



ORANGE COUNTY FIRE AUTHORITY

AGENDA

Pursuant to the Brown Act, this meeting also constitutes a meeting of the Board of Directors.

EXECUTIVE COMMITTEE REGULAR MEETING Thursday, November 17, 2016 5:30 P.M.

**Regional Fire Operations and Training Center
Board Room
1 Fire Authority Road
Irvine, CA 92602**

This Agenda contains a brief general description of each item to be considered. Except as otherwise provided by law, no action or discussion shall be taken on any item not appearing on the following Agenda. Unless legally privileged, all supporting documents, including staff reports, and any writings or documents provided to a majority of the Executive Committee after the posting of this agenda are available for review at the Orange County Fire Authority Regional Fire Operations & Training Center, 1 Fire Authority Road, Irvine, CA 92602 or you may contact Sherry A.F. Wentz, Clerk of the Authority, at (714) 573-6040 Monday through Thursday, and every other Friday from 8 a.m. to 5 p.m. and available online at <http://www.ocfa.org>

If you wish to speak before the Fire Authority Executive Committee, please complete a Speaker Form identifying which item(s) you wish to address. Please return the completed form to the Clerk of the Authority prior to being heard before the Committee. Speaker Forms are available at the counters of both entryways of the Board Room.



In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, you should contact the Clerk of the Authority at (714) 573-6040.

CALL TO ORDER

INVOCATION by OCFA Chaplain Brett Peterson

PLEDGE OF ALLEGIANCE by Director Lalloway

ROLL CALL

1. PRESENTATIONS

No items.

REPORT FROM THE BUDGET AND FINANCE COMMITTEE CHAIR**PUBLIC COMMENTS**

Resolution No. 97-024 established rules of decorum for public meetings held by the Orange County Fire Authority. Resolution No. 97-024 is available from the Clerk of the Authority.

Any member of the public may address the Committee on items within the Committee's subject matter jurisdiction but which are not listed on this agenda during PUBLIC COMMENTS. However, no action may be taken on matters that are not part of the posted agenda. We request comments made on the agenda be made at the time the item is considered and that comments be limited to three minutes per person. Please address your comments to the Committee as a whole, and do not engage in dialogue with individual Committee Members, Authority staff, or members of the audience.

The Agenda and Minutes are now available through the Internet at www.ocfa.org. You can access upcoming agendas on the Monday before the meeting. The minutes are the official record of the meeting and are scheduled for approval at the next regular Executive Committee meeting.

2. MINUTES**A. Minutes from the October 27, 2016, Regular Executive Committee Meeting**

Sherry Wentz, Clerk of the Authority

Recommended Action:

Approve as submitted.

3. CONSENT CALENDAR

All matters on the consent calendar are considered routine and are to be approved with one motion unless a Committee Member or a member of the public requests separate action on a specific item.

A. Monthly Investment Reports

Tricia Jakubiak, Treasurer

Budget and Finance Committee Recommendation: *APPROVE*

Recommended Action:

Receive and file the reports.

B. Sole Source Blanket Order Renewal –PulsePoint

Mike Schroeder, Assistant Chief/Support Services Department

Recommended Actions:

1. Authorize the Purchasing Manager to renew the sole source blanket order with Physio-Control Inc. for maintenance and support of PulsePoint software at \$28,000 for one year.
2. Authorize extension of the blanket order with Physio-Control Inc. for an additional four years as long as the pricing remains the same, should pricing increase, the renewal will return for additional consideration.

END OF CONSENT CALENDAR

4. DISCUSSION CALENDAR

No items.

COMMITTEE MEMBER COMMENTS

CLOSED SESSION

No items.

ADJOURNMENT – The next regular meeting of the Executive Committee is scheduled for Thursday, January 26, 2017, at 5:30 p.m.

AFFIDAVIT OF POSTING

I hereby certify under penalty of perjury under the laws of the State of California, that the foregoing Agenda was posted in the lobby, front gate public display case, and website of the Orange County Fire Authority, Regional Fire Operations and Training Center, 1 Fire Authority Road, Irvine, CA, not less than 72 hours prior to the meeting. Dated this 10th day of November 2016.

Sherry A.F. Wentz, CMC
Clerk of the Authority

UPCOMING MEETINGS:

All regular meetings go dark in December

Human Resources Committee Meeting

Tuesday, January 3, 2017, 12 noon

Budget and Finance Committee Meeting

Wednesday, January 11, 2017, 12 noon

Claims Settlement Committee Meeting

Thursday, January 26, 2017, 5:00 p.m.

Executive Committee Meeting

Thursday, January 26, 2017, 5:30 p.m.

Board of Directors Meeting

Thursday, January 26, 2017, 6:00 p.m.

MINUTES ORANGE COUNTY FIRE AUTHORITY

**Executive Committee Regular Meeting
Thursday, October 27, 2016
5:30 P.M.**

**Regional Fire Operations and Training Center
Board Room
1 Fire Authority Road
Irvine, CA 92602**

CALL TO ORDER

Chair Hernandez called the regular meeting of the Orange County Fire Authority Executive Committee to order at 5:31 p.m. on October 27, 2016.

INVOCATION

Assistant Chief Schroeder offered the invocation.

PLEDGE OF ALLEGIANCE

Director Hatch led the assembly in the Pledge of Allegiance to our Flag.

ROLL CALL

Present: Carol Gamble, Rancho Santa Margarita
Noel Hatch, Laguna Woods
Gene Hernandez, Yorba Linda
Jeffrey Lalloway, Irvine
Al Murray, Tustin
Ed Sachs, Mission Viejo
David Shawver, Stanton
Todd Spitzer, County of Orange
Elizabeth Swift, Buena Park

Absent: None

Also present were:

Assistant Chief Lori Zeller	Assistant Chief Mike Schroeder
Assistant Chief Lori Smith	Assistant Chief Brian Young
General Counsel David Kendig	Assistant Chief Dave Thomas
Clerk of the Authority Sherry Wentz	Communications Director Sandy Cooney

1. PRESENTATIONS

No items.

REPORT FROM THE BUDGET AND FINANCE COMMITTEE CHAIR (F: 12.02A6)

Budget and Finance Committee Chair Sachs deferred the report to Vice Chair Swift as he was not in attendance at this meeting. Budget and Finance Committee Vice Chair Swift reported at its October 12, 2016, meeting, the Committee received and filed the Quarterly Status Update Orange County Employees' Retirement System, reviewed the Community Risk Reduction Fee Development directing staff to provide an additional review of the exemption policy, time allocations for pre/post plan review, and to return the item to the Committee for additional consideration; voted unanimously to send the Fourth Quarter Financial Newsletter and the Monthly Investment Reports to the Executive Committee for approval; and send the Updated Cost Reimbursement Rates to the Board of Directors to approve and adopt the proposed updated rate schedules effective October 28, 2016. Vice Chair Swift noted Director Carol Gamble's presence for the discussion of the Subcontractor Insurance Requirements, that the Committee discussed at length the two proposed options, and unanimously approved sending the item to the Board of Directors with its recommendation to proceed with Option 1 - to place responsibility on the primary contractor to verify that any subcontractors have obtained the required insurance.

REPORT FROM THE HUMAN RESOURCES COMMITTEE CHAIR (F: 12.02A6)

Human Resources Committee Chair Shawver reported at its October 4, 2016, meeting, the Committee received and filed the Workers' Compensation Program Update, the Quarterly Human Resources Project Update, the Board Member Classification, and the Professional Standards Unit Update. The Committee discussed and voted unanimously to send the Environmental Health and Safety Specialists Classification to the Executive Committee, with its recommendation to approve the new classification and corresponding salary range.

PUBLIC COMMENTS (F: 12.02A3)

Chair Hernandez opened the Public Comments portion of the meeting. Chair Hernandez closed the Public Comments portion of the meeting without any comments from the general public.

2. MINUTES

A. Minutes from the September 22, 2016, Regular Executive Committee Meeting (F: 12.02A2)

On motion of Director Spitzer and second by Director Shawver, the Executive Committee voted unanimously by those present to approve the September 22, 2016, Regular Executive Committee Minutes as submitted. Chair Hernandez and Director Lalloway were recorded as abstentions due to their absence from the meeting.

3. CONSENT CALENDAR (Agenda Item 3F was pulled for separate consideration.)

A. Monthly Investment Reports (F: 11.10D2)

On motion of Director Murray and second by Director Shawver, the Executive Committee voted unanimously by those present to receive and file the reports.

B. Fourth Quarter Financial Newsletter (F: 15.07)

On motion of Director Murray and second by Director Shawver, the Executive Committee voted unanimously by those present to receive and file the report.

C. Award of Contract for Copier Replacement and Managed Print Services – RFP JA2114 (F: 19.08C)

On motion of Director Murray and second by Director Shawver, the Executive Committee voted unanimously by those present to:

1. Authorize the Purchasing Manager to issue a blanket order for a five-year term to lease multifunctional devices (MFD) units and managed print services with SEMA dba Cell Business Equipment based on the pricing provided in the Best and Final Offer (BAFO) for an annual contract amount of \$145,326 or \$726,630 over the five-year term.
2. Authorize the Purchasing Manager to utilize the contract for additional MFD units or additional copy/print volume needed during the five-year term based on the BAFO pricing provided, not to exceed a 10% increase to the five-year value of the contract.
3. Authorize the Purchasing Manager to extend the current Xerox Corporation blanket orders on a month-to-month basis through no later than March 31, 2017, to provide time for a smooth transition to the new provider, for an amount of \$65,000 to B00694 for copiers at the Regional Fire Operations and Training Center and \$35,000 to B00729 for copiers at the fire stations.

D. Environmental Health and Safety Specialist Classification (F: 17.18)

On motion of Director Murray and second by Director Shawver, the Executive Committee voted unanimously by those present to approve the new Environmental Health and Safety Specialist classification and corresponding salary range.

E. Temporary Entry Permit - Hold Harmless Agreement Irvine Ranch Water District (F: 17.14A)

On motion of Director Murray and second by Director Shawver, the Executive Committee voted unanimously by those present to approve and authorize the Fire Chief or his designee, to execute the proposed Hold Harmless Agreement with the Irvine Ranch Water District.

F. Request for Special Procurement Agency-wide Internet Services (F: 19.08A2a9)

Director Gamble pulled this item for separate consideration of the contract language and noted the exclusion of the proposal in the staff report.

A lengthy discussion ensued. By consensus the Committee opted to continue the discussion following the Board of Directors meeting to allow staff some time to provide additional information.

G. Sole Source Purchase Order Eagle Aerial Imaging (F: 19.08A6c)

On motion of Director Murray and second by Director Shawver, the Executive Committee voted unanimously by those present to authorize the Purchasing Manager to issue a sole source purchase order to Eagle Aerial Imaging for digital orthophotography to be used with the OCFA's enterprise Geographic Information Systems and TriTech Computer Aided Dispatch system in the amount of \$63,000.

H. Sole Source Contract Increase for Information Management Technologies (F: 19.08A7)

On motion of Director Murray and second by Director Shawver, the Executive Committee voted unanimously by those present to authorize the Purchasing Manager to increase the contract amount for Information Management Technologies by \$96,000 from \$164,000 to \$260,000 for the current contract ending April 30, 2018.

I. Sole Source Purchase of Motorola 800MHz Portable and Mobile Radios Utilizing County of Orange Agreement # MA-060-15011560 (F: 18.04A1)

Director Lalloway did not participate on this matter due to his employment with the County of Orange.

On motion of Director Murray and second by Director Shawver, the Executive Committee voted by those present to:

1. Authorize the Purchasing Manager to issue a sole source purchase order to Motorola Solutions, Inc. for the purchase of 1,555 radios and accessories in an amount not to exceed \$6,715,163 including shipping and sales tax.
2. Authorize the Purchasing Manager to issue a sole source purchase order to Orange County Sheriff's Department in the amount of \$77,750 to program the new radios.

END OF CONSENT CALENDAR

4. DISCUSSION CALENDAR

No items.

COMMITTEE MEMBER COMMENTS (F: 12.02A4)

Vice Chair Swift thanked staff for coordinating the trip to the National Firefighter Memorial Service in Emmitsburg, Pennsylvania. She noted attending the 6th Annual Benevolent Association's Picnic and the 9/11 Memorial event in Santa Ana.

Director Murray also thanked staff for their coordination for the attendees of the Firefighter Memorial in Emmitsburg. He reported attending the California Firefighter's Memorial event in Sacramento with OCFA representatives which included former firefighter Greg Hennessey's widow.

CLOSED SESSION

No items.

RECESSED – Chair Hernandez recessed the meeting at 6:02 p.m. to continue the discussion concerning Agenda Item 3F - Request for Special Procurement Agency-wide Internet Services immediately following the Board of Directors meeting.

