



ORANGE COUNTY FIRE AUTHORITY

AGENDA

BOARD OF DIRECTORS REGULAR MEETING
Thursday, March 23, 2017
6:00 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 Board of Directors 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 Board, 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 Board. 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 Robert Benoun

PLEDGE OF ALLEGIANCE by Director Murray

ROLL CALL

ADMINISTRATION OF OATH OF OFFICE FOR NEW MEMBERS

PRESENTATIONS

1. **Requests for Commendations and Proclamations**

Submitted by: Sherry Wentz, Clerk of the Authority

- A. Recognition of Santa Ana Police Officers Elizalde, Esparza, Gonzales, and Corporal Velasquez for their water rescue life saving efforts.
- B. Recognition of Santa Ana Police Officers Baek and Jezulin for their structural fire life saving efforts.
- C. Recognition of former OCFA Board Member Dwight Robinson for his service.
- D. Recognition of former OCFA Board Chair for his service.

Recommended Action:

Approve request as submitted and make presentations to those present.

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 Board on items within the Board'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 Board as a whole, and do not engage in dialogue with individual Board 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 Board of Directors meeting.

CLOSED SESSION

CS1. CONFERENCE WITH LABOR NEGOTIATOR

Agency Designated Representative: Peter Brown, Liebert Cassidy Whitmore
Employee Organizations: Orange County Professional Firefighters Association,
Local 3631
Authority: Government Code Section 54957.6

CS2. CONFERENCE WITH LABOR NEGOTIATOR

Agency Designated Representative: Brigitte Gibb, Human Resources Director
Employee Organizations: Chief Officers Association
Authority: Government Code Section 54957.6

CS3. CONFERENCE WITH LEGAL COUNSEL–ANTICIPATED LITIGATION

Authority: Government Code Section 54956.9(d)(2) – Significant Exposure to Litigation (4 cases)

CS4. PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Position: General Counsel
Authority: Government Code Section 54957(b)(1)

CLOSED SESSION REPORT

REPORT FROM THE BUDGET AND FINANCE COMMITTEE CHAIR

REPORT FROM THE CLAIMS SETTLEMENT COMMITTEE CHAIR

REPORT FROM THE FIRE CHIEF

- Recognition of Assistant Chief Dave Thomas and introduction of new Assistant Chief Dave Anderson
- Emergency Command Center Dispatch Stats (Schroeder)
- Emergency Medical Service Demonstration Announcement (Young)

2. MINUTES

A. Minutes from the January 26, 2017, Special Board of Directors Meeting
Submitted by: Sherry Wentz, Clerk of the Authority

Recommended Action:
Approve as submitted.

3. CONSENT CALENDAR

A. Approval of Drowning Prevention Awareness Proclamation

Submitted by: Sherry Wentz, Clerk of the Authority

Recommended Action:
Approve as submitted.

B. FY 2016/17 Mid-Year Budget Adjustment

Submitted by: Lori Zeller, Assistant Chief/Business Services Department

Budget and Finance Committee Recommendation: *APPROVE*

Recommended Action:

Authorize the proposed mid-year budget adjustments and transfers.

C. 2017 Update – Financial Stability Budget Policy

Submitted by: Lori Zeller, Assistant Chief/Business Services Department

Budget and Finance Committee Recommendation: *APPROVE*

Recommended Action:

Adopt the updated *Financial Stability Budget Policy*.

D. Board Member Retirement Savings Plan Resolution

Submitted by: Brigitte Gibb, Director/Human Resources Division

Recommended Action:

Approve the proposed resolution to allow OCFA Board Members to enroll in 457 Omnibus Budget Reconciliation Act mandatory retirement savings plan.

E. Reserve Firefighter Program Status Update

Submitted by: Dave Thomas, Assistant Chief/Operations Department

Recommended Action:

Receive and file the report.

F. Conduct Analysis of Field Operations: Aircraft Rescue Fire Fighting Operations

Submitted by: Brian Young, Assistant Chief/Organizational Planning Department

Budget and Finance Committee Recommendation: *APPROVE*

Recommended Action:

Establish a 2.5% specialty compensation for Aircraft Rescue Fire Fighting trained personnel who are certified Mobile Crane Operators.

G. Secured Fire Protection Agreements for Oakcrest Heights and Trevana I

Submitted by: Brian Young, Assistant Chief/Organizational Planning Department

Recommended Actions:

1. Approve and authorize the Fire Chief or his designee to execute Secured Fire Protection Agreements with Savi Ranch II Housing Partners, L.P., as related to Oakcrest Heights, Yorba Linda and Meritage Homes of California, Inc., as related to Trevana I, Irvine.
2. Direct the Clerk of the Authority to record these Secured Fire Protection Agreements in the Official Records of the County of Orange, and furnish the developer a copy of the conformed documents within fifteen days of recordation.
3. Approve the proposed Resolution entitled A RESOLUTION OF THE ORANGE COUNTY FIRE AUTHORITY BOARD OF DIRECTORS AMENDING THE ROLES/RESPONSIBILITIES/AUTHORITIES MATRIX TO DEFINE APPROVAL AUTHORITY FOR SECURED FIRE PROTECTION AGREEMENTS.

END OF CONSENT CALENDAR**4. PUBLIC HEARING(S)**

No items.

5. DISCUSSION CALENDAR**A. Fiscal Year 2015/16 Backfill/Overtime and Calendar Year 2016 Total Earnings/Compensation Analysis**

Presented by: Lori Zeller, Assistant Chief/Business Services Department

Budget and Finance Committee Recommendation: *APPROVE*

Recommended Actions:

1. Direct staff to continue pursuing reductions in overtime by filling permanent vacancies (excluding vacancies required by MOU) as quickly as possible after the positions become vacant.
2. Direct staff to continue using overtime to fill temporary vacancies rather than hiring additional personnel, recognizing this as a cost-effective practice for temporary needs.

B. Discussion of Member Agency Financial Equity Issues and Potential Liability of Member Agencies Upon Withdrawal From OCFA or Upon Expiration of OCFA's Joint Powers Agreement and Requests Made by City of Irvine and County of Orange for OCFA to Engage in Discussions and Negotiations regarding Financial Equity Issues; Potential Formation of an Equity Ad Hoc Committee

Presented by: Lori Zeller, Assistant Chief/Business Services Department

Recommended Actions:

1. Reaffirm Board's prior May 26, 2016, direction rescinding the formation of a 2016 Equity Ad Hoc Committee, noting it is at the discretion of the two agencies, County of Orange and City of Irvine, to deliberate the issue of equity and, when appropriate, present proposed options to the Board of Directors.
2. Reaffirm Board's prior September 22, 2016, direction to forward the topics relating to member agency obligation for pension liabilities to the Pension Ad Hoc Committee.
3. Receive oral status report from the Pension Ad Hoc Committee Chair.

BOARD MEMBER COMMENTS

ADJOURNMENT - The next regular meeting of the Orange County Fire Authority Board of Directors is scheduled for Thursday, May 25, 2017, at 6:00 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 16th day of March 2017.

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

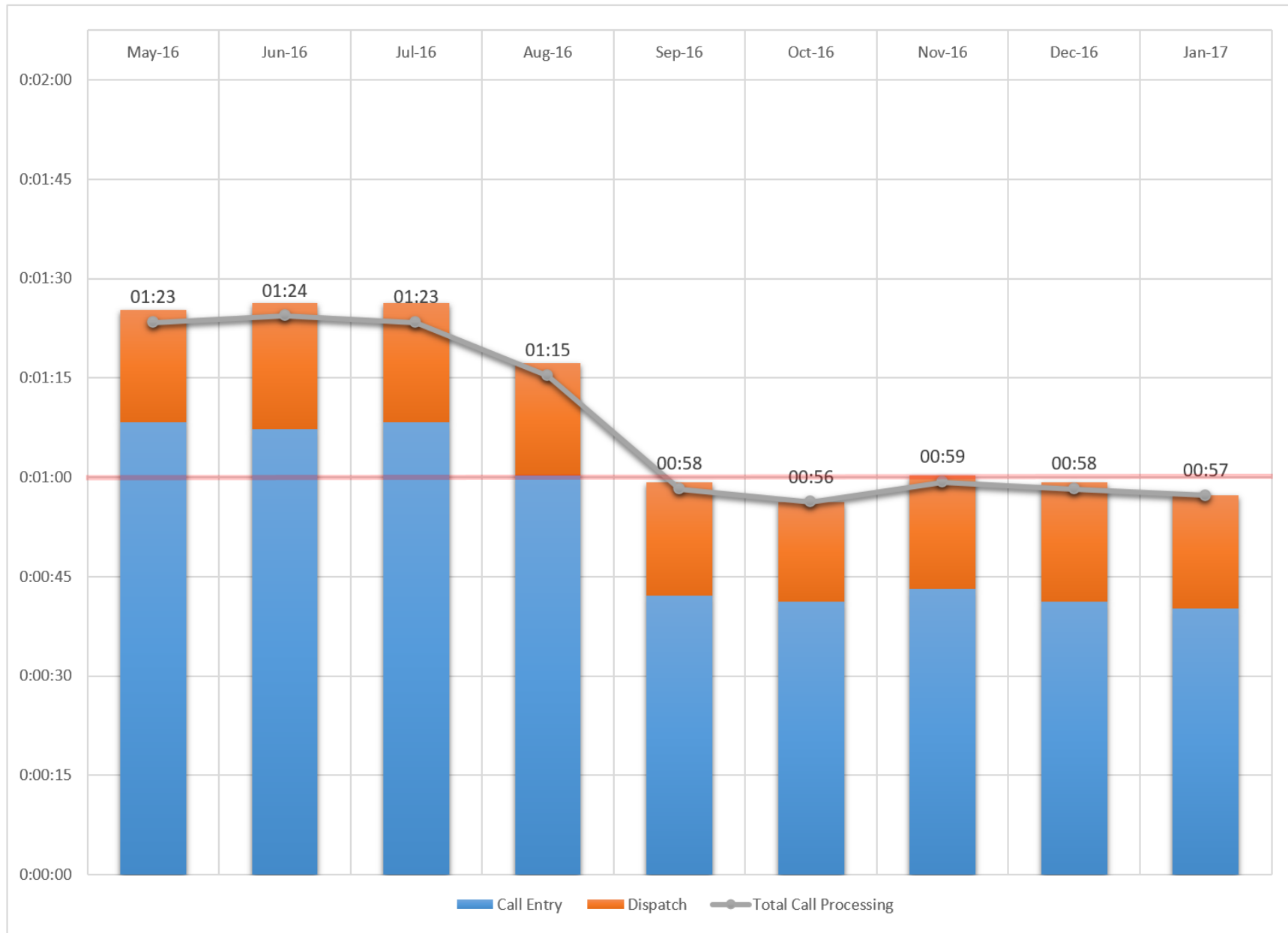
UPCOMING MEETINGS:

Human Resources Committee Meeting	Tuesday, April 4, 2017, 12 noon
Budget and Finance Committee Meeting	Wednesday, April 12, 2017, 12 noon
Claims Settlement Committee Meeting	Thursday, April 27, 2017, 5:00 p.m.
Executive Committee Meeting	Thursday, April 27, 2017, 5:30 p.m.

AGENDA ITEM NO. 1A

There are no supportive materials
for Presentation Item No. 1A

Emergency Command Center Call Processing Performance (Core Calls/80th Percentile)



MINUTES ORANGE COUNTY FIRE AUTHORITY

**Board of Directors Special Meeting
Thursday, January 26, 2017
5:00 P.M.**

**Regional Fire Operations and Training Center Board Room
1 Fire Authority Road
Irvine, CA 92602-0125**

CALL TO ORDER

A special meeting of the Orange County Fire Authority Board of Directors was called to order on January 26, 2017, at 5:01 p.m. by Chair Hernandez.

INVOCATION

Senior Chaplain Dave Keehn offered the invocation.

PLEDGE OF ALLEGIANCE

Director Shawver led the Assembly in the Pledge of Allegiance to the Flag.

ROLL CALL

Leah Basile, Lake Forest
Tim Brown, San Clemente
Sergio Farias, San Juan Capistrano
Carol Gamble, Rancho Santa Margarita
Dave Harrington, Aliso Viejo
Noel Hatch, Laguna Woods
Robert Johnson, Cypress
Al Murray, Tustin
Ed Sachs, Mission Viejo
Don Sedgwick, Laguna Hills
Todd Spitzer, County of Orange
Elizabeth Swift, Buena Park

Lisa Bartlett, County of Orange
Laurie Davies, Laguna Niguel
Melissa Fox, Irvine
Craig Green, Placentia
Shelley Hasselbrink, Los Alamitos
Gene Hernandez, Yorba Linda
Joe Muller, Dana Point
Bill Nelson, Villa Park
Vicente Sarmiento, Santa Ana
David Shawver, Stanton
Michele Steggell, La Palma
Tri Ta, Westminster

Absent: Ellery Deaton, Seal Beach

Also present were:

Fire Chief Jeff Bowman
Assistant Chief Brian Young
General Counsel David Kendig
Assistant Chief Lori Smith
Clerk of the Authority Sherry Wentz

Assistant Chief Dave Thomas
Assistant Chief Lori Zeller
Assistant Chief Mike Schroeder
Human Resources Director Brigitte Gibb

ADMINISTRATION OF OATH OF OFFICE FOR NEW MEMBERS (F: 11.02C)

Chair Hernandez welcomed newly appointed Directors Leah Basile of Lake Forest, Sergio Farias of San Juan Capistrano, Melissa Fox of Irvine, Dave Harrington of Aliso Viejo, and Bill Nelson of Villa Park.

Director Sarmiento arrived at this point (5:03 p.m.).

Director Ta arrived at this point (5:05 p.m.).

Fire Chief Jeff Bowman welcomed the newly appointed Directors and introduced Clerk of the Authority Sherry Wentz, who administered the Oath of Office.

1. PRESENTATIONS

No items.

PUBLIC COMMENTS (F: 11.11)

Stephen Wontrobski, Mission Viejo resident, addressed staff overtime and Stanford University's offer to review OCFA's unfunded liability.

Director Sedgwick arrived at this point (5:14 p.m.).

CLOSED SESSION (F: 11.15)

General Counsel David Kendig reported the Board would convene to Closed Session to consider the matter on the Agenda identified as CS1, Conference with Legal Counsel – Anticipated Litigation.

Chair Hernandez recessed the meeting to Closed Session at 5:25 p.m.

Director Spitzer left at this point (5:25 p.m.).

CS1. CONFERENCE WITH LEGAL COUNSEL–ANTICIPATED LITIGATION

Authority: Government Code Section 54956.9(d)(2) – Significant Exposure to Litigation
(1 case)

Director Brown arrived at this point (5:28 p.m.).

Director Steggell arrived at this point (5:45 p.m.).

Chair Hernandez reconvened the meeting from Closed Session at 6:30 p.m.

Director Sarmiento left at this point (6:33 p.m.).

Minutes

OCFA Board of Directors Special Meeting

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CLOSED SESSION REPORT (F: 11.15)

General Counsel David Kendig reported the Board of Directors voted against releasing Closed Session and attorney client privileged documents to the Grand Jury. Director Brown voted in opposition.

REPORT FROM THE BUDGET AND FINANCE COMMITTEE CHAIR (F: 11.12)

Budget and Finance Committee Chair Sachs reported at its January 11, 2017, meeting, the Committee received the OCERS Quarterly Status Update, and approved the Request for Proposal (RFP) for Financial Audit Services. Chair Sachs reported the Audit RFP included a provision to preclude OCFA's current auditors from submitting a proposal, in order to ensure that the auditors rotate periodically and provide a fresh set of eyes on OCFA's financial statements. The Committee also voted unanimously to send the Monthly Investment Reports and the First Quarter Financial Newsletter to the Executive Committee for its approval. The Committee voted unanimously to send the Annual Grant Priorities, the FY 2016/17 Mid-Year Financial Report, and the Phase Three Service Delivery Enhancements to the Board of Directors for its approval.

REPORT FROM THE HUMAN RESOURCES COMMITTEE CHAIR (F: 11.12)

Human Resources Committee Chair Shawver reported at the January 3, 2017, meeting, the Committee received the Human Resources Committee Orientation; received and filed the California Employment Law Update, Quarterly Human Resources Accomplishment/Project Update, and Professional Standards Unit Update. The Committee discussed and voted unanimously to send the consideration of the Classification Specifications – Title Change and New Classifications to the Executive Committee with the recommendation that the Committee approve the item.

REPORT FROM THE CLAIMS SETTLEMENT COMMITTEE CHAIR (F: 11.12)

Claims Settlement Committee Chair Hernandez reported the Claims Settlement Committee held a special meeting to consider one case of anticipated litigation. There was no reportable action.

REPORT FROM THE FIRE CHIEF (F: 11.14)

Fire Chief Jeff Bowman presented the FY 2016/17 Domain Objectives Mid-Year Update. He introduced Assistant Chief Schroeder who provided an overview of the contingency funds, and the Regional Fire Operations and Training Center AV upgrades. Fire Chief Bowman reported on the recent rainfall and introduced Division Chief John Abel, the acting duty chief during the rainstorms, who reported on the activity and coordination efforts to keep the public safe.

Fire Chief Bowman introduced Assistant Chief Young who presented a fire service deployment video and addressed its key points.

2. MINUTES

A. Minutes from the November 17, 2016, Regular Board of Directors Meeting (F: 11.06)

On motion of Director Johnson and second by Director Sachs, the Board of Directors voted to approve the Minutes of the November 17, 2016, Regular Board Meeting as submitted. Directors Basile, Farias, Fox, Harrington, Hasselbrink, Murray, and Nelson were recorded as abstentions due to their absence from the meeting.

Directors Sarmiento and Spitzer were absent for the vote.

3. CONSENT CALENDAR (Agenda Item Nos. 3B and 3C were pulled for separate consideration.)

A. FY 2016/17 Mid-Year Financial Report (F: 15.04)

On motion of Director Murray and second by Director Ta, the Board of Directors voted to:

1. Approve a budget adjustment in the General Fund (Fund 121) increasing expenditures to allocate \$9,814,477 of available unencumbered funds identified in the FY 2015/16 financial audit to OCFA's unfunded pension liability, in accordance with the OCFA's Expedited Pension Payment Plan.
2. Direct staff to return to the Board of Directors in March 2017 for approval of all additional budget adjustments discussed herein for the FY 2016/17 budget.

Directors Sarmiento and Spitzer were absent for the vote.

B. Annual Grant Priorities for 2017 (F: 11.10G)

Director Bartlett pulled this item from the Consent Calendar to inquire about OCFA applying for the 2017 Federal Emergency Management Agency Fire Prevention and Safety Grant.

On motion of Director Bartlett and second by Director Murray, the Board of Directors voted to approve OCFA's Annual Grant Priorities for 2017.

Directors Sarmiento and Spitzer were absent for the vote.

C. Award of Public Works Contract for Tenant Improvements – Urban Search and Rescue Warehouse (F: 22.05A1a)

Director Sachs pulled this item from the Consent Calendar for clarification of the terms addressing the completion of the contract.

On motion of Director Gamble and second by Director Murray, the Board of Directors voted to:

1. Approve the plans and specifications for the tenant improvements at the US&R Warehouse.
2. Approve and award the public works contract to Hoffman Management and Construction Corporation in the amount of \$616,258.
3. Authorize a 10% (\$61,625) allowance for contingency.

Directors Sarmiento and Spitzer were absent for the vote.

D. Secured Fire Protection Agreement for South Cove (Dana Point) (F: 18.14)

On motion of Director Murray and second by Director Ta, the Board of Directors voted to:

1. Approve and authorize the Fire Chief or his designee to execute a Secured Fire Protection Agreement with 27 DBV Owner, LLC, as related to South Cove (Doheny Village), Dana Point.
2. Direct the Clerk of the Authority to record the Secured Fire Protection Agreement in the Official Records of the County of Orange, and furnish the developer a copy of the conformed documents within fifteen days of recordation.

Directors Sarmiento and Spitzer were absent for the vote.

E. Initial Budget Adjustment to Replace Losses Incurred at the Fire Station 61 Fire (F: 19.07C61A)

On motion of Director Murray and second by Director Ta, the Board of Directors voted to:

1. Approve an initial budget adjustment in the amount of \$3 million to be allocated between the General and the Capital Improvement Program funds at staff's discretion to be used for the purposes of replacing vehicles and equipment lost at Fire Station 61.
2. Direct staff to return to include any additional budget adjustments required to complete the replacement of losses in the March 2017 Mid-Year Budget Adjustment.

Directors Sarmiento and Spitzer were absent for the vote.

END OF CONSENT CALENDAR

4. PUBLIC HEARING(S)

No items.

5. DISCUSSION CALENDAR

A. Board Member Retirement Savings Plan Options (F: 17.05A)

Human Resources Director Brigitte Gibb presented Retirement Savings Plan Options.

On motion of Director Green and second by Director Johnson, the Board of Directors voted to direct staff to enroll the Board Members into a 457 Omnibus Budget Reconciliation Act (OBRA) mandatory retirement savings plan.

Directors Sarmiento and Spitzer were absent for the vote.

B. Service Delivery Enhancements – Phase Three (F: 17.10D) (X: 18.13)

Assistant Chief Brian Young provided a PowerPoint presentation for the Service Delivery Enhancements - Phase Three.

On motion of Director Davies and second by Director Johnson, the Board of Directors voted to:

1. Direct staff to include funding for the Phase Three enhancements in the Mid-Year Budget Adjustments that will be submitted to the Board in March, at a partial-year cost of \$684,764.
2. Authorize staff to add 12 firefighter positions to the Master Position Control (four post-positions, with three employees per post-position to cover three shifts for 24/7 coverage).

Directors Sarmiento and Spitzer were absent for the vote.

