 (Drone Program), 4 (EMT Training) and 5 (CERT Coordinator) may, at Authority's discretion, be temporarily paused during the fiscal year during which a finding of fiscal hardship applies. The Authority shall not pause the one-time payments required by Section 1 (Joint Police-Fire Training Facility), nor Section 3 (Bi-Directional Amplifiers), nor the on-going Accelerated Pension Pay Down payments required under Section 6.

n. No Adjustments for Inflation. The dollar amounts set forth in this Agreement will not be adjusted for inflation or deflation.

o. Counterparts. This Agreement may be executed by the Parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the Parties had executed the same instrument.

IN WITNESS WHEREOF, Irvine and Authority have executed this Agreement as of the date first above written.

“Irvine”

CITY OF IRVINE, a California charter city

By: _____
Donald P. Wagner, Mayor

APPROVED AS TO FORM:

City Attorney, City of Irvine

“Authority”

ORANGE COUNTY FIRE AUTHORITY, a California Joint Powers Authority

By: _____
Joseph Muller, Chairman, Board of Directors

APPROVED AS TO FORM:

General Counsel, Orange County Fire Authority

ATTACHMENT A

“Authority Joint Training Facility Uses”

In exchange for its financial contributions identified in Section 1, and subject to the Joint Use Understanding as the same may be amended from time to time, the Joint Training Facility shall include, and the Authority shall have the right to the use of the one hundred percent (100%) of the following facilities and services (in their entirety) for fifty percent (50%) of the Joint Training Facility’s hours of operation, until the Expiration Date as defined in Section 1.f. Scheduling of Authority Joint Training Facility Uses shall be as agreed upon in the Joint Use Understanding.

1. Indoor Firearm Range
2. Emergency Operations Center
3. Emergency Vehicle Operations Course (pursuit course and slow speed training area)
4. Classrooms (minimum of two)
 - a. Each will seat at least 70 students
 - b. Each will be equipped with desks, chairs and new audio/video equipment
5. “Scenario Village”
 - a. Approximately 10,000 square feet or more space simulating a city street with multiple buildings (house, bank, mini-market) for simulation training
6. Multi-Purpose Training room requiring large, open spaces.
 - a. Multi-Purpose Training room shall be a minimum of 5,000 square feet
7. Office Space
8. Kitchen and break area
9. Small male and female locker rooms
10. Reception Area
11. Helipad



Orange County Fire Authority

SUPPLEMENT TO
AGENDA STAFF REPORT

Board of Directors Meeting
March 28, 2019

Agenda Item No. 5A
Discussion Calendar

City of Irvine – Settlement Agreement

Contact(s) for Further Information

Lori Zeller, Deputy Chief
Administration & Support Bureau

lorizeller@ocfa.org

714.573.6020

Summary

The information below supplements the Agenda Staff Report for this item that was circulated on March 21, 2019, and responds to questions and comments set forth in the attached letter from Director Bartlett (Attachment 3) dated March 20, 2019 (emailed to OCFA on March 21).

Supplemental Information

OCFA staff has received the attached letter from Director Bartlett regarding the Irvine Settlement Agreement dated March 20, 2019, transmitted via email to OCFA on March 21 (Attachment 3). The following provides OCFA staff's and General Counsel's responses to questions and comments in that letter in the order in which they appeared in the letter.

1. "A copy of this agreement was provided to County Counsel yesterday."

Response: The draft Settlement Agreement was originally circulated to Mark Servino at County Counsel at the same time it was emailed to the full Board of Directors, on March 11, 2019. The purpose of circulating it at that time was to allow County Counsel time for review and dialogue with OCFA General Counsel and with Irvine's City Attorney to address any concerns. To that end, County Counsel participated in a conference call about the Settlement Agreement with OCFA General Counsel, OCFA staff, and Irvine's City Attorney on March 13, 2019. A minor clarification was added to the Settlement Agreement as a result of that input.

2. "Thus, we request that this matter be placed on a public agenda so that OCFA's Board members can have adequate time to review the agreement prior to the meeting and discuss the following issues:"

Response: The matter has been placed on a public agenda for the OCFA Board of Director's regularly-scheduled meeting of March 28, 2019. The electronic link for this meeting agenda was distributed to all Board members on March 21, 2019, and a hard copy of the agenda packet was hand-delivered to Director Bartlett's office on the same day.

