



# ORANGE COUNTY FIRE AUTHORITY

## AGENDA

**BOARD OF DIRECTORS SPECIAL MEETING**  
**Thursday, April 27, 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 Jeff Hetschel

**PLEDGE OF ALLEGIANCE** by Director Ta

### **ROLL CALL**

### **PRESENTATIONS**

No items.

**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](http://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

**CLOSED SESSION REPORT****REPORT FROM THE HUMAN RESOURCES COMMITTEE CHAIR****REPORT FROM THE BUDGET AND FINANCE COMMITTEE CHAIR**

No report, as the Committee did not meet this month.

**REPORT FROM THE CLAIMS SETTLEMENT COMMITTEE CHAIR****REPORT FROM THE FIRE CHIEF**

- Quarterly CIP Update (Assistant Chief Anderson)
- USAR Contingency Fund (Assistant Chief Anderson)
- Wildfire Breakthrough Meeting (Chief Bowman)
- Air Operations

**2. MINUTES**

No items.

**3. CONSENT CALENDAR**

**A. Renewal of Health Plan Agreement**

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

Recommended Action:

Approve the proposed Health Plan Agreement between the Orange County Fire Authority and the Orange County Professional Firefighters Association for a term of January 1, 2017, to December 31, 2021.

**B. Award of RFP DC2177 Special Counsel Legal Services**

Submitted by: David Kendig, General Counsel and Lori Zeller, Assistant Chief/Business Services Department

**Pension Ad Hoc Committee Recommendation: *APPROVE***

Recommended Actions:

1. Approve the request from Meyers Nave Riback Silver & Wilson for Consent to Concurrent Representation with the County of Orange for an unrelated matter.
2. Approve the Professional Services Agreement with Meyers Nave Riback Silver & Wilson to advise the OCFA about specified issues related to pension liability, in an amount of \$100,000.
3. Approve a budget adjustment in the General Fund (Fund 121) increasing appropriations in the amount of \$100,000.
4. Agree to Meyers Nave's proposal to include an arbitration provision in the Professional Services Agreement.

**END OF CONSENT CALENDAR**

**4. PUBLIC HEARING(S)**

No items.

**5. DISCUSSION CALENDAR**

No items.

**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 20<sup>th</sup> day of April 2017.

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

**UPCOMING MEETINGS:**

Budget and Finance Committee Meeting	Wednesday, May 10, 2017, 12 noon
Claims Settlement Committee Meeting	Thursday, May 25, 2017, 5:00 p.m.
Executive Committee Meeting	Thursday, May 25, 2017, 5:30 p.m.
Board of Directors Meeting	Thursday, May 25, 2017, 6:00 p.m.

## WILDFIRE BREAKTHROUGH INITIATIVE

A Public-Private Partnership to Innovate Wildfire  
Suppression Solutions, Including Through an XPRIZE Competition

### THE PROBLEM: Wildfires are burning longer, hotter, and more often

A variety of factors have upset the natural balance and caused a dramatic increase in wildfires and their devastation. However, there have been no major advances in fire suppression technology and tools in decades.

- Today's fire seasons are on average 78 days longer than in the 1970s and are projected to grow hotter, more unpredictable, and expensive in the coming years.
- The interval between rangeland fires is shrinking at an alarming rate, as areas that used to burn every 100 years or so now often burn every 5 to 10 years. Rangelands cover roughly 40 percent of the Nation's entire land mass.
- Fires are no longer just a balancing part of nature. Wildfires exacerbate the cycle of creating warming temperatures which lead to drought conditions which lead to more wildfires, and a warmer climate.
- Large-scale fires in western and southeastern states can pump as much carbon dioxide into the atmosphere in a few weeks as the states' entire motor vehicle traffic carbon emissions in a year. Wildfire emissions of CO<sub>2</sub> in the contiguous U.S. are expected to increase by 50% by 2050. Emissions are growing at a rate considerably faster than the carbon sink created by forest regrowth.
- Taxpayers are footing the bill for soaring fire suppression costs that now reach almost \$5 billion a year across federal, state, and local governments. 20 years ago, fire suppression accounted for only 16% of the US Forest Service budget. Today it is over 50%. Total wildfire costs are 10 to 50 times the suppression costs, according to a 2014 study.