RECONVENE – Chair Hernandez reconvened the Executive Committee at 8:27 p.m. with all members present.

CONSENT CALENDAR (Continued)

F. Request for Special Procurement Agency-wide Internet Services (F: 19.08A2a9)

Discussion continued concerning clarification of the contract's scope of work and use of internal resources in reprogramming IP addresses.

On motion of Vice Chair Swift and second by Director Spitzer, the Executive Committee voted to authorize the Purchasing Manager to issue a three-year contract to Cogent Communications Group, Inc. for agency-wide internet services utilizing the special procurement provision in the purchasing ordinance in the total contract amount of \$158,300 or \$52,800 annually beginning March 1, 2017. Director Gamble voted in opposition.

ADJOURNMENT – Chair Hernandez adjourned the meeting at 8:46 p.m. The next regular meeting of the Executive Committee is scheduled for Thursday, November 17, 2016, at 5:30 p.m.

Sherry A.F. Wentz, CMC
Clerk of the Authority



Orange County Fire Authority
AGENDA STAFF REPORT

Board of Directors Meeting
November 17, 2016

Agenda Item No. 3A
Consent Calendar

**Annual Statement of Investment Policy
and Investment Authorization**

Contact(s) for Further Information

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Summary

This agenda item is submitted to the Committee in compliance with the Authority's Investment Policy that requires the Statement of Investment Policy to be reviewed and approved annually by the Budget and Finance Committee and the Board of Directors. This item is also being submitted in compliance with Government Code provisions which require the Board of Directors to review and renew the annual delegation of investment authority to the Treasurer for a one-year period.

Prior Board/Committee Action

Budget and Finance Committee Recommendation: *APPROVE*

At its regular November 9, 2016, meeting, the Budget and Finance Committee reviewed and unanimously recommended approval of this item.

RECOMMENDED ACTION(S)

1. Review and approve the submitted Investment Policy of the Orange County Fire Authority, to be effective January 1, 2017.
2. Pursuant to Government Code Sections 53601 and 53607, renew delegation of investment authority to the Treasurer for a one-year period, to be effective January 1, 2017.

Impact to Cities/County

Not Applicable.

Fiscal Impact

Not Applicable.

Background

The Statement of Investment Policy is reviewed annually and revised by the Treasurer, if needed. The proposed Policy is then submitted to the Budget and Finance Committee and Board of Directors for approval every November to become effective on January 1 for the calendar year.

During the past year, there were no significant legislative amendments to the California Government Code regarding investments; therefore, staff is not proposing any changes to the OCFA's Investment Policy for 2017.

The Proposed Investment Policy is attached for review and approval, to be effective January 1, 2017. (Attachment).

Attachment(s)

Proposed Investment Policy



ORANGE COUNTY FIRE AUTHORITY

INVESTMENT POLICY

Calendar Year 2017



INVESTMENT POLICY

History of OCFA's Investment Policy & Cash Management Program

Following the formation of the Orange County Fire Authority in March 1995, OCFA funds were initially invested in the Orange County Investment Pool (OCIP) and the Local Agency Investment Fund (LAIF). At that time, investment options were limited since the Authority was using County services for treasury, banking, and accounting systems pending implementation of its own systems. During this transitional stage, OCFA staff worked to establish independent banking, custodian, and broker/dealer agreements, installed a portfolio management system, and implemented the Banner Financial System. Staff also researched and drafted a comprehensive Investment Policy. On January 1, 1997, the OCFA Board of Directors adopted the Investment Policy and appointed a Treasurer. Immediately thereafter, OCFA assumed in-house responsibility for Treasury services and implemented its own Cash Management & Investment Services Program.

As the Cash Management program evolved, all remaining funds in the OCIP were gradually withdrawn. The Treasurer invested these funds in individual securities and scheduled maturities to correspond with cash flow needs. Investments included Treasury and Federal Agency securities, prime quality commercial paper, money market mutual funds (U.S. Treasury Obligations), and LAIF.

Since inception in 1997, the Treasurer has continued to refine the Investment Policy on an annual basis to meet the changing needs of the Authority. The Policy has also been formally recognized by the Association of Public Treasurer's of the United States and Canada (APTA US&C). Certification is awarded when an investment policy meets the professional standards set forth by MTA US&C. Agencies may submit for re-certification after significant changes are made to the Policy.

During the past year, there were no significant legislative amendments to the California Government Code regarding investments that would require a change to the 2016 Investment Policy.



INVESTMENT POLICY

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INVESTMENT POLICY

ORANGE COUNTY FIRE AUTHORITY

1. **Policy:** The Orange County Fire Authority (the “Authority”) shall invest public funds in such a manner as to comply with state and local laws; ensure prudent money management; provide for daily cash flow requirements; and meet the objectives, in priority order, of safety, liquidity, and return on investment.
2. **Scope:** This Investment Policy applies to all financial assets of the Orange County Fire Authority which are available for investment by the Authority’s Treasurer; except that funds in the Authority’s deferred compensation plan, defined contribution plan, and security deposits held in escrow in lieu of retention are excluded from this investment policy. The funds governed by this policy may be referred to herein as the OCFA portfolio.
 - 2.1. The Authority’s funds are accounted for in the Comprehensive Annual Financial Report (CAFR) and include the funds listed below and any new fund created by the Board of Directors unless specifically exempted.
 - Fund 121 General Fund
 - Fund 122 Facilities Maintenance and Improvements
 - Fund 123 Capital Projects
 - Fund 124 Communications and Information Systems Replacement
 - Fund 133 Vehicle Replacement
 - Fund 171 Structural Fire Fund Entitlement
 - Fund 190 Self-Insurance Fund
 - Fund 422 Extra-Help Retirement Trust
 - 2.2. Bond fund investments will be held separately and made in accordance with the bond debenture requirements.
 - 2.3. Retiree Medical Trust Funds may be held separately from the OCFA portfolio and invested in accordance with California Government Code Section 53620 to 53622 and/or Section 31694.3.

3. **Prudence:** The standard of prudence to be used shall be the “prudent investor” standard (in Probate Code Sections 16040-16042 and 16045-16054 cited as Uniform Prudent Investor Act) and shall be applied in the context of managing the overall portfolio, not to a single item within a diversified portfolio. Investments shall be made with judgment and care (under circumstances then prevailing) which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived.
4. **Objectives:** The primary objectives of investment activities, in order of priority, shall be:
 - 4.1. *Safety:* Safety of principal is the prime objective of the investment program. The investment program shall be designed and implemented to ensure preservation of capital in the overall portfolio. Invested funds shall be **diversified** to minimize the risk of loss resulting from over concentration of assets in a specific maturity, specific issuer, or specific class of securities.
 - 4.2. *Liquidity:* The investment portfolio shall be structured in a manner which strives to time the maturity of securities with cash requirements. Additionally, since not all possible cash demands can be anticipated, the portfolio should consist of securities with an active secondary or resale market.
 - 4.3. *Return on investment:* The Authority shall attempt to obtain a reasonable return provided that the requirements of safety and liquidity are first met.
5. **Authorization and Delegation of Authority:** Under California Government Code Section 53601, the legislative body of a local agency (i.e., the Authority’s Board of Directors) is authorized to invest surplus moneys as specified in that code section. In accordance with California Government Code Section 53607, this authority is delegated to the Treasurer of the Authority for a one-year period. Subject to review, the Board of Directors may renew the delegation of authority under this code section each year. The Treasurer will be responsible for all investment transactions and shall establish a system of controls to regulate the activities of officials involved in any aspect of the investment program.
 - 5.1. *Investment Procedures:* The Treasurer shall establish written procedures for the operation of the investment program consistent with this Investment Policy. The procedures should include reference to: safekeeping, repurchase agreements, wire transfer agreements, banking service contracts and collateral/depository agreements. The procedures shall include explicit delegation of authority to persons responsible for investment transactions. No person may engage in an investment transaction, except as provided under the terms of this policy and the procedures established by the Treasurer.
 - 5.2. *Delegation in Treasurer’s Absence:* In the Treasurer’s absence, the Treasurer delegates investment authority in the following order to (1) the Assistant Chief, Business Services and (2) the Deputy Fire Chief or Fire Chief’s designee.

6. Duties and Responsibilities:

- 6.1. *Treasurer:* Charged with responsibility for all public funds and securities belonging to or under the control of the Authority, and for the deposit and investment of those funds in accordance with the principles of sound treasury management and in accordance with the applicable laws, ordinances and policies adopted by the Authority.
- 6.2. *Auditor:* Charged with recording investment activity in the accounting records and with verifying the Treasurer's records with broker confirmations, bank statements and safekeeping records.
- 6.3. *Assistant Chief, Business Services:* Charged with responsibility (in the absence of the Treasurer) for all public funds and securities belonging to or under the control of the Authority and for their deposit. Duties related to investment activities shall be performed by staff other than those responsible for the accounting of those investments.
- 6.4. *Deputy Fire Chief or Fire Chief's designee:* Charged with responsibility (in the absence of the Treasurer and Assistant Chief, Business Services) for all public funds and securities belonging to or under the control of the Authority and for their deposit. Duties related to investment activities shall be performed by staff other than those responsible for the accounting of those investments.
- 6.5. *Fire Chief:* Charged with responsibility for implementation of and conformance to the policies and procedures approved by the Board of Directors for the investment of the Authority's funds.
- 6.6. *Budget and Finance Committee:* Charged with responsibility for investment oversight. The Committee shall review the monthly investment reports and significant investment activity being undertaken. The Committee's recommendations shall be reported in a monthly investment report to the Executive Committee.
- 6.7. *Executive Committee:* Charged with responsibility to receive, review and approve the monthly investment report, following review by the Budget and Finance Committee.
- 6.8. *Board of Directors:* May delegate to the Treasurer for a one-year period the authority to invest the Fire Authority's funds. Subject to review, the Board may renew the delegation of this authority each year. The Board shall also annually consider and approve a written Statement of Investment Policy at a public meeting. Any change to the Investment Policy at any time shall also be considered by the Board at a public meeting.

7. Ethics and Conflicts of Interest: All officers, employees, and participants in the Authority's investment process shall:

- 7.1. Act responsibly as custodians of the public trust.

- 7.2. Avoid any transaction that might impair the public confidence in the Authority's ability to serve the citizens of our area of responsibility.
 - 7.3. Refrain from personal business activities that could conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions.
 - 7.4. Abide by the Authority's adopted Conflict of Interest Code, which by reference is incorporated into this Investment Policy.
 - 7.5. The Treasurer, the Assistant Chief, Business Services, the Deputy Fire Chief or Fire Chief's designee and the Fire Chief shall be prohibited from doing personal investment transactions with any broker or securities dealer with whom OCFA does business, with the exception of the OCFA's primary bank for banking services. Employees shall subordinate their personal investment transactions to those of OCFA, particularly with regard to the time of purchases and sales.
8. **Authorized Financial Dealers and Institutions:** To promote the optimum yield on the investment of Authority funds, investment procedures shall be designed to encourage competitive bidding on transactions from approved financial institutions or broker/dealers.
- 8.1. On a biennial basis, the Treasurer shall recommend a list of at least three financial institutions and broker/dealers who are authorized to provide investment services. The list shall be approved by the Budget and Finance Committee and the Executive Committee. All financial institutions and broker/dealers who wish to be considered for the list must meet the following minimum requirements:
 - 8.1.1 Must certify that they have read and agree to comply with the investment policies of the Authority.
 - 8.1.2 Must be a primary or regional dealer that qualifies under the Securities and Exchange Commission Rule 15C3-1 (Uniform Net Capital Rule).
 - 8.1.3 Must have a branch office in California.
 - 8.1.4 Must be experienced in institutional trading practices and familiar with the California Government Code as related to investments for local governmental agencies.
 - 8.1.5 Must have been in business for at least three years.
 - 8.1.6 Must provide current audited financial statements.
 - 8.1.7 Must provide proof of Financial Industry Regulatory Authority (FINRA) certification.

- 8.1.8 Other criteria as may be established in the *Investment Procedures Manual* of the Authority.
- 8.2. All financial institutions in which the Authority's public funds are deposited will supply the Treasurer with the following:
 - 8.2.1 Current audited financial statements.
 - 8.2.2 Depository contracts.
 - 8.2.3 A copy of the latest FDIC call report.
 - 8.2.4 Proof that the institution is state or federally chartered.
- 9. **Authorized Investment Advisors and Investment Managers:**

Authorized Investment Advisors

Although the Authority does not currently use an investment advisor, these policies and procedures shall be applicable if an investment advisor is utilized in the future to provide advice and guidance for the investment of OCFA portfolio funds. Under Government Code, the Authority is authorized to engage specially trained and experienced firms for economic advice and services. The Board of Directors must approve, in advance, all contracts with an investment advisor, after review by the Authority's Counsel. The investment advisor may only provide advice and may not effectuate trades; he/she may not make investment decisions. The Treasurer shall provide the investment manager with a copy of the Authority's Investment Policy.