ELECTION OF CHAIR/VICE CHAIR (F: 11.02B)

Chair Hernandez opened the nominations for Chair of the Board of Directors.

Director Shawver nominated Vice Chair Swift with a second by Director Murray.

There were no additional nominations.

Director Murray requested the Board vote Vice Chair Swift as Chair by acclamation.

The Board acclaimed Vice Chair Swift as Chair for the ensuing term. Directors Sarmiento and Spitzer were absent for the vote.

Chair Swift opened the nominations for Vice Chair of the Board of Directors.

Director Hatch nominated Director Shawver with a second by Director Ta.

Director Davies nominated Director Sachs with a second by Director Harrington.

Chair Swift closed the nominations for Vice Chair of the OCFA Board of Directors.

The following Directors (9) voted in support of Director Shawver:

Melissa Fox, Lake Forest	Noel Hatch, Laguna Woods
Shelley Hasselbrink, Los Alamitos	Robert Johnson, Cypress
Bill Nelson, Villa Park	David Shawver, Stanton
Michelle Steggell, La Palma	Elizabeth Swift, Buena Park
Tri Ta, Westminster	

The following Directors (13) voted in support of Director Sachs.

Lisa Bartlett, County of Orange	Leah Basile, Lake Forest
Tim Brown, San Clemente	Laurie Davies, Laguna Niguel
Sergio Farias, San Juan Capistrano	Carol Gamble, Rancho Santa Margarita
Craig Green, Placentia	Dave Harrington, Aliso Viejo
Gene Hernandez, Yorba Linda	Joseph Muller, Dana Point
Al Murray, Tustin	Ed Sachs, Mission Viejo
Don Sedgwick, Laguna Hills	

Directors Sarmiento and Spitzer were absent for the vote.

Chair Swift requested the Board vote Director Sachs as Vice Chair by acclamation.

The Board acclaimed Director Sachs as Vice Chair for the ensuing term. Directors Sarmiento and Spitzer were absent for the vote.

BOARD MEMBER COMMENTS (F: 11.13)

Chair Swift thanked Director Hernandez for his service as Board Chair.

Director Hernandez praised the Board of Directors, Chief Bowman, and wished Chair Swift well during her tenure.

Director Sedgwick, after participating on a ride-along with Station 22, complemented the firefighters for their professionalism.

Director Bartlett requested the Board agendaize the subject of equity.

Director Gamble thanked former Chair Hernandez for his service, praised Director Sachs and Shawver, and Chair Swift, and offered a “shout out” to Chief Abel for his presentation and his constant updates during the rain storms; keeping the council and city manager of Rancho Santa Margarita well informed.

Director Murray congratulated Chair Swift and Vice Chair Sachs on their appointments, and Director Shawver for his nomination as Vice Chair; and noted Director Shawver’s recent appointment to the Orange County Sanitation District.

Director Hernandez commended Captain/Paramedic Joe Menton from Station 51, after responding to a 911 call, he ensured the owners pet was cared for and followed-up on the patient.

Vice Chair Sachs thanked those who voted for Director Shawver and himself; offered a personal thanks to Director Hernandez for his work and efforts for the Board, and noted looking forward to working with Chair Swift. He suggested new Board Members add the PulsePoint app on their phones (which provides notification of emergency calls within close proximity), and reported during the storms, staff responded to fifty-five flooding calls.

Director Fox looked forward to serving on OCFA Board.

Director Hatch complimented Director Hernandez for his dedicated service as Chair of the Board; praised the direction the Board took during Director Murray’s service as Chair during some rather difficult times; complimented Vice Chair Sachs as he takes on his new position, and complimented the firefighters of Fire Station 22 for their dedicated service to his community.

Chair Swift commented on the fire at Fire Station 61, mentioning the future plans for the new station include breaking ground in April 2017, with a projected completion date of March 2018. She commended the firefighters who rescued the trapped individuals on the Sky Cabin (a non-thriller ride) at Knott’s Berry Farm.

ADJOURNMENT – Chair Swift adjourned the meeting at 7:54 p.m. The next regular meeting of the Orange County Fire Authority Board of Directors is scheduled for Thursday, March 23, 2017, at 6:00 p.m.

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

DROWNING PREVENTION AWARENESS

WHEREAS, drowning is the leading cause of death and disability in California for children under five years of age, and in 2016 there were 3 fatal drownings and 26 non-fatal incidents involving children in Orange County; and

WHEREAS, drowning is a major problem for adults ages 35-64, and as a result there were 16 fatal drownings and 12 non-fatal incidents for adults in 2016; and

WHEREAS, fatal and non-fatal drowning is a silent event, occurring in as little as two inches of water, including swimming pools, spas, lakes, the ocean, and any other body of water; and

WHEREAS, the themes of this year's water safety campaign "Always Watch Your Child Around Water" and "Never Swim Alone," in-depth information will be provided by staff on what Orange County residents can do to prevent drowning; and

WHEREAS, the initiatives set forth in the "ABCs of Water Safety" program will increase public awareness regarding proper procedures to prevent this needless tragedy; and

WHEREAS, the Orange County Fire Authority, in collaboration with the Orange County Task Force on Drowning Prevention, will be taking this opportunity to increase public awareness about drowning prevention through a diverse community outreach campaign; and

WHEREAS, OCFA will launch its 24-week water safety campaign in May and continue through October.

NOW, THEREFORE BE IT RESOLVED, that the Orange County Fire Authority Board of Directors does hereby proclaim its participation in the "Always Watch Your Child Around Water" and "Never Swim Alone" 2017 campaigns—that kick-off in May and continue through October by encouraging all families, parents, residents, schools, recreational facilities, businesses, and homeowner associations to become partners in preparedness by increasing their knowledge of proper safety measures in drowning prevention.



Orange County Fire Authority
AGENDA STAFF REPORT

Board of Directors Meeting
March 23, 2017

Agenda Item No. 3B
Consent Calendar

FY 2016/17 Mid-Year Budget Adjustment

Contact(s) for Further Information

Lori Zeller, Assistant Chief Business Services Department	lorizeller@ocfa.org	714.573.6020
Tricia Jakubiak, Treasurer	triciajakubiak@ocfa.org	714.573.6301
Deborah Gunderson, Budget Manager	deborahgunderson@ocfa.org	714.573.6302

Summary

This item is submitted to request approval to adjust revenues, expenditures and transfers to reflect changes identified after adoption of the FY 2016/17 budget.

Prior Board/Committee Action

Budget and Finance Committee Recommendation: *APPROVE*

A comprehensive mid-year financial review was presented to the Budget and Finance Committee and the Board of Directors in January, highlighting proposed mid-year changes that are needed to the FY 2016/17 budget based on events that have occurred since the budget was adopted last May. The Board directed staff to return in March with the technical budget adjustments required to implement the proposed changes.

At its regular March 8, 2017, meeting, the Budget and Finance Committee reviewed and unanimously recommended approval of this item.

RECOMMENDED ACTION(S)

Authorize the proposed mid-year budget adjustments and transfers.

Impact to Cities/County

The proposed mid-year adjustments to the FY 2016/17 budget will have no impact to cash contract city charges in the current fiscal year. Future increases for cash contract cities are currently estimated at 4.5% per year for FY 2017/18 and FY 2018/19 (excluding the catch-up provision) based on the Five-Year Financial Forecast.

Fiscal Impact

Financial impact has been presented in the attached report.

Background

See extended background.

The attached Combined Budget Summary represents the total adjusted budget for the OCFA and details the revenue and expenditure budgets in each fund assuming these proposed adjustments are approved.

Attachment(s)

1. FY 2016/17 Mid-Year Budget Adjustments
2. Combined Budget Summary

Background

This report is submitted to request approval of the technical budget adjustments following the January mid-year financial review. The following is a summary of the significant changes being requested (See Attachment 1 for the total proposed adjustment for each Fund).

FY 2016/17 General Fund

Overall, proposed General Fund changes result in a total revenue increase of approximately \$14.3 million and a total expenditure increase of approximately \$15.4 million.

Revenue Adjustments - \$14.3 million

Property Taxes: Based on secured tax billings provided by the Auditor/Controller, preliminary projections indicate an approximately \$2.9 million increase over budget. **\$2,861,592**

Assistance by Hire (ABH): Assistance by Hire is the term used when OCFA responds to requests for assistance on a reimbursement basis, to incidents outside our responsibility area. Current year activity is \$9.2 million greater than budget, due to various out-of-county responses. Staff will be monitoring this source of revenue for additional reimbursements later in the fiscal year. A corresponding expenditure adjustment is also proposed to the Assistance by Hire/Emergency Incident Costs category. **\$9,250,315**

Miscellaneous: This category of revenue adjustments includes adjustments for the receipt of revenues from bankruptcy proceeds, interest assumption changes, and a one-time payment to OCFA from the OCPFA Excess Trust Fund as required by the Agreement. **\$2,205,064**

Expenditure Adjustments - \$15.4 million

Assistance by Hire/Emergency Incident Costs: As mentioned under Revenue for Assistance by Hire, an adjustment of approximately \$7.3 million is needed for out-of-county responses, primarily in the overtime/backfill category, but also for response-related supplies and services. **\$7,335,012**

Academies and Training Costs: An additional career firefighter academy is necessary to fill vacancies, and has been added to the schedule for this fiscal year. Costs for the academy include overtime for the cadre, pre-employment screening, supplies for use during the academy, and service center costs for turnouts, etc. Included in this category are overtime costs for an upcoming dispatcher academy and Flight safety training for Air Ops. **\$1,923,866**

Personnel: On June 23, and September 1, 2016, the Board approved new MOUs with the Chief Officers Association, and the Orange County Professional Firefighters Association, respectively. These included increases to salaries, which were partially offset by increased employee retirement contributions. Also included in this expenditure category are the Phase Three Services Delivery Enhancements approved by the Board in January 2017, and, a correction to the AFTO budget, extra-help in planning and development, and a change to full-time status for an existing part-time multi-media position. The net impact is an approximately \$5.7 million ongoing increase to expenditures. **\$5,747,423**

Miscellaneous: This expenditure category includes miscellaneous increases to the budget for air operations maintenance, sand, information technology licenses, supplies for OC All Hazards Incident Management team, HazMat Multi-Rae Program, Employee relations budget, Zoll monitors extended warranty, increase to the annual Open House budget, remodel to Fire Station 6 kitchen, additional professional services for on-site consultant plan review, and a reduction to the TRAN debt service costs as a TRAN was not issued this fiscal year. **\$424,079**

General Fund / Fund Balance and Capital Improvement Program (CIP) Funds

Beginning Fund Balances: As part of the annual mid-year adjustment, beginning fund balances will be adjusted in accordance with the FY 2015/16 year-end audit.

Budget Transfers: After accounting for the MOU and other requested expenditure adjustments, the amount of General Fund surplus available to transfer to the CIP funds has changed. The General Fund transfers out to the CIP funds will be increased by \$5,540,105. Transfers into the following funds will be adjusted as follows: General Fund CIP (Fund 12110) decreased by \$51,608; and Fire Apparatus (Fund 133) increased by \$5,591,713.

Fund 12110 – General Fund CIP: To properly classify expenditures and comply with accounting standards, the expenditure budget of \$191,117 for the Emerald Bay fire station improvements will be transferred to the General Fund CIP Fund from Fund 123 – Fire Station and Facilities.

Additionally, a new project is being added for \$350,000, using Drought Augmentation Funds received from CAL FIRE. This project is to provide OCFA increased capability to monitor the state of the weather as part of our Fire Danger Operating Plan (FDOP) and to detect and monitor wildland fires in State Responsibility Lands (SRA) through a network of cameras placed in strategic locations throughout the County. These cameras will be monitored primarily from a band of video monitors that will be placed in the OCFA EOC for viewing as needed prior to fires as well as monitoring on-going fires providing increased responder awareness and efficiencies in dispatch.

Fund 123 – Fire Stations and Facilities: New developer contribution revenues and bankruptcy proceeds in the total amount of \$671,748 will be recognized in this fund. Concurrently, as described above, the Emerald Bay fire station improvement project expenditure budget of \$191,117 is being moved from this fund. The remaining \$358,883 from the original Emerald Bay project budget is being transferred to the US&R warehouse project to accommodate the tenant improvements approved by the Board in January 2017.

Fund 124 – Communications and Information Systems: Bankruptcy proceeds and updated interest rate assumptions in the net amount of \$22,029 will be recognized in this fund. The expenditure budget will be adjusted down by \$1,755,117 as the Integrated Fire Prevention, Incident Reporting, and Next Gen CAD2CAD projects are being moved to the subsequent fiscal year.

Fund 133 – Fire Apparatus: Bankruptcy proceeds and updated interest rate assumptions in the amount of \$25,430 will be recognized in this fund. Additionally, expenditures will be increased in the amount of \$201,188 for the addition of a Dozer Transport Tractor funded by the CAL FIRE Drought Augmentation funds, and \$219,000 for vehicles to be used by new Administrative Captains.

Fund 171 – Structural Fire Fund Entitlement: Interest rate assumptions and resulting expected revenues will be adjusted down by \$672 in this fund. Additionally, an expenditure budget commensurate with the unexpended fund balance of \$584,464 in the Fund will be appropriated, allowing members with remaining funds to expend them in this fiscal year, should they so choose.

Fund 190 – Self Insurance: Interest rate assumptions and resulting expected revenues will be adjusted down by \$71,357 in this fund. The expenditure budget for the cash-flow timing of medical payments will be increased by \$1,763,344 as recommended by the latest actuarial report of February 6, 2017.

FY 2016/17 Mid-Year Budget Adjustments

The following adjustments to the FY 2016/17 budget are requested:

General Fund (Fund 121)

Budgeted Beginning Fund Balance - \$10,400,956 increase
Revenue - \$14,316,971 increase
Appropriations - \$15,430,380 increase
Operating Transfer Out - \$5,540,105 increase

General Fund CIP (Fund 12110)

Budgeted Beginning Fund Balance - \$4,362,741 increase
Appropriations - \$541,117 increase
Operating Transfer In - \$51,608 decrease

Fire Stations and Facilities Fund (Fund 123)

Budgeted Beginning Fund Balance - \$1,868,281 increase
Revenue - \$671,748 increase
Appropriations - \$191,117 decrease

Communications and Information Systems Fund (Fund 124)

Budgeted Beginning Fund Balance - \$1,634,247 increase
Revenue - \$22,029 increase
Appropriations - \$1,755,117 decrease

Fire Apparatus Fund (Fund 133)

Budgeted Beginning Fund Balance - \$5,627,430 increase
Revenue - \$25,430 increase
Appropriations - \$420,188 increase
Operating Transfer In - \$5,591,713 increase

Structural Fire Fund Entitlement Fund (Fund 171)

Budgeted Beginning Fund Balance - \$24,198 decrease
Revenue - \$672 decrease
Appropriations - \$584,464 increase

Self-Insurance Fund (Fund 190)

Budgeted Beginning Fund Balance - \$117,407 decrease
Revenue - \$71,357 decrease
Appropriations - \$1,763,344 increase

**ORANGE COUNTY FIRE AUTHORITY
COMBINED BUDGET SUMMARY
FY 2016/17**

	121 General Fund	<u>CIP Funds</u>				<u>Other Funds</u>		Total
		12110 General Fund CIP (1)	123 Fire Stations & Facilities	124 Communications & Info. Systems	133 Fire Apparatus	171 SFF Entitlement	190 Self Insurance	
FUNDING SOURCES								
<i>Property Taxes</i>	230,301,459	-	-	-	-	-	-	230,301,459
<i>Intergovernmental</i>								
State Reimbursements	14,264,663	-	-	-	-	-	-	14,264,663
Federal Reimbursements	3,092,791	-	-	-	-	-	-	3,092,791
Community Redevelopment Pass-thru	9,706,233	-	-	-	-	-	-	9,706,233
<i>Charges for Current Services</i>								
Contracts	92,357,580	-	-	-	1,358,858	-	-	93,716,438
HMS Revenue	-	-	-	-	-	-	-	-
Fees - Community Risk Reduction	6,448,604	-	-	-	-	-	-	6,448,604
Other Charges for Services	104,951	-	-	-	-	-	-	104,951
ALS Reimbursements, Supplies	3,929,330	-	-	-	-	-	-	3,929,330
Charges for Workers' Comp	-	-	-	-	-	-	11,444,465	11,444,465
<i>Use of Money and Property</i>								
Interest	283,622	-	151,582	148,621	186,890	3,895	498,258	1,272,868
<i>Other</i>								
Developer contributions	-	-	630,394	-	-	-	-	630,394
Miscellaneous	4,295,254	-	120,546	203,511	124,886	-	-	4,744,197
<i>Other Funding Sources</i>								
Total Revenues & Other Financing Sources	364,784,487	-	902,522	352,132	1,670,634	3,895	11,942,723	379,656,393
Operating Transfer In	-	1,771,392	7,900,000	4,866,307	15,405,300	-	-	29,942,999
Beginning Fund Balance	73,446,407	4,761,135	15,845,512	18,977,557	14,788,654	584,464	73,720,054	202,123,783
TOTAL AVAILABLE RESOURCES	438,230,894	\$6,532,527	\$24,648,034	\$24,195,996	\$31,864,588	\$588,359	\$85,662,777	\$611,723,175
EXPENDITURES								
Salaries & Emp Benefits	\$319,982,082	\$0	\$0	\$0	\$0	\$0	\$0	\$319,982,082
Services & Supplies	34,179,470	2,151,527	1,183,814	-	100,000	584,464	9,257,363	47,456,638
Capital Outlay/Equipment	1,369,016	4,381,000	7,738,755	9,449,482	21,699,582	-	-	44,637,835
Debt Service	-	-	-	-	-	-	-	-
Total Expenditures	\$355,530,568	\$6,532,527	\$8,922,569	\$9,449,482	\$21,799,582	\$584,464	\$9,257,363	\$412,076,555
Appropriation for Contingencies	3,000,000	-	-	-	-	-	-	3,000,000
Operating Transfer Out	29,942,999	-	-	-	-	-	-	29,942,999
Ending Fund Balance	49,757,327	-	15,725,465	14,746,514	10,065,006	3,895	76,405,414	166,703,621
TOTAL FUND COMMITMENTS & FUND BALANCE	\$438,230,894	\$6,532,527	\$24,648,034	\$24,195,996	\$31,864,588	\$588,359	\$85,662,777	\$611,723,175

- (1) Project related budgets segregated for operational budget clarity purposes. As a sub-fund of the General Fund, revenues and expenditures are accounted for as the General Fund in the CAFR, however for cash-flow purposes the expenditures are tracked outside of the General Fund. Therefore 12110 requires cash-flow transfers in the same manner as the other CIP Funds.
- (2) Combined Budget Summary assumes all Mid-Year Budget Adjustments are approved by the Board. The categories are represented in gross order of magnitude and may be specifically adjusted as accounting transactions are finalized.



Orange County Fire Authority
AGENDA STAFF REPORT

Board of Directors Meeting
March 23, 2017

Agenda Item No. 3C
Consent Calendar

2017 Update – Financial Stability Budget Policy

Contact(s) for Further Information

Lori Zeller, Assistant Chief Business Services Department	lorizeller@ocfa.org	714.573.6020
Tricia Jakubiak, Treasurer	triciajakubiak@ocfa.org	714.573.6301
Deborah Gunderson, Budget Manager	deborahgunderson@ocfa.org	714.573.6302

Summary

This item is submitted for approval of updates to the *Financial Stability Budget Policy*.

Prior Board/Committee Action

Budget and Finance Committee Recommendation: *APPROVE*

The *Financial Stability Budget Policy* was originally adopted by the Board of Directors in May 2002, and was last updated in November 2013. The policy is periodically updated to maintain the policy in a manner that reflects the ongoing financial goals of the Authority.

At its regular March 8, 2017, meeting, the Budget and Finance Committee reviewed and unanimously recommended approval of this item.

RECOMMENDED ACTION(S)

Adopt the updated *Financial Stability Budget Policy*.

Impact to Cities/County

Strong fiscal policies are intended to assist OCFA in maintaining fiscal health and thereby ensuring that services are appropriately sustained for the communities we serve.

Fiscal Impact

Adoption of the updated policy has no fiscal impact; however, the actions taken as a result of having the policy in place should assist OCFA's fiscal health for the long-term.

Background

In May of 2002, the *Financial Stability Budget Policy* was approved to formally document contingency fund levels for the General Fund and establish annual funding targets for the CIP funds. In addition, the policy was designed to guide OCFA in making annual budget decisions that focus on 1) both short and long-term financial priorities and 2) the fiscal health of OCFA as an organization rather than focusing on a "fund-by-fund" basis.

The attached *Financial Stability Budget Policy* has been updated to reflect OCFA's current goals related to accelerated payment of unfunded liabilities, and to better align the timing of annual operating transfers with OCFA's budget and General Fund cash-flow cycle.

Prior Policy Terms

In the past, the policy required that surplus operating funds be transferred from the General Fund to the Capital Improvement Program (CIP) to fund future capital needs. The operating transfer to the CIP would occur in July of each fiscal year following budget adoption, and the amount of the transfer was based on budget figures. Subsequently, in March of each fiscal year, when the budget is adjusted for updated property tax revenue and expenditure data, the amount of the operating transfer would often require adjustment.

Furthermore, the timing of the annual transfers from the General Fund to the CIP each July has historically caused the cash-flow balance of the General Fund to be strained pending receipt of major property tax allocations that occur in December and April.

Proposed Updated Policy Terms

Staff is proposing to update the policy to balance the OCFA's current priorities of funding CIP needs as well as funding long-term liabilities. Rather than allocating 100% of surplus operating funds to the CIP, the updated policy would provide for 50% allocation to the CIP and 50% allocation to accelerated payment of unfunded liabilities.