3. "Joint Police-Fire Training Facility (Paragraph 1): Given that OCFA will contribute \$20.5 million of general fund money toward the construction of this facility, we would like to understand the terms

of this arrangement, including how OCFA or its successor agencies would be able to use the facility, particularly if Irvine is not a constituent member of that successor fire agency.”

Response. Pages 2 through 6 of the Settlement Agreement (along with Attachment A to the Agreement) lay out the proposed terms of the arrangement and identify particular features that OCFA would have the use of, in their entirety, for fifty percent (50%) of the Joint Training Facility’s hours of operation. The key terms can be summarized as follows:

- In exchange for its \$20.5 million contribution, OCFA will be entitled to use the following training facilities and services (identified in Attachment A to the Agreement):
 - Emergency Operations Center
 - Emergency Vehicle Operations Course (pursuit course and slow speed training area)
 - Classrooms (minimum of two)
 - Each will seat at least 70 students
 - Each will be equipped with desks, chairs and new audio/video equipment
 - “Scenario Village”
 - Approximately 10,000 square feet or more space simulating a city street with multiple buildings (house, bank, mini-market) for simulation training
 - Multi-Purpose Training room requiring large, open space
 - Multi-Purpose Training room shall be a minimum of 5,000 square feet
 - Office Space
 - Kitchen and break area
 - Small male and female locker rooms
 - Reception Area
 - Helipad
 - Indoor Firearm Range.
- If the OCFA dissolves or is terminated, then the Joint Use Understanding will be assignable at OCFA’s discretion to at least one successor agency;
 - Q: Director Bartlett’s asked how a successor fire agency would be able to use the Joint Training Facility if Irvine is not a constituent member of that successor agency.
 - A: Under the proposed Settlement Agreement, OCFA will (in the event of dissolution) have the right in its discretion to assign its *own* remaining use rights (i.e., 100% of the Joint Training Facility, 50% of the time) to a successor agency(ies), provided that the successor agency(ies) provides fire protection services to one or more of the then-remaining Structural Fire Fund agencies. The successor fire agency(ies) will have the same rights to the use of the Joint Training Facility under the Joint Use Understanding as the OCFA has now. If assigned to multiple successors, OCFA’s rights (but not Irvine’s) would be divided among the successor agencies in whatever manner is agreed upon at that time by OCFA and the successors. Irvine will continue to have its own, separate rights in the use of the Joint Training Facility under the Joint Use Understanding regardless of the assignment of OCFA’s rights. This is clarified by the final sentence in Section 1.f. that reads: “Any assignment of the Authority’s interest in the Joint Use Agreement, whether to one or multiple successors, shall not impair or reduce Irvine’s rights under the Joint Use Agreement.”

4. “Irvine CERT Coordinator (Paragraph 5): We question whether this is a valid expenditure of OCFA funds, because all OCFA members have delegated their fire protection powers to OCFA. Thus, it may be inconsistent with GC 6503.1 and OCFA’s JPA for OCFA to enter into an agreement with a member to transfer monies for the member to separately employ personnel who are engaged in fire protection duties.”

Response: Government Code section 6503.1 restricts the *purposes* to which property tax revenues may be appropriated for expenditure. *i.e.*, they may only be used for “fire protection services”, as defined. There is nothing in section 6503.1 that in any way limits the *manner* in which fire protection services are delivered. Indeed, the OCFA routinely enters into contracts with a variety of providers, and on occasion with its member agencies, to assist the Authority in carrying out responsibilities related to providing fire protection services. The Community Emergency Response Team Coordinator function is a disaster preparedness function within the definition of a “fire protection service” pursuant to Government Code section 6503.1¹.

Contracting for the accomplishment of “fire protection services”, including with member agencies, is also consistent with OCFA’s expressly enumerated powers under its Joint Powers Agreement. In Article I, Section 4 of the OCFA’s Amended Joint Powers Agreement, all of the member agencies have agreed, in pertinent part, that the “Authority shall have the power to do any of the following in its own name:

“B. To make and enter into contracts, including contracts with its members.

...

“P. To provide related services as authorized by law.

“Q. To contract for the services of attorneys, consultants and other services as needed.”

[Emphases added.]

5. “Accelerated Pension Pay Down (Paragraph 6): First, the pension provisions appear to affect all OCFA members, not just Irvine. However, only Irvine and OCFA are parties to this agreement, not any other members of the OCFA.”