Authorized Investment Managers

The provisions above for authorized investment advisors also apply to authorized investment managers. In addition, an investment manager may effectuate trades upon specific authorization for each transaction; however, he/she may not make investment decisions. All investment decisions must be made and approved by the Treasurer in advance, before the investment manager is authorized to execute a transaction. The Treasurer shall provide the investment manager with a copy of the Authority's Investment Policy. Upon execution of any trade, the Authority must receive confirmation directly from the broker/dealer and the custodian, not from the investment manager. Investments recommended by the investment manager should be safe kept by the Authority's regular custodian, and not with the investment manager.

- 10. **Authorized and Suitable Investments:** The Authority is empowered by statute (California Government Code Section 53600 et seq., 53620 et seq., and Section 5922[d]) to invest in the following types of securities (see Section 15 of this Policy for maximum percentage limits imposed under Authority Policy):
 - 10.1. U.S Treasury or Federal Agency securities.

- 10.2. Collateralized or insured passbook savings accounts and demand deposits.
- 10.3. Collateralized or insured certificates of deposit (or time deposits) placed with commercial banks (maximum term five years).
- 10.4. Bankers acceptances (issued by one of the 10 largest domestic banks or 20 largest international banks based on assets) with maturities not to exceed 180 days. State statute restricts bankers' acceptances to no more than 40% of the agency's surplus funds and no more than 30% in any one commercial bank. Authority policy is more restrictive, with a maximum 25% limit (see Section 15.1.4). Bankers' acceptances are to be purchased only from institutions that are well capitalized as the term is defined in the glossary.
- 10.5. Money market mutual funds whose portfolio consists solely of short-term treasury securities (i.e., one year or less remaining until maturity, at purchase). Mutual funds must be AAA rated by at least 2 of the 3 largest rating agencies.
- 10.6. Repurchase agreements whose underlying collateral consists of U.S. Treasury obligations or U.S. government agency obligations and the collateralization level must be in accordance with Government Code section 53601(i)(2), effective January 1, 1996 (maximum maturity of 14 days). A Public Securities Association (PSA) Master Repurchase Agreement is required between the Authority and the bank or broker/dealer for all repurchase agreements transacted. Direct investment in reverse repurchase agreements is prohibited.
- 10.7. Local Agency Investment Fund (State of California Pool).
- 10.8. Commercial paper in compliance with the following requirements:
 - 10.8.1 Must be rated highest-quality by at least two of the following three nationally recognized rating agencies. Highest-quality ratings are defined as (1) Moody's Investor Services rating of P1; (2) Standard & Poor's rating of A1/A1+; (3) Fitch rating of F1/F1+.
 - 10.8.2 Investments will not be made with commercial paper issuers placed on negative credit watch by any one of the above rating agencies.
 - 10.8.3 Commercial paper issuers must be domestic corporations having assets in excess of \$500,000,000 and having an AA or better rating on its long term debentures as provided by Moody's, Standard & Poor's, or Fitch.
 - 10.8.4 Purchases of eligible commercial paper may not: (a) exceed 270 days to maturity; or (b) exceed 15% of the cost value of the portfolio. Although Government Code allows a maximum investment in commercial paper of 25%, Authority Policy maintains a 15% maximum, which is more restrictive.

- 10.8.5 The Treasurer shall conduct research on commercial paper issuers prior to investing OCFA funds with those issuers. The Treasurer will avoid investing in issuers with current events that involve negative financial implications that could lead to a downgrade to their credit rating. Sources of research will include, at a minimum, WSJ.com, Bloomberg.com, Marketwatch.com, and CNNMoney.com.
- 10.9. Negotiable certificates of deposit, issued by national or state-chartered banks or state or federal savings institutions, commercial bank, savings bank (savings and loan association), or credit union that uses a private sector entity that assists in the placement of certificates of deposit under specified conditions. Government code limits negotiable certificates of deposit to 30% of the portfolio. Authority Policy, which is more restrictive, limits investment in these securities to 25% (see Section 15.1.5).
- 10.10. Proceeds of bonds or other indebtedness and any moneys set aside and pledged to secure payment of the bonds may be invested in accordance with the resolution, indenture, or other statutory provisions governing the issuance of those bonds or indebtedness.
- 10.11. Retiree Medical Funds may be held in a separate trust fund and invested as permitted under California Government Code Section 53620 to 53622 and/or Section 31694.3 for the purpose of paying health insurance benefits to retirees.
- 11. **Unallowable Investments / Restrictions:** The Authority shall **not** invest OCFA portfolio funds in the following instruments:
 - 11.1. Derivatives, except for indirect investment through the State's Local Agency Fund.
 - 11.2. Reverse repurchase agreements, although indirect investment through a pool is allowable up to a maximum of ten percent (10%) of the pool's portfolio.
 - 11.3. Financial futures or financial options.
 - 11.4. Common stocks or corporate bonds.
- 12. **Investment Pools:** Governmental sponsored pools and/or mutual funds should be carefully reviewed prior to investing and should be monitored on an ongoing basis. Requisite information on the pool includes the following:
 - 12.1. A statement of investment policy and objectives.
 - 12.2. A list of allowable investments.

- 12.3. Disclosure regarding settlement and safeguarding of investments.
 - 12.4. Description of securities pricing (fair value) and whether GASB 31 compliant.
 - 12.5. An explanation of interest calculations and distributions, plus fee disclosures.
 - 12.6. Deposit and withdrawal restrictions.
 - 12.7. Disclosure of audit findings and reports.
13. **Collateralization:** Collateral must always be held by an independent third party with whom the Authority has a current custodial agreement.
- 13.1. State law regarding collateralization of deposits of public funds requires that securities be held by an agent (i.e., a trust company) of the bank, which may include the bank's trust department only if acceptable to both the bank and the Treasurer, pursuant to California Government Code Sections 53656 and 53658. Under the provisions of California Government Code Section 53652, banks are required to secure the deposits of public funds, including certificates of deposits, by: a) pledging government securities with a value of 110% of the principal and accrued interest; b) pledging first trust deed mortgage notes having a value of 150% of the total agency deposit; or c) a letter of credit drawn on the Federal Home Loan Bank at 105% of the total agency deposit. Deposits must be secured at all times with eligible securities pursuant to Section 53651. A copy of the Call Report of Local Agency's Deposits and Securities must be supplied to the Authority and retained to document compliance with the collateral requirements.
 - 13.2. Collateralization of repurchase agreements must be at least 102% of the market value of principal and accrued interest. Collateral must consist of U.S. Treasury obligations or U.S. Agency obligations. Other specific requirements on repurchase agreements must be addressed in a master repurchase agreement between the Authority and the bank or broker/dealer.
 - 13.3. The Treasurer, at his/her discretion, may waive the collateral requirements for deposits up to \$250,000 which are fully insured by the Federal Deposit Insurance Corporation. The right of collateral substitution is granted.
14. **Safekeeping and Custody:** All security transactions shall be conducted on a delivery-versus-payment (DVP) basis. Securities will be held by a third party qualified custodian and evidenced by safekeeping receipts. The trust department of the Authority's bank may act as third party custodian, provided that the custodian agreement is separate and apart from the banking agreement.
15. **Diversification:** The Authority shall maintain a diversified portfolio to minimize the risk of loss resulting from over concentration of assets in a specific maturity, issuer, or security type.
- 15.1. *Restrictions on Securities:* At no time shall the Authority's portfolio be invested in a

single security type or in a single financial institution or pool in excess of 15% of the total investment portfolio, with the following exceptions:

- 15.1.1 Treasury securities 100%
- 15.1.2 Local Agency Investment Fund 75% (*Excludes moneys deposited in LAIF bond funds.*)
- 15.1.3 Federal Agency securities 75%
- 15.1.4 Bankers' Acceptances 25%
- 15.1.5 Negotiable CD's 25%
- 15.2. *Exception for Automatic Overnight Sweep:* There shall be no restriction on the amount that is automatically swept from the Authority's bank into the Highmark Money Market Mutual Fund of U.S. Treasury Obligations *on an overnight basis*, in order to accommodate immediate investment of large inflows of property taxes or other receipts, pending diversified investment into other securities by the Treasurer.
- 15.3. *Maturity Diversification:* Every effort will be made to match investment maturities to cash flow needs. Matching maturities with cash flow dates will reduce the need to sell securities prior to maturity, thus reducing the market risk. Maximum maturities shall be as follows:
 - 15.3.1 At least 50% of the portfolio is limited to a period of one year or less.
 - 15.3.2 Unless matched to a specific requirement and approved by the Executive Committee and the Board of Directors, no portion of the portfolio may exceed five years.

16. **Internal Control:**

- 16.1. Internal policies and procedures shall be developed to assure that appropriate controls are in place to document and confirm all transactions. A separate *Investment Procedures Manual* shall be established to assist Treasury staff with daily operations and shall be reviewed at least annually by the Treasurer.
- 16.2. An independent analysis by an external auditor shall be conducted annually to review internal control, account activity and compliance with policies and procedures.
- 16.3. To provide further protection of the Authority funds, written instructions require the Authority's bank to obtain verification of all wire transfers from two of the three following officers:
 - 16.3.1 Treasurer.

16.3.2 Assistant Chief, Business Services.

16.3.3 Deputy Fire Chief.

17. **Performance Standards:** The investment portfolio shall be designed with the objective of obtaining a rate of return throughout budgetary and economic cycles, commensurate with investment risk constraints and cash flow needs.

17.1. *Investment Strategy:* The Authority's basic investment strategy is to buy and hold investments until maturity. However, the Treasurer may sell a security due to adverse changes in credit or market risk or due to unexpected cash flow needs.

17.2. *Market Yield (Benchmark):* The basis used by the Treasurer to determine whether market yields are being achieved shall be the rates of return from the following combination of indices: Local Agency Investment Fund (LAIF) and 3-month, 6-month and 1-year Treasury Bills (constant maturity).

17.3. *Review:* The investment policy shall be reviewed at least annually by the Budget and Finance Committee and approved by the Board of Directors to ensure its consistency with the overall objectives of safety (including diversification), liquidity and return, as well as its relevance to current law and financial/economics trends. The Authority's philosophy prohibits speculation (i.e., purchasing securities with the intent to profit from anticipated changes in future market conditions). Leveraging or borrowing money for the purpose of investing is specifically prohibited.

18. **Reporting:**

18.1. *Monthly Reports:* In compliance with Government Code Sections 53607 and 53646, the Treasurer shall file a monthly investment report with the Clerk of the Board, who will submit copies to the Board of Directors, the Executive Committee, the Budget and Finance Committee, the Fire Chief, the Assistant Chief of Business Services, the Auditor, and the Authority's outside auditor (as required). The investment report will be agendaized for the monthly meetings of the Budget and Finance Committee and the Executive Committee, and any Board member may request inclusion of the report on the Board's agenda at any time. This report shall certify that the Treasurer has complied with the Authority's *Investment Procedures Manual* and will include an *Executive Summary*, which provides a condensed summary of the most important information in the report, plus a detailed report covering the following elements:

18.1.1 Type of investments and percent that each type represents in the portfolio.

18.1.2 Issuer.

18.1.3 Purchase date.

18.1.4 Date of maturity.

- 18.1.5 Amount of deposit.
 - 18.1.6 Face value of the securities.
 - 18.1.7 Current market value of securities.
 - 18.1.8 Portfolio yield and comparison to benchmark.
 - 18.1.9 Interest earnings.
 - 18.1.10 Percentage of portfolio maturing within one year, 1-3 years, 3-5 years and over 5 years.
 - 18.1.11 Statement relating the report to the Investment Policy.
 - 18.1.12 Statement on availability of funds to meet its obligations for the next 30 days and the next 6 months.
 - 18.1.13 Description of funds, investments, or programs managed by contracted parties.
 - 18.1.14 Statement of compliance of the portfolio with the investment policy or manner in which the portfolio is out of compliance.
 - 18.1.15 GASB 31 effects on financial statements.
 - 18.1.16 Comments on the fixed income markets and economic conditions.
 - 18.1.17 Potential changes in future portfolio structure (if any), including risk factors.
 - 18.1.18 Any other information required by the Board.
- 18.2. *Annual Reports:* The Treasurer shall submit an annual report to the Budget and Finance Committee and the Executive Committee, following the close of the fiscal year which shall certify that the Treasurer has complied with the Authority's investment procedures and detail the following:
- 18.2.1 Analysis of the composition of the investment fund.
 - 18.2.2 Discussion of investment risk in the portfolio.
 - 18.2.3 GASB 31 impacts.
 - 18.2.4 A review of trends regarding the size of the investment fund.