The updated policy also provides for a change in timing for the annual transfers, so that the transfers will occur in March of each fiscal year, when actual property tax revenue amounts are known and expenditure data has been updated for the fiscal year. The timing change not only improves the accuracy of transfer amounts, but it improves the stability of cash-flow for the General Fund, pending receipt of property taxes in December.

[Attachment\(s\)](#)

Financial Stability Budget Policy – March 2017 Update

FINANCIAL STABILITY BUDGET POLICY

1. PURPOSE

1.1. To guide OCFA budget actions toward maintaining long-term financial stability and to establish contingency fund levels and annual funding targets for the Authority's General Fund and Capital Improvement Program (CIP) Funds.

1.2. To establish CIP fund balances that accumulate and deplete in harmony with the needs and timing of capital projects identified in the five-year CIP.

1.2.1.3. To facilitate accelerated payment of OCFA's unfunded liabilities for improved fiscal health.

2. ADOPTION AND REVIEW

2.1. This policy was originally adopted by the Board of Directors on May 23, 2002, and was implemented with the Fiscal Year 2002/03 Budget Update.

2.2. This policy shall be reviewed periodically for recommended revisions in order to maintain the policy in a manner that reflects the ongoing financial goals of the Authority.

2.3. Policy revisions shall be reviewed by the Budget and Finance Committee and approved by the Board of Directors.

3. POLICY

3.1. The Five-Year Financial Forecast shall be used as a budget tool that's updated annually in conjunction with the budget for projected revenues and expenditures. The Five-Year Forecast will include all OCFA budgetary funds to provide a picture of the Authority's overall fiscal health.

3.1.1 The Five-Year Forecast will also be updated whenever a significant financial event occurs or is anticipated to occur mid-year in order to assess the severity of the impact.

3.1.2 The Five-Year Forecast shall also be evaluated before undertaking any significant financial commitment to ensure the Authority's fiscal health is maintained.

- 3.1.3 It should be noted that data included in the first two years of the forecast is the most predictable and reliable.
- 3.1.4 Data contained in the outer years of the forecast is less reliable due to uncertainties regarding items such as future property tax growth, benefit costs, and capital needs. Although less reliable, the information is a useful indicator of trends and the potential need for early corrective intervention.
- 3.2. The proposed operating budget (General Fund) submitted by Authority staff shall be a balanced budget.
- 3.3. The Authority shall also strive to achieve a projected operating budget that's balanced for all years included in the Five-Year Financial Forecast.
- 3.4. The Authority shall maintain a contingency reserve in the General Fund set at 10% of operating expenditures for unplanned emergencies.
 - 3.4.1 Operating expenditures exclude grant-funded expenditures, ~~annual equity payments, accelerated payments toward unfunded liabilities,~~ and operating transfers out to the CIP.
- 3.5. Funds available for transfer out of the General Fund after funding annual ~~operating~~ expenses (net general fund revenue, or "surplus") shall be allocated ~~first to the~~ as follows:
- 3.5.1 Net General Fund, or surplus general fund revenue, shall be calculated for transfer each year as part of the March mid-year budget adjustments.
- 3.5.2 In March of each year, after funding any incremental increase required to ~~maintain the~~ 10% General Fund contingency reserve, ~~and then 50% of the remaining surplus shall be transferred to the CIP and 50% shall be allocated as accelerated payment of OCFA's unfunded liabilities (first toward pension liability until achieving an 85% funding level, and then toward Retiree Medical), except in the following circumstances:~~
 - 3.5.2.1. If the 50% allocation to the CIP, when combined with CIP fund balance and other CIP revenues, is insufficient to fund that year's CIP expenses, then a sufficient percentage of the surplus (up to 100%) may be transferred to the CIP to fund that year's CIP expenses. Any remainder shall be allocated as an accelerated payment of OCFA's unfunded liabilities.

3.5.2.2.If the 50% allocation to the CIP, when combined with CIP fund balance and other CIP revenues, exceeds the cost of projects in OCFA's five-year CIP (including projects identified as deferred) then the amount transferred to the CIP shall be reduced below 50% to only fund the incremental increase needed for funding of the five-year CIP. Any remainder shall be allocated as an accelerated payment of OCFA's unfunded liabilities.

3.5.3.6.The Authority shall review reserve fund levels annually for the CIP funds and establish annual funding targets as follows:

3.5.13.6.1 CIP funds will include:

- Fund 12110 – General Fund CIP
- ~~Fund 122 – Facilities Maintenance & Improvement~~
- Fund 123 – Fire Stations and Facilities~~Capital Projects~~
- Fund 124 – Communications & Information Systems~~Replacements~~
- Fund 133 – Fire Apparatus~~Vehicle Replacement~~

3.7.2 The amount of revenue available for transfer from the General Fund to the CIP shall be allocated based on the existing reserve balance in each CIP fund and based on the future needs identified in the five-year CIP, and conformed with Section 3.5.2 above.

Priority #1: Each CIP fund shall be allocated sufficient funds to meet planned expenditures included in the upcoming fiscal year. Sufficient funds can be a combination of existing fund balance plus new revenues and operating transfers in from the General Fund.

Priority #2: After meeting the needs for the upcoming fiscal year in each CIP fund, any additional funding shall be allocated based on planned expenditures included in the second fiscal year of the five-year CIP. This process shall be repeated for future years to the extent that funding is available.

Ultimate Funding Target: Although this status may or may not be achieved, a fully funded five-year CIP would be our ultimate goal and would allow OCFA to rest assured that all projects identified within our planning horizon have funds earmarked for those projects.

3.6.3.7.The Authority will analyze the feasibility of paying its annual retirement contributions to the Orange County Employees Retirement System (OCERS) early each year, to take advantage of the discount offered by OCERS.

~~3.6.13.7.1~~ OCERS reviews and sets the early payment discount rate each year~~has taken the approach to use the assumed rate of return for the system (7.25%) as the discount~~. The employer is given the full 7.25% discount set by OCERS if payment is made in January, a full year in advance, and one-half the 3.625% discount if payment is made six months in advance in July.



Orange County Fire Authority
AGENDA STAFF REPORT

Board of Directors Meeting
March 23, 2017

Agenda Item No. 3D
Consent Calendar

Board Member Retirement Savings Plan Resolution

Contact(s) for Further Information

Brigette Gibb, Director Human Resources Division	brigettegibb@ocfa.org	714.573.6353
Jim Ruane, Finance Manager/Auditor	jimruane@ocfa.org	714.573.6304

Summary

This item is submitted to seek approval of a resolution to allow OCFA Board Members to enroll into a 457 Omnibus Budget Reconciliation Act (OBRA) mandatory retirement savings plan.

Prior Board/Committee Action(s)

At the January 26, 2017, meeting, the Board voted to enroll the Board Members into a 457 OBRA.

RECOMMENDED ACTION(S)

Approve the proposed resolution to allow OCFA Board Members to enroll in 457 Omnibus Budget Reconciliation Act mandatory retirement savings plan.

Impact to Cities/County

Not Applicable.

Fiscal Impact

Not Applicable.

Background

Historically, OCFA Board Members have been classified as independent contractors of the OCFA. Legal Counsel has opined that Board Members are public officers in positions which meet five criteria designated by the Internal Revenue Service to be considered employees (not Independent Contractors). The payment of the stipend to Board Members triggers the obligation to enroll in a retirement savings plan. As employees, in addition to enrolling in a retirement savings plan, Board Members will be subject to various federal and state taxes.

On January 26, 2017, the Board approved the 457 (OBRA) deferred compensation plan, due to the low administrative complexity and the ability of each Board Member, upon separation, to immediately receive benefits without penalty. Approval of the attached resolution will allow the enrollment to occur.

Attachment(s)

1. Proposed Resolution
2. Plan Documents

RESOLUTION NO. 2017- XX

**A RESOLUTION OF THE ORANGE COUNTY FIRE AUTHORITY
BOARD OF DIRECTORS ESTABLISHING A DEFERRED
COMPENSATION PLAN FOR ELIGIBLE PART-TIME EMPLOYEES**

WHEREAS, the Board of Directors of the Orange County Fire Authority ("OCFA") has considered the establishment of a Deferred Compensation Plan to be made available to all eligible part-time employees pursuant to Federal legislation permitting such Plans; and

WHEREAS, **OCFA recognizes that adoption of a Deferred Compensation Plan will allow OCFA to satisfy its obligations under the Omnibus Budget Reconciliation Action of 1990; and**

WHEREAS, certain tax benefits could accrue to those participants contributing at least the minimum required amount from their current income in said Deferred Compensation Plan to meet their future financial requirement and supplement their Social Security benefits; and

WHEREAS, the National Association of Counties ("NACo") has established a Master Deferred Compensation Program for counties and political subdivisions permitting its member counties and their employees to participate in this program; and

WHEREAS, by adoption of the NACo Program, all regulatory, operational, administrative and fiduciary responsibilities are hereby assumed by NACo on behalf of OCFA; and

WHEREAS, NACo, as Plan Administrator, agrees to hold harmless and indemnify OCFA, its appointed and elected officers and participants from any loss from NACo or its Agent's failure to perform its duties and services pursuant to the NACo Program;

NOW, THEREFORE, BE IT RESOLVED, that the Orange County Fire Authority Board of Directors does hereby resolve as follows:

1. To adopt the NACo Deferred Compensation Program and hereby establish the OCFA Deferred Compensation Plan (pursuant to the attached Agreement) for the participation of all eligible part-time employees.
2. To authorize the Human Resources Director to execute for OCFA, individual enrollment forms with each said Board member and to act as the "Administrator" of the Plan representing OCFA, and to execute such agreements and contracts as are necessary to implement the Program. It is implicitly understood that, in addition to the incidental expenses of collecting and disbursing the Board member's deferral and other minor administrative matters, there shall be a cost to OCFA for the Program in an annual amount per participant as specified in certain other agreements.

PASSED, APPROVED, and ADOPTED this 23rd day of March, 2017.

Elizabeth Swift, CHAIR
Board of Directors

ATTEST:

SHERRY A.F. WENTZ, CMC
Clerk of the Authority

**NATIONAL ASSOCIATION OF COUNTIES
OBRA DEFERRED COMPENSATION PROGRAM**

ADMINISTRATIVE AGREEMENT

This OBRA Deferred Compensation Program Administrative Agreement (hereinafter "Agreement") is executed this _____ day of _____, 20____, by the among NACoServices, Inc., a subsidiary of the National Association of Counties (hereinafter "NACoServices"), _____ (hereinafter "Employer"), and Nationwide Retirement Solutions, Inc. (hereinafter "NRS").

WHEREAS, the National Association of Counties (hereinafter "NACo") endorses and NACoServices sponsors a prototype OBRA deferred compensation program ("Program") designed to supplement the NACo deferred compensation program under which the Employer has heretofore or in connection herewith adopted a deferred compensation plan; and

WHEREAS, Employer recognizes that adoption of a deferred compensation plan ("Plan") under the Program will allow Employer to satisfy its obligations under the Omnibus Budget Reconciliation Act of 1990 (hereinafter "OBRA"); and

WHEREAS, Employer recognizes that through the adoption of a Plan under the Program, all such regulatory, operational, administrative and other Plan management responsibilities are assumed by NACoServices on behalf of the Employer, in accordance with the Plan document, except as may be described herein, and certain responsibilities have been and may be delegated by NACoServices, to NRS as Program Administrator; and

WHEREAS, Employer recognizes the important contribution of NACoServices' technical expertise in the design, implementation and administration of a national program established and administered in compliance with all applicable regulatory authorities; and

WHEREAS, Employer recognizes the benefit of NACoServices' making arrangements on behalf of the Employer for a functional administrative system to administer the Program; and

WHEREAS, Employer has enacted the necessary resolution/court order to adopt the OBRA Deferred Compensation Program and this Administrative Agreement and to establish its Plan for its employees.

NOW, THEREFORE, in consideration of the premises set forth hereinabove, and the promises contained hereinafter, the parties agree as follows:

I. THE PROGRAM

NACo endorses a prototype Section 457 Plan designed as a supplement to Employer's voluntary Section 457 Plan and developed in cooperation with NACoServices and NRS, a third party administrator, which permits Employer and its employees to enjoy the advantages derived from Section 457 of the Internal Revenue Code of 1986, as amended, while allowing Employer to satisfy its requirements under OBRA.

II. REGULATORY CONSIDERATIONS

NRS has represented and warranted to NACoServices that the Program and the Plans adopted thereunder meet all necessary criteria for approval by all federal and state regulatory authorities governing such programs.

III. PROGRAM ADMINISTRATOR:

NACo and NACoServices have agreed to sponsor the Program in its present form, and have selected and exclusively contracted with a third party administrator, NRS, qualified to fulfill the responsibility for all administrative requirements necessary for the successful operation of the Program.

The Employer hereby accepts NRS to act as Program Administrator in fulfilling the administrative requirements of its Plan and the Program

IV. RESPONSIBILITIES OF NRS:

NRS agrees to the following terms and conditions of the Program as provided below:

- A. Provide Employer with a Deferred Compensation Plan Agreement and necessary agreements for execution with its participating employees subject to OBRA which is and will be maintained in compliance with the provisions of the Internal Revenue Code and OBRA.
- B. Provide Employer with such technical assistance as is reasonably necessary to install and implement the Program.
- C. Maintain a comprehensive administrative service system to facilitate employee deferrals, reconciliations, disbursements to the investment media, maintain individual and Employer account records, coordinate employee distributions, and assure proper tax reporting systems.
- D. Maintain such accounting and audit systems as are necessary to ensure the fiscal integrity of the Program.
- E. Make NRS representatives available to Employer's representatives to discuss issues or questions relating to NRS' fulfillment of its obligations under this Agreement or the general operation of the Plan.
- F. Compute and deduct from any disbursements under the Plan all appropriate federal and state income taxes required by law to be withheld from plan distributions and also furnish to all Participants receiving tax reporting forms.

V. EMPLOYER RESPONSIBILITIES:

The Employer agrees to the following terms and conditions of the Program as provided below:

- A. Provide NACoServices and NRS its full cooperation and support in administering the necessary salary deferral system for contributions to the Plan; and notify NRS in writing, within fourteen (14) business days of a participant's separation from service with an Employer.

- B. Disseminate from time to time such informational materials as provided to it for employee distribution.
- C. Name an official or committee of the Employer to act as local coordinator on behalf of the Employer on all material matters relating to activities of the Plan.
- D. Accept the terms and conditions of the investment media and, if applicable, insurance contracts issued to the Employer pursuant to the Plan adopted by the Employer.
- E. Use the OBRA Plan Document, informational materials, and other forms provided to it as a participant under the Program in connection with the Plan.
- F. Notify NRS of the dollar amount to be deferred on behalf of each participant, which the Employer shall be responsible for ensuring that such amount is no less than 7.5% of a participant's compensation or such other minimum amount as shall be required for the Plan to be considered a retirement system under OBRA. In the event a participant under the Plan elects to join the voluntary NACo Deferred Compensation Plan or other deferred compensation plan adopted by the Employer, the Employer is responsible for ensuring that each participant's annual deferral amount does not exceed the applicable limits set forth in Section 457.
- G. Direct Plan participants desiring to increase contributions to the Plan to NRS for completion of appropriate forms.
- H. The Employer acknowledges and agrees that NRS shall not be responsible for monitoring deferrals to other Section 457, 403(b), 401(a), 414(h) plans or other defined benefit plans referenced by the Internal Revenue Code or for monitoring interplan coordination between the Plan and the NACo Deferred Compensation Plan adopted by Employer or any other Section 457 plan which Employer may have.

VI. ADMINISTRATIVE CHARGE

- A. NRS shall bill the Employer semi-annually for the amount of the Administrative Charge set forth below during the term of this Agreement. In the event this Agreement is terminated, the Administrative Charge shall be prorated through the effective termination date. The billings will occur semi-annually, based upon the average participant count as of December 31 and June 30 of that year. "Average participant count" is defined as the participant count on December 31 plus June 30, divided by two.
- B. The Administrative Charge during the periods set forth herein shall not exceed but, in the discretion of NRS may be less than, the following amounts:

2000-2005	\$22/per participant
2006-2011	\$28/per participant
2012-2017	\$36/per participant

VII. TERMINATION

- A. This Agreement shall automatically terminate in the event and as of the date the NACo Deferred Compensation Plan administrative agreement entered into by and among NACoServices, Employer, and NRS in connection with the voluntary NACo Deferred Compensation Plan is terminated.

- B. NRS may terminate this Agreement upon thirty (30) days written notice if the Employer fails to accept any amendment or modification to the Plan proposed by NRS or if the Employer amends, modifies or terminates the Plan without the prior written consent of NRS.
- C. Any party may terminate this Agreement upon ninety (90) days written notice should another party fail to perform its obligations hereunder; provided, the defaulting party shall have the right to cure the default or breach during such period. Any written notice given hereunder for failure to perform shall specifically state the nature of the default or breach. If the specified default or breach is not corrected during such period, this Agreement shall terminate.

VIII. INDEMNIFICATION:

NACoServices agrees to hold harmless and indemnify the Employer, its appointed and elected officers and participants from any loss from NACoServices or NRS' failure to perform its duties and services pursuant to the Program.

IX. CONTRACT TERM

This Agreement is effective until terminated in accordance with Section VII above.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first described above.

EMPLOYER

(Employer's Name)

Signature: _____

Title: _____

NATIONWIDE RETIREMENT SOLUTIONS, INC.

Signature: _____

Title: _____

NACoSERVICES, INC.

Signature: _____

Title: _____



Orange County Fire Authority
AGENDA STAFF REPORT

Board of Directors Meeting
March 23, 2017

Agenda Item No. 3E
Consent Calendar

Reserve Firefighter Program Status Update

Contact(s) for Further Information

Dave Thomas, Assistant Chief Operations Department	davethomas@ocfa.org	714.573.6012
Andy Kovacs, Battalion Chief Community Volunteer Services	andykovacs@ocfa.org	949.275.1220

Summary

This item is submitted routinely to provide a six month status report on the OCFA Reserve Firefighter Program.

Prior Board/Committee Action

Not Applicable.

RECOMMENDED ACTION(S)

Receive and file the report.

Impact to Cities/County

Not Applicable.

Fiscal Impact

Funding for the Reserve Firefighter Program is included in the FY 2016/17 adopted budget.

Background

This report on the Reserve Firefighter Program activities covers the period of October 1, 2016, to March 1, 2017.

Current Reserve Program Status: Consistently operating under budget and effectively augmenting the OCFA's career staff.

Roster Size/Strength: Current roster information is presented for review in Attachment 1.

Recruitment/Hiring: We have received over 300 applications since the last report to the board. Candidates who successfully pass the application process will be attending OCFA Reserve Academy #20 scheduled to begin July 2017.

Training/EMS: The patrol driver/operator academy was completed in February with 18 candidates graduating. The reserve officer academy is scheduled for April 2017. A driver/operator academy is scheduled for May 2017. A chainsaw refresher class is scheduled for the 1st quarter of 2017.

Attachment(s)

1. Reserve Program Staffing Levels as of 03/01/17
2. Summary of Reserve Unit Activity (10/01/16 to 03/01/17)

Reserve Firefighter Program
STAFFING LEVELS

Reserve Program staffing levels, vacancies, applications, as of March 6, 2017

Station		Equipment	Total Roster Positions	Currently Filled	Qualified Application Received (07/11/2016 - 03/06/2017)	# Vacancies
7	San Juan Capo	Patrol, WT	27	14	25	13
11	Emerald Bay	Engine, Patrol	29	11	27	18
14	Silverado Cyn	Engine, Patrol	29	5	18	24
16	Modjeska Cyn	Engine, Patrol, WT	29	20	14	9
18	Trabuco Cyn	Patrol	22	19	22	3
26	Irvine	Patrol	22	17	31	5
30	Dana Point	Patrol, Air Unit	27	14	20	13
32	Yorba Linda	Patrol, WT	27	16	18	11
C18	Trabuco Cyn	Reserve Hand Crew	39	24	55	15
C41	Fullerton Airport	Heli-Support, WT, Air Unit	39	26	84	13
Totals			290	166	314	124

Summary of Reserve Unit Activity

10/01/16 to 03/01/17

Fire Station Location	Unit	# Dispatched Responses	# En Route Responses	% En route Dispatched	# On Scene Responses	% On Scene Dispatched
FS 7 San Juan Capistrano	Patrol 7	274	109	40%	64	23%
	Water Tender 7	22	12	55%	10	45%
	Totals	296	121	41%	74	25%
FS 11 Emerald Bay	Engine 11	23	14	61%	12	52%
	Patrol 11	83	58	70%	45	54%
	Totals	106	72	68%	57	54%
FS 14 Silverado	Engine 14	10	6	60%	3	30%
	Patrol 14	46	40	87%	32	70%
	Totals	56	46	82%	35	63%
FS 16 Modjeska	Engine 16	28	18	64%	12	43%
	Patrol 16	54	52	96%	38	70%
	Water Tender 16	39	33	85%	10	26%
	Totals	121	103	85%	60	50%
FS 26 Irvine	Patrol 26	274	179	65%	102	37%
	Totals	274	179	65%	102	37%
FS 18 Trabuco Canyon	Patrol 18	47	26	55%	10	21%
	Crew 18	27	5	19%	2	7%
	Totals	74	31	42%	12	16%
FS 30 Dana Point	Patrol 30	115	29	25%	18	16%
	Air Utility 30	14	2	14%	1	7%
	Totals	129	31	24%	19	15%
FS 32 Yorba Linda	Patrol 32	98	59	60%	33	34%
	Water Tender 32	20	6	30%	3	15%
	Totals	118	65	55%	36	31%
FS 41 Fullerton Airport	Hel-Support 41	8	6	75%	3	38%
	Heli-Tender 41	47	21	45%	7	15%
	Heli-Tender 241	17	13	76%	5	29%
	Air Utility 41	0	0		0	
	Totals	72	40	56%	15	21%

Dispatched Responses:

Total number of incidents the unit was dispatched.