### THE NEED: Suppression Innovation

Experts agree that this is unsustainable. New solutions are needed for early detection and fast suppression (when appropriate), which will save lives, property, billions of dollars and help protect the environment. Despite the swelling cost of fighting fires through conventional means, current R&D budgets are increasingly limited, and are not focused on suppression. There is an urgent need for private and public funding for R&D into wildfire suppression, and to apply it using a modern, rapid innovation model for new science and technology, as is being used to address other global problems (fighting cancer, renewable energy, etc.).

### OUR MISSION: Moonshot Effort to Find New Solutions

Wildfire Breakthrough, a new non-profit organization, is creating a "moonshot" program that will find new solutions to wildfires so they can be stopped when needed.

## OUR APPROACH: Creating Public-Private Partnership and Launching an XPRIZE

- Bringing together the best minds from across all sectors – federal and local government, academia, and industry to address the challenge
- Partnering with the U.S. Forest Service and other federal, state, and local leaders to drive the initiative, including testing ideas and their efficacy.
- Recruiting private sector stakeholders to help fund the efforts who have their own economic and public service interests in finding solutions.
- Approaching leading research institutions, entrepreneurs, and the private industry to attract their interest in the new scientific and business opportunities created by the development of new fire suppression technologies and products.
- Creating a global XPRIZE competition; putting out a worldwide call to scientists, innovators, technology experts, and entrepreneurs to develop new products. Making grants to universities so they can participate in the XPRIZE competition.
- Applying the best principles and best practices for rapid innovation, testing, and commercialization from other recent “moonshot” R&D efforts (e.g. cancer, energy) to create an efficient, rapid innovation pipeline.

We will operate in two phases:

1. **Year One: Organizing public-private partnership and developing innovation and competition plan.** We will recruit partners and set specific goals and parameters for solutions to these problems. We will generate interest from diverse scientific fields and investors. We will plan a global competition, working with XPRIZE to scope a multi-year program.
2. **The Future: 3-5 year global innovation and competition program.** This includes several stages, starting with an announcement of an idea competition, the formation of competition teams, a variety of events bringing together competing teams, sharing the latest science with teams, and encouraging investors to get behind teams with promising ideas.

## WHO: Leaders and Experts

Wildfire Breakthrough is a public service endeavor started with a founding gift from entrepreneurs Gareth Wokes and Andrew Downing. James Lee Witt, renowned disaster expert and former Director of FEMA, will chair Wildfire Breakthrough with advisory leadership of J. Keith Gillespie, Dean of the College of Natural Resources, University of California at Berkeley, and Chair of the California Board of Forestry and Fire Protection.



**Orange County Fire Authority**  
**AGENDA STAFF REPORT**

**Board of Directors Meeting**  
**April 27, 2017**

**Agenda Item No. 3A**  
**Consent Calendar**

**Renewal of Health Plan Agreement**  
**Orange County Professional Firefighters Association**

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**Contact(s) for Further Information**

Lori Zeller, Assistant Chief  
Business Services Department

[lorizeller@ocfa.org](mailto:lorizeller@ocfa.org)

714.573.6020

**Summary**

This item is submitted for approval of a renewed Health Plan Agreement (Agreement) with the Orange County Professional Firefighters Association (OCPFA).

**Prior Board/Committee Action**

Not applicable.

**RECOMMENDED ACTION(S)**

Approve the proposed Health Plan Agreement between the Orange County Fire Authority and the Orange County Professional Firefighters Association for a term of January 1, 2017, to December 31, 2021.

**Impact to Cities/County**

Not Applicable.

**Fiscal Impact**

The proposed Agreement holds health care costs flat for calendar years 2017 and 2018, followed by annual increases of 5% effective each January 2019, 2020, and 2021.

**Background**

The OCPFA has managed comprehensive health benefits (medical, dental, vision, life, and disability) for its members since 1998 through an Agreement between OCFA and the OCPFA. The Agreement provides for monthly premium payments made by OCFA into an OCPFA-managed Health Care Trust (Trust) for active employees. OCPFA retains a third-party administrator to deliver the benefits, and the OCFA uses an independent auditor to verify annual compliance with the Agreement. Terms of the Agreement dictate the maximum fund balance that can be retained in the Trust, and any excess fund balance is returned to OCFA following the annual audit.