18.2.5 Portfolio performance and comparison to benchmark.

18.2.6 Investment income.

18.2.7 A statement of anticipated investment fund activity in the next fiscal year.

18.3 **Investment Policy Adoption:** The Treasurer shall annually render to the Fire Chief, the Budget and Finance Committee, and the Board of Directors a Statement of Investment Policy.

Glossary

Active Deposits. Funds which are immediately required for disbursement.

Active investment management. An investment strategy that involves the active trading of securities in an attempt to earn above-average returns on a portfolio. Active investment management requires frequent monitoring of financial markets.

Agency. A debt security issued by a federal or federally sponsored agency. Federal agencies are backed by the full faith and credit of the U.S. Government. Federally sponsored agencies (FSAs) are backed by each particular agency with a market perception that there is an implicit government guarantee. An example of federal agency is the Government National Mortgage Association (GNMA). An example of an FSA is the Federal National Mortgage Association (FNMA).

Arbitrage. Generally, transactions by which securities are bought and sold in different markets at the same time for the sake of the profit arising from a difference in prices in the two markets.

Bankers' Acceptances (BA's). Time drafts or bills of exchange that are accepted payment by banks engaged in the financing of international trade. BA's finance the importation, exportation, shipment or storage of foreign and domestic goods. BA's are usually backed by documentation such as invoices, bills of lading, or warehouse receipts. Upon acceptance by a bank, a BA becomes an irrevocable and unconditional obligation of the accepting bank, while it is also an obligation of the drawer as well as any endorser thereof.

Basis point. By common agreement, .01% of yield on a fixed income security (1/100 of 1%).

Bond Equivalent Yield (BEY). An annual yield, expressed as a percentage, describing the return provided to bond holders. A bond equivalent yield is double the simple interest, semiannual yield. Since Treasury and agency notes and bonds pay interest semiannually, the bond equivalent yield is a way to compare yields from discount securities, such as Treasury bills and bankers' acceptances with yields available from coupon securities. From that usage, this yield measure is also known as the coupon yield equivalent. For securities that pay daily, monthly or quarterly interest, the bond equivalent yield understates the benefits obtained from the compounding of those investments.

Book-entry clearance. A system for the transfer of ownership of securities through entries on the records of a centralized agency. The centralized agency holds securities on behalf of their owners; when the securities are sold, ownership is transferred by bookkeeping entry from the seller to the purchaser. In the case of U.S government securities, securities certificates are not issued, and ownership of the securities is evidenced in computer records maintained by the Federal Reserve System. For other types of securities, book entry clearance is made available through linked or interfaced systems maintained by four securities depositories, which hold securities and act on behalf of their participants.

Book-entry security. A security which is not available to purchasers in physical form. Such a security may be held either as a computer entry on the records of a central holder (as is the case with U.S. certain government securities) or in the form of a single, global certificate.

Book value. The value at which a security is carried on the inventory lists or other financial records of an investor. This value may be the original cost of acquisition of the security, or original cost adjusted by the amortization of a premium or accretion of a discount. The book value may differ significantly from the security's current value in the market.

Broker. A broker brings buyers and sellers together for a commission paid by the initiator of the transaction or by both sides; he does not position or take ownership of the security.

Certificate of Deposit (CD). A deposit of funds, in a bank or savings and loan association, for a specified term that earns interest at a specified rate or rate formula.

Collateralization. Process by which a borrower pledges securities, property or other deposits for the purpose of securing the repayment of a loan and/or security.

Commercial Paper. Unsecured short-term promissory notes issued by corporations, with maturities ranging from 2 to 270 days. May be sold on a discount basis or may bear interest. Firms with lower ratings or without well known names usually back their commercial paper with guarantees or bank letters of credit.

Coupon rate. Interest rate, expressed as a percentage of par or face value, that issuer promises to pay over lifetime of debt security.

Credit Risk. The risk to an investor that an issuer will default in the payment of interest and/or principal on a security.

Current Yield (Current Return). A measure of the simple interest annual yield for interest-bearing investments with maturities of one year or more. To calculate the current yield, the annual coupon interest income is divided by the amount paid to acquire the investment. It is important to note that the current yield is only accurate for investments purchased at par. The current yield calculation includes just one income cash flow - the annual interest income. It ignores the profit or loss resulting from discounts and premiums.

Custody. The service of an organization, usually a financial institution, of holding (and reporting) a customer's securities for safekeeping. The financial institution is known as the **custodian**.

Dealer. An individual or firm who, as a matter of regular business, purchases or sells securities for his account and risk.

Delivery versus payment (DVP). A settlement procedure where payment for a securities purchase is made simultaneously with the transfer of the purchased securities. The same procedure applies for a securities sale; the securities are transferred as payment is made.

Derivative instrument. A security that derives its value from an underlying asset, group of assets, reference rate, or an index value. Some derivative instruments can be highly volatile and result in a loss of principal in changing interest rate environments.

Discount. The amount by which a bond sells under its par (face) value.

Discount securities. Securities that do not pay periodic interest. Investors earn the difference between the discount issue price and the full face value paid at maturity. Treasury bills, bankers' acceptances and most commercial paper are issued at a discount.

Diversification. Dividing investment funds among a variety of securities, offering independent returns, to reduce risk inherent in particular securities.

Effective Annual Yield. A seldom used expression to refer to the yield on an investment expressed on a compound interest basis.

Fed Wire. Computerized network linking the Fed with its district banks, member banks, and primary dealers in government securities.

Federal Agency Securities. A variety of securities issued by several Federally sponsored agencies. Some are issued on a discount basis and some are issued with coupons. Several have the full faith and credit guarantee of the U.S. government, although others do not.

Federal Deposit Insurance Corporation (FDIC). A federal agency that insures bank deposits, currently up to \$250,000 per deposit.

Federal funds (Fed Funds). Funds placed in Federal Reserve banks by depository institutions in excess of current reserve requirements. These depository institutions may lend fed funds to each other overnight or on a longer basis. They may also transfer funds among each other on a same-day basis through the Federal Reserve banking system. Fed funds are considered to be immediately available funds.

Fed Funds Rate - Interest rate charged by one institution lending federal funds to another.

Floater. A floating rate security with an interest rate that resets at specified intervals according to an underlying index, such as LIBOR (the London Interbank Offered Rate), and is based on a predetermined formula. The value of a floater will fluctuate as interest rates change and therefore can be very volatile.

Inactive deposits. Funds not immediately needed for disbursement.

Interest rate risk. The risk associated with declines or rises in interest rates which cause an investment in a fixed-income security to increase or decrease in value.

Inverse floater. A security that reacts inversely to the direction of interest rates. These securities can be very volatile and can lose value in a rising interest-rate environment.

Leverage. An attempt to increase the rate of return on an investment by buying securities on margin or using borrowed funds for investment purposes. This practice can be risky if interest rates rise or if investment yields are lower than expected.

Liquidity. The quality of an asset that permits it to be converted quickly into cash without a significant loss of value.

Local Agency Investment Fund (LAIF). A special fund in the State Treasury which local agencies may use to deposit funds for investment and for reinvestment. There is no minimum investment period and the minimum transaction is \$5,000, in multiples of \$1,000 above that, with a maximum of \$50 million for any agency (*excluding bond funds, which have no maximum*). It offers high liquidity because deposits can be converted to cash in 24 hours and no interest is lost. All interest is distributed to those agencies participating on a proportionate share determined by the amounts deposited and the length of time they are deposited. Interest is paid quarterly via a check, warrant, or direct deposit to the agency's State Pooled Fund account. The State keeps an amount for reasonable costs of making the investments, not to exceed 1/4 of a percent of the earnings.

Marketability. The measure of ease with which a security can be sold in the secondary market.

Mark-to-Market. The practice of valuing a security of portfolio according to its market value, rather than its cost or book value.

Market Rate of Return. The average yield of the 3-month U.S. Treasury Bill or other index that closely matches the average maturity of the portfolio.

Market Value. The price at which the security is trading and could presumably be purchased or sold.

Maturity Date. The specified day on which the issuer of a debt security is obligated to repay the principal amount, or face value of, a security.

Money Market Mutual Fund. Mutual funds that invest solely in money market instruments (short-term debt instruments, such as Treasury bills, commercial paper, bankers' acceptances, repos and federal funds).

Mutual Fund. An investment company that pools money and can invest in a variety of securities, including fixed-income securities and money market instruments. Mutual funds are regulated by the Investment Company Act of 1940 and must abide by the following Securities and Exchange Commission (SEC) disclosure guidelines.

Negotiable. Salable.

Par. Face value or principal value of a bond, typically \$1,000 per bond.

Passive investment management. An investment strategy where securities are bought with the

intention of holding them to maturity or investments in benchmark products designed to yield a market rate of return.

Principal. The face amount or par value of a debt instrument.

Primary Dealer. A small group of large banks and brokers that have pledged to make a market for any Treasury securities at any time. They are required to report their inventory positions and volume of activities to the Federal Reserve. Because of this, they are given the right to deal directly with the Federal Reserve in their daily operations.

Prudent Investor Standard. A standard of conduct where a person acts with care, skill, prudence, and diligence when investing, reinvesting, purchasing, acquiring, exchanging, selling and managing funds. The test of whether the standard is being met is if a prudent person acting in a similar situation would engage in similar conduct to ensure that investments safeguard principal and maintain liquidity.

Rate of return. The amount of income received from an investment, expressed as a percentage. A *market rate of return* is the yield that an investor can expect to receive in the current interest-rate environment utilizing a buy-and-hold to maturity investment strategy.

Public Securities Association. The bond market trade association, which publishes a Master Repurchase Agreement that is widely accepted as the industry standard.

Rating. Judgment of creditworthiness of an issuer made by an accepted rating service.

Repurchase Agreement (Repo). A form of secured, short-term borrowing in which a security is sold with a simultaneous agreement to buy it back from the purchaser at a future date. A *master repurchase agreement* is a written contract governing all future transactions between the parties and seeks to establish each party's rights in the transaction.

Reverse Repurchase Agreement. A form of secured, short-term investment in which a security is purchased with a simultaneous agreement to sell it back to the seller at a future date.

Safekeeping. A procedure where securities are held by a third party acting as custodian for a fee.

Secondary Market. Markets for the purchase and sale of any previously issued financial instrument. The first sale of a financial instrument by the original issuer is said to be done a primary market. All subsequent trades are said to be secondary market.

Securities Investors Protection Corporation (SIPC). A private corporation providing insurance to brokerage firms to cover customer accounts up to \$500,000 in securities which includes a \$250,000 for cash.

Swap. The trading of one asset, or cash flows, for another. Sometimes used in active portfolio management to increase investment returns by "swapping" one type of security for another. Also used to manage risk; for example, swapping fixed interest rate payments for floating rate payments.

Total return. Interest income paid on the invested principal, plus interest income earned from the successive reinvestment of that interest income, plus projected capital gains (or minus losses) on the investment. Differs from yield to maturity because (1) it can include gains or losses from sales prior to maturity, and (2) it permits the assumption of a reinvestment rate different from the yield earned on the underlying principal.

Treasury Bills. Short-term U.S. government non-interest bearing debt securities with maturities of no longer than one year. The yields on these bills are monitored closely in the money markets for signs of interest rate trends.

Treasury Notes. Intermediate U.S. government debt securities with maturities of one to 10 years.

Treasury Bonds. Long-term U.S. government debt securities with maturities of ten years or longer.

Uniform Net Capital Rule. Securities and Exchange Commission 15C3-1 outlining capital requirements for brokers.

Weighted Average Maturity (WAM). The average maturity of all the securities that comprise a portfolio.

Yield. Loosely refers to the annual return on an investment expressed as a percentage on an annual basis. For interest-bearing securities, the yield is a function of the rate, the purchase price, the income that can be earned from the reinvestment of income received prior to maturity, call or sale and the time from purchase to maturity, call or sale. Different formulas or methods are used to calculate yield. See Yield to Maturity and Total Return Analysis.

Yield-to-maturity. The rate of return yielded by a debt security held to maturity when both the interest payments and the investor's potential capital gain or loss are included in the calculation of the return.



Orange County Fire Authority
AGENDA STAFF REPORT

Executive Committee Meeting
November 17, 2016

Agenda Item No. 3B
Consent Calendar

Sole Source Blanket Order Renewal – PulsePoint

Contact(s) for Further Information

Mike Schroeder, Assistant Chief
Support Services Department

michaelschroeder@ocfa.org

714.573.6008

Dave Anderson, Division Chief

daveanderson@ocfa.org

714.567.3234

Summary

This agenda item is submitted for approval to renew a sole source blanket order with Physio-Control Inc. for annual maintenance and support of the PulsePoint software. This software supports the PulsePoint smartphone application which is free to the public.