Response: The OCFA Board routinely approves contracts that affect all of its member agencies (for instance, labor agreements) or benefit an individual member agency to a greater degree than other members. As noted above, the Amended Joint Powers Agreement (Article I, Section 4, subsection B) broadly authorizes the OCFA to “make and enter into contracts, including contracts with its members.” Thus, the actions proposed to be taken to establish and fund a 115 Trust are actions that the OCFA Board alone could take, without the need for Irvine, or any other member agencies, to separately authorize the action. The fact that the OCFA is doing so in conjunction with an agreement with one of its members is consistent with the authority vested in the Board by the member agencies in the JPA Agreement. Since the topic of pension security is of importance to the City of Irvine and the OCFA, and is an important factor in Irvine’s consideration to rescind its notice of withdrawal, it is appropriate, with the Board’s approval, to incorporate this as an element of this Settlement Agreement.

¹ California Government Code section 6503.1(a) provides that property tax revenues allocated to an agency (currently OCFA) those revenues “may only be appropriated for expenditure ... for fire protection services.” “Fire protection services” is defined to include “purposes directly related to, and in furtherance of, providing fire prevention, fire suppression, emergency medical services, hazardous materials response, ambulance transport, disaster preparedness, rescue services, and related administrative costs.” (Cal. Gov’t Code § 6503.1(b).)

6. “In the event of a dissolution of OCFA, it is unclear whether Paragraph 6 would be enforceable by OCFA members with respect to the allocation or payment of OCFA pension liability if only Irvine and OCFA have executed this agreement.”

Response: Recent legislation requires, in the event of JPA dissolution, an apportionment of retirement obligations among the member agencies. (See Government Code section 6508.2.) The Settlement Agreement provides that, after the statutory allocation of retirement obligations is completed, the 115 Trust will be liquidated “and the amounts in the 115 Trust attributed to each 115 Trust Contributing Member shall be used toward the satisfaction of the portion of liability previously assigned to that member through the 6508.2 statutory allocation process.” Thus, the Settlement Agreement is intended to ensure that each of the benefitting member agencies (referred to in the Agreement as “115 Trust Contributing Members”) would be an implied intended third-party beneficiary of the Settlement Agreement. Consistent with that intent, each 115 Trust Contributing Member could seek to enforce its rights under the Settlement Agreement.

To further clarify this issue, at the Board’s direction, the following additional sentence could be inserted as a new subsection f. of Section 6 of the proposed Settlement Agreement (Irvine City staff has been advised of this potential addition, and has no objections thereto):

“f. *Third Party Beneficiaries.* Each of the 115 Trust Contributing Members shall be an “intended third party beneficiary” entitled to enforce the provisions of Section 6.”

7. “Ideally these provisions should be incorporated into an amendment to OCFA’s joint powers agreement and reconciled with OCFA’s Fourth Amendment, which also has similar attribution language relating to the pay down of OCFA’s pension liabilities.”

Response: The “snowball plan” set forth in the Fourth Amendment to the Amended JPA Agreement requires certain payments to be made to reduce OCFA’s pension and Retiree Medical liabilities, but it does not restrict the OCFA Board’s discretion to make other financial arrangements to address retirement liabilities above-and-beyond those required payments. As a result, the proposed Agreement and the Fourth Amendment are “reconciled” (*i.e.*, each will operate independently of the other, and in a manner that does not conflict).

OCFA makes its snowball plan payments to OCERS annually in any case, and there are no sub-allocations intended to benefit any specific member agencies. The 115 Trust, on the other hand, is a long-term security “reserve” set-aside for future application to pension liability, only upon dissolution of OCFA.

8. “Second, neither the agreement nor the Fourth Amendment address how the pension pay down provisions apply with respect to the withdrawal of an OCFA member, which does not result in the dissolution of OCFA. ... Does a withdrawing member forfeit the benefit of the 115 Trust?”

Response: Neither the agreement nor the Fourth Amendment have any impact on an OCFA member withdrawing from the OCFA when the withdrawal does not result in dissolution of OCFA. As currently drafted, there is no indication in the Settlement Agreement that a benefitted “115 Trust Contributing Member” would forfeit that benefit if it withdrew from OCFA. Because “the law traditionally disfavors forfeitures” (*People v United Bonding Ins. Co.*, 5 Cal. 3d 901,

906 (1971)) and there is no provision in the Settlement Agreement that would dictate or justify a forfeiture, the withdrawing member would not forfeit the benefit of the 115 Trust.

If the Board would like this to be made more clear, the Board may direct that the Settlement Agreement be revised to incorporate the following new subsection g to clarify that withdrawal does not waive already-accrued benefits (this proposed revision has been discussed with Irvine staff, and they have no objection to its addition):

“g. No Forfeiture. Withdrawal from the OCFA by a 115 Trust Contributing Member will not forfeit nor reduce the rights accrued by that member pursuant to this Section 6 prior to withdrawal.”