The Agreement recently expired in December 2016, and although expired, the terms continued status-quo pending negotiation of a renewal. Formal negotiations for renewal began in February 2017, with OCFA's professional labor negotiator, Peter Brown/Liebert Cassidy Whitmore, serving as lead negotiator. We are pleased to report that a Tentative Agreement (TA) was reached with OCPFA on March 29, 2016. Formal ratification by OCPFA was completed on April 13, 2017. Following are key terms of the proposed renewal (see attached Agreement for specific language):

- Five-year term from January 2017–December 2021
- 0% increases in OCFA’s premium payments into the Trust in 2017 and 2018, followed by 5% annual increases in 2019, 2020, and 2021
- Continue return of “excess fund balance” to OCFA, with returned funds to be allocated to the OCFA’s Retiree Medical Trust Fund
- During years 1-4 of the Agreement, redefine “excess fund balance” as “funds in excess of 5-months’ premiums” instead of the prior definition of 4-months’ premiums; return to the former definition of “funds in excess of 4-months’ premiums” in the final year 5
- Continue annual audit provision unchanged
- Merged existing language from a Memorandum of Understanding Side Letter into the Agreement pertaining to enrollment eligibility for employees transitioning to OCFA from a former Fire Department (i.e. the Santa Ana transition)
- Added language necessary to align with the Affordable Care Act

#### **Attachment(s)**

Proposed redlined version of Health Plan Agreement between the Orange County Fire Authority and the Orange County Professional Firefighters Association (The attachment has been posted on OCFA’s website in compliance with the Board’s seven day posting requirement for labor documents and is also on file in the Office of the Clerk.)



## APPENDIX D.1

### HEALTH PLAN AGREEMENT by and between The Orange County Fire Authority and

### The Orange County Professional Firefighters Association, Local 3631

IN CONSIDERATION OF the mutual covenants, promises and conditions set forth herein below and pursuant to Article XIII, Section I, of the Parties' 20~~1600~~-20~~2044~~ Memorandum of Understanding (MOU), the Orange County Fire Authority ("Authority") and Orange County Professional Firefighters Association, Local 3631 ("OCPFA") agree as follows:

1. The term of this Agreement shall begin on January 1, 201~~70~~ and will terminate at 12:00 a.m. on December 31, 20~~2146~~.

2. Employees' required contributions, towards health plan premiums shall be determined by OCPFA, but shall not fall below the percentage of employee contributions in effect in 2008 for Kaiser coverage and Blue Cross coverage unless, to the extent that the Affordable Care Act (ACA) is still the law, such employee contribution must fall below such threshold in order to meet the ACA's affordability threshold under the Federal Poverty Line Safe Harbor. This means that the employee's required contribution toward premiums for the lowest cost plan that offers minimum essential coverage shall not exceed 9.69% (or the applicable percentage set by the ACA for the year) of the monthly Federal Poverty Line for a single individual that is in effect during the six months prior to the start of the plan year. (For example, in December of 2016 the monthly Federal Poverty Line for a single individual is \$990; 9.69% of \$990 is \$95.93. This means that an employee's required contribution toward the lowest cost plan for 2017 must not exceed \$95.93.). For employees who are on approved Family Leave pursuant to the Parties' MOU and applicable law, the OCPFA shall continue to pay health insurance premiums to the same extent the Authority would be required under applicable law or as long as the employee is considered full-time for IRS' ACA reporting by the Authority.

3. The Authority shall contribute to an OCPFA medical benefit trust fund the following amounts for provision and administration of health and related benefits:

a. The Authority shall contribute toward health benefits (including medical, dental, vision, life and disability insurance benefits) ~~\$1,279 per month effective January 1, 2011 for each actively employed enrollee member of the Firefighter Bargaining Unit, \$1,344 per month effective January 1, 2012 for each actively employed enrollee member of the Firefighter Bargaining Unit, \$1,466 per month effective January 1, 2013 for each actively employed enrollee member of the Firefighter Bargaining Unit, \$1,598 per month effective January 1, 2014 for each actively employed enrollee member of the Firefighter Bargaining Unit, \$1,742 per month effective January 1, 2015 for each actively employed enrollee member of the Firefighter Bargaining Unit and \$1,900 per month effective January 1, 201~~76~~ for each actively employed enrollee member of the Firefighter Bargaining Unit, for the term of this agreement.~~

b. Employees are not entitled to cash out any of the \$1,900 per month.

c. OCPFA shall ensure that for purposes of the ACA's affordability determination, the portion of the \$1,900 that makes the lowest cost plan affordable under the Federal Poverty Line Safe Harbor is applied only to health premiums and cannot be applied to life or disability insurance.

d. Effective January 1, 2019, 2020 and 2021 the Authority contribution to the OCPFA health benefit trust fund shall be increased for each actively employed enrollee member of the Firefighter Bargaining Unit by five percent (5%) per year.