Prior Board/Committee Action(s)

On September 24, 2015, the Board of Directors approved supplementing the OCFA Foundation funding for the purchase and implementation of PulsePoint software with the OCFA Foundation transferring ownership of the software to OCFA.

RECOMMENDED ACTION(S)

1. Authorize the Purchasing Manager to renew the sole source blanket order with Physio-Control Inc. for maintenance and support of PulsePoint software at \$28,000 for one year.
2. Authorize extension of the blanket order with Physio-Control Inc. for an additional four years as long as the pricing remains the same, should pricing increase, the renewal will return for additional consideration.

Impact to Cities/County

Not Applicable.

Fiscal Impact

Funding is included in the approved FY 2016/17 budget.

Background

The OCFA Foundation received a \$28,000 grant from Hoag Memorial Hospital Presbyterian Community Benefits program (HOAG) in 2015 to purchase PulsePoint. The PulsePoint software is a pre-arrival solution designed to support public safety agencies working to improve cardiac arrest survival rates through improved bystander performance and active citizenship. PulsePoint empowers everyday citizens to provide life-saving assistance to victims of sudden cardiac arrest. PulsePoint users who have indicated that they are trained in cardiopulmonary resuscitation (CPR) and are willing to assist in case of an emergency can now be notified if someone nearby is having a cardiac emergency and may require CPR. If the cardiac emergency is in a public place, the location-aware smartphone application will alert trained citizens in the vicinity of the need for bystander CPR simultaneous with the dispatch of advanced medical care. The application also directs these citizen rescuers to the exact location of the closest publicly accessible

Automated External Defibrillator (AED). PulsePoint was successfully integrated with the OCFA CAD system.

PulsePoint offers the additional benefits listed below:

- Improves public awareness of fire department activities for fire, medical, and rescue calls. Incidents can be filtered by geographic area and configured for individual notifications. Incidents involving law enforcement or sensitive incidents in nature are automatically suppressed in the application.
- Enables OCFA stakeholders to monitor activity while remaining compliant with the Health Insurance Portability and Accountability Act.
- Joins over 2,000 communities across 28 states in increasing cardiac arrest survival rates by enlisting the help of citizen responders.
 - To date, over 36,000 citizen responders have been activated to more than 14,000 cardiac arrest incidents.
- Assists citizens in locating publicly accessible AEDs.

To date, there are approximately 3,500 users of the smartphone application across the seven OCFA Divisions. Approximately one-half have indicated they are CPR trained and willing to receive notifications of nearby cardiac arrest events. Ninety-six CPR events have been pushed to 170 PulsePoint users since implementation on November 10, 2015.

Staff is recommending approval to renew the blanket order for maintenance and software support with Physio-Control in the amount of \$28,000 annually for up to five years so long as the pricing remains the same each year, should pricing increase, the renewal will return to the Executive Committee for additional consideration. The total contract value for the five-year term is \$140,000.

Since this is a renewal only of existing software, there will be no additional equipment or staff time required for implementation.

Attachment(s)

1. Sole Source Request Form
2. Price Quote for Year One

OCFA Sole Source Request Form

The Purchasing Ordinance of the Orange County Fire Authority requires competitive bids and proposals for service and commodity contracts. A sole source is defined as a product or service that is available from only one known supplier as a result of unique performance capabilities, manufacturing processes, compatibility requirements or market conditions. The using department requesting a sole source shall provide written clear and convincing evidence to support a sole source determination, meaning that only one source exists to fulfill the requirements. This form is to be submitted with the purchase requisition to Purchasing with any sole source requests.

SECTION I - INSTRUCTIONS

1. Written justification on this form will be completed by the requesting department and submitted with the purchase requisition.
2. The request must be approved by the section manager and assistant chief prior to submitting the request to the purchasing manager.
3. All sole source forms must be submitted to the Purchasing Manager for approval. Based on the new ordinance the Fire Chief is not required to approve the sole source form. The sole source request may be submitted to Assistant Chief of Business Services by the Purchasing Manager for concurrence as required.
4. All sole source contracts exceeding \$50,000 (life of contract) require Executive Committee approval. In this case, the sole source request form must be submitted to the Executive Committee as an attachment to the staff report.
5. The approved sole source justification form will be included in the contract file.

SECTION II – REQUEST INFORMATION

Department/Section: Support Services	Requested By: Dave Anderson	Date: 11/3/16
Recommended Vendor: Physio-Control Inc.	Vendor Contact: Brandon Brien	Vendor's E-mail Address: brandon.brien@physio-control.com
Vendor Address: 11811 Willows Rd Northeast Redmond, WA 98073-9706		Vendor's Telephone #: 760-207-6626
Type of Contract: <input type="checkbox"/> One-time <input checked="" type="checkbox"/> Multi-Year <input checked="" type="checkbox"/> Renewal <input type="checkbox"/> Amendment <input type="checkbox"/> Increase	Contract Term (Dates): 01/01/2017 - 12/30/2022	
Contract Amount: \$140,000		
If the contract type is a Renewal, Amendment or Increase, please provide previous contract information with this request (PO, BO, previous approval date, Chief approval or EC approval, and dollar amount).		Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

SECTION III – JUSTIFICATION

1. **Provide a detailed description of the product or service requested. Describe what it is. Attach additional sheet if necessary.**

The software is a pre-arrival solution designed to support public agencies working to improve cardiac arrest survival rates through improved bystander performance and active citizenship.

2. **Please state why the recommended vendor is the only one capable of providing the required services and/or commodities. Provide a summary of findings (research and analysis) including any supporting documentation which validates your recommendation (e.g., attach a manufacturer's letter verifying patented design and direct sale with no distributors) and demonstrates the sole source nature of this request. Attach additional sheet if necessary.**

Physio-Control Inc (PulsePoint) is the sole source owner and developer of the PulsePoint Software.

PulsePoint is the only software product that will notify trained citizens of a cardiac emergency

including the location of the event. The software is integrated into OCFA's CAD system to provide

SECTION III – JUSTIFICATION (continued)

The exact location of the medical aid. Maintenance and support services are only offered by Physio-Control, the manufacturer. There is no alternative should OCFA elect to continue with this product.

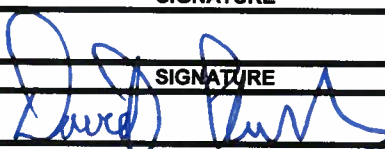


3. Pricing - What efforts were made to get the best pricing (e.g., did you simply request a quote, negotiate with the vendor, did the vendor provide a discount)? Please provide the quote with your sole source request.

Pricing is based on population that is served by the organization. OCFA is a Tier 4 agency serving over 1,500,000.


4. Will this purchase obligate the OCFA to future purchases (maintenance, licensing or continuing needs)? (If yes, please explain how and what the future costs will be.)

Yes, as long as OCFA chooses to continue use of the PulsePoint application, it will be necessary to maintain the licensing and software support. Staff has requested fixed pricing for a five year term contract at \$28,000 annually.

Sole Source Request Submitted by:

REQUESTORS NAME	SIGNATURE	DATE
		
DIVISION CHIEF/SECTION MANAGER NAME	SIGNATURE	DATE
Dave Anderson, Division Chief		11/8/16
ASSISTANT CHIEF NAME	SIGNATURE	DATE
Mike Schroeder, Assistant Chief Support Svs.		11/8/16

Purchasing Manager's Comments:

PURCHASING MANAGER'S APPROVAL	DATE
	11/8/16
ASSISTANT CHIEF BUSINESS SERVICES CONCURRENCE	DATE

☐

Executive Committee Approval Required ☒ Yes ☐ No Sole Source over \$50,000

Executive Committee Approved: ☐ Yes ☐ No Date approved _____

Orange County Fire Authority

1 Fire Authority Road, Irvine, CA 92602

BLANKET ORDER

DATE: 12/10/15

PURCHASE ORDER #: **E00264 - 1 Change Notice**

VENDOR: 00022
PHYSIO-CONTROL INC.
11811 WILLOWS RD NORTHEAST
REDMOND WA 98073-9706

SHIP TO:

P.O. # must appear on all packages & correspondence.

1 FIRE AUTHORITY ROAD
SERVICE CENTER
IRVINE CA 92602
ATTN: JIM RUANE

Delivery Hours: 7am - 12pm and 1pm - 4pm

PHONE: 800-442-1142 2067

FAX: 425-881-2405

FOB:

CONTRACT TERM: 10/29/15 - 12/31/16

BUYER: DEBBIE CASPER @ 714-573-6641

TERMS: NET 30 DAYS

Item	Description	Total Amount										
1	<p>SOFTWARE & INSTALLATION</p> <p>IMPLEMENTATION OF PULSEPOINT PROPRIETARY ENTERPRISE CLASS SOLUTION TO SUPPORT PUBLIC SAFETY AGENCIES WORKING TO IMPROVE CARDIAC ARREST SURVIVAL RATES PER THE TERMS AND CONDITIONS IN THE STATEMENT OF WORK DATED 7/8/15.</p> <p>=====</p> <p>PRODUCT ID # 11600-000021 INCLUDES DATA SOURCE CONNECTION, COMPLETE TESTING AND VALIDATION, AED REGISTRY ORGANIZATION. TECHNICAL TRAINING, COMMUNITY LAUNCH SUPPORT AND DIGITAL MATERIALS ALL MANAGED BY A DEDICATED PROJECT MANAGER.</p> <p>=====</p> <p>INITIAL PURCHASE OF THE PROJECT IS GRANT FUNDED BY THE ORANGE COUNTY FIRE AUTHORITY FOUNDATION. THE SOLE SOURCE SOFTWARE PURCHASE WAS APPROVED BY THE FOUNDATION AT THE JULY 15, 2015 MEETING. THE CONTRACT TERMS WERE APPROVED BY LEGAL COUNSEL.</p> <p>.</p> <p>**THE ANTICIPATED GO LIVE DATE IS DECEMBER 2015**</p>	10,000.00										
2	<p>SUPPORT</p> <table><thead><tr><th>Account #:</th><th>Amount</th></tr></thead><tbody><tr><td>121-3379-4000-200-</td><td>.00</td></tr><tr><td>125-3379-4000-200-</td><td>10000.00</td></tr><tr><td>125-3379-1302-200-</td><td>18000.00</td></tr><tr><td>121-3379-1302-200-</td><td>10000.00</td></tr></tbody></table>	Account #:	Amount	121-3379-4000-200-	.00	125-3379-4000-200-	10000.00	125-3379-1302-200-	18000.00	121-3379-1302-200-	10000.00	28,000.00
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121-3379-4000-200-	.00											
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125-3379-1302-200-	18000.00											
121-3379-1302-200-	10000.00											

Amount

Authorized Signature:

Debbie Casper

PURCHASING COPY

Bill to: Accounts Payable P.O. Box 53008, Irvine, CA 92619-3008 (Include Federal Tax ID # on invoice)

Please acknowledge the terms and conditions on the reverse side.

Orange County Fire Authority

1 Fire Authority Road, Irvine, CA 92602

BLANKET ORDER

DATE: 12/10/15

PURCHASE ORDER #: E00264 - 1 Change Notice

VENDOR: 00022

PHYSIO-CONTROL INC.
11811 WILLOWS RD NORTHEAST
REDMOND WA 98073-9706

SHIP TO:

1 FIRE AUTHORITY ROAD
SERVICE CENTER
IRVINE CA 92602
ATTN: JIM RUANE

P.O. # must appear on all packages & correspondence.