En Route Responses:

Number of times the unit went en route to the dispatched responses.

% En Route Dispatched:

Percentage of dispatched responses the unit went en route.

On Scene Responses:

Number of times the unit arrived on scene, without being cancelled.

% On Scene Dispatched:

Percentage of total dispatched responses that the unit arrived on scene of the emergency.



Orange County Fire Authority
AGENDA STAFF REPORT

Board of Directors Meeting
March 23, 2017

Agenda Item No. 3F
Consent Calendar

**Conduct Analysis of Field Operations:
Aircraft Rescue Fire Fighting Operations**

Contact(s) for Further Information

Brian Young, Assistant Chief
Organizational Planning Department

brianyoung@ocfa.org

714.573.6014

Greg McKeown, Division Chief
Operations Department

gregmckeown@ocfa.org

949.341.0294

Summary

This item seeks approval of recommendations to address operational issues in the Aircraft Rescue Fire Fighting (ARFF) program.

Prior Board/Committee Action(s)

Budget and Finance Committee Recommendation: *APPROVE*

At its regular March 8, 2017, meeting, the Budget and Finance Committee reviewed and unanimously recommended approval of this item.

RECOMMENDED ACTION(S)

Establish a 2.5% specialty compensation for Aircraft Rescue Fire Fighting trained personnel who are certified Mobile Crane Operators.

Impact to Cities/County

Approval of the workgroup recommendations will improve OCFA's ability to staff key specialty positions with qualified personnel and improve the longevity of personnel in these key assignments, which ultimately results in improved response capabilities on behalf of the citizens we serve. Maintaining a qualified and proficient ARFF Aircraft Crane Program minimizes flight delays and cancellations saving taxpayers and commerce operators thousands of dollars per incident.

Fiscal Impact

Cost will be included in the ARFF annual charge, in compliance with contract terms. The cost increase associated with the bonus is estimated not to exceed \$68,425.

Background

The proposed actions were developed by a collaborative workgroup comprised of subject matter experts, labor representatives and management to address the initiative as identified in the 180-Day Plan and FY 2015/16 Domain Objectives as Initiative 3.1 – Establish working groups to address key operational issues. This is the last specialty program to be evaluated from the initial FY 2015/16 Domain Objectives.

Apart from providing traditional ARFF services at John Wayne Airport (JWA), OCFA personnel also remove aircraft that become disabled on the runway utilizing specialized crane and tug/tow equipment. Commercial flight operations are interrupted until the runway is cleared resulting in lost revenue for many entities.

A workgroup comprised of labor and management began meeting in early 2016 to discuss operational and staffing issues that have been occurring in the ARFF program affecting services mandated by contract with JWA.

The current workgroup identified the following key issues/concerns:

- Lack of consistent specialized training availability
- Lack of proficiency retention in the program due to turn-over
- Significant re-occurring training costs for personnel new to the program
- Need for formalized skill sets as outlined in the Federal Aviation Administration (FAA) requirements for ARFF training (§139.319 - Aircraft Rescue and Firefighting: Operational Requirements), NFPA 403: Standard for Aircraft Rescue Fire-fighting Services at Airports, and the National Commission for the Certification of Crane Operators (NCCCO)
- Discrepancies between the current OCFA/3631 Memorandum of Understanding and OCFA/JWA Agreement No. S1000000270 regarding the availability of certified crane operators and riggers

The group discussed options for addressing these issues, and worked toward a consensus on recommendations intended to resolve the issues.

Recommendations included:

- Establish 2.5% specialty compensation for Mobile Crane Operator - certification equivalent to the National Commission for the NCCCO standard and all OSHA requirements. This brings the ARFF specialty compensation into alignment with the Hazardous Materials Response Team and Technical Rescue Truck programs
- Support a staffing model of ARFF crane operators/riggers to assure resource availability
- Meet all FAA mandates for ARFF training and safety
- Train to a technical level equivalent to that recognized by the International Fire Service Accreditation Congress for Airport Firefighter
- Assure apparatus operators meet standards equivalent to Strategies and Tactics ARFF Vehicle Operator Certification (EVOC-24)
- Define minimum standards of recurrent training and time commitment in the position commensurate to the cost and effort of training provided
- All ARFF personnel to participate in identified skill sets
- Establish an interview process for the Fire Captain position prior to voluntary transfer
- Establish a group of fully qualified part-time ARFF members to support staffing needs

The workgroup identified these areas for improvement in the ARFF program. Following these recommendations, the OCFA will be better prepared to provide the highest level of emergency, fire, rescue, and emergency medical services, with daily staffing and longevity in the program. These recommendations are anticipated to take effect July 21, 2017.

Attachment(s)

None.



Orange County Fire Authority
AGENDA STAFF REPORT

Board of Directors Meeting
March 23, 2017

Agenda Item No. 3G
Consent Calendar

**Secured Fire Protection Agreements for
Oakcrest Heights and Trevana I**

Contact(s) for Further Information

Brian Young, Assistant Chief Organizational Planning Department	brianyoung@ocfa.org	714.573.6014
Tamera Rivers, Management Analyst	tamyrrivers@ocfa.org	714.573.6199

Summary

This item is submitted to authorize the Fire Chief to execute Secured Fire Protection Agreements (SFPA) with Savi Ranch II Housing Partners, L.P., as related to Oakcrest Heights, Yorba Linda and with Meritage Homes of California, Inc., as related to Trevana I, Irvine. Staff is also seeking an amendment to the OCFA Roles/Responsibilities/Authorities matrix to delegate authority to OCFA management for execution of future Secured Fire Protection Agreements.

Prior Board/Committee Action(s)

No committee action required or requested.

RECOMMENDED ACTION(S)

1. Approve and authorize the Fire Chief or his designee to execute Secured Fire Protection Agreements with Savi Ranch II Housing Partners, L.P., as related to Oakcrest Heights, Yorba Linda and with Meritage Homes of California, Inc., as related to Trevana I, Irvine.
2. Direct the Clerk of the Authority to record these Secured Fire Protection Agreements in the Official Records of the County of Orange, and furnish the developer a copy of the conformed documents within fifteen days of recordation.
3. Approve the proposed Resolution entitled A RESOLUTION OF THE ORANGE COUNTY FIRE AUTHORITY BOARD OF DIRECTORS AMENDING THE ROLES/RESPONSIBILITIES/AUTHORITIES MATRIX TO DEFINE APPROVAL AUTHORITY FOR SECURED FIRE PROTECTION AGREEMENTS.

Impact to Cities/County

These agreements have no negative impacts to any of our member cities or the County.

Fiscal Impact

Revenue received from these agreements will be assigned to the Capital Improvement Program in Fund 123. Revenue produced by full entitlements on the Oakcrest Heights and Trevana I projects is estimated to be \$55,800.

Background

The SFPA defines the fair share contributions needed to adequately serve the intended development and current communities adjacent to the project area. The fair share contributions are \$600 per dwelling unit and are intended to cover a pro rata share of costs associated with

providing fire protection infrastructure to the new development. Payment will be made to OCFA after these agreements are signed and recorded and prior to the occupancy. The proposed agreements should provide OCFA and the developer with the ability to make long-range plans and decisions with respect to both infrastructure costs and operational costs associated with the development. This SFPA provides OCFA with the necessary assurances needed to complete work/review on enhancements to the regional emergency fire services delivery system.

Oakcrest Heights, Yorba Linda

Savi Ranch II Housing Partners, L.P. is developing Oakcrest Heights in Yorba Linda. This project will provide 54 residential units in the project area. The SFPA is a required condition for project approval, and is in the standard form and at the standard per unit cost required for new development. Estimated revenue for the project is \$32,400.

Trevana I, Irvine

Meritage Homes of California, Inc. is developing Trevana I in Irvine. This project will provide 39 residential units in the project area. The SFPA is a required condition for project approval, and is in the standard form and at the standard per unit cost required for new development. Estimated revenue for the project is \$23,400.

Roles/Responsibilities/Authorities Matrix

The Board of Directors has an adopted matrix of Roles, Responsibilities, and Authorities to define levels of approval and establish rules and regulations for conducting business. Amendments to the Roles, Responsibilities, and Authorities matrix are periodically recommended by staff to reflect current organizational needs.

With this agenda item, staff is recommending an amendment to the Roles, Responsibilities, and Authorities Matrix to delegate authority to OCFA management for execution of future SFPAs, so long as they conform to the standard form agreement previously approved by the Board of Directors and are approved as to form by General Counsel (Attachment 3, Page 8 of Exhibit). SFPAs are routine agreements that OCFA enters into frequently, using a standard form agreement. Since January 2016, staff has submitted 12 SFPAs to the Board of Directors for approval, in compliance with the current Roles, Responsibilities, and Authorities Matrix. Delegation of authority to OCFA management for approval and execution of these standard form agreements will streamline the SFPA process and reduce delays associated with their approval.

Attachment(s)

1. Proposed Secured Fire Protection Agreement with Savi Ranch II Housing Partners, L.P.
2. Proposed Secured Fire Protection Agreement with Meritage Homes of California, Inc.
3. Proposed Resolution

EXEMPT PER GOVERNMENT CODE 6103

PLEASE COMPLETE THIS INFORMATION
RECORDING REQUESTED BY:

Orange County Fire Authority
Clerk of the Authority
1 Fire Authority Road
Irvine, CA 92602

AND WHEN RECORDED MAIL TO:

Orange County Fire Authority
Clerk of the Authority
1 Fire Authority Road
Irvine, CA 92602

THIS SPACE FOR RECORDER'S USE ONLY

TITLE OF DOCUMENT:

SECURED FIRE PROTECTION AGREEMENT

By and between the

ORANGE COUNTY FIRE AUTHORITY,
A CALIFORNIA JOINT POWERS AUTHORITY

And

Savi Ranch II Housing Partners, L.P.

Effective Date: 03/23/2017

Project Name: Oakcrest Heights

SECURED FIRE PROTECTION AGREEMENT

by and between the

ORANGE COUNTY FIRE AUTHORITY,
A CALIFORNIA JOINT POWERS AUTHORITY

and

Savi Ranch II Housing Partners, L.P.

Effective Date: March 23, 2017

Project Name: Oakcrest Heights

**ORANGE COUNTY FIRE AUTHORITY
SECURED FIRE PROTECTION AGREEMENT**

WITH

Savi Ranch II Housing Partners, L.P.

This Secured Fire Protection Agreement ("Agreement") is made between the Orange County Fire Authority, a California Joint Powers Authority ("OCFA") and Savi Ranch II Housing Partners, L.P. ("Company"), and is effective as of March 23, 2017.

RECITALS

A. OCFA is a governmental entity, organized as a California Joint Powers Authority, providing fire protection and life safety services to over one million residents within the County of Orange ("County"), including the City of Yorba Linda ("City") and all of the real property described in this Agreement.

B. This Agreement covers real property owned by Company located within the County of Orange and the City of Yorba Linda as of the date of this Agreement, all as described on Exhibit A attached hereto. The extent of Company development for which fire protection services will be provided by Authority shall cover all of the property subject to Assessor's Parcel Number 352-117-13.

C. Company's development of the Project Area is subject to the general development requirements and conditions (collectively, the "City Conditions") related to the provision for emergency response, fire protection services, equipment and facilities imposed by the City. The City Conditions generally include requirements for Company to enter into agreements with OCFA to ensure that Company will provide for and contribute its *pro rata* fair share costs of emergency response, fire protection services, equipment and facilities for the benefit of residents residing within the Project Area.

D. OCFA and Company believe that this Agreement contains adequate safeguards to ensure OCFA's ability to enforce the obligations of this Agreement and protect the public interest.

AGREEMENT

Based upon the foregoing Recitals and in consideration of the covenants and conditions contained in this Agreement, the parties agree to timely perform each of their respective obligations as set forth herein.

SECTION 1. DEFINITIONS

Unless the context otherwise requires, wherever in this Agreement the following terms are used, the intent and meaning shall be interpreted as provided herein.

"Agreement" means this Secured Fire Protection Agreement, including the attached Exhibits between OCFA and the Company.

"OCFA" means the Orange County Fire Authority, a governmental entity and California joint powers authority.

"City" means the City of Yorba Linda, a member of OCFA.

"Company" means Savi Ranch II Housing Partners, L.P.

"City Conditions" means the general development requirements and conditions related to the provision of emergency response, fire protection services, equipment and facilities imposed by the City as conditions of approval on development projects proposed or undertaken in the City by Company.

"Effective Date" means the date this Agreement is approved by the OCFA Board of Directors.

"Fee" means the most current fee, as approved by OCFA or its successors or predecessors in interest, or as may be adopted by OCFA or its successors from time to time, for the funding in whole or in part of emergency response, fire protection services, equipment and facilities within the jurisdiction of OCFA.

"Project Area" means the property owned by Company within the City as of the date of this Agreement, and as more particularly described in Exhibit A.

"Security Instruments" means surety bonds, letters of credit or any other form of security or method, acceptable to OCFA, of assuring construction, installation, or provision of emergency response, fire protection services, equipment and facilities.

SECTION 2. COMPANY OBLIGATIONS

Company is in the process of developing the property in the Project Area and constructing improvements thereon that will result in regional impacts that will require emergency response, fire protection services, equipment and facilities by OCFA. In recognition and consideration of these impacts, OCFA and Company mutually agree as follows:

A. Acknowledgment of Obligations and Satisfaction of OCFA Requirements

Company acknowledges that pursuant to the City Conditions, Company is required (i) to provide a *pro rata* share of funding necessary to establish adequate emergency response, fire protection services, equipment and facilities, and (ii) contribute towards overall regional emergency response, fire protection services, equipment and facilities as provided herein in this Agreement. OCFA acknowledges that Company's performance of the obligations set forth in this Agreement constitute satisfaction of the obligations of Company for this Project. The *pro rata* share does not include standard processing fees for plan checking, permits and similar services or requirements of OCFA.

B. *Pro Rata* Share

1. Company agrees to pay in full its *pro rata* share as provided below:

(a) A cash contribution in an amount determined by multiplying the applicable fee in effect at the time payment is due by the number of proposed residential dwelling units and, in the case of commercial development, the square footage equivalency as determined by the formula in subparagraph (b) below (all as shown on the attached Exhibit B), within ten (10) days of issuance of the first residential or commercial building permit ("Due Date") for any portion of the property owned by Company within the Project Area as of the Effective Date. The parties agree that the applicable fee on the Effective Date is \$600/unit. The parties further agree that the Company's total funding obligation on the effective date of this Agreement is \$32,400.00 (all as shown on Exhibit B).

(b) Such amounts of residential dwelling units and square footage of commercial development may be adjusted according to an equivalency formula as follows: 1) commercial development square footage may be divided by 1,000 and then multiplied by 0.9 (nine/tenths or 9/10) to reach the equivalent dwelling units; 2) residential dwelling units may be divided by 0.9 (nine/tenths or 9/10) and then multiplied by 1,000 to reach the equivalent commercial square footage.

2. Nothing in this Agreement shall be construed to prohibit Company from paying all, or a portion, of the amount(s) set forth above in advance of the Due Date. Such prepayment will be calculated by multiplying \$600 or the applicable fee in effect at the time of payment by the number of units for which the Company wishes to prepay. Company will not be responsible for any subsequent fee increase that may be adopted by OCFA between the date of payment and the issuance of a building permit for the units covered by the paid fee.

3. In the event that the actual number of dwelling units, or equivalent dwelling units, built is less than fifty-four (54), OCFA will make such adjustments as may be appropriate, including the payment of any refund for any amounts overpaid. At build-out, documentation satisfactory to OCFA shall be furnished to OCFA which verifies the actual number of dwelling units, or equivalent dwelling units, constructed and that no further units, or equivalent units, shall be built on the property in the Project Area owned by Company on the Effective Date. Such documentation shall serve as the basis for making any necessary adjustments by multiplying the applicable fee in effect at the time of the last payment to OCFA by the actual number of units, or equivalent units, that were not built (calculated by subtracting the total number of units, or equivalent units, built from fifty-four (54), the total number of units, or equivalent units, allowed). OCFA shall refund the Company for any amounts overpaid within thirty (30) days of the earlier of (i) written notification to OCFA that the Company will build less than the fifty-four (54) proposed residential dwelling units; and (ii) the date the OCFA receives the above-referenced documentation which shall serve as the basis for making any necessary adjustments by multiplying the applicable fee in effect at the time of the last payment to OCFA by the actual number of units, or equivalent units, that were not built.

SECTION 3. SECURITIES

A. Security to Guarantee Payment

Within sixty (60) days after execution of this Agreement, Company shall furnish OCFA with a Faithful Performance Bond or Letter of Credit or any other security instrument acceptable to the Fire Chief and OCFA Counsel, securing Company's then remaining obligation to pay OCFA the *pro rata* share amount set forth in Section 2, subject to the following requirements:

1. Form of Security Instruments. All Security Instruments shall meet the following minimum requirements and otherwise shall be in a form acceptable to OCFA:

(a) Any insurance company acting as surety shall have a minimum rating of A, as rated by the current edition of Best's Key Rating Guide published by A.M. Best's Company, Oldwick, New Jersey 08858; any bank issuing a Letter of Credit shall have a minimum rating of AA, as rated by Moody's or Standard & Poor's; each entity acting as a surety shall be licensed to do business in California.

(b) Payments under the security instrument shall be required to be made in the County of Orange, State of California.

(c) The security instrument shall reference Company's obligations under this Agreement, shall be irrevocable, and shall include, as an additional obligation secured, the responsibility to compensate OCFA for all of OCFA's reasonable attorneys' fees and litigation expenses reasonably incurred in enforcing its rights under the security instrument.

2. Release of Security Instruments. OCFA shall release or partially release the Faithful Performance Bond or Letter of Credit, *pro rata*, upon Company's written request as and when OCFA receives payment and after acceptance of Company's final payment obligation pursuant to Section 2.

SECTION 4. DEFAULT AND ATTORNEYS' FEES

A. Remedies Not Exclusive

In any case where this Agreement provides a specific remedy to OCFA for breach or default by Company hereunder, such remedy shall be in addition to, and not exclusive of, OCFA's right to pursue any other administrative, legal or equitable remedy to which it may be entitled.

B. Attorneys' Fees and Costs

In the event of any litigation arising out of this Agreement or under any of the Security Instruments referenced herein, the prevailing party in such action, in addition to any other relief, which may be granted, shall be entitled to recover its reasonable attorneys' fees and costs. Such attorneys' fees and costs shall include fees and costs on any appeal, and all other reasonable costs incurred in investigating such action, taking depositions and discovery, retaining expert witnesses, and all other necessary and related costs with respect to such litigation or arbitration. All such fees and costs shall be deemed to have accrued on commencement of the action and shall be enforceable whether or not the action is prosecuted to judgment.

SECTION 5. GENERAL PROVISIONS

A. Successors and Assigns

This Agreement shall be binding upon all successors and assigns of Company's right, title, and interest in and to the Project Area and any portions thereof.

B. Density and Intensity of Development

The provisions of this Agreement shall be deemed to be in substantial compliance with all City Conditions for this Project. In the event the density or intensity of development for this Project is proposed to be increased, OCFA and Company shall meet and confer and determine whether there should be any modification to this Agreement to provide for additional services, equipment or facilities necessary to serve the Project Area as a result of the approval of any such increase. In the event the parties cannot agree, OCFA shall have the right to protest or contest in any administrative or judicial forum as OCFA deems appropriate any approval of any such increase.

C. Waiver of Rights and Claims

Company agrees and acknowledges that there is an essential nexus between its *pro rata* share and a legitimate governmental interest and that its *pro rata* share is roughly proportional to and reasonably and rationally related to the impacts that will be caused by development of the Project Area.

In consideration of the mutual promises and covenants set forth in this Agreement, Company, its successors and assigns, hereby waives and releases any present or future rights or claims Company, or its successors or assigns may have or possess under Government Code section 66000 et. seq. (as amended) with respect to OCFA's establishment, receipt and use of the fees required to be paid to OCFA under this Agreement so long as OCFA, or its successors in interest, continues to provide fire protection and related services to the Project Area as contemplated by this Agreement.

D. Good Faith Negotiations

Company acknowledges and agrees that OCFA is prepared to conduct a fee study that might result in an increased *pro rata* share to Company. Company desires to avoid the delay and uncertain results of such a study and enters this Agreement in good faith and in consideration for OCFA deferring such a study to a later date.

E. Severability

In the event any portion of this Agreement shall finally be determined by a court of competent jurisdiction to be unlawful, such provision shall be deemed to be severed from this Agreement and every other provision of this Agreement shall remain in full force and effect. If any one or more of the provisions contained in this Agreement shall for any reason be held to be excessively broad, it shall be construed, by limiting and reducing it, so as to be enforceable to the extent compatible with the applicable laws then in effect.

F. Notices

All written notices pursuant to this Agreement shall be addressed as set forth below or as either party may hereafter designate by written notice and shall be delivered in person or sent certified or registered mail, postage prepaid and addressed as follows:

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

WITH COPY TO:
David E. Kendig, General Counsel
Woodruff, Spradlin & Smart
555 Anton Blvd., Suite 1200
Costa Mesa, CA 92626

To: Savi Ranch II Housing Partners, L.P.
Attn: Chief Financial Officer
9421 Haven Avenue
Rancho Cucamonga, CA 91730

WITH COPY TO:
None

All notices provided for herein shall be deemed effective upon receipt if personally served or seventy-two (72) hours after being sent by certified or registered mail, postage prepaid.

G. Entire Agreement

This Agreement constitutes the entire understanding between the parties and supersedes all prior negotiations or agreements between them pertaining to the subject matter hereof.