9. “Third, we understand that Irvine and OCFA are making some revisions to the agreement to clarify that if OCFA has not reached an 85 percent UAAL funding target, the \$500,000 reduction of annual 115 trust payments will be used by OCFA to directly pay OCERS as part of OCFA’s “snowball” accelerated pension liability pay down plan. While I am supportive of taking steps to address OCFA’s unfunded pension liability, this raises the question of whether it is a good policy to maintain a separate 115 trust that does not directly count towards the reduction of OCFA’s pension liability as determined by OCERS.”

Response: The proposed Settlement Agreement has been revised to clarify that any \$500,000 reduction of annual trust payments will be added to the “snowball” plan payments. Section 6.b. includes a sentence that states: “The \$500,000 reduction shall be contributed to the OCFA’s “snowball” plan to reduce OCFA’s UAAL.” As drafted, the proposed language would ensure the “snowball” plan proceeds in a manner to achieve OCFA’s goal of 85% funding, while also setting aside funds in the 115 Trust as an additional security, in the event of dissolution, which would only be applied to OCFA’s pension liability.

10. “Fourth, the agreement incorporates the calculation methodology for OCFA’s contributions to the Structural Fire Fund Entitlement Fund contained in the equity provisions of OCFA’s JPA. However, it is not clear whether OCFA’s payments under the agreement are in addition to, or in lieu of, the contributions to the SFF Entitlement Fund. Put another way, how does the agreement operate and interact with the equity provisions of OCFA’s JPA, since only Irvine and OCFA are parties to the settlement agreement?”

Response: Nothing in the Settlement Agreement amends, in any way, the provisions of the JPA Agreement. Thus, the commitments made under the JPA are not impacted by this Agreement. As a result, the 115 payments under this Settlement Agreement are separate from, and in addition to, the JPA-defined Structural Fire Fund Entitlement Fund (SFFEF) contributions.

If the Board would like this to be made more overt in the Settlement Agreement, the Board may direct that Section 6 of the Settlement Agreement be revised to incorporate the following new subsection h. (this proposed revision has been discussed with Irvine staff, and they have no objection to its addition):

“h. Contributions Separate from Structural Fire Fund Entitlement Fund. Payments made into the 115 Trust are separate from, and in addition to, the Structural Fire Fund Entitlement Fund contributions made pursuant to the OCFA’s Amended JPA Agreement.

11. “Given the concerns outlined above and the significance of the matters impacted by the agreement with Irvine, which directly affect OCFA members who are not signatories to the agreement, I request that this matter be continued at least to the next meeting of OCFA’s Board of Directors and placed on the public agenda.”

Response: The matter has been placed on the public agenda for the OCFA Board of Director’s next regularly scheduled meeting on March 28, 2019. The electronic link for this meeting agenda was distributed to all Board members on March 21, 2019 and a hard copy of the agenda packet was hand delivered to Director Bartlett’s office on the same day.

Attachments:

1 & 2: Attached to original Staff Report

3: Letter from Director Bartlett dated March 20, 2019, emailed March 21



LISA A. BARTLETT
CHAIRWOMAN
ORANGE COUNTY BOARD OF SUPERVISORS
SUPERVISOR, FIFTH DISTRICT

ORANGE COUNTY HALL OF ADMINISTRATION
333 W. SANTA ANA BLVD.
10 CIVIC CENTER, SANTA ANA, CALIFORNIA 92701
PHONE (714) 834-3550 FAX (714) 834-2670
<http://bos.ocgov.com/fifth/>

March 20, 2019

David Kendig, General Counsel
Orange County Fire Authority
1 Fire Authority Road
Irvine, CA 92612

Jeffrey Melching, City Attorney
City of Irvine
1 Civic Center Plaza
Irvine, CA 92606

Re: Settlement Agreement between Orange County Fire Authority and Irvine

Dear Mr. Kendig and Mr. Melching:

I understand that a proposal for OCFA to enter into an agreement with the City of Irvine will be presented to OCFA's Board of Directors. A copy of this agreement was provided to County Counsel yesterday. We appreciate having the opportunity to review and comment on agreement. The agreements affects the expenditure of millions of dollars in OCFA revenues, and affects the rights and obligations of OCFA members who are not signatories to this agreement. Thus, we request that this matter be placed on a public agenda so that OCFA's Board members can have adequate time to review the agreement prior to the meeting and discuss the following issues:

A. Joint Police-Fire Training Facility (Paragraph 1)

The agreement refers to a separate, long-term Joint Use Understanding agreement that will govern Irvine and OCFA's use of a Joint Training Facility. Irvine will own this facility. Given that OCFA will contribute \$20.5 million of general fund money toward the construction of this facility, we would like to understand the terms of this arrangement, including how OCFA or its successor agencies would be able to use the facility, particularly if Irvine is not a constituent member of that successor fire agency.