Delivery Hours: 7am - 12pm and 1pm - 4pm

PHONE: 800-442-1142 2067

FAX: 425-881-2405

FOB:

CONTRACT TERM: 10/29/15 - 12/31/16

BUYER: DEBBIE CASPER @ 714-573-6641

TERMS: NET 30 DAYS

Item	Description	Total Amount										
	<p>MAINTENANCE AND SUPPORT PRODUCT ID# 11600-000008 ONE YEAR COMMITMENT, SOFTWARE SUPPORT FOR SERVING POPULATION SIZE >1,500,000. ENSURES PERFORMANCE, RELIABILITY AND SUPPORTS FUTURE UPGRADES.</p> <p>=====</p> <p>THIS TIER ANNUAL FEE IS BASED ON POPULATION SERVED THESE FEES COVE 24/7 TECHNICAL SUPPORT, BACKGROUND MONITORING OF FUNCTIONALITY, AND SUPPORT FOR FUTURE AGENCY CAD UPGRADES.</p> <p>=====</p> <p>SUBSCRIPTIONS COMMENCE UPON IMPLEMENTATION OR 60 DAYS AFTER ORDER SUBMISSION. EITHER PARTY MAY TERMINATE THIS AGREEMENT WITH THIRTY (30) DAYS WRITTEN NOTICE FOR A MATERIAL BREACH THAT REMAINS UNSOLVED BY THE OTHER PARTY.</p> <p>=====</p> <p>THE STATEMENT OF WORK AND THE APPLICABLE QUOTE #00003778 DATED 07/09/15 CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEROF AND SUPERSEDES ALL PRIOR AND CONTEMPORANEOUS AGREEMENTS WHETHER WRITTEN OR ORAL, OF THE PARTIES, RELATING TO SUCH SUBJECT</p> <table><tr><td>Account #:</td><td>Amount</td></tr><tr><td>121-3379-4000-200-</td><td>.00</td></tr><tr><td>125-3379-4000-200-</td><td>10000.00</td></tr><tr><td>125-3379-1302-200-</td><td>18000.00</td></tr><tr><td>121-3379-1302-200-</td><td>10000.00</td></tr></table>	Account #:	Amount	121-3379-4000-200-	.00	125-3379-4000-200-	10000.00	125-3379-1302-200-	18000.00	121-3379-1302-200-	10000.00	
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Authorized Signature:

Debbie Casper

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CONTRACT TERM: 10/29/15 - 12/31/16

BUYER: DEBBIE CASPER @ 714-573-6641

TERMS: NET 30 DAYS

Item	Description	Total Amount										
	<p>MATTER.</p> <p>=====</p> <p>OCFA WILL PROVIDE SUPPLEMENTAL FUNDS FOR THE ONE-TIME INSTALLMENT COSTS. THE OCFA BOARD OF DIRECTORS APPROVED THE FUNDING (10,000) AT THE SEPT. 24, 2015 MEETING. FUTURE BOARD APPROVAL WILL BE REQUIRED FOR CONTRACT RENEWAL.</p> <p>.</p> <p>VENDOR CONTACT: BRANDON BRIEN @ 760-207-6626 RICHARD PRICE, PRESIDENT PULSEPOINT @ 925-570-5262 E-MAIL: RICHARD.PRICE@PULSEPOINT.ORG</p> <p>.</p> <p>OCFA CONTACT: JIM RUANE, FINANCE MGR @714-573-6304 IT CONTACT: TODD MUILENBURG @ 714-573-6442 E-MAIL: TODDMUILENBURG@OCFA.ORG</p> <p>.</p> <p>*CHANGE ORDER ISSUED 12/10/15 TO MODIFY ACCOUNT CODING REQUESTED BY FINANCE*</p>											
	<table><tr><th>Account #</th><th>Amount</th></tr><tr><td>121-3379-4000-200-</td><td>.00</td></tr><tr><td>125-3379-4000-200-</td><td>10000.00</td></tr><tr><td>125-3379-1302-200-</td><td>18000.00</td></tr><tr><td>121-3379-1302-200-</td><td>10000.00</td></tr></table>	Account #	Amount	121-3379-4000-200-	.00	125-3379-4000-200-	10000.00	125-3379-1302-200-	18000.00	121-3379-1302-200-	10000.00	
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Authorized Signature:

Debbie Casper

PURCHASING COPY

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Attachment 2



Physio-Control, Inc
 11811 Willows Road NE
 P.O. Box 97006
 Redmond, WA 98073-9706 U.S.A.
 www.physio-control.com
 tel 800.442.1142
 fax 800.732.0956

To Orange County Fire Authority
 Attn: Debbie Casper
 1 Fire Authority Road
 Irvine, CA 92602 (714)
 573-6641
debbiecasper@ocfa.org

Quote Number 00058860
 Revision # 1
 Created Date 11/4/2016
 Sales Consultant Brandon A. Brien
 (760) 207-6626
 FOB Redmond, WA
 Terms All quotes subject to credit approval and the
 following terms and conditions
 NET Terms NET 30

Expiration Date 12/22/2016

Product	Product Description	Quantity	List Price	Unit Discount	Unit Sales Price	Total Price
11600-000008	PulsePoint Annual Licensing Fee- Tier 4. 1 year commitment. Serving population size >1,500,000. Ensures performance, reliability and supports future upgrades.	1.00	28,000.00	0.00	28,000.00	28,000.00

Subtotal USD 28,000.00
 Estimated Tax USD 0.00
 Estimated Shipping & Handling USD 0.00

Grand Total USD 28,000.00

Pricing Summary Totals

List Price Total USD 28,000.00
 Total Contract Discounts Amount USD 0.00
 Total Discount USD 0.00
 Trade In Discounts USD 0.00
 Tax + S&H USD 0.00

GRAND TOTAL FOR THIS QUOTE
 USD 28,000.00

PHYSIO-CONTROL, INC. REQUIRES WRITTEN VERIFICATION OF THIS ORDER. A PURCHASE ORDER IS REQUIRED ON ALL ORDERS \$5,000 OR GREATER BEFORE APPLICABLE FREIGHT AND TAXES. THE UNDERSIGNED IS AUTHORIZED TO ACCEPT THIS ORDER IN ACCORDANCE WITH THE TERMS AND PRICES DENOTED HEREIN.

CUSTOMER APPROVAL (AUTHORIZED SIGNATURE)

NAME

TITLE

DATE

Reference Number BV/76965

General Terms for all Products, Services and Subscriptions.

Physio-Control, Inc. ("Physio") accepts Buyer's order expressly conditioned on Buyer's assent to the terms set forth in this document. Buyer's order and acceptance of any portion of the goods, services or subscriptions shall confirm Buyer's acceptance of these terms. Unless specified otherwise herein, these terms constitute the complete agreement between the parties. Amendments to this document shall be in writing and no prior or subsequent acceptance by Seller of any purchase order, acknowledgment, or other document from Buyer specifying different and/or additional terms shall be effective unless signed by both parties.

Pricing. Prices do not include freight insurance, freight forwarding fees, taxes, duties, import or export permit fees, or any other similar charge of any kind applicable to the goods and services. Sales or use taxes on domestic (USA) deliveries will be invoiced in addition to the price of the goods and services unless Physio receives a copy of a valid exemption certificate prior to delivery. Discounts may not be combined with other special terms, discounts, and/or promotions.

Payment. Payment for goods and services shall be subject to approval of credit by Physio. Unless otherwise specified by Physio in writing, the entire payment of an invoice is due thirty (30) days after the invoice date for deliveries in the USA, and sight draft or acceptable (confirmed) irrevocable letter of credit is required for sales outside the USA.

Minimum Order Quantity. Physio reserves the right to charge a service fee for any order less than \$200.00.

Patent Indemnity. Physio shall indemnify Buyer and hold it harmless from and against all demands, claims, damages, losses, and expenses, arising out of or resulting, from any action by a third party against Buyer that is based on any claim that the services infringe a United States patent, copyright, or trademark, or violate a trade secret or any other proprietary right of any person or entity. Physio's indemnification obligations hereunder will be subject to (i) receiving prompt written notice of the existence of any claim; (ii) being able to, at its option, control the defense and settlement of such claim (provided that, without obtaining the prior written consent of Buyer, Physio will enter into no settlement involving the admission of wrongdoing); and (iii) receiving full cooperation of Buyer in the defense of any claim.

Limitation of Interest. Through the purchase of Physio products, services, or subscriptions, Buyer does not acquire any interest in any tooling, drawings, design information, computer programming, patents or copyrighted or confidential information related to said products or services, and Buyer expressly agrees not to reverse engineer or decompile such products or related software and information.

Delays. Physio will not be liable for any loss or damage of any kind due to its failure to perform or delays in its performance resulting from an event beyond its reasonable control, including but not limited to, acts of God, labor disputes, the requirements of any governmental authority, war, civil unrest, terrorist acts, delays in manufacture, obtaining any required license or permit, and Physio inability to obtain goods from its usual sources.

Limited Warranty. Physio warrants its products and services in accordance with the terms of the limited warranties located at <http://www.physio-control.com/Documents/>. The remedies provided under such warranties shall be Buyer's sole and exclusive remedies. Physio makes no other warranties, express or implied, including, without limitation, **NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND IN NO EVENT SHALL PHYSIO BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL OR OTHER DAMAGES.**

Compliance with Confidentiality Laws. Both parties acknowledge their respective obligations to maintain the security and confidentiality of individually identifiable health information and agree to comply with applicable federal and state health information confidentiality laws.

Compliance with Law. The parties agree to comply with any and all laws, rules, regulations, licensing requirements or standards that are now or hereafter promulgated by any local, state, and federal governmental authority/agency or accrediting/administrative body that governs or applies to their respective duties and obligations hereunder.

Regulatory Requirement for Access to Information. In the event 42 USC § 1395x(v)(1)(I) is applicable, Physio shall make available to the Secretary of the United States Department of Health and Human Services, the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, a copy of these terms, such books, documents and records as are necessary to certify the nature and extent of the costs of the products and services provided by Physio.

No Debarment. Physio represents and warrants that it and its directors, officers, and employees (i) are not excluded, debarred, or otherwise ineligible to participate in the Federal health care programs as defined in 42 USC § 1320a-7b(f); (ii) have not been convicted of a criminal offense related to the provision of healthcare items or services; and (iii) are not under investigation which may result in Physio being excluded from participation in such programs.

Choice of Law. The rights and obligations of Physio and Buyer related to the purchase and sale of products and services described in this document shall be governed by the laws of the state where Buyer is located. All costs and expenses incurred by the prevailing party related to enforcement of its rights under this document, including reasonable attorney's fees, shall be reimbursed by the other party.

Additional Terms for Purchase and Sale of Software Licenses and Software-as-Service.

In addition to the General Terms above, software and software-as-service is licensed (not sold) pursuant to the following terms:

Licenses. Upon full payment, Physio will grant to Buyer the licenses to the software and/or software-as-service ordered by Buyer according to the applicable End User License Agreement or Software-As-Service Agreement. The duration of each license is the term of the subscription purchased by Buyer.

Additional Terms Regarding Wireless Enabled Devices.

In addition to the General Terms above, the data services provided by a third party are pursuant to the following terms:

Payments. Payments to Physio are non-refundable as they are incorporating into the pricing of the connected devices.

Geolocation. Buyer is responsible for maintaining the actual location of the devices within their facilities, property or buildings.

Not Wireless Provider. Physio has contracted with an outside data services provider for the provision of services on behalf of Buyer. Physio is not a telecommunications services company nor does it possess any telecommunications personal property.

Security. Buyer has the sole responsibility for ensuring the security of its network and data. Buyer will take reasonable measures to protect against unauthorized access.

No Guarantee. **PHYSIO DOES NOT GUARANTEE SECURITY, UNINTERRUPTED DATA SERVICES, THE ACCURACY OF GEOLOCATION SERVICES, NETWORK TRANSMISSION CAPACITY, COVERAGE OR THE INTEGRITY OF THE DATA TRANSMITTED.** Physio is not responsible for any consequential damages caused in any way by Buyer's hardware, software, network or other Buyer responsibilities.

Quote Number: 00058860



REVISED 11/17/16

Orange County Fire Authority AGENDA STAFF REPORT

Executive Committee Meeting
November 17, 2016

Agenda Item No. 3B
Consent Calendar

Sole Source Blanket Order Renewal – PulsePoint

Contact(s) for Further Information

Mike Schroeder, Assistant Chief michaelschroeder@ocfa.org 714.573.6008
Support Services Department

Dave Anderson, Division Chief daveanderson@ocfa.org 714.567.3234

Summary

This agenda item is submitted for approval to renew a sole source blanket order with Physio-Control Inc. for annual maintenance and support of the PulsePoint software. This software supports the PulsePoint smartphone application which is free to the public.

Prior Board/Committee Action(s)

On September 24, 2015, the Board of Directors approved supplementing the OCFA Foundation funding for the purchase and implementation of PulsePoint software with the OCFA Foundation transferring ownership of the software to OCFA.

RECOMMENDED ACTION(S)

1. Authorize the Purchasing Manager to renew the sole source blanket order with Physio-Control Inc. for maintenance and support of PulsePoint software at a total cost of \$139,980 for a five-year term~~\$28,000 for one year.~~
- ~~2. Authorize extension of the blanket order with Physio-Control Inc. for an additional four years as long as the pricing remains the same, should pricing increase, the renewal will return for additional consideration.~~

Impact to Cities/County

Not Applicable.

Fiscal Impact

Funding is included in the approved FY 2016/17 budget.