H. Recordation of Agreement

This Agreement and any amendment shall be recorded in the Official Records of the County of Orange by OCFA with a conformed copy being furnished to Company by OCFA within fifteen (15) days of recordation.

I. Time of the Essence

OCFA and Company agree that time is of the essence with respect to each provision of this Agreement of which time is an element.

J. Exhibits to Agreement

This Agreement includes the following Exhibits, which are attached hereto and made a part hereof:

Exhibit A - Description of the Project Area

Exhibit B - Fire Service Impact Fees

K. Authorized Signatories

Company and its signatories herein covenant and represent that each individual executing this Agreement is a person duly authorized to execute this Agreement for Company.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year above written.

ORANGE COUNTY FIRE AUTHORITY
a California Joint Powers Authority

By: _____ Date: _____
Jeff Bowman, Fire Chief
Orange County Fire Authority

ATTEST:


By: _____ Date: _____
Sherry Wentz
Clerk of the Orange County
Fire Authority

APPROVED AS TO FORM:

DAVID E. KENDIG
GENERAL COUNSEL

By: _____ Date: _____

Savi Ranch II Housing Partners, L.P.

By:  Date: 2/9/17
Michael Ruane, Executive Vice
President

By: _____

California All-Purpose Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of San Bernardino

s.s.

On February 9, 2017 before me, Monica Rodriguez, Notary Public
Name of Notary Public, Title

personally appeared Michael Ruane
Name of Signer (1)

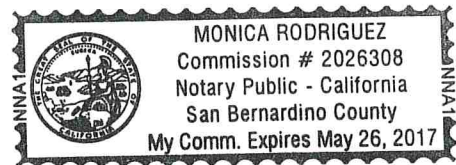
Name of Signer (2)

who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public



Seal

OPTIONAL INFORMATION

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled/for the purpose of _____

containing _____ pages, and dated _____.

The signer(s) capacity or authority is/are as:

- ☐ Individual(s)
☐ Attorney-in-fact
☐ Corporate
Officer(s) _____

Title(s)

- ☐ Guardian/Conservator
☐ Partner - Limited/General
☐ Trustee(s)
☐ Other: _____

representing: _____
Name(s) of Person(s) Entity(ies) Signer is Representing

Additional Information

Method of Signer Identification

Proved to me on the basis of satisfactory evidence:

- ☐ form(s) of identification ☐ credible witness(es)

Notarial event is detailed in notary journal on:

Page # _____ Entry # _____

Notary contact: _____

Other

- ☐ Additional Signer ☐ Signer(s) Thumbprints(s)

☐ _____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROJECT AREA

PRELIMINARY REPORT Fidelity National Title Company
Your Reference: Order No.: 989-23084572-C-SG4
CLTA Preliminary Report Form – Modified (11/18/16)

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF YORBA LINDA, IN THE COUNTY OF ORANGE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL A:

PARCEL 2 OF PARCEL MAP NO. 2001-135, IN THE CITY OF YORBA LINDA, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP FILED IN BOOK 325, PAGES 38 AND 39 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL B:

NON-EXCLUSIVE, RECIPROCAL EASEMENTS OF INGRESS AND EGRESS AS GRANTED IN THAT CERTAIN DOCUMENT ENTITLED "AGREEMENT FOR RECIPROCAL ACCESS EASEMENTS AND CONSTRUCTION AND MAINTENANCE OF IMPROVEMENTS" RECORDED MAY 10, 2002, INSTRUMENT NO. 20020395287 OF OFFICIAL RECORDS.

APN: 352-117-13

EXHIBIT B
FIRE SERVICE IMPACT FEES

Dwelling Units	Rate	Obligation
54	\$600	\$ 32,400
Total Units – 54	\$600	<hr/> \$ 32,400

EXEMPT PER GOVERNMENT CODE 6103

PLEASE COMPLETE THIS INFORMATION
RECORDING REQUESTED BY:

Orange County Fire Authority
Clerk of the Authority
1 Fire Authority Road
Irvine, CA 92602

AND WHEN RECORDED MAIL TO:

Orange County Fire Authority
Clerk of the Authority
1 Fire Authority Road
Irvine, CA 92602

THIS SPACE FOR RECORDER'S USE ONLY

TITLE OF DOCUMENT:

SECURED FIRE PROTECTION AGREEMENT

By and between the

ORANGE COUNTY FIRE AUTHORITY,
A CALIFORNIA JOINT POWERS AUTHORITY

And

Meritage Homes of California, Inc.

Effective Date: 03/23/2017

Project Name: Trevana I

SECURED FIRE PROTECTION AGREEMENT

by and between the

ORANGE COUNTY FIRE AUTHORITY,
A CALIFORNIA JOINT POWERS AUTHORITY

and

Meritage Homes of California, Inc.

Effective Date: _____

Project Name: Trevana I

ORANGE COUNTY FIRE AUTHORITY
SECURED FIRE PROTECTION AGREEMENT
WITH

Meritage Homes of California, Inc.

This Secured Fire Protection Agreement ("Agreement") is made between the Orange County Fire Authority, a California Joint Powers Authority ("OCFA") and Meritage Homes of California, Inc. ("Company"), and is effective as of _____, 2017.

RECITALS

A. OCFA is a governmental entity, organized as a California Joint Powers Authority, providing fire protection and life safety services to over one million residents within the County of Orange ("County"), including the City of Irvine ("City") and all of the real property described in this Agreement.

B. This Agreement covers real property owned by Company located within the County of Orange and the City of Irvine as of the date of this Agreement, all as described on Exhibit A attached hereto. The extent of Company development for which fire protection services will be provided by Authority shall cover all of the property subject to Tentative Tract Map No. 18021.

C. Company's development of the Project Area is subject to the general development requirements and conditions (collectively, the "City Conditions") related to the provision for emergency response, fire protection services, equipment and facilities imposed by the City. The City Conditions generally include requirements for Company to enter into agreements with OCFA to ensure that Company will provide for and contribute its *pro rata* fair share costs of emergency response, fire protection services, equipment and facilities for the benefit of residents residing within the Project Area.

D. OCFA and Company believe that this Agreement contains adequate safeguards to ensure OCFA's ability to enforce the obligations of this Agreement and protect the public interest.

AGREEMENT

Based upon the foregoing Recitals and in consideration of the covenants and conditions contained in this Agreement, the parties agree to timely perform each of their respective obligations as set forth herein.

SECTION 1. DEFINITIONS

Unless the context otherwise requires, wherever in this Agreement the following terms are used, the intent and meaning shall be interpreted as provided herein.

"Agreement" means this Secured Fire Protection Agreement, including the attached Exhibits between OCFA and the Company.

"OCFA" means the Orange County Fire Authority, a governmental entity and California joint powers authority.

"City" means the City of Irvine, a member of OCFA.

"Company" means Mertiage Homes of California, Inc.

"City Conditions" means the general development requirements and conditions related to the provision of emergency response, fire protection services, equipment and facilities imposed by the City as conditions of approval on development projects proposed or undertaken in the City by Company.

"Effective Date" means the date this Agreement is approved by the OCFA Board of Directors.

"Fee" means the most current fee, as approved by OCFA or its successors or predecessors in interest, or as may be adopted by OCFA or its successors from time to time, for the funding in whole or in part of emergency response, fire protection services, equipment and facilities within the jurisdiction of OCFA.

"Project Area" means the property owned by Company within the City as of the date of this Agreement, and as more particularly described in Exhibit A.

"Security Instruments" means surety bonds, letters of credit or any other form of security or method, acceptable to OCFA, of assuring construction, installation, or provision of emergency response, fire protection services, equipment and facilities.

SECTION 2. COMPANY OBLIGATIONS

Company is in the process of developing the property in the Project Area and constructing improvements thereon that will result in regional impacts that will require emergency response, fire protection services, equipment and facilities by OCFA. In recognition and consideration of these impacts, OCFA and Company mutually agree as follows:

A. Acknowledgment of Obligations and Satisfaction of OCFA Requirements

Company acknowledges that pursuant to the City Conditions, Company is required (i) to provide a *pro rata* share of funding necessary to establish adequate emergency response, fire protection services, equipment and facilities, and (ii) contribute towards overall regional emergency response, fire protection services, equipment and facilities as provided herein in this Agreement. OCFA acknowledges that Company's performance of the obligations set forth in this Agreement constitute satisfaction of the obligations of Company for this Project. The *pro rata* share does not include standard processing fees for plan checking, permits and similar services or requirements of OCFA.

B. Pro Rata Share

1. Company agrees to pay in full its *pro rata* share as provided below:

(a) A cash contribution in an amount determined by multiplying the applicable fee in effect at the time payment is due by the number of proposed residential dwelling units and, in the case of commercial development, the square footage equivalency as determined by the formula in subparagraph (b) below (all as shown on the attached Exhibit B), within ten (10) days of issuance of the first residential or commercial building permit ("Due Date") for any portion of the property owned by Company within the Project Area as of the Effective Date. The parties agree that the applicable fee on the Effective Date is \$600/unit. The parties further agree that the Company's total funding obligation on the effective date of this Agreement is \$23,400 (all as shown on Exhibit B).

(b) Such amounts of residential dwelling units and square footage of commercial development may be adjusted according to an equivalency formula as follows: 1) commercial development square footage may be divided by 1,000 and then multiplied by 0.9 (nine/tenths or 9/10) to reach the equivalent dwelling units; 2) residential dwelling units may be divided by 0.9 (nine/tenths or 9/10) and then multiplied by 1,000 to reach the equivalent commercial square footage.

2. Nothing in this Agreement shall be construed to prohibit Company from paying all, or a portion, of the amount(s) set forth above in advance of the Due Date. Such prepayment will be calculated by multiplying \$600 or the applicable fee in effect at the time of payment by the number of units for which the Company wishes to prepay. Company will not be responsible for any subsequent fee increase that may be adopted by OCFA between the date of payment and the issuance of a building permit for the units covered by the paid fee.

3. In the event that the actual number of dwelling units, or equivalent dwelling units, built is less than 39 units, OCFA will make such adjustments as may be appropriate, including the payment of any refund for any amounts overpaid. At build-out, documentation satisfactory to OCFA shall be

furnished to OCFA which verifies the actual number of dwelling units, or equivalent dwelling units, constructed and that no further units, or equivalent units, shall be built on the property in the Project Area owned by Company on the Effective Date. Such documentation shall serve as the basis for making any necessary adjustments by multiplying the applicable fee in effect at the time of the last payment to OCFA by the actual number of units, or equivalent units, that were not built (calculated by subtracting the total number of units, or equivalent units, built from 39 units, the total number of units, or equivalent units, allowed). OCFA shall refund the Company for any amounts overpaid within thirty (30) days of the earlier of (i) written notification to OCFA that the Company will build less than the 39 units proposed residential dwelling units; and (ii) the date the OCFA receives the above-referenced documentation which shall serve as the basis for making any necessary adjustments by multiplying the applicable fee in effect at the time of the last payment to OCFA by the actual number of units, or equivalent units, that were not built.

SECTION 3. SECURITIES

A. Security to Guarantee Payment

Within sixty (60) days after execution of this Agreement, Company shall furnish OCFA with a Faithful Performance Bond or Letter of Credit or any other security instrument acceptable to the Fire Chief and OCFA Counsel, securing Company's then remaining obligation to pay OCFA the *pro rata* share amount set forth in Section 2, subject to the following requirements:

1. Form of Security Instruments. All Security Instruments shall meet the following minimum requirements and otherwise shall be in a form acceptable to OCFA:

(a) Any insurance company acting as surety shall have a minimum rating of A, as rated by the current edition of Best's Key Rating Guide published by A.M. Best's Company, Oldwick, New Jersey 08858; any bank issuing a Letter of Credit shall have a minimum rating of AA, as rated by Moody's or Standard & Poor's; each entity acting as a surety shall be licensed to do business in California.

(b) Payments under the security instrument shall be required to be made in the County of Orange, State of California.

(c) The security instrument shall reference Company's obligations under this Agreement, shall be irrevocable, and shall include, as an additional obligation secured, the responsibility to compensate OCFA for all of OCFA's reasonable attorneys' fees and litigation expenses reasonably incurred in enforcing its rights under the security instrument.

2. Release of Security Instruments. OCFA shall release or partially release the Faithful Performance Bond or Letter of Credit, *pro rata*, upon Company's written request as and when OCFA receives payment and after acceptance of Company's final payment obligation pursuant to Section 2.

SECTION 4. DEFAULT AND ATTORNEYS' FEES

A. Remedies Not Exclusive

In any case where this Agreement provides a specific remedy to OCFA for breach or default by Company hereunder, such remedy shall be in addition to, and not exclusive of, OCFA's right to pursue any other administrative, legal or equitable remedy to which it may be entitled.

B. Attorneys' Fees and Costs

In the event of any litigation arising out of this Agreement or under any of the Security Instruments referenced herein, the prevailing party in such action, in addition to any other relief, which may be granted, shall be entitled to recover its reasonable attorneys' fees and costs. Such attorneys' fees and costs shall include fees and costs on any appeal, and all other reasonable costs incurred in investigating such action, taking depositions and discovery, retaining expert witnesses, and all other necessary and related costs with respect to such litigation or arbitration. All such fees and costs shall be deemed to have accrued on commencement of the action and shall be enforceable whether or not the action is prosecuted to judgment.

SECTION 5. GENERAL PROVISIONS

A. Successors and Assigns

This Agreement shall be binding upon all successors and assigns of Company's right, title, and interest in and to the Project Area and any portions thereof.

B. Density and Intensity of Development

The provisions of this Agreement shall be deemed to be in substantial compliance with all City Conditions for this Project. In the event the density or intensity of development for this Project is proposed to be increased, OCFA and Company shall meet and confer and determine whether there should be any modification to this Agreement to provide for additional services, equipment or facilities necessary to serve the Project Area as a result of the approval of any such increase. In the event the parties cannot agree, OCFA shall have the right to protest or contest in any administrative or judicial forum as OCFA deems appropriate any approval of any such increase.

C. Waiver of Rights and Claims

Company agrees and acknowledges that there is an essential nexus between its *pro rata* share and a legitimate governmental interest and that its *pro*

rata share is roughly proportional to and reasonably and rationally related to the impacts that will be caused by development of the Project Area.

In consideration of the mutual promises and covenants set forth in this Agreement, Company, its successors and assigns, hereby waives and releases any present or future rights or claims Company, or its successors or assigns may have or possess under Government Code section 66000 et. seq. (as amended) with respect to OCFA's establishment, receipt and use of the fees required to be paid to OCFA under this Agreement so long as OCFA, or its successors in interest, continues to provide fire protection and related services to the Project Area as contemplated by this Agreement.

D. Good Faith Negotiations

Company acknowledges and agrees that OCFA is prepared to conduct a fee study that might result in an increased *pro rata* share to Company. Company desires to avoid the delay and uncertain results of such a study and enters this Agreement in good faith and in consideration for OCFA deferring such a study to a later date.

E. Severability

In the event any portion of this Agreement shall finally be determined by a court of competent jurisdiction to be unlawful, such provision shall be deemed to be severed from this Agreement and every other provision of this Agreement shall remain in full force and effect. If any one or more of the provisions contained in this Agreement shall for any reason be held to be excessively broad, it shall be construed, by limiting and reducing it, so as to be enforceable to the extent compatible with the applicable laws then in effect.

F. Notices

All written notices pursuant to this Agreement shall be addressed as set forth below or as either party may hereafter designate by written notice and shall be delivered in person or sent certified or registered mail, postage prepaid and addressed as follows:

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

WITH COPY TO:
David E. Kendig, General Counsel
Woodruff, Spradlin & Smart
555 Anton Blvd., Suite 1200
Costa Mesa, CA 92626

To: John Heimann
Meritage Homes
1250 Corona Pointe Court
Suite 210
Corona, CA 92879

WITH COPY TO:
None

All notices provided for herein shall be deemed effective upon receipt if personally served or seventy-two (72) hours after being sent by certified or registered mail, postage prepaid.

G. Entire Agreement

This Agreement constitutes the entire understanding between the parties and supersedes all prior negotiations or agreements between them pertaining to the subject matter hereof.

H. Recordation of Agreement

This Agreement and any amendment shall be recorded in the Official Records of the County of Orange by OCFA with a conformed copy being furnished to Company by OCFA within fifteen (15) days of recordation.

I. Time of the Essence

OCFA and Company agree that time is of the essence with respect to each provision of this Agreement of which time is an element.

J. Exhibits to Agreement

This Agreement includes the following Exhibits, which are attached hereto and made a part hereof:

- Exhibit A - Description of the Project Area
- Exhibit B - Fire Service Impact Fees

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K. Authorized Signatories

Company and its signatories herein covenant and represent that each individual executing this Agreement is a person duly authorized to execute this Agreement for Company.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year above written.

ORANGE COUNTY FIRE AUTHORITY
a California Joint Powers Authority

By: _____ Date: _____
Jeff Bowman, Fire Chief
Orange County Fire Authority

ATTEST:

By: _____ Date: _____
Sherry Wentz
Clerk of the Orange County
Fire Authority

APPROVED AS TO FORM:

DAVID E. KENDIG
GENERAL COUNSEL

By: _____ Date: _____

MERITAGE HOMES OF CALIFORNIA, INC.

By: _____ Date: 2/22/17
Brent Johnson
Director of Forward Planning

By: _____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROJECT AREA

Real property in the City of Irvine, County of Orange, State of California, described as follows:

PARCEL 1, IN THE CITY OF IRVINE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP FILED IN BOOK 46, PAGE 16 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, CALIFORNIA.

EXCEPTING ALL OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS, NATURAL GAS RIGHTS, AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN THAT MAY BE WITHIN OR UNDER THE PARCEL OF LAND HEREINABOVE DESCRIBED, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING, AND OPERATING THEREOF, AND STORING IN AND REMOVING THE SAME FROM SAID LAND OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM LANDS OTHER THAN THOSE HEREINABOVE DESCRIBED, OIL OR GAS WELL, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND HEREINABOVE DESCRIBED, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES, WITHOUT, HOWEVER THE RIGHT TO DRILL, MINE STORE, EXPLORE AND OPERATE THROUGH THE SURFACE OF THE UPPER 500 FEET OF THE SUBSURFACE OF THE LAND HEREINABOVE DESCRIBED, AS RESERVED IN THE DEED FROM IRVINE INDUSTRIAL COMPLEX, A CORPORATION, RECORDED MAY 12, 1972, IN BOOK 10123, PAGE 422 OF OFFICIAL RECORDS.

APN: 430-162-12

EXHIBIT B
FIRE SERVICE IMPACT FEES

Dwelling Units	Rate	Obligation
39	\$600	\$23,400
Total Units – 39 units	\$600	<hr/> \$23,400

ACKNOWLEDGMENT

(In accordance with Section 1189 of the California Civil Code)

A Notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy, or validity of that document.

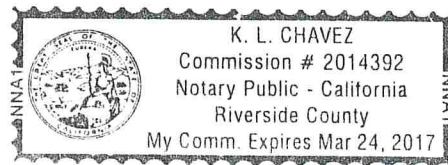
State of California

County of Riverside} ss.

On February 22, 2017, before me, K. L. Chavez, Notary Public, personally appeared Brent Johnson, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signatures on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature K. L. Chavez
K. L. Chavez, Notary Public, #2014392
(Commission Expires March 24, 2017)

(seal)

RESOLUTION NO. 2017 - XX

**A RESOLUTION OF THE ORANGE COUNTY FIRE AUTHORITY
BOARD OF DIRECTORS AMENDING THE
ROLES/RESPONSIBILITIES/AUTHORITIES MATRIX TO DEFINE
APPROVAL AUTHORITY FOR SECURED FIRE PROTECTION
AGREEMENTS**

WHEREAS, the Orange County Fire Authority Board of Directors last amended the Roles/Responsibilities/Authorities Matrix on April 28, 2016; and

WHEREAS, because OCFA frequently enters into Secured Fire Protection Agreements (SFPA) using a standard form agreement, approved as to form by General Counsel, it is appropriate to update the Roles/Responsibilities/Authorities Matrix to recognize the approval and execution of standard SFPAs as routine business for delegation to OCFA management; and

WHEREAS, the Board has considered the attached amendments to the Matrix.

NOW THEREFORE BE IT RESOLVED, that the Orange County Fire Authority Board of Directors does hereby amend the Roles/Responsibilities/Authorities Matrix as indicated by the redline version attached hereto as Exhibit A.

PASSED, APPROVED, and ADOPTED this 23rd day of March 2017.

ELIZABETH SWIFT, CHAIR
Board of Directors

ATTEST:

SHERRY A.F.WENTZ, CMC
Clerk of the Authority

ORANGE COUNTY FIRE AUTHORITY Roles/Responsibilities/Authorities

All authority rests with the Board of Directors unless it is delegated by statute or board action. When delegated, these authorities are further defined by contracts, resolutions, policies, or other board actions. The following chart defines OCFA's levels of authority. The Board of Directors has the authority to change these delegations within the parameters of legal and contractual restrictions.

	Authority Management	Claims Settlement Committee	Executive Committee	Board of Directors
Levels of Service	Develop and implement programs to provide the identified "Levels of Service."		Approve temporary changes in "Levels of Service."	Approve "Levels of Service" for the Authority.
Resource Deployment	Establish policy/deployment that maintains the approved "Levels of Service."			
Standard Operating Procedures (SOPs) and General Orders (GOs)	Develop and implement SOPs and GOs consistent with Board policies.			
Budget Adoption	Develop the budget.		Budget & Finance Committee - Review the budget; make recommendations.	Approve the budget prior to June 30 each year (JPA Agreement, Article IV.1)
Budget Execution	Authorize expenditures within approved budget appropriations (JPA Agreement, Article IV.2)			
Budget: Intra- and inter-fund transfer; increases and decreases to appropriation.	Approve intra-fund transfers within adopted budgets			Approve inter-fund transfers between budgets; Approve increases and decreases to appropriations.