4. OCPFA shall maintain a medical benefit trust fund for the sole purpose of providing health/dental/disability benefit plans, which may include medical prescriptions, vision care, life and/or disability insurance, ("Health Benefit Plans"), for employees and retirees in the Firefighters' Unit. Said medical benefit trust fund shall be administered by medical benefit trustee(s) designated by OCPFA. Funds in said medical benefit trust shall not be co-mingled with other OCPFA funds. It is intended that the administration of the Health Benefit Plans by the trust fund shall not survive the expiration of this Agreement without mutual written consent of the Parties.

~~5. The OCPFA agrees to return to OCFA the amount of \$2,000,000 from the medical benefit trust fund. The return of these funds shall occur in two increments as follows: \$500,000 within 10 days from July 1, 2011, and \$1,500,000 within 10 days from July 1, 2012.~~

~~6.5. Beginning with the calendar year ending December 31, 2016<sup>09</sup> and every year thereafter, OCPFA shall return OCFA shall reduce future monthly contributions towards health benefits for any excess fund balance being held in the Trust (excluding the 1% Supplemental Benefit Investment Account) as of December 31 to OCFA. "Excess fund balance" shall be defined as any amount that exceeds fivefour-times (for calendar years 2017-2020) and four times (for calendar year 2021 and at the end of this Agreement) the total insurance premiums minus the employee's share of the premium contribution paid for the month of December (per the OCPFA Premium Accounting for December 1) for the year just ended. The amount of the "excess fund balance" shall be determined. Payment by OCPFA to OCFA of the excess fund balance shall occur within 30 days following completion of the annual audit conducted by OCFA's auditors of the OCPFA Medical Benefit Trust. Once the "excess fund balance" is determined for the prior calendar year, the OCFA shall reduce its monthly contribution for the next six months by one-sixth of the "excess fund balance". The application of these reductions for "excess fund balance" will begin to occur 30 days after completion of the final audit report (e.g., if the determination of the "excess fund balance" occurs in February, then starting in March). In addition, OCFA agrees to contribute an amount equal to the "excess fund balance" from the prior calendar year to the OCFA's Retiree Medical Trust Fund on deposit with, and administered by, OCERS.~~

6. Health Benefit Plans provided through the medical benefit trust fund shall be made available by OCPFA to all employees in the representation unit and retirees of the representation unit on an equal basis regardless of membership status. Employees must sign a written authorization for deductions. Annual predetermined rate increases shall be automatically adjusted with the approval of OCPFA, without a requirement for new payroll deduction forms.

- a. In addition to all OCPFA employees and retirees, Health Benefit Plans provided through the medical benefit trust shall also be made available to former Fire Department employees who transitioned to the OCFA and retired from California Public Employees' Retirement System (CALPERS) greater than 120 days from separation from their former Fire Department. These transitioned employees are not eligible for retiree health care benefits from a CALPERS administered plan; therefore, upon separation from OCFA, these retirees will be considered eligible for enrollment for retiree health benefits (health, dental, and vision insurance) from a plan administered by the OCPFA medical benefit trust. The OCFA shall not incur any costs as a result of this Section 6.a. and this Section shall only apply to employees within the OCPFA bargaining group.

7. The level of benefits for each type of plan shall be substantially similar to those provided by the Authority for employees not in the Firefighters' Bargaining Unit during the 12 month period immediately preceding this Agreement.

8. Health Benefit Plans must receive prior approval from the Human Resources Director or ~~designee~~the Deputy Fire Chief whose approval shall not be unreasonably withheld. Group policies must be designated as such in the California Insurance Code and issuance must be lawful in this state. OCPFA shall offer health plans that constitute minimum essential coverage and provide minimum value under the ACA's employer shared responsibility provisions. OCPFA shall not offer reimbursement of premiums for health coverage obtained through Covered California, as this constitutes an impermissible employer payment plan under the ACA.

~~8-9.~~ Retiree-Only Benefit: Retirees who move out of the group plan area and, therefore, may not be eligible to participate in the group plans, may enroll in an alternative minimum essential coverage-qualified individual plan. Retirees in such individual plans are eligible for retiree medical grant funding under the same conditions as applied to group plan members (the OCPFA/OCFA sponsored plan), provided that they submit a valid proof of payment, i.e. payroll stub showing payroll deduction for insurance or a copy of an insurance invoice accompanied by the paid check used for payment.