Background

The OCFA Foundation received a \$28,000 grant from Hoag Memorial Hospital Presbyterian Community Benefits program (HOAG) in 2015 to purchase PulsePoint. The PulsePoint software is a pre-arrival solution designed to support public safety agencies working to improve cardiac arrest survival rates through improved bystander performance and active citizenship. PulsePoint empowers everyday citizens to provide life-saving assistance to victims of sudden cardiac arrest. PulsePoint users who have indicated that they are trained in cardiopulmonary resuscitation (CPR) and are willing to assist in case of an emergency can now be notified if someone nearby is having a cardiac emergency and may require CPR. If the cardiac emergency is in a public place, the location-aware smartphone application will alert trained citizens in the vicinity of the need for bystander CPR simultaneous with the dispatch of advanced medical care. The application

also directs these citizen rescuers to the exact location of the closest publicly accessible Automated External Defibrillator (AED). PulsePoint was successfully integrated with the OCFA CAD system.

PulsePoint offers the additional benefits listed below:

- Improves public awareness of fire department activities for fire, medical, and rescue calls. Incidents can be filtered by geographic area and configured for individual notifications. Incidents involving law enforcement or sensitive incidents in nature are automatically suppressed in the application.
- Enables OCFA stakeholders to monitor activity while remaining compliant with the Health Insurance Portability and Accountability Act.
- Joins over 2,000 communities across 28 states in increasing cardiac arrest survival rates by enlisting the help of citizen responders.
 - To date, over 36,000 citizen responders have been activated to more than 14,000 cardiac arrest incidents.
- Assists citizens in locating publicly accessible AEDs.

To date, there are approximately 3,500 users of the smartphone application across the seven OCFA Divisions. Approximately one-half have indicated they are CPR trained and willing to receive notifications of nearby cardiac arrest events. Ninety-six CPR events have been pushed to 170 PulsePoint users since implementation on November 10, 2015.

Staff is recommending approval to renew the blanket order for maintenance and software support with Physio-Control in the amount of ~~\$139,980 \$28,000 annually for up to a five year term, so long as the pricing remains the same each year, should pricing increase, the renewal will return to the Executive Committee for additional consideration. The total contract value for the five-year term is \$140,000.~~

Since this is a renewal only of existing software, there will be no additional equipment or staff time required for implementation.

Contract Terms Outlined on Price Quote

After publication of the November 17 meeting agenda, staff and General Counsel continued to work with Physio-Control Inc. to modify the duration of the contract term from one year to five years, and to obtain favorable modifications to the “General Terms” identified in the initial price quote. As a result of these efforts, staff was able to obtain fixed pricing for a five-year term and achieve some modifications to the “General Terms”, as shown in the revised Price Quote.

Attachment(s)

1. Sole Source Request Form
2. Price Quote for Five-Year Term ~~One~~ (reflecting Revised Contract Terms)

OCFA Sole Source Request Form

The Purchasing Ordinance of the Orange County Fire Authority requires competitive bids and proposals for service and commodity contracts. A sole source is defined as a product or service that is available from only one known supplier as a result of unique performance capabilities, manufacturing processes, compatibility requirements or market conditions. The using department requesting a sole source shall provide written clear and convincing evidence to support a sole source determination, meaning that only one source exists to fulfill the requirements. This form is to be submitted with the purchase requisition to Purchasing with any sole source requests.

SECTION I - INSTRUCTIONS

1. Written justification on this form will be completed by the requesting department and submitted with the purchase requisition.
2. The request must be approved by the section manager and assistant chief prior to submitting the request to the purchasing manager.
3. All sole source forms must be submitted to the Purchasing Manager for approval. Based on the new ordinance the Fire Chief is not required to approve the sole source form. The sole source request may be submitted to Assistant Chief of Business Services by the Purchasing Manager for concurrence as required.
4. All sole source contracts exceeding \$50,000 (life of contract) require Executive Committee approval. In this case, the sole source request form must be submitted to the Executive Committee as an attachment to the staff report.
5. The approved sole source justification form will be included in the contract file.

SECTION II – REQUEST INFORMATION

Department/Section: Support Services	Requested By: Dave Anderson	Date: 11/3/16
Recommended Vendor: Physio-Control Inc.	Vendor Contact: Brandon Brien	Vendor's E-mail Address: brandon.brien@physio-control.com
Vendor Address: 11811 Willows Rd Northeast Redmond, WA 98073-9706		Vendor's Telephone #: 760-207-6626
Type of Contract: <input type="checkbox"/> One-time <input checked="" type="checkbox"/> Multi-Year <input checked="" type="checkbox"/> Renewal <input type="checkbox"/> Amendment <input type="checkbox"/> Increase	Contract Term (Dates): 01/01/2017 - 12/30/2022	
Contract Amount: \$140,000		
If the contract type is a Renewal, Amendment or Increase, please provide previous contract information with this request (PO, BO, previous approval date, Chief approval or EC approval, and dollar amount).		Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

SECTION III – JUSTIFICATION

1. **Provide a detailed description of the product or service requested. Describe what it is. Attach additional sheet if necessary.**

The software is a pre-arrival solution designed to support public agencies working to improve cardiac arrest survival rates through improved bystander performance and active citizenship.

2. **Please state why the recommended vendor is the only one capable of providing the required services and/or commodities. Provide a summary of findings (research and analysis) including any supporting documentation which validates your recommendation (e.g., attach a manufacturer's letter verifying patented design and direct sale with no distributors) and demonstrates the sole source nature of this request. Attach additional sheet if necessary.**

Physio-Control Inc (PulsePoint) is the sole source owner and developer of the PulsePoint Software.

PulsePoint is the only software product that will notify trained citizens of a cardiac emergency

including the location of the event. The software is integrated into OCFA's CAD system to provide

SECTION III – JUSTIFICATION (continued)

The exact location of the medical aid. Maintenance and support services are only offered by Physio-Control, the manufacturer. There is no alternative should OCFA elect to continue with this product.

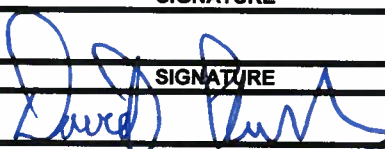


3. Pricing - What efforts were made to get the best pricing (e.g., did you simply request a quote, negotiate with the vendor, did the vendor provide a discount)? Please provide the quote with your sole source request.

Pricing is based on population that is served by the organization. OCFA is a Tier 4 agency serving over 1,500,000.


4. Will this purchase obligate the OCFA to future purchases (maintenance, licensing or continuing needs)? (If yes, please explain how and what the future costs will be.)

Yes, as long as OCFA chooses to continue use of the PulsePoint application, it will be necessary to maintain the licensing and software support. Staff has requested fixed pricing for a five year term contract at \$28,000 annually.

Sole Source Request Submitted by:

REQUESTORS NAME	SIGNATURE	DATE
		
DIVISION CHIEF/SECTION MANAGER NAME	SIGNATURE	DATE
Dave Anderson, Division Chief		11/8/16
ASSISTANT CHIEF NAME	SIGNATURE	DATE
Mike Schroeder, Assistant Chief Support Svs.		11/8/16

Purchasing Manager's Comments:

PURCHASING MANAGER'S APPROVAL	DATE
	11/8/16
ASSISTANT CHIEF BUSINESS SERVICES CONCURRENCE	DATE

☐

Executive Committee Approval Required ☒ Yes ☐ No Sole Source over \$50,000

Executive Committee Approved: ☐ Yes ☐ No Date approved _____

Orange County Fire Authority

1 Fire Authority Road, Irvine, CA 92602

BLANKET ORDER

DATE: 12/10/15

PURCHASE ORDER #: **E00264 - 1 Change Notice**

VENDOR: 00022
PHYSIO-CONTROL INC.
11811 WILLOWS RD NORTHEAST
REDMOND WA 98073-9706

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BUYER: DEBBIE CASPER @ 714-573-6641

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Authorized Signature:

Debbie Casper

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IRVINE CA 92602
ATTN: JIM RUANE

P.O. # must appear on all packages & correspondence.

Delivery Hours: 7am - 12pm and 1pm - 4pm

PHONE: 800-442-1142 2067

FAX: 425-881-2405

FOB:

CONTRACT TERM: 10/29/15 - 12/31/16

BUYER: DEBBIE CASPER @ 714-573-6641

TERMS: NET 30 DAYS

Item	Description	Total Amount										
	<p>MAINTENANCE AND SUPPORT PRODUCT ID# 11600-000008 ONE YEAR COMMITMENT, SOFTWARE SUPPORT FOR SERVING POPULATION SIZE >1,500,000. ENSURES PERFORMANCE, RELIABILITY AND SUPPORTS FUTURE UPGRADES.</p> <p>=====</p> <p>THIS TIER ANNUAL FEE IS BASED ON POPULATION SERVED THESE FEES COVE 24/7 TECHNICAL SUPPORT, BACKGROUND MONITORING OF FUNCTIONALITY, AND SUPPORT FOR FUTURE AGENCY CAD UPGRADES.</p> <p>=====</p> <p>SUBSCRIPTIONS COMMENCE UPON IMPLEMENTATION OR 60 DAYS AFTER ORDER SUBMISSION. EITHER PARTY MAY TERMINATE THIS AGREEMENT WITH THIRTY (30) DAYS WRITTEN NOTICE FOR A MATERIAL BREACH THAT REMAINS UNSOLVED BY THE OTHER PARTY.</p> <p>=====</p> <p>THE STATEMENT OF WORK AND THE APPLICABLE QUOTE #00003778 DATED 07/09/15 CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEROF AND SUPERSEDES ALL PRIOR AND CONTEMPORANEOUS AGREEMENTS WHETHER WRITTEN OR ORAL, OF THE PARTIES, RELATING TO SUCH SUBJECT</p> <table><tr><td>Account #:</td><td>Amount</td></tr><tr><td>121-3379-4000-200-</td><td>.00</td></tr><tr><td>125-3379-4000-200-</td><td>10000.00</td></tr><tr><td>125-3379-1302-200-</td><td>18000.00</td></tr><tr><td>121-3379-1302-200-</td><td>10000.00</td></tr></table>	Account #:	Amount	121-3379-4000-200-	.00	125-3379-4000-200-	10000.00	125-3379-1302-200-	18000.00	121-3379-1302-200-	10000.00	
Account #:	Amount											
121-3379-4000-200-	.00											
125-3379-4000-200-	10000.00											
125-3379-1302-200-	18000.00											
121-3379-1302-200-	10000.00											
	Amount											

Authorized Signature:

Debbie Casper

PURCHASING COPY

Bill to: Accounts Payable P.O. Box 53008, Irvine, CA 92619-3008 (Include Federal Tax ID # on invoice)

Please acknowledge the terms and conditions on the reverse side.

Orange County Fire Authority

1 Fire Authority Road, Irvine, CA 92602

BLANKET ORDER

DATE: 12/10/15

PURCHASE ORDER #: **E00264 - 1 Change Notice**

VENDOR: 00022
PHYSIO-CONTROL INC.
11811 WILLOWS RD NORTHEAST
REDMOND WA 98073-9706

SHIP TO:
P.O. # must appear on all packages & correspondence.
1 FIRE AUTHORITY ROAD
SERVICE CENTER
IRVINE CA 92602
ATTN: JIM RUANE

Delivery Hours: 7am - 12pm and 1pm - 4pm

PHONE: 800-442-1142 2067

FAX: 425-881-2405

FOB:

CONTRACT TERM: 10/29/15 - 12/31/16

BUYER: DEBBIE CASPER @ 714-573-6641

TERMS: NET 30 DAYS

Item	Description	Total Amount
	<p>MATTER.</p> <p>=====</p> <p>OCFA WILL PROVIDE SUPPLEMENTAL FUNDS FOR THE ONE-TIME INSTALLMENT COSTS. THE OCFA BOARD OF DIRECTORS APPROVED THE FUNDING (10,000) AT THE SEPT. 24, 2015 MEETING. FUTURE BOARD APPROVAL WILL BE REQUIRED FOR CONTRACT RENEWAL.</p> <p>.</p> <p>VENDOR CONTACT: BRANDON BRIEN @ 760-207-6626 RICHARD PRICE, PRESIDENT PULSEPOINT @ 925-570-5262 E-MAIL: RICHARD.PRICE@PULSEPOINT.ORG</p> <p>.</p> <p>OCFA CONTACT: JIM RUANE, FINANCE MGR @714-573-6304 IT CONTACT: TODD MUILENBURG @ 714-573-6442 E-MAIL: TODDMUILENBURG@OCFA.ORG</p> <p>.</p> <p>*CHANGE ORDER ISSUED 12/10/15 TO MODIFY ACCOUNT CODING REQUESTED BY FINANCE*</p>	
Account #:	Amount	
121-3379-4000-200-	.00	
125-3379-4000-200-	10000.00	
125-3379-1302-200-	18000.00	
121-3379-1302-200-	10000.00	
		ADDL CHARGES: .00
		TOTAL TAXES: .00
	Amount	38,000.00

Authorized Signature:

Debbie Casper

PURCHASING COPY

Bill to: Accounts Payable P.O. Box 53008, Irvine, CA 92619-3008 (Include Federal Tax ID # on invoice)

Please acknowledge the terms and conditions on the reverse side.