ORANGE COUNTY FIRE AUTHORITY
Roles/Responsibilities/Authorities

	Authority Management	Claims Settlement Committee	Executive Committee	Board of Directors
Fire Station 41, Air Operations Maintenance Facility - Leases	Negotiate, approve and execute leases and/or lease amendments for Hangers Nos. 1, 2, 3, and 4			
Fund Balance - Assigned	Assign amounts for workers' compensation and the capital improvement program within requirements of the <i>Assigned Fund Balance Policy</i>		Budget & Finance Committee – Review calculations used to determine assignments for workers' compensation and the capital improvement program for consistency with <i>Assigned Fund Balance Policy</i>	Assign and un-assign fund balance for any specific purposes other than workers' compensation and the capital improvement program, within the guidelines of GASB Statement No. 54
Fund Balance – Committed				Commit and un-commit fund balance via minutes action, within the guidelines of GASB Statement No. 54
Contingency Planning and funding	Develop plan; administer budget in a manner consistent with plan and policies.		Budget & Finance Committee - Review contingencies and spending for compliance with plan and policies.	Establish plan and policies. Transfer of Appropriation for Contingencies requires prior approval of the Chair or the Vice Chair, in the absence of the Chair, and must be reported to the Board immediately in writing.

ORANGE COUNTY FIRE AUTHORITY
Roles/Responsibilities/Authorities

	Authority Management	Claims Settlement Committee	Executive Committee	Board of Directors
Debt obligation	Develop and recommend financing plans.		Budget & Finance Committee – Review of recommended financing plans.	Approve all debt obligations. (Note: long-term bonded indebtedness requires approval by 2/3 rd vote of the members.)
Commodity purchases (materials, equipment & supplies) Ord. 8, Sec. 1-3(18)	Approve purchase of commodities (Ord. 8, per Art. III selection process or Art. X cooperative purchasing) for annual contract amount less than \$250,000. Approve any increase to commodity term contracts provided the annual contract amount remains less than \$250,000.		Approve purchase of commodities with an annual contract amount greater than \$250,000. Approved increase to commodity contracts if the increase results in the annual contract being greater than \$250,000.	
Fixed asset purchases	Approve purchase of fixed assets with unit cost less than \$100,000.		Approve purchase of fixed assets with a unit cost greater than \$100,000.	

ORANGE COUNTY FIRE AUTHORITY
Roles/Responsibilities/Authorities

	Authority Management	Claims Settlement Committee	Executive Committee	Board of Directors
Service Contracts - <i>includes professional services, facilities & equipment services, and consulting.</i>	<p>Approve all service contracts (selection process per Ord. 8, Art. III, or Art. X) for annual contract amount less than \$100,000.</p> <p>Approve multi-year contracts so long as the annual amount is less than \$100,000, and the total contract amount does not exceed \$500,000.</p>		<p>Approve all service contracts in which the annual contract amount exceeds \$100,000 or multi-year contract exceeds \$500,000 when future years are taken into consideration.</p> <p>Contract extensions beyond the initial contract term and allowable contract extensions will require Executive Committee approval prior to contract extension.</p>	
Change Orders/ Modifications Service Contract Amendments (<i>Non Public Projects</i>)	<p>For service contracts within the limits delegated herein to Authority Management, approve change orders in any amount so long as the revised amount remains within the delegated limits.</p> <p>For contracts originally approved by the Executive Committee or Board of Directors, approve change orders within the original scope of work, less than 15% but not to exceed a total value of \$50,000.</p>		<p>Approve change order/modifications to any contracts with original or revised values that exceed those amounts delegated herein to Authority Management.</p>	

ORANGE COUNTY FIRE AUTHORITY
Roles/Responsibilities/Authorities

	Authority Management	Claims Settlement Committee	Executive Committee	Board of Directors
Emergency Purchases/Contracts	Approve emergency purchases, as defined in Ord. 8, Sec. 1-3(14) & Sec. 1-22, up to \$100,000.		Purchases in excess of \$100,000 require prior approval of Chair or Vice Chair and must be reported at the next Executive Committee meeting.	
Sole Source Contracts	Approve any sole source contracts less than \$50,000, so long as acceptable justification is provided by the using agency per the requirements in Ord. 8, Sec. 1-21.		Approve any sole source contracts when aggregate amount exceeds \$50,000. <i>Sole source justification form is a required attachment to the staff report.</i>	
Special Procurement Contracts – <i>utilized when it is in the best interest of OCFA to award a contract without bidding requirements and the procurement does not meet the definition of a sole source.</i>	Approve any special procurement contract less than \$50,000, so long as acceptable justification is provided by the using agency per the requirements in Ord. 8, Sec. 1-23.		Approve any special procurement contract when the aggregate amount exceeds \$50,000. <i>Special procurement justification form is a required attachment to the staff report.</i>	
Public Projects	Approve all informal public projects in amounts up to the statutory limits authorized by Public Contract Code Section 22032 (Currently projects under \$175,000).			Approve all formal public works contracts in amounts at or above the statutory limits authorized by Public Contract Code Section 22032 (Currently projects over \$175,000).

ORANGE COUNTY FIRE AUTHORITY
Roles/Responsibilities/Authorities

	Authority Management	Claims Settlement Committee	Executive Committee	Board of Directors
Public Projects - Change Orders/ Modifications for formal and informal Public Projects as set forth in Public Contract Code Section 22032	Approve Change Order/modifications for formal and informal Public Projects up to 10% of original contract amount, but less than a total value of \$17,500.		Approve Change Order/modifications for informal Public Projects over 10% of original contract amount, or exceeding a total value of \$17,500.	
Public Projects – Emergency as defined in Public Contract Code Sections 22035 and 22050 (Ord. 8, Sec. 1-53)	Fire Chief or designee has authority to declare an emergency and authorize procurement of equipment, services, construction services and supplies without the competitive bidding requirements when it is impracticable to convene a meeting of the Board of Directors prior to addressing the emergency needs.			Authorize exemption from procurement requirements by four-fifths vote (at next scheduled meeting) as required per Public Contract Code Sections 22035 and 22050.
Investment Practices	Provide financial data to Budget & Finance Committee, Executive Committee and Board of Directors. Develop draft policy.		Budget & Finance Committee - Review Treasury/Investment actions to insure compliance with policy. Executive Committee – review monthly reports.	Adopt investment and Treasury policies.
Setting of salaries/benefits and other terms and conditions of employment	Identify issues, recommend negotiations approach; negotiate with labor organizations as approved by the Board of Directors.		Review management recommendations; make recommendations to the Board of Directors.	Provide direction to chief negotiator on negotiations; adopt resulting MOUs and changes in the PSR.

ORANGE COUNTY FIRE AUTHORITY
Roles/Responsibilities/Authorities

	Authority Management	Claims Settlement Committee	Executive Committee	Board of Directors
Grievances	Administer procedures pursuant to MOU and PSR provisions.			
Disciplinary Actions	Implement disciplinary actions within legal and MOU requirements.			
Hire/Terminate	Hire/terminate Authority staff.		Make recommendations to the Board of Directors on General Counsel legal services contract and Fire Chief employment contract, and compensation of General Counsel and the Fire Chief.	Hire/terminate Fire Chief and General Counsel. Approve service contract for General Counsel. Approve employment contract for Fire Chief.
Appointments				Appointment of clerk, auditor, and treasurer (JPA Agreement Articles II.9 and II.13)
Classification and Salary Ranges	Administer classification system within existing classes and budget.		Adopt and approve new or modified classes and corresponding salary ranges.	
Settlement of Employee Complaints and Grievances	Approve settlements up to \$10,000 within existing PSR parameters.		Approve settlements up to \$50,000.	Approve settlements over \$50,000.
File Legal action				Authorize filing of legal action.
Respond to legal action				Authorize response to legal action.

ORANGE COUNTY FIRE AUTHORITY
Roles/Responsibilities/Authorities

	Authority Management	Claims Settlement Committee	Executive Committee	Board of Directors
Settlement of Claims and Litigation	Approve settlements of claims and litigation up to \$50,000. in accordance with Board of Directors Rules of Procedure.	Approve settlements of claims and litigation over \$50,000 not to exceed \$250,000. in accordance with Board of Directors Rules of Procedure.		Approve settlements of claims and litigation over \$250,000.
Level of risk/coverage/exposure	Recommend risk management policies; administer risk management program within established Board of Directors and legal requirements.			Establish policies.
Write-Off for Uncollectible Accounts	Approve write-off of uncollectible accounts up to \$15,000.		Approve write-off of uncollectible accounts over \$15,000. Budget and Finance Committee review annual report of uncollectibles and make a recommendation to Executive Committee for final decision.	
Accept Real Property Interests	Accept interest in real property if the Board of Directors or Executive Committee has previously approved.			Approve Secured Fire Protection Agreements and Purchase Agreements for the acquisition of real property.
<u>Secured Fire Protection Agreements</u>	<u>Approve Secured Fire Protection Agreements, using the standard form agreement previously approved by the Board of Directors, and approved as to form by General Counsel.</u>			<u>Approve Secured Fire Protection Agreements that contain material differences from the standard form approved by the Board of Directors.</u>

ORANGE COUNTY FIRE AUTHORITY
Roles/Responsibilities/Authorities

	Authority Management	Claims Settlement Committee	Executive Committee	Board of Directors
Utility licenses and easements	Execute licenses and easements for utilities necessary to implement construction projects approved by the Board or Executive Committee		Approve licenses and easements for utilities where no prior approval of construction projects has occurred	
Accept Grants	Accept all grants except: (1) when the grantor requires approval by the governing body, or; (2) when an adjustment is immediately needed to appropriations to expend the grant, or; (3) when a contract award is needed, requiring approval by the Executive Committee or Board.		Accept all grants in which the grantor requires approval by the governing body.	



Orange County Fire Authority
AGENDA STAFF REPORT

Board of Directors Meeting
March 23, 2017

Agenda Item No. 5A
Discussion Calendar

**Fiscal Year 2015/16 Backfill/Overtime and Calendar Year 2016 Total
Earnings/Compensation Analysis**

Contact(s) for Further Information

Lori Zeller, Assistant Chief lorizeller@ocfa.org 714.573.6020
Business Services Division

Jim Ruane, Finance Manager/Auditor jimruane@ocfa.org 714.573.6304

Summary

This annual agenda item provides an overview and analysis of the Fiscal Year 2015/16 backfill and overtime earnings along with the employee total compensation for Calendar Year 2016.

Prior Board/Committee Action(s)

Budget and Finance Committee Recommendation: *APPROVE*

At its regular March 8, 2017, meeting, the Budget and Finance Committee reviewed and unanimously recommended approval of this item.

RECOMMENDED ACTION(S)

1. Direct staff to continue pursuing reductions in overtime by filling permanent vacancies (excluding vacancies required by MOU) as quickly as possible after the positions become vacant.
2. Direct staff to continue using overtime to fill temporary vacancies rather than hiring additional personnel, recognizing this as a cost-effective practice for temporary needs.

Impact to Cities/County

Not Applicable

Fiscal Impact

Backfill/overtime costs are included in the annual budget.

Background

See extended background.

Attachment(s)

1. Frequently asked Questions & Responses
2. FY 15/16 Backfill/Overtime & Calendar Year 2016 Total Earnings/Compensation Analysis (PowerPoint Slides)

Background

The OCFA's General Fund budget consists primarily of labor costs with approximately 92.1% of the final FY 2015/16 budget allocated to salaries and employee benefits. For 2015/16, final backfill/overtime expenditures were \$46,089,676 or 14.3% of the salaries and employee benefits budget. The primary factors driving OCFA's backfill/overtime costs are:

- OCFA's Constant Staffing Policy - \$35.4M
- Major Emergency Incident Response - \$4.3M
- Training Requirements - \$1.7M
- Discretionary - \$1.6M

Backfill and overtime costs can either be non-discretionary or discretionary and are explained in the following paragraphs.

Constant Staffing Backfill / Overtime (Non-Discretionary)

The OCFA maintains constant staffing levels, which means that every day, all authorized Operations post-positions are staffed. Constant staffing enables delivery of emergency services 24-hours per day, 7 days per week. A post-position is a seat on a fire or EMS response unit (including engines, trucks, and paramedic vehicles) that must be filled to meet the staffing requirements of that unit.

- Backfill occurs when there is a vacancy in a position that requires constant staffing and another employee works overtime to fill the vacancy. Examples include:
 - Positions temporarily vacant due to personnel on leave (sick, vacation, jury duty, military leave, bereavement, workers' compensation, etc.)
 - Positions vacant due to cost control measures (open positions per the MOU)
 - Positions vacant as a result of retirements, promotions, the addition of new positions to staff a new station, or converting Basic Life Support engines to Advance Life Support engines
 - Positions temporarily vacant due to personnel responding to major in/out of county emergency incidents
- Overtime is used for work performed above and beyond the constant staffing requirements. Examples of overtime include strike team or overhead assignments or emergency incidents, either in or out of County, and mandatory training classes that occur on a day other than the employee's regularly assigned shift.

Major Emergency Incident Response (Non-Discretionary)

Another form of non-discretionary overtime incurred by OCFA is for major emergency incident response. OCFA responds to emergency incidents at the request of surrounding fire agencies (Mutual Aid), California Department of Forestry (CAL FIRE), Cleveland National Forest Service (CNF), and the California Office of Emergency Services (OES). Backfill/overtime costs for responding to major emergency incidents in FY 2015/16 totaled \$4.3M and represented approximately 9.2% of total backfill/overtime expenditures. Approximately 95-100% of these emergency related incident response costs (except Mutual Aid) are reimbursable.

Backfill/Overtime costs for constant staffing and major emergency incident response are considered non-discretionary and represent 92.6% of FY2015/16 Backfill/Overtime costs.

Training Requirements (Discretionary & Non-Discretionary)

OCFA incurs additional backfill/overtime costs related to various training requirements for suppression personnel. Examples include mandatory training requirements for federal, state, and local programs including Urban Search and Rescue (US&R), Airport Rescue Firefighting (ARFF), Weapons of Mass Destruction (WMD), and Incident Command. Additionally, OCFA historically incurs overtime and backfill costs to provide training academies for new and/or promoted Dispatchers, Firefighters, Engineers, Captains, Battalion Chiefs, and Reserve Firefighters. Backfill/overtime costs as a result of training activities in FY 2015/16 totaled \$1.7M and represented 3.8% of the total backfill/overtime expenditures.

Discretionary Backfill/Overtime

For FY 2015/16 total discretionary backfill/overtime was \$1.6M or 3.6% and is attributable to the following:

- Employees staffing special events, participating on project teams, and Fire Explorer program activities
- Information systems, GIS, automotive, communications services, and fire prevention personnel requested to work outside their normal work schedule

Page three of the attached presentation illustrates the distribution and cause of backfill/overtime by category (discretionary and non-discretionary).

Regular vs. Overtime Analysis

As referenced on page four of the attached presentation, backfill/overtime continues to be nearly 28% more cost effective than hiring a full time benefited employee. For FY 2015/16, the estimated cost savings to OCFA by using overtime rather than full time employees to fill vacancies was \$15,590,115 and is included as page five of the attachment.

Compensation Cost Transparency

Annual employee compensation costs are posted and readily available on the OCFA website dating back to calendar year 2009. Since 2012 the format of the report includes all earnings segregated by base salary, overtime, payouts, special pay, and other. Additionally, employer paid retirement and benefits are also included in the employee compensation report posted on the OCFA website. This year's 2016 report will be posted to the OCFA website on April 28, 2017. The State Controller Report will be submitted to the State on April 28, 2017, in compliance with the April 30, 2017, due date.

Filling Vacant Position

To help reduce the number of vacancies that are open pending hiring and promotions, OCFA has conducted, and plans to conduct the following academies:

<u>July 1, 2016, through March 1, 2017</u>	<u>Academies planned for next 12 months</u>
2 Firefighter Academies	2 Firefighter Academies
1 Fire Apparatus Engineer Academy	1 Fire Apparatus Engineer Academy
1 Fire Captain Academy	1 Fire Captain Academy
1 Battalion Chief Academy	1 Battalion Chief Academy

Backfill/Overtime Monitoring & Analysis

OCFA financial staff prepares monthly reports to track and monitor backfill/overtime activity. Reports are provided internally to management to show expenditures by section and by cause (reason) so that they can monitor and, if required, adjust activities as needed in their respective area.

The OCFA also has policies, procedures, and systems in place that monitor and report overtime usage. Due to the extraordinary fire season, open positions and vacancies due to promotion and retirements during 2016, the OCFA was required to force many employees to work that possessed specialty skills. As stated earlier, the OCFA has aggressively been conducting academies to help reduce the impact to the employee and distribution of overtime. OCFA staff is also working with the Orange County Professional Firefighters Association to enhance the existing policies to reduce the amount of forced overtime.

The current policy is to allow employees to voluntarily work up to 120 continuous hours, subject to the Battalion Chief's approval. OCFA staff will continue to reduce the consecutive hour rule back to 96, when our vacancies are filled and the need to force employees to work shifts are minimized.

As discussed in this report, the majority of backfill/overtime incurred by OCFA is non-discretionary; however, a small portion of overtime is considered discretionary (3.6% of total backfill/overtime expenditures) and is monitored closely. Emergency response activity is generally 95-100% reimbursable.

FY 2015/16 BACKFILL/OVERTIME ANALYSIS FREQUENTLY ASKED QUESTIONS

1. What is a firefighter's standard work schedule?

Firefighters assigned to suppression positions work 24-hour shifts which equate to a 56-hour average work week or 2,912 hours per year. When firefighters are assigned to staff positions on a 40-hour work week, they average 2,080 regular hours per year.

2. What does "maintaining constant staffing levels" mean? What is the difference between backfill and overtime?

This means that every day, all authorized Operations post-positions are staffed. A post-position is a seat on a fire or EMS response unit (including engines, trucks and paramedic vans) that must be filled to meet the staffing requirement of that unit. Backfill occurs when there is a vacancy in a position that requires constant staffing and the employee either volunteers or is forced to work to fill the vacancy. Overtime is used for work done above and beyond the constant staffing requirements. Examples of overtime include strike team or overhead assignments to emergency incidents, either in or out of County, and mandatory training classes that occur on days other than the employee's regularly assigned shift.

3. Because our backfill/overtime budget is significant, does that mean we are understaffed?

OCFA's backfill/overtime budget is significant due to the reasons outlined in #2 above. Due to retirements and promotions, there are positions that have gone unfilled. In addition, a labor agreement includes provisions to hold 15 positions open for each rank in the firefighter labor group. This will be phased out over the next three fiscal years. For Fiscal Year 2015/16, an average of 72 positions were vacant which required constant staffing on an overtime/backfill basis. Recent and planned academies along with promotional exams are expected to significantly reduce the number of vacancies and open positions.

4. How many continuous hours may a firefighter work?

The maximum number of continuous hours (regular and backfill/overtime) an employee may work is 96. Employees enter their availability to work into the OCFA's Staffing System. The staffing system hires employees based upon the premise of an equal distribution of overtime and agreed upon hiring list procedures. The Assistant Chief of Operations may suspend the 96-hour rule to ensure sufficient incident response capability and adequate station coverage. Personnel assigned to out of county strike teams or to overhead positions are often deployed for periods of 14 days. When assigned to these extended incidents, employees work within established work/rest cycles.

5. Is the OCFA concerned about employee fatigue as the result of the continuous work hour rules?

The OCFA recognizes employee fatigue is a factor that impacts employee performance. Severe fatigue may increase the dangers inherent in the performance of emergency operations. The OCFA takes steps to protect employees from these dangers. The OCFA ensures that firefighters are trained, equipped and supervised to work as safely as possible. There is an additional emphasis on employee health and wellness provided through the WEFIT Program. Supervisors have the means by which to ensure employees are either adequately rested or relieved of duty where appropriate. Firefighters on extended incidents adhere to specified work/rest periods.



ORANGE COUNTY FIRE AUTHORITY

Fiscal Year 2015/16 Backfill/Overtime

Calendar Year 2016 Total Earnings/Compensation Analysis



Board of Directors Meeting

Prepared by:

OCFA Finance Division

March 23, 2017



2016 California Fire Map

Sept. 22,
2016



FY 2015/16 Backfill/Overtime Categories

Categories of Backfill/Overtime	FY 2015/16	% of Total
<u>Non-Discretionary Categories:</u>		
Vacation, Sick, W/C, Other Leave	10,826,647	23.5%
Open Positions	14,133,156	30.7%
Other Non-Discretionary	154,222	0.3%
FLSA Rate Adjustment	13,307,352	28.9%
Emergency *	4,262,697	9.2%
Total Non-Discretionary	42,684,074	92.6%
Total Training	1,757,221	3.8%
Total Discretionary	1,648,381	3.6%
Fiscal Year Totals	46,089,676	100.00%

* Emergency overtime is generally 95-100% reimbursable.

FY 2015/16 Regular vs. Overtime Analysis

Top Step Firefighter Hourly Rates Regular Full-Time-Equivalent vs. OT	Hourly Reg. FTE Rate	Hourly OT Rate	\$ Diff.	% Diff.
<u>Salaries:</u>				
Base Hourly Rate	28.98	28.98		
Other Pays (Holiday, Educ. Inc., EMT, FLSA)	5.13			
Total Salaries	34.11	28.98		
<u>Benefits:</u>				
Retirement	19.29			
Workers' Compensation	2.82	2.40		
Health Insurance	7.54			
Medicare	0.49	0.63		
Total Benefits	30.14	3.03		
Total Overtime Premium		14.49		
Total Hourly Salaries & Benefits	\$64.25	\$46.50	\$17.75	27.63%

It is 27.63% more cost-effective to use overtime for filling vacancies compared to hiring a regular full-time employee.