B. Irvine Community Emergency Response Team (CERT) Coordinator (Paragraph 5)

Paragraph 5 of the agreement provides that OCFA shall pay Irvine \$118,000 per fiscal year for a full-time CERT Coordinator who will be employed by Irvine. We question whether this is a valid expenditure of OCFA funds, because all OCFA members have delegated their fire protection powers to OCFA. Thus, it may be inconsistent with Government Code section 6503.1 and OCFA's Joint Powers Agreement for OCFA to enter into an agreement with a member to transfer monies for the member to separately employ personnel who are engaged in fire protection duties.

C. Accelerated Pension Pay Down (Paragraph 6)

Paragraph 6 of the agreement provides that OCFA shall pay \$2 million per year into a 115 Trust established with Public Agency Retirement Services (PARS) or OCERS to pay down OCFA's unfunded pension liability. The agreement further provides that this payment shall be reduced to \$1.5 million per year if OCFA has not funded 85 percent of its unfunded pension liability as determined by OCERS until OCFA achieves the 85 percent target. We have several concerns regarding the pension provisions of the agreement.

First, the pension provisions appear to affect all OCFA members, not just Irvine. However, only Irvine and OCFA are parties to this agreement, not any other members of OCFA. In the event of a dissolution of OCFA, it is unclear whether Paragraph 6 would be enforceable by OCFA members with respect to the allocation or payment of OCFA pension liability if only Irvine and OCFA have executed this agreement. Ideally, these provisions should be incorporated into an amendment to OCFA's joint powers agreement and reconciled with OCFA's Fourth Amendment, which also has similar attribution language relating to the pay down of OCFA's pension liabilities.

Second, neither the agreement nor the Fourth Amendment address how the pension pay down provisions apply with respect to the withdrawal of an OCFA member, which does not result in the dissolution of OCFA. For example, Placentia has withdrawn from OCFA without being required to pay its estimated \$21 million share of OCFA's UAAL. Likewise, the agreement does not address what happens if Irvine or another SFF member were to withdraw from OCFA in 2030. Instead, the agreement only discusses the use of the 115 Trust in the event of OCFA's dissolution. Does a withdrawing SFF member forfeit the benefit of the 115 Trust?

Third, we understand that Irvine and OCFA are making some revisions to the agreement to clarify that if OCFA has not reached an 85 percent UAAL funding target, the \$500,000 reduction of annual 115 Trust payments from \$2 million to \$1.5 million will be used by OCFA to directly pay OCERS as part of OCFA's "snowball" accelerated pension liability pay down plan, which is the subject of the Fourth Amendment to the Joint Powers Agreement. While I am supportive of taking steps to address OCFA's unfunded pension liability, this raises the question of whether it is a good policy to maintain a separate 115 Trust that does not directly count towards the reduction of OCFA's pension liability as determined by OCERS.

Fourth, the agreement incorporates the calculation methodology for OCFA's contributions to the Structural Fire Fund Entitlement Fund ("SFF Entitlement Fund") contained in the equity provisions of OCFA's Joint Powers Agreement. However, it is not clear whether OCFA's payments under the agreement are in addition to, or in lieu of, the contributions to the SFF Entitlement Fund. Put another way, how does the agreement operate and interact with the equity provisions of OCFA's Joint Powers Agreement, since only Irvine and OCFA are parties to the settlement agreement?

Overall, I am supportive of efforts to re-admit Irvine as a participating member of OCFA's Board of Directors. I am also supportive of efforts to address OCFA's unfunded pension liability. However, given the concerns outlined above and the significance of the matters impacted by the agreement with Irvine, which directly affect OCFA members who are not signatories to the agreement, I request that this matter be continued at least to the next meeting of OCFA's Board of Directors and placed on the public agenda.

Sincerely,



Lisa A. Bartlett
Chairwoman, OC Board of Supervisors
Supervisor, 5th District

cc: Lori Zeller, Assistant Chief of Business Services