~~9-10.~~ All costs of providing and administering the Health Benefit Plans shall be the sole responsibility of OCPFA. The Authority shall not be responsible for any cost of providing or administering said plans in excess of the amounts specified in this Agreement. The use of OCFA contributions to cover the administrative costs of the program shall not exceed \$50,000 during calendar year 2009. Each calendar year thereafter, the maximum amount of administrative costs funded using OCFA contributions will be adjusted by the annual percentage change in the Medical Care Services CPI for all urban consumers as of November for the preceding year (i.e., the 2017~~9~~ administrative fee will be adjusted by the annual change in CPI between November 2015~~08~~ and November 2016~~09~~). Administrative costs are defined as costs incurred as a result of administering said plans exclusive of premium payments. The Authority shall continue to take deductions from employees' pre-taxed earnings in accordance with the Group Benefit Plan Agreement and Declaration of Trust for the Orange County Professional Firefighters' Association, IAFF Local 3631~~Section 125 Plan of the Internal Revenue Code.~~

~~10-11.~~ OCPFA will be responsible for ensuring that best investment practices shall be used in accordance with applicable laws and regulations when investing the Trust's funds.

~~11-12.~~ OCPFA will be responsible for all accounting practices relating to the disbursement of all trust funds. Accounting practices will be in accordance with industry standards.

~~12-13.~~ Upon completion of the annual audit, OCPFA shall provide the Authority with a copy of the annual audit within 30 days of the report's issuance. The annual audit report shall include actual cost of Health Benefit Plan premiums, total amount of contributed funds spent on all plans, and details of how all remaining contributed funds are spent or administered. As used in this Agreement, "remaining contributed funds" means any part of the Authority's contribution that has not been spent on health benefit premiums. All books and records related to the administration and provision of such plans shall be available to audit and/or inspection by the Authority or its agents upon request and a 30-day notice.

~~13-14.~~ All regular, full-time, limited-term or part-time (at least twenty (20) hours per week) or probationary employees in classifications represented by OCPFA shall be eligible and offered an opportunity to enroll in the OCPFA plan options. No such employee shall be eligible for Authority-provided Health Benefit Plans.

~~14-15.~~ Any employee who retires while in the OCPFA bargaining unit and who is otherwise eligible under the Authority's retiree medical benefit plan shall have coverage available

from the OCPFA Health Benefit Plan. No such employee shall be eligible for Authority-provided Health Benefit Plans.

~~15-16.~~ OCPFA shall have an open enrollment at least once a year.

~~16-17.~~ The waiting period for Health Benefit Plan coverage ~~of new employees~~ may not exceed sixty (60) days.

~~17-18.~~ OCPFA may not terminate its Health Benefit Plans during the term of this Agreement. If OCPFA or health provider terminates Health Benefit Plan coverage, the Authority will terminate its contribution for the medical benefit trust fund 30 days prior to plan termination unless OCPFA provides a suitable replacement plan approved by the Human Resources Director or the Deputy Fire Chief whose approval shall not be unreasonably withheld.

~~18-19.~~ Employees eligible for coverage under an OCPFA plan as a result of change of Authority representation unit shall be enrolled without regard to pre-existing conditions of illness or injury for plan benefits for themselves and their enrolled dependents. Employees eligible for coverage under an Authority health plan as a result of change of Authority representation unit shall be enrolled without regard to pre-existing conditions of illness or injury for plan benefits for themselves and their enrolled dependents.

~~19-20.~~ In the administration and provision of health care plans, OCPFA shall comply with COBRA, HIPAA, ACA, and all other applicable state and federal laws and regulations to the same extent the Authority would be required to comply.

~~20-21.~~ OCPFA shall comply with all laws applicable to health and welfare benefit, and/or medical or similar benefit, trust funds and the administration and management thereof.

~~21-22.~~ Any dividends paid, premiums refunded or other rebates or refunds made under any plan or policy shall be the property of the Authority; provided, however, that said funds will be transmitted to the OCPFA medical benefit trust fund for medical benefit trust fund purposes.

~~22-23.~~ OCPFA shall take all steps necessary to ensure the confidentiality of Health Benefit Plan user information.

~~23-24.~~ Except as provided below. Plan eligibility shall terminate at the end of the calendar month in which any of the following occur:

- a. Employee terminates. However, this will not interfere with a former employee's right to continue insurance coverage at his/her option as provided for under law.
- b. Change of representation unit.
- c. Disenrollment of a dependent (for the dependent).

However, upon any of the above occurrences, if the employee would still be reported to the IRS as full-time under the ACA, then that employee's Plan eligibility shall continue until the end of the stability period as reported by the Authority, or until coverage by the new OCFA representation unit begins, whichever comes first.