Regular vs. Overtime Analysis

FY 2015/16 Firefighter Unit Estimated Cost Savings

Classification	Actual Overtime Hours Worked FY 15/16	FTE Equivalent *	Estimated ** FTE Cost	Estimated ** Overtime Cost	Estimated ** Cost Saving by Utilizing Overtime/Backfill
Fire Captain	245,966	84.5	\$ 19,989,657	\$ 15,018,684	\$ 4,970,973
Engineer	219,687	75.4	\$ 15,571,415	\$ 11,456,677	\$ 4,114,738
Firefighter	366,239	125.8	\$ 23,534,518	\$ 17,030,114	\$ 6,504,405
		285.7	\$ 59,095,590	\$ 43,505,475	\$ 15,590,115

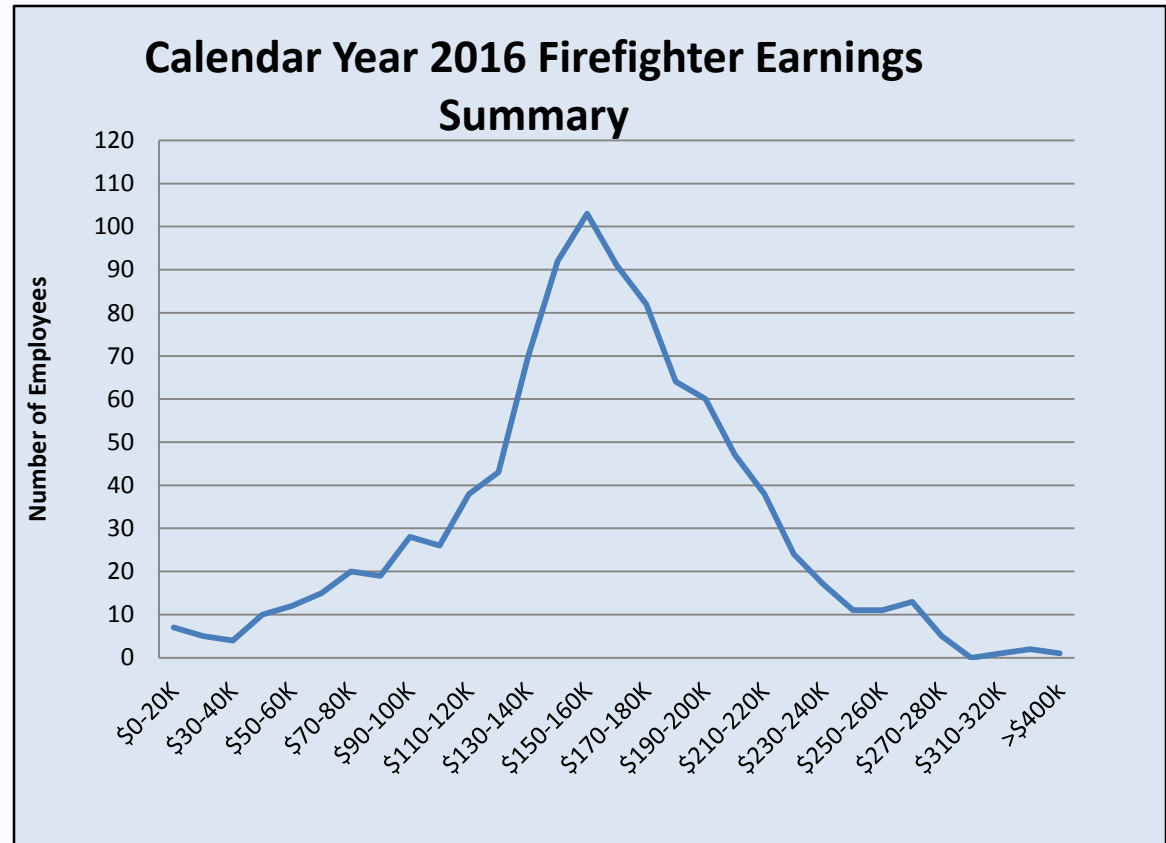
* Assumes 2,912 hours worked per year.

** Utilizes estimated hourly rates for top step within a classification.

- **The estimated \$15,590,115 savings is a direct result of utilizing overtime/backfill rather than full-time employees at a savings of 24-28% .**

Firefighter Earnings Analysis

\$10,000 Increments	# of Employees
\$0-20K	7
\$20-30K	5
\$30-40K	4
\$40-50K	10
\$50-60K	12
\$60-70K	15
\$70-80K	20
\$80-90K	19
\$90-100K	28
\$100-110K	26
\$110-120K	38
\$120-130K	43
\$130-140K	70
\$140-150K	92
\$150-160K	103
\$160-170K	91
\$170-180K	82
\$180-190K	64
\$190-200K	60
\$200-210K	47
\$210-220K	38
\$220-230K	24
\$230-240K	17
\$240-250K	11
\$250-260K	11
\$260-270K	13
\$270-280K	5
\$280-310K	0
\$310-320K	1
\$320-330K	2
>\$400k	1
Total	959



Median=50% of earnings fall below this amount and 50% of earnings fall above this amount.

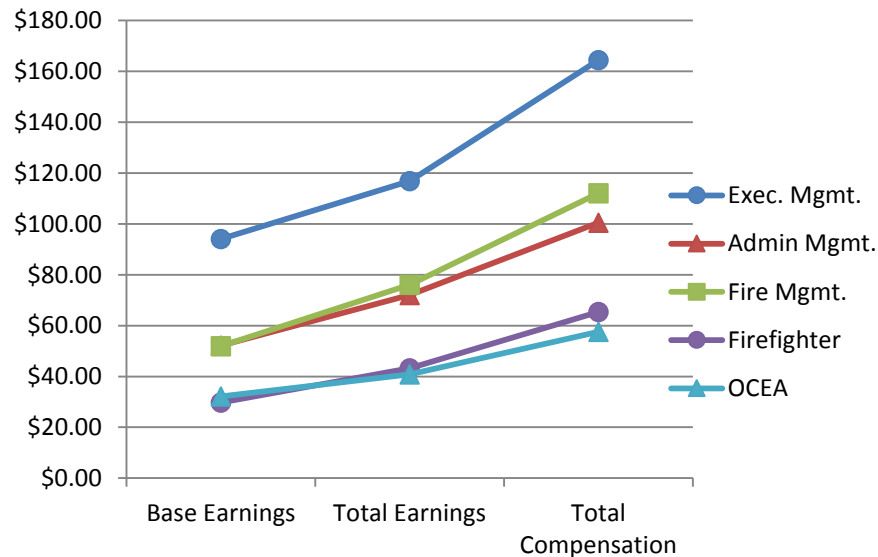
Annual Firefighter (excluding firefighter trainees) average and median earnings:

AVERAGE	\$	157,602
MEDIAN	\$	159,070

CY 2016 Total Employee Compensation

	BASE EARNINGS			TOTAL EARNINGS			TOTAL COMPENSATION		
Bargaining Group	Average Base Earnings	Regularly Scheduled Hours	Average Hourly Rate	Average Total Earnings	Average Actual Hours Worked	Average Hourly Rate	Average Total Compensation	Average Actual Hours Worked	Average Hourly Rate
Executive Management	\$195,693	2080	\$94.08	\$221,573	1897	\$116.80	\$311,872	1897	\$164.40
Administrative Management	\$108,542	2080	\$52.18	\$128,254	1781	\$72.01	\$178,982	1781	\$100.50
Chief Officers Association	\$150,958	2912	\$51.84	\$239,331	3145	\$76.10	\$352,536	3145	\$112.09
OC Professional Firefighters Assoc.	\$86,632	2912	\$29.75	\$150,827	3491	\$43.20	\$228,014	3491	\$65.31
Orange County Employee's Assoc.	\$66,905	2080	\$32.17	\$82,397	2017	\$40.85	\$115,979	2017	\$57.50

Average Hourly Rate



Calendar Year 2016 Top 10 Firefighter Unit Total Compensation & FTE Cost Savings

	Title/ Assignment	Total Earnings	Total Compensation	Base Hours	Other Hours	Total Hours	Average Hours Per Week	Average Hourly Rate	FTE	Cost Savings
1	Fire Captain/PM/CalFire	\$412,689	\$508,495	2,912	4,096	7,008	135	\$ 72.56	2.41	\$ 82,780.16
2	Fire Captain/PM	\$325,828	\$429,653	2,912	2,702	5,614	108	\$ 76.53	1.93	\$ 54,607.42
3	Fire Captain/PM	\$329,536	\$424,850	2,912	2,713	5,625	108	\$ 75.53	1.93	\$ 54,829.73
4	Fire Captain	\$312,943	\$412,720	2,144	1,699	3,843	74	\$ 107.40	1.79	\$ 34,336.79
5	Fire Captain/PM	\$272,493	\$375,350	2,912	1,855	4,767	92	\$ 78.74	1.64	\$ 37,489.55
6	Fire Captain/PM	\$268,123	\$372,126	2,912	1,900	4,812	93	\$ 77.33	1.65	\$ 38,399.00
7	Fire Captain/PM	\$267,540	\$371,650	2,912	1,742	4,654	90	\$ 79.86	1.60	\$ 35,205.82
8	Fire Captain/PM	\$266,925	\$368,632	2,912	1,855	4,767	92	\$ 77.33	1.64	\$ 37,489.55
9	Fire Captain/PM	\$266,092	\$368,289	2,912	1,967	4,879	94	\$ 75.48	1.68	\$ 39,753.07
10	Fire Captain	\$268,865	\$366,958	2,912	2,248	5,160	99	\$ 71.12	1.77	\$ 45,432.08



Calendar Year 2016 Top 10 Employee Total Compensation

	Title/ Assignment	Total Earnings	Total Compensation	Base Hours	Other Hours	Total Hours	Average Hours Per Week	Average Hourly Rate
1	Fire Captain/PM/CalFire	\$412,689	\$508,495	2,912	4,096	7,008	135	\$ 72.56
2	Fire Captain/PM	\$325,828	\$429,653	2,912	2,702	5,614	108	\$ 76.53
3	Fire Battalion Chief	\$312,345	\$428,259	2,816	1,697	4,513	87	\$ 94.89
4	Fire Captain/PM	\$329,536	\$424,850	2,912	2,713	5,625	108	\$ 75.53
5	Fire Battalion Chief/CalFire	\$301,803	\$414,817	2,912	1,580	4,492	86	\$ 92.35
6	Fire Battalion Chief	\$302,894	\$412,895	2,845	1,572	4,417	85	\$ 93.48
7	Fire Captain	\$312,943	\$412,720	2,144	1,699	3,843	74	\$ 107.40
8	Fire Battalion Chief	\$290,517	\$408,705	2,533	1,038	3,571	69	\$ 114.45
9	Fire Battalion Chief/CalFire	\$288,003	\$407,967	2,027	660	2,687	52	\$ 151.83
10	Fire Battalion Chief/CalFire	\$297,065	\$405,104	2,912	1,547	4,459	86	\$ 90.85

The top 10 employees worked an average of 89 hours per week with an average total compensation per hour of \$96.99.

Calendar Year 2016 Top 10 Employee Pensionable vs. Non- Pensionable Compensation

	Title/ Assignment	Base Hours	Other Hours	Total Hours	Compensation Pensionable	Compensation Non-Pensionable	Employer Paid Pension (Non-Pensionable)	Employer Paid Health (Non-Pensionable)	Total Compensation
1	Fire Captain/PM/CalFire	2,912	4,096	7,008	\$ 147,933	\$ 264,756	\$ 73,006	\$ 22,800	\$ 508,495
2	Fire Captain/PM	2,912	2,702	5,614	\$ 147,854	\$ 177,975	\$ 81,025	\$ 22,800	\$ 429,653
3	Fire Battalion Chief	2,816	1,697	4,513	\$ 170,279	\$ 142,065	\$ 94,840	\$ 21,074	\$ 428,259
4	Fire Captain/PM	2,912	2,713	5,625	\$ 147,800	\$ 181,737	\$ 72,514	\$ 22,800	\$ 424,850
5	Fire Battalion Chief/CalFire	2,912	1,580	4,492	\$ 167,820	\$ 133,983	\$ 91,342	\$ 21,672	\$ 414,817
6	Fire Battalion Chief	2,845	1,572	4,417	\$ 165,401	\$ 137,493	\$ 88,922	\$ 21,079	\$ 412,895
7	Fire Captain	2,144	1,699	3,843	\$ 138,284	\$ 174,660	\$ 76,977	\$ 22,800	\$ 412,720
8	Fire Battalion Chief	2,533	1,038	3,571	\$ 177,500	\$ 113,017	\$ 98,585	\$ 19,603	\$ 408,705
9	Fire Battalion Chief/CalFire	2,027	660	2,687	\$ 180,555	\$ 107,448	\$ 98,377	\$ 21,587	\$ 407,967
10	Fire Battalion Chief/CalFire	2,912	1,547	4,459	\$ 173,063	\$ 124,002	\$ 91,957	\$ 16,082	\$ 405,104

Calendar Year 2016 Top 10 Employees Hours by Overtime/Backfill Cause Code

	Title/ Assignment	Base or "Regular" Hours Worked	Backfill Hours Worked to fill for Sick/Vacation/ Workers Comp	Backfill Hours Worked to fill Open Vacant Positions	Overtime Hours Worked to Staff an Emergency Incident (1)	Overtime Hours Worked to Attend Training	Other (2)	Total Hours
1	Fire Captain/PM/CalFire	2,912	968	1,710	911	309	198	7,008
2	Fire Captain/PM	2,912	938	1,162	103	115	384	5,614
3	Fire Battalion Chief	2,816	190	324	604	169	410	4,513
4	Fire Captain/PM	2,912	1,026	1,191	99	94	303	5,625
5	Fire Battalion Chief/CalFire	2,912	108	268	651	211	342	4,492
6	Fire Battalion Chief	2,845	160	312	812	92	196	4,417
7	Fire Captain	2,144	48	141	1,237	0	273	3,843
8	Fire Battalion Chief	2,533	106	366	385	69	112	3,571
9	Fire Battalion Chief/CalFire	2,027	0	155	429	41	35	2,687
10	Fire Battalion Chief/CalFire	2,912	72	346	687	107	335	4,459

(1) Reimbursable

(2) Other includes: Special Activity, Other Discretionary, Other Non-Discretionary, Administrative.

Summary

- Approximately 92% of the backfill/overtime cost are non-discretionary (81 % - constant staffing) and emergency activity (10% - reimbursable)
- For FY 2016/17 over 30% non-discretionary overtime was a result of open positions. OCFA staff has conducted, or has scheduled, the following academies from July 1, 2015 through June 30, 2016:

2 Firefighter Academies

1 Fire Captain Academy

1 Fire Apparatus Engineer Academy

1 Battalion Chief Academy

- The following academies are planned to be conducted in the next 12 months:

2 Firefighter Academies

(including lateral paramedics)

1 Fire Captain Academy

1 Fire Apparatus Engineer Academy

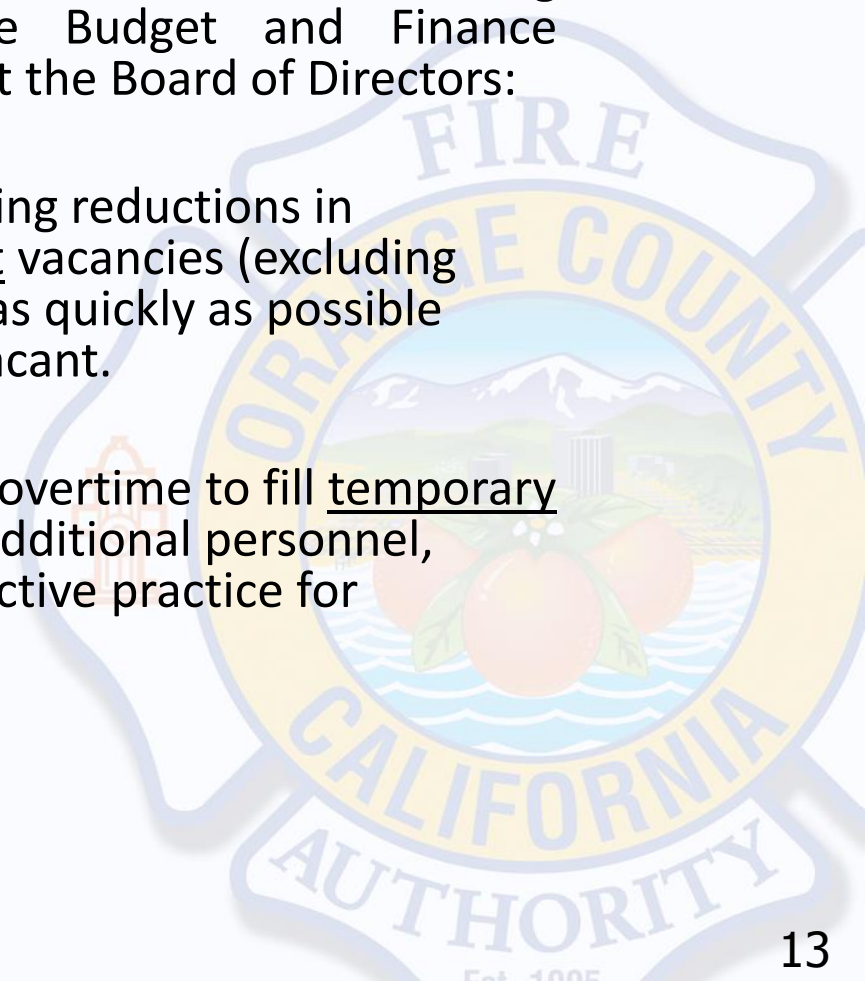
1 Battalion Chief Academy

- Monthly reports are provided to management to show backfill/overtime expenditures by section and cause so that managers can monitor and, if required, adjust activities as needed in their respective areas.

Recommended Action

Review the proposed agenda item and direct staff to place the item on the agenda for the Board of Directors meeting of March 23, 2017, with the Budget and Finance Committee's recommendation that the Board of Directors:

1. Direct staff to continue pursuing reductions in overtime by filling permanent vacancies (excluding vacancies required by MOU) as quickly as possible after the positions become vacant.
2. Direct staff to continue using overtime to fill temporary vacancies rather than hiring additional personnel, recognizing this as a cost-effective practice for temporary needs.





Orange County Fire Authority
AGENDA STAFF REPORT

Board of Directors Meeting
March 23, 2017

Agenda Item No. 5B
Discussion Calendar

**Discussion of Member Agency Financial Equity Issues
and Potential Liability of Member Agencies Upon Withdrawal from
OCFA or Upon Expiration of OCFA's Joint Powers Agreement and Requests
made by City of Irvine and County of Orange for OCFA to Engage in
Discussions and Negotiations regarding Financial Equity Issues; Potential
Formation of an Equity Ad Hoc Committee**

Contact(s) for Further Information

Lori Zeller, Assistant Chief
Business Services Department

lorizeller@ocfa.org

714.573.6020

Summary

This item is submitted in response to a request from Directors Spitzer and Bartlett for inclusion of the above titled topics on the agendas for both the Executive Committee and the Board of Directors.

Prior Board/Committee Action

At its May 26, 2016, meeting, the Board of Directors considered formation of an Equity Ad Hoc Committee and voted unanimously to rescind the formation of a 2016 Equity Ad Hoc Committee, noting it is at the discretion of the two agencies, County of Orange and City of Irvine, to deliberate the issue of equity and, when appropriate, present proposed options to the Board of Directors.

At its September 22, 2016, meeting, the Board of Directors took action to form a Pension Ad Hoc Committee to further review the proposed scope and questions to be submitted to Special Counsel in order to obtain an opinion relating to member agency obligation for pension liabilities upon withdrawal from OCFA. The Ad Hoc Committee is also to make recommendations to the Board of Directors regarding selection of Special Counsel.

RECOMMENDED ACTION(S)

1. Reaffirm Board's prior May 26, 2016, direction rescinding the formation of a 2016 Equity Ad Hoc Committee, noting it is at the discretion of the two agencies, County of Orange and City of Irvine, to deliberate the issue of equity and, when appropriate, present proposed options to the Board of Directors.
2. Reaffirm Board's prior September 22, 2016, direction to forward the topics relating to member agency obligation for pension liabilities to the Pension Ad Hoc Committee.
3. Receive oral status report from the Pension Ad Hoc Committee Chair.

Impact to Cities/County

Not Applicable.

Fiscal Impact

Not Applicable

Background

This agenda item is submitted in response to a request from Directors Spitzer and Bartlett for inclusion of the above titled topics on the agendas for both the Executive Committee and the Board of Directors. Further, as requested by Director Spitzer, and invitation was extended to the County Chief Executive Officer and the Irvine City Manager, for attendance and participation in the March 23 meetings of the OCFA Executive Committee and Board of Directors.

Many of the topics requested for inclusion in this agenda are currently being explored by the Pension Ad Hoc Committee. A comprehensive list of legal questions are being considered by the Pension Ad Hoc Committee for potential inclusion in a legal opinion that would be prepared by Special Counsel (Attachment 1). A Request for Proposal was issued in December to identify qualified firms for recommendation to the Board of Directors. Three proposals were received in January, and the proposals are being evaluated by the Committee. Additional updates will be provided orally by the Chair of the Pension Ad Hoc Committee, to share the most recent information available from this process.

As action has previously been taken by the Board relating to these topics, and is currently underway, staff is recommending that the Board reaffirm its prior direction.