Physio-Control, Inc
 11811 Willows Road NE
 P.O. Box 97006
 Redmond, WA 98073-9706 U.S.A.
www.physio-control.com
 tel 800.442.1142
 fax 800.732.0956

To Orange County Fire Authority
 Attn: Debbie Casper
 1 Fire Authority Road
 Irvine, CA 92602
 (714) 573-6641
debbiecasper@ocfa.org

Quote Number 00060224
 Revision # 1
 Created Date 11/16/2016
 Sales Consultant Brandon A. Brien
 (760) 207-6626
 FOB Redmond, WA
 Terms All quotes subject to credit approval and the
 following terms and conditions
 NET Terms NET 30
 Expiration Date 12/30/2016

Product	Product Description	Quantity	List Price	Unit Discount	Unit Sales Price	Total Price
11600-000028	PulsePoint Annual Licensing Fee- Tier 4. 5 year commitment, annual payment of \$28,000. Serving population size >1,500,000. Ensures performance, reliability and supports future upgrades.	1.00	139,980.00	0.00	139,980.00	139,980.00

Subtotal USD 139,980.00
 Estimated Tax USD 0.00
 Estimated Shipping & Handling USD 0.00

Grand Total USD 139,980.00

Pricing Summary Totals

List Price Total USD 139,980.00
 Total Contract Discounts Amount USD 0.00
 Total Discount USD 0.00
 Trade In Discounts USD 0.00
 Tax + S&H USD 0.00

GRAND TOTAL FOR THIS QUOTE

USD 139,980.00

PHYSIO-CONTROL, INC. REQUIRES WRITTEN VERIFICATION OF THIS ORDER. A PURCHASE ORDER IS REQUIRED ON ALL ORDERS \$5,000 OR GREATER BEFORE APPLICABLE FREIGHT AND TAXES. THE UNDERSIGNED IS AUTHORIZED TO ACCEPT THIS ORDER IN ACCORDANCE WITH THE TERMS AND PRICES DENOTED HEREIN.

CUSTOMER APPROVAL (AUTHORIZED SIGNATURE)

NAME

TITLE

DATE

Reference Number BV/76965

General Terms for all Products, Services and Subscriptions.

Physio-Control, Inc. ("Physio") accepts Buyer's order expressly conditioned on Buyer's assent to the terms set forth in this document. Buyer's order and acceptance of any portion of the goods, services or subscriptions shall confirm Buyer's acceptance of these terms. Unless specified otherwise herein, these terms constitute the complete agreement between the parties. Amendments to this document shall be in writing and no prior or subsequent acceptance by Seller of any purchase order, acknowledgment, or other document from Buyer specifying different and/or additional terms shall be effective unless signed by both parties.

Pricing. Prices do not include freight insurance, freight forwarding fees, taxes, duties, import or export permit fees, or any other similar charge of any kind applicable to the goods and services. Sales or use taxes on domestic (USA) deliveries will be invoiced in addition to the price of the goods and services unless Physio receives a copy of a valid exemption certificate prior to delivery. Discounts may not be combined with other special terms, discounts, and/or promotions. ~~The total of this Quote represent all charges for the purchase of the annual licensing fee for PulseF~~

Payment. Payment for goods and services shall be subject to approval of credit by Physio. Unless otherwise specified by Physio in writing, the entire payment of an invoice is due thirty (30) days after the invoice date for deliveries in the USA, and sight draft or acceptable (confirmed) irrevocable letter of credit is required for sales outside the USA.

Minimum Order Quantity. Physio reserves the right to charge a service fee for any order less than \$200.00.

Patent Indemnity. Physio shall indemnify Buyer and hold it harmless from and against all demands, claims, damages, losses, and expenses, arising out of or resulting, from any action by a third party against Buyer that is based on any claim that the services infringe a United States patent, copyright, or trademark, or violate a trade secret or any other proprietary right of any person or entity. ~~Physio's indemnification obligations hereunder will be subject to (i) receiving prompt written notice of the existence of any claim; (ii) being able to, at its option, control the defense and settlement of such claim (provided that, without obtaining the prior written consent of Buyer, Physio will enter into no settlement involving the admission of wrongdoing); and (iii) receiving full cooperation of Buyer in the defense of any claim.~~

Limitation of Interest. Through the purchase of Physio products, services, or subscriptions, Buyer does not acquire any interest in any tooling, drawings, design information, computer programming, patents or copyrighted or confidential information related to said products or services, and Buyer expressly agrees not to reverse engineer or decompile such products or related software and information.

~~**Delays.** Physio will not be liable for any loss or damage of any kind due to its failure to perform or delays in its performance resulting from an event beyond its reasonable control, including but not limited to, acts of God, labor disputes, the requirements of any governmental authority, war, civil unrest, terrorist acts, delays in manufacture, obtaining any required license or permit, and Physio's inability to obtain goods from its usual sources.~~

Limited Warranty. Physio warrants its products and services in accordance with the terms of the limited warranties located at <http://www.physio-control.com/Documents/>. The remedies provided under such warranties shall be Buyer's sole and exclusive remedies. Physio makes no other warranties, express or implied, including, without limitation, **NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND IN NO EVENT SHALL PHYSIO BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL OR OTHER DAMAGES.**

Compliance with Confidentiality Laws. Both parties acknowledge their respective obligations to maintain the security and confidentiality of individually identifiable health information and agree to comply with applicable federal and state health information confidentiality laws.

Compliance with Law. The parties agree to comply with any and all laws, rules, regulations, licensing requirements or standards that are now or hereafter promulgated by any local, state, and federal governmental authority/agency or accrediting/administrative body that governs or applies to their respective duties and obligations hereunder.

Regulatory Requirement for Access to Information. In the event 42 USC § 1395x(v)(1)(I) is applicable, Physio shall make available to the Secretary of the United States Department of Health and Human Services, the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, a copy of these terms, such books, documents and records as are necessary to certify the nature and extent of the costs of the products and services provided by Physio.

No Debarment. Physio represents and warrants that it and its directors, officers, and employees (i) are not excluded, debarred, or otherwise ineligible to participate in the Federal health care programs as defined in 42 USC § 1320a-7b(f); (ii) have not been convicted of a criminal offense related to the provision of healthcare items or services; and (iii) are not under investigation which may result in Physio being excluded from participation in such programs.

Choice of Law. The rights and obligations of Physio and Buyer related to the purchase and sale of products and services described in this document shall be governed by the laws of the state where Buyer is located. All costs and expenses incurred by the prevailing party related to enforcement of its rights under this document, including reasonable attorney's fees, shall be reimbursed by the other party.

Additional Terms for Purchase and Sale of Software Licenses and Software-as-Service.

In addition to the General Terms above, software and software-as-service is licensed (not sold) pursuant to the following terms: **Licenses.** Upon full payment, Physio will grant to Buyer the licenses to the software and/or software-as-service ordered by Buyer according to the applicable End User License Agreement or Software-As-Service Agreement. The duration of each license is the term of the subscription purchased by Buyer. ~~End User License Agreement is located at <http://developer.pulsepoint.org/signup.php>~~

Additional Terms Regarding Wireless Enabled Devices.

In addition to the General Terms above, the data services provided by a third party are pursuant to the following terms:

Payments. Payments to Physio are non-refundable as they are incorporating into the pricing of the connected devices.

Geolocation. Buyer is responsible for maintaining the actual location of the devices within their facilities, property or buildings.

Not Wireless Provider. Physio has contracted with an outside data services provider for the provision of services on behalf of Buyer. Physio is not a telecommunications services company nor does it possess any telecommunications personal property.

Security. Buyer has the sole responsibility for ensuring the security of its network and data. Buyer will take reasonable measures to protect against unauthorized access.

No Guarantee. PHYSIO DOES NOT GUARANTEE SECURITY, UNINTERRUPTED DATA SERVICES, THE ACCURACY OF GEOLOCATION SERVICES, NETWORK TRANSMISSION CAPACITY, COVERAGE OR THE INTEGRITY OF THE DATA TRANSMITTED. Physio is not responsible for any consequential damages caused in any way by Buyer's hardware, software, network or other Buyer responsibilities.

Quote Number: 00060224

Additional Terms for Purchase and Sale of Software Implementation Services.

In addition to the General Terms above, the following terms apply to all purchases of Software Implementation Services from Physio:

Physio's Duties. Physio agrees to make commercially reasonable efforts to: (i) commence implementation of all applicable software in accordance with a mutually agreed upon schedule; (ii) diligently perform the implementation process in a professional and workmanlike manner; (iii) provide the training associated with purchased subscriptions, components and/or software; and (iv) provide access to technical support.

Buyer's Duties. Buyer agrees to make commercially reasonable efforts to: (i) cooperate with and reasonably assist Physio in the implementation process; (ii) have all equipment, connections and facilities prepared and ready for implementation in accordance with the mutually agreed upon schedule.

Completion of Implementation. Implementation is complete when Buyer is able to transmit/receive data through the implemented software.

Fees and Billing. Upon implementation, Physio shall provide Buyer with an invoice setting forth the amount due. If implementation is delayed by more than six (6) months, solely due to Buyer's delay, Physio reserves the right to invoice prior to implementation. Payment is due thirty (30) days after receipt of invoice.

Confidential Information. In the course of performing Implementation Services, each party may receive, be exposed to or acquire confidential and/or proprietary information of the other party ("Confidential Information"). All Confidential Information disclosed by a party will bear a legend "Confidential," "Proprietary" or words of similar import. All Confidential Information disclosed by a party in any manner other than in writing will be preceded by an oral statement indicating that the information is Confidential Information. Each party agrees to take reasonable steps to protect the other party's Confidential Information, including not disclosing it to third parties except as otherwise permitted. The restrictions and obligations upon the parties concerning confidentiality shall not apply to any portion of the Confidential Information of either party which: (a) is or becomes publicly available to the receiving party through no fault of such receiving party; or (b) can be reasonably demonstrated to have been known to or hereafter developed by the receiving party independently of any disclosure of Confidential Information by the disclosing party; or (c) is disclosed to the receiving party by a third party who, to the best of the receiving party's knowledge, is lawfully in possession of the same and has the right to make such disclosure.

Warranties. Physio represents and warrants that it will provide the Services in a professional and workmanlike manner consistent with good industry standards and practices. Physio warrants that the Service will perform in all material respects for a period of three (3) months after implementation. As Buyer's sole and exclusive remedy and Physio's entire liability for any breach of the foregoing warranty, Physio will re-perform the Services, or, if Physio is unable to do so, return the fees paid to Physio for such deficient Services. Except as specifically set forth herein, Physio expressly disclaims any and all warranties with respect to the services, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. Physio does not warrant that the services will be uninterrupted or error-free.

Exclusions and Limitations of Liability. In no event shall Physio be liable to Buyer or other employee, contractor or agent for any indirect, incidental, special, or consequential damages arising in connection with this agreement (whether in warranty, contract or tort, including negligence, and even if Physio has been advised of the possibility thereof), including without limitation medical expenses, loss of revenue or profits, or damages resulting from interruptions in or unavailability of telecommunications or Internet connections to the service, or from the impact of the services on any Buyer system.

PHYSIO'S TOTAL LIABILITY TO BUYER FOR DAMAGES WITH RESPECT TO THE SERVICES PROVIDED UNDER THIS AGREEMENT AND OTHERWISE ARISING UNDER THIS AGREEMENT REGARDLESS OF THE BASIS UNDER WHICH BUYER IS ENTITLED TO CLAIM DAMAGES (INCLUDING BREACH, NEGLIGENCE, OR ANY OTHER CONTRACT OR TORT CLAIM) SHALL NOT EXCEED THE FEES DUE HEREUNDER. EACH PARTY RECOGNIZES AND AGREES THAT THE WARRANTY DISCLAIMERS AND LIABILITY AND REMEDY LIMITATIONS IN THIS AGREEMENT ARE MATERIAL BARGAINED-FOR BASES OF THIS AGREEMENT AND THAT THEY HAVE BEEN TAKEN INTO ACCOUNT AND REFLECTED IN DETERMINING THE CONSIDERATION TO BE GIVEN BY EACH PARTY UNDER THIS AGREEMENT AND IN THE DECISION BY EACH PARTY TO ENTER INTO THIS AGREEMENT.

Quote Number: 00060224