~~24-25.~~ The provisions of this Agreement shall not be subject to the grievance and arbitration provisions of the Parties' separate Memorandum of Understanding.

~~25-26.~~ Upon expiration or breach of this Agreement, the Authority shall have the right to unilaterally change the plans or assume or assign administration of the plans without meeting and conferring with OCPFA; provided however, that in the event that the Authority makes such a

change, benefits provided under new plan(s) shall be substantially similar to the benefits provided under the existing plan(s).

26-27. OCPFA shall defend, indemnify and hold the Authority harmless from any claims or legal action arising out of, or in any way related to, Health Benefit Plans administered and/or provided pursuant to this Agreement, including any IRS penalties assessed as a result of the ACA's employer shared responsibility provisions or the high cost plan excise tax scheduled to take effect in 2020 if the ACA is still in effect as well as the provision on the high cost plan excise tax. This obligation shall not arise with respect to any claim or legal action brought by OCPFA or employees concerning coverage overlap between the respective Authority and OCPFA plans.

27-28. This Agreement is the entire, integrated agreement with respect to the subject matter hereof, and supersedes all prior and contemporaneous oral and written agreements and discussions. The Parties also agree that no modification of this Agreement shall be valid unless it is in writing and signed by all of the Parties to this Agreement.

29. This Agreement shall not be construed in favor or against any party, regardless of which party drafted or participated in the drafting of its terms.

30. The parties agree to reopen negotiations if any of the following occurs:

a. If changes to the ACA occur which modify this Agreement, including additions or potential repeal;

b. If the ACA is still in effect in 2020 and the Cadillac Tax becomes effective, impacting this Agreement;

a-c. If there are other legislative changes that modify this Agreement.

Orange County Professional Firefighters  
Association, IAFF, Local 3631

Orange County Fire Authority

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Baryic Hunter  
President

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Peter J. Brown  
Labor Negotiator

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Ryan Bishop  
Vice President

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Lori Zeller  
Assistant Chief, Business Services

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Brigette Gibb  
Human Resources Director

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Jim Ruane  
Finance Manager/Auditor



Orange County Fire Authority  
**AGENDA STAFF REPORT**

Board of Directors Meeting  
April 27, 2017

Agenda Item No. 3B  
Consent Calendar

**Award of RFP DC2177  
Special Counsel Legal Services**

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**Contact(s) for Further Information**

David Kendig, General Counsel  
Woodruff, Spradlin & Smart

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714.415.1083

Lori Zeller, Assistant Chief  
Business Services Department

[lorizeller@ocfa.org](mailto:lorizeller@ocfa.org)

714.573.6020

**Summary**

This item is submitted for approval to award a contract to Meyers Nave Riback Silver & Wilson, the number one ranked firm in the Request for Proposals (RFP) process, to advise the OCFA about issues related to pension liability.

**Prior Board/Committee Action**

**Pension Ad Hoc Committee Recommendation: *APPROVE***

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 of work and questions to be submitted to Special Counsel in order to obtain opinions and guidance relating to member agency obligations for pension liabilities in the event a member city were to withdraw from OCFA. The Ad Hoc Committee was also requested to make recommendations to the Board of Directors regarding selection of Special Counsel. The Ad Hoc Committee reviewed the proposals, and on March 10, 2017, interviewed Meyers Nave. Based on its review, the Ad Hoc Committee recommended the Board appoint Meyers Nave and consent to the firm's concurrent representation of the OCFA and the County.

**RECOMMENDED ACTION(S)**

1. Approve the request from Meyers Nave Riback Silver & Wilson for Consent to Concurrent Representation with the County of Orange for an unrelated matter.
2. Approve the Professional Services Agreement with Meyers Nave Riback Silver & Wilson to advise the OCFA about specified issues related to pension liability, in an amount of \$100,000.
3. Approve a budget adjustment in the General Fund (Fund 121) increasing appropriations in the amount of \$100,000.
4. Agree to Meyers Nave's proposal to include an arbitration provision in the Professional Services Agreement.

**Impact to Cities/County**

Not Applicable.



## Fiscal Impact

Funding for the proposed special counsel services is not included in the FY 2016/17 budget; therefore, a budget adjustment is necessary to fund the contract award.

## Background

On December 6, 2016, a Request for Proposal (RFP) was issued to identify qualified legal firms to advise the OCFA about specialized issues related to pension liability. Three proposals were received and evaluated