Attachment(s)

September 21, 2016 Correspondence from Directors Bartlett and Spitzer – Questions re: Potential Liability of Orange County Fire Authority (OCFA) Members for OCFA's Debts and Obligations



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

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

September 21, 2016

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

Re: Potential Liability of Orange County Fire Authority (OCFA) Members for
OCFA's Debts and Obligations

Dear Mr. Kendig:

We understand that a proposal may be presented to OCFA's Board of Directors to retain special legal counsel to address questions regarding the potential liability of its members if OCFA's Joint Powers Agreement were to expire in 2030. In order to accurately assess this issue, we believe that OCFA's special counsel would need to address the following questions as part of their legal analysis:

A. General Questions

1. Does the manner by which fire protection might be delivered following the dissolution of OCFA affect the responsibility for OCFA liabilities, including pension obligations, among its members? For example, who would be responsible for OCFA's liabilities if OCFA's members opted to return to the pre-OCFA model of a County operated fire department? Alternatively, what if OCFA's members formed individual city fire departments? Is there a difference in liability exposure between OCFA's Cash Contract City and Structural Fire Fund ("SFF") members?
2. If OCFA were to dissolve, would the County be responsible for providing fire protection to SFF cities if such cities decided not to form their own fire departments? If so, would the County be responsible for the share of OCFA liabilities attributable to serving OCFA's SFF members?
3. In the event that a SFF city provides proper notice of its intent to withdraw from OCFA and opts to either provide its own fire protection or contract with another fire department for fire protection, can the SFF city negotiate an exchange of property taxes directly with the County without the approval of OCFA?
4. Does the OCFA joint powers agreement provision that "termination will occur if only one member is left in the Authority," mean that the last one out is responsible for OCFA's remaining liabilities?

5. How would you reconcile the opinion by OCFA's general counsel dated June 24, 2014 (see attached Exhibit A), with the opinion by Sidley & Austen dated September 20, 2013, which opined that members of a Joint Powers Authority might be liable for takings damages arising from the JPA's activities (see attached Exhibit B)?

B. Pension Questions

1. Could the withdrawal of members from OCFA result in an increase in OCFA retirement costs paid by OCFA's remaining members? Is there a difference in the impact on SFF members versus Cash Contract City members?

2. If OCFA dissolved, could OCFA's members be held liable for OCFA's unfunded pension obligation? Put another way, could OCERS assert a valid claim against OCFA's former members for pro rata contributions toward the Unfunded Actuarial Accrued Liability ("UAAL") that is attributable to OCFA? Is there a difference in the impact on SFF members versus Cash Contract City members?

3. Could the County, as the primary sponsor of OCERS, factor its UAAL exposure in property tax negotiations with SFF cities wishing to provide their own fire protection?

4. Could OCERS (A) demand increased contributions from OCFA in response to notice that OCFA might dissolve; (B) threaten to accelerate OCFA's payment of UAAL given OCFA's declining payroll; and/or (C) seek to recover payment from OCFA's assets prior to the distribution of OCFA's assets to its members pursuant to terms of the joint powers agreement?

C. Labor-Related Questions

1. Would OCFA's members be required to hire or extend benefits and seniority to former OCFA firefighters in the event OCFA dissolves or an OCFA member withdraws and forms its own fire department pursuant to Government Code 53292 and similar statutes?

2. Would former members of OCFA, which are not currently members of OCERS, have to extend reciprocal pension benefits to former OCFA firefighters that they hire? Would this increase the pension costs of such members?

D. Real Property and Other Assets

1. Upon a member's withdrawal from OCFA, is that withdrawing member entitled to receive any portion of OCFA's real property or assets or is such distribution subject to negotiation?

2. Upon the dissolution of OCFA, must OCFA's liabilities, including pension liabilities, be settled and allocated prior to distribution of OCFA's assets?

Finally, we believe that any opinion that OCFA's special legal counsel might issue will depend in large part on the underlying assumptions regarding how the dissolution of OCFA is accomplished. The questions listed above are designed to explore these assumptions and require that they be clearly articulated.

Sincerely,



Lisa A. Bartlett
Chairwoman
Orange County Supervisor, 5th District



Todd Spitzer
Orange County Supervisor, 3rd District

cc: Orange County Fire Authority Board of Directors
Lori Zeller, Assistant Chief of Business Services



WOODRUFF, SPRADLIN & SMART
A Professional Corporation

555 ANTON BOULEVARD, SUITE 1200
COSTA MESA, CA 92626-7670
(714) 558-7000

DIRECT DIAL: (714) 415-1083
DIRECT FAX: (714) 415-1183
E-MAIL: dkendig@wss-law.com

MEMORANDUM

VIA E-MAIL

TO: Board of Directors, Orange County Fire Authority

FROM: General Counsel

DATE: June 23, 2014

RE: Proposed Legislation re Liability of Member Agencies for OCFA Pension Obligations

This office has been requested to analyze whether a member agency in the Orange County Fire Authority ("OCFA") has liability for the OCFA's pension obligations after withdrawal from the OCFA. This memo provides the requested analysis.

Question Presented.

Under current law and the existing joint powers agreement, would a member agency in the OCFA have liability to pay its pro rata share of the OCFA's pension obligations if it withdraws from the Authority?

Brief Answer.

No.¹

Discussion and Analysis.

In connection with the Board of Supervisors' meeting tomorrow, the County of Orange Executive Office/Legislative Affairs has circulated to the Board its "Legislative Bulletin" providing analyses of legislation proposed or pending in Sacramento or Washington D.C. that are of interest to the County. One item in that Bulletin recommends support of legislation that would, if adopted, affect the liability of OCFA member agencies for OCFA's pension obligations. Specifically, the Bulletin reads as follows:

¹ Upon joining the OCFA, the City of Santa Ana entered into a Fire Services Agreement providing it could be responsible for a portion of the OCFA's pension liability upon termination or expiration of the agreement. That agreement is applicable only to the City of Santa Ana and is not a part of the OCFA Joint Powers Agreement affecting the Authority's other member agencies. As a result, that agreement is not analyzed further here.

"OCFA Pension Obligation Legislation: SUPPORT

"The Orange County Professional Firefighters Association is concerned about the impact on the pension solvency of the Orange County Fire Authority (OCFA) if members are allowed to withdraw from the authority without paying the full share of their future pension obligation. Legislation specific to OCFA may be proposed to amend the Government Code to require that upon withdrawal from OCFA, a public agency would remain liable for its pro-rata share of the authority's continued financial obligation to fund the cost of the unfunded actuarial accrued liability (UAAL) of the retirement plan for active and retired employees enrolled in the Orange County Employees Retirement System. The withdrawing public agency also would be responsible for its pro-rata share of any unfunded liability for any applicable retiree medical plan. The proposed bill would also specify that the withdrawing agency would have to complete payment of its pro-rata share(s) within 10 years of withdrawing from the authority.

"CEO Legislative Affairs recommends the Board support in concept such legislation."

OCFA Staff and several OCFA Board Members have inquired whether State law and the existing OCFA joint powers agreement, as amended (the "JPA Agreement"²) already establish liability on member agencies for a share of the OCFA's pension liability?

1. Existing Law.

Joint powers authorities are created and regulated by California's "Joint Exercise of Powers Act", California Government Code sections 6500-6536 (the "Act"). According to the Act, the OCFA "is a public entity separate from the parties to the agreement" that created the OCFA.³ Thus, because it was established by an agreement made pursuant to the Act, the OCFA is a separate legal entity, distinct from its member agencies.

According to the Act, whether the member agencies of a joint powers authority have liability for the obligations of the OCFA depends on the provisions of the joint powers agreement:

"If the agency is not one or more of the parties to the agreement but is a public entity, commission, or board constituted pursuant to the agreement, the debts,

² The OCFA currently operates under an Amended Joint Powers Agreement, which itself has been amended twice, by a First Amendment and most recently by a Second Amendment to the Amended Joint Powers Agreement. For ease of reference, the Amended Joint Powers Agreement as amended by the First and Second Amendment are referred to in this memo as the "JPA Agreement". Each of the JPA Agreement provisions referenced in this memo was contained in the original Amended Joint Powers Agreement, and was not altered by the First or Second Amendments.

³ Cal. Gov't Code § 6507 ["For the purposes of this article, the agency is a public entity separate from the parties to the agreement."]

liabilities, and obligations of the agency shall be debts, liabilities, and obligations of the parties to the agreement, unless the agreement specifies otherwise."⁴

"A party to the agreement may separately contract for, or assume responsibility for, specific debts, liabilities, or obligations of the agency."

Thus, this analysis turns to JPA Agreement, and whether that agreement establishes limitations upon the liability of the member agencies.

2. The Provisions of the Existing JPA Agreement Limit Member Agency Liability for OCFA's Obligations.

According to the JPA Agreement the OCFA's obligations are that of the Authority and not of its members. Article I of the JPA Agreement states:

"The Authority is formed by this Agreement pursuant to the provisions of Article 1, Chapter 5, Division 7, Title I (commencing with Section 6500) of the Government Code of the State of California. The Authority shall be a public entity separate from the parties hereto and its debts, liabilities and obligations shall not be the debts, liabilities and obligations of its members."⁵

Consistent with that section, Article VI of the JPA Agreement further provides as follows:

"Liabilities. Except as otherwise provided herein, the debts, liabilities and obligations of the Authority shall be the debts, liabilities or obligations of the Authority alone and not of the parties of this Agreement."⁶

There is no other provision in the JPA Agreement that establishes an exception to that provision that would otherwise subject the member agencies to liability for any portion of the OCFA's Orange County Employee Retirement System unfunded liability.

As a result, we conclude that, under current law and the current JPA Agreement, member agencies would not have liability for OCFA's pension obligations (or retiree medical benefits) in the event of withdrawal from the OCFA.⁷ As a result, legislation adopted consistent with the proposal supported by the County CEO Legislative Affairs would represent a change in the member agencies' legal obligations.

We hope this proves helpful. Please let me know if you have any questions.

⁴ Cal. Gov't Code § 6508.1 [emphasis added]

⁵ JPA Agreement, Article I, Section 1 [emphasis added.]

⁶ JPA Agreement, Article VI, Section 3 [emphasis added.]

⁷ As noted in footnote 1 above, a separate agreement exists with the City of Santa Ana that would subject Santa Ana to liability for its share of the pension liability.

MEMORANDUM

TO: Tim Cameron, Kim Chamberlain, Chris Killian
Securities Industry and Financial Markets Association

FROM: David R. Carpenter, Collin P. Wedel, Lauren A. McCray

RE: Liability of Municipal Members of a Joint Powers Authority

DATE: September 30, 2013

INTRODUCTION

We are informed that the City of Richmond, California, is considering soliciting other municipalities to form a Joint Powers Authority (“JPA”) to implement its proposed underwater-loan eminent domain plan. Under California law, two or more public entities can enter into an agreement to form a JPA to exercise any common power, including their respective powers of eminent domain. *See* Cal. Gov. Code § 6502; Cal. Civ. Proc. Code § 1240.140.¹ We understand that Richmond may be interested in forming a JPA, on the assumption that cities could insulate themselves from liability or financial obligations arising from the JPA’s implementation of the eminent domain plan. Thus, Richmond may be seeking to form a JPA as a substitute for obtaining full indemnification or liability insurance from private parties who would be financing and/or assisting in administering the eminent domain plan.

You have asked us to research the issue for you. Based on our research, this assumption appears contrary to California statutory law, California public policy doctrines, and the constitutional requirements relating to public entities’ exercise of eminent domain. Accordingly, we believe that individual cities would remain liable, and indeed would be jointly and severally liable, as to any takings damages arising from a JPA’s activities.

¹ Once formed, a JPA becomes a “public entity separate from the parties to the agreement.” Cal. Gov. Code § 6507. In exercising its powers, the JPA “is authorized, in its own name,” to enter into contracts; to acquire, hold, or dispose of property; to incur debts, liabilities, and obligations; and to sue and be sued, among other things. *Id.* § 6508.

ANALYSIS

I. As a Matter of California Statutory Law, Members Likely Would Be Jointly and Severally Liable for Liability Arising from the JPA's Actions

Government Code section 895.2 provides for members' joint and several liability for damages arising from a JPA's actions, as follows:

Whenever any public entities enter into [a joint powers] agreement, they are *jointly and severally liable upon any liability which is imposed by any law* other than this chapter upon any one of the entities or upon any entity created by the agreement *for injury caused by a negligent or wrongful act or omission occurring in the performance of such agreement*. (emphasis added)

See also *id.* Law Revision Comm'n Notes ("[Section 895.2] makes each of the public entities that are parties to [a JPA] jointly and severally liable to the injured party for any torts that may occur in the performance of the agreement."). The joint and several liability required by Section 895.2 is consistent with the default rule set forth in Government Code section 6508.1 that "the debts, liabilities, and obligations of the agency shall be the debts, liabilities, and obligations of the parties to the agreement, unless the agreement specifies otherwise."²

The argument that cities would not be liable for the JPA's conduct likely is based on the "unless the agreement specifies otherwise" language in Section 6508.1, and the California Court of Appeal decision, *Tucker Land Co. v. California*, 94 Cal. App. 4th 1191 (2001). *Tucker* interpreted Section 6508.1 to give JPA members the power not only to *allocate* the JPA's liabilities amongst themselves, but also to agree that the JPA will be *solely* responsible for its obligations and the members will not have any responsibility for its debts. See 94 Cal. App. 4th at 1200-1201. *Tucker*, however, explained that this narrow exception applies only to a JPA's *contractual* obligations; in keeping with Section 895.2, members cannot insulate themselves from liability for the JPA's "torts." *Id.* Presumably, the proposed JPA would argue that eminent

² In a separate paragraph, the provision allows for allocation or indemnification, stating: "A party to the agreement may separately contract for, or assume responsibility for, specific debts, liabilities, or obligations of the agency." Cal. Gov. Code § 6508.

domain is akin to a forced contract for the sale of property, and thus any monetary payments required in the exercise of eminent domain are equivalent to the JPA's "contractual" obligations.

In this context, however, any takings damages would be more akin to "tort" liability, requiring joint and several liability under Government Code section 895.2. There are two main scenarios in which a JPA would face liability on a scale that would require looking to its members for compensation: either the seizure power was not lawfully asserted in the first place, or the planned purchase prices are so unreasonably low that the JPA lacks the funds to pay any "just compensation."³ In either case, liability would then stem from a constitutional violation—*i.e.*, a "wrongful" or "negligent" act—and would sound in tort. *See City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 709 (1999) (stating, in takings case brought by property owner, that "there can be no doubt that claims brought pursuant to § 1983 [to vindicate constitutional rights] sound in tort," and rejecting dissent's arguments that eminent domain is essentially an instance of quasi-contract); *id.* at 715 (plurality opinion) (where damages arise from takings violation, "the cause of action sounds in tort and is most analogous to the various actions that lay at common law to recover damages for interference with property interests"); *Rose v. California*, 19 Cal. 2d 713, 724 (1942) (rejecting notion that claim for takings damages "is strictly a suit on implied contract;" instead, it arises from a "self-executing constitutional" requirement to pay just compensation for taking or substantial impairment of property); *see also Crane-McNab v. Cnty. of Merced*, No. 08-1218, 2010 WL 4024936, at *8 (E.D. Cal. Oct. 13, 2010) (citing Government Code section 895.2 and holding that County could be liable for inverse condemnation, nuisance, and negligence claims arising from JPA-owned landfill).

³ Presumably, any JPA would be sufficiently funded to pay for the seizures and proceedings, at least if everything goes according to the assumptions of the plan's proponents about the legality and cost of the seizures. The question of whether JPA members can be held jointly and severally liable would only be relevant if those assumptions turn out to be wrong and the JPA is facing steeper liability than what it budgeted for.

Provisions in California's Eminent Domain Law confirm that the Legislature would view damages arising from the proposed eminent domain plan as akin to "tort" damages and would intend for Section 895.2 to apply. For example, if the JPA acquires property pursuant to a "quick take" procedure, but a court later rejects the right to take, California law requires "the payment of *all damages proximately caused by the proceeding and its dismissal as to that property.*" Cal. Civ. Proc. Code § 1268.620 (emphasis added). A property owner can also sue for "actual damage to or substantial interference with" property "cause[d]" by pre-condemnation activities, whether or not a taking actually is completed. *Id.* § 1245.060(a). The Legislature's choice of wording in these provisions demonstrates its belief that this relief is akin to a tort remedy. *See, e.g., Dillon v. Legg*, 68 Cal. 2d 728, 737 (1968) ("[The] principles of foreseeability, proximate cause and consequential injury . . . generally govern tort law.").

As further examples, the JPA would be liable for litigation expenses if (a) the "right to take" is rejected as unlawful; or (b) the jury or court requires a substantially higher "just compensation" amount than the JPA's private financiers are offering or willing to provide. *See* Cal. Civ. Proc. Code § 1268.610(a) (litigation expenses awarded if eminent domain proceeding is dismissed or abandoned); *id.* § 1250.410(b) (litigation expenses awarded when offer to purchase is found "unreasonable" in light of evidence and ultimate award). The Legislature's decision to require the payment of litigation expenses—in contrast to the normal "American rule" that attorneys' fees are not recoverable—further reflects its intent to compensate property owners for all losses resulting from the actual or threatened exercise of eminent domain, *particularly* when the public entity has acted wrongfully (beyond its power), negligently (initiating proceedings it later abandons), or otherwise unreasonably (making low-ball offers).

In sum, our research indicates that liability arising from a JPA's implementation of the proposed plan would properly be viewed as falling under Government Code section 895.2, and thus, as a matter of statutory law, the JPA's members would remain jointly and severally liable.

II. California Public Policy Doctrines Would Nullify any Attempt by Cities to Insulate Themselves from Liability

Regardless of whether takings damages sound in “contract” or “tort,” public policy doctrines would likely preclude Richmond and other municipalities from using a JPA formation agreement to inoculate themselves against liability.

For example, *Tucker* recognizes that the “alter ego” doctrine can apply to hold members liable where (a) the interests of the JPA and the municipality are virtually indistinguishable, and (b) treating the acts or debts in question as those of the JPA alone would lead to an inequitable result. *See Tucker*, 94 Cal. App. 4th at 1202 (citing *Sonora Diamond Corp. v. Super. Ct.* 83 Cal. App. 4th 523, 538 (2000)). These factors likely would apply in this context because the JPA would have no real existence, and serve no real function, other than to exercise each city’s eminent domain power within that city’s respective jurisdiction. Especially if the primary organizational purpose of the JPA is simply to insulate cities from liability, the equities would weigh decisively in favor of holding the cities directly liable when necessary to ensure that property owners subjected to the eminent domain plan are fully compensated, as the Federal and State Constitutions require.⁴

In addition, California law renders void, as against public policy, contractual provisions that are designed “directly or indirectly, to exempt any one from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent.” Cal. Civ. Code § 1668. As expanded by the California Supreme Court in *Tunkl v. Regents of University of California*, 60 Cal. 2d 92, 95 (1963), and subsequent cases, liability disclaimers will be considered contrary to public policy so long as the subject matter of the agreement affects the public interest. *See id.* at 99-101 (listing categories of agreements that

⁴ In contrast, *Tucker*—which involved a JPA’s obligations to repay a note—declined to apply the doctrine on its facts because, among other things, (1) the plaintiff had willingly contracted with the JPA, knew or should have known that the members would not be obligated on the debt, and thus assumed the risk of non-payment; and (2) there was no evidence of any “abuse of organizational formalities” designed to help members avoid liability for their actions. 94 Cal. App. 4th at 1201-02.

qualify as affecting the public interest). Most notably, in its list of agreements for which liability could not be disclaimed, *Tunkl* included agreements that result in “the person or property of the purchaser [being] placed under the control of the seller.” *Id.* at 101. Here, an agreement between municipalities for the purpose of exercising eminent domain over privately held mortgage loans squarely would affect this kind of public interest. As noted above, the default rule under Government Code section 6508.1 is that cities will remain responsible for a JPA’s liabilities. Whatever discretion Section 6508.1 provides cities to alter the default rule by agreement and disclaim liability for the JPA’s conduct, the scope of that discretion should be limited by Civil Code section 1668, and should not allow members to disclaim liability for actions implicating private parties’ constitutional-protected property rights.

III. The Constitution’s Requirement that Municipalities Provide “Just Compensation” Overrides any Contractual Attempt to Evade Liability

In any event, because the duty to pay just compensation (both for the property itself and for incidental damages) is a *constitutional* obligation, that obligation necessarily overrides any statutory or contractual privilege public entities may have to exempt themselves from liability. For example, in *Rose v. California*, 19 Cal. 2d 713 (1942), the California Supreme Court rejected the State’s statutory immunity defense to an inverse condemnation claim, explaining that no legislative or agency action can shield the government from its obligation to pay constitutionally required compensation. *Id.* at 725-26 (explaining that “the legislature by statutory enactment may not abrogate or deny a right granted by the Constitution” and that “counties, cities, and other political subdivisions are held liable where they take property, not upon the ground that are authorized by statute to be sued, but because of the constitutional provision requiring compensation to be made for such taking”).

Although Government Code section 6508.1, as interpreted by *Tucker*, may allow members to limit their liability for a JPA’s contractual debts, this statutory provision cannot

authorize JPA members to exempt themselves from a constitutional obligation to pay just compensation for a taking. “To hold otherwise would be to say that the Constitution itself gives a right which the legislature”—or in this case, public entities forming the JPA— “may deny by failing or refusing to provide a remedy.” *Rose*, 19 Cal. 2d at 725; *cf. City of St. Louis v. Praprotnik*, 485 U.S. 112, 126-27 (1988) (plurality opinion) (“If . . . a city[] . . . could insulate the government from liability simply by delegating [its] policymaking authority to others, § 1983 could not serve its intended purpose.”).

CONCLUSION

Accordingly, whatever reason the City of Richmond may have for wanting to form a JPA, insulating itself from liability should not be one of them. Cities cannot contract around the constitutional liability arising out of an ill-conceived eminent domain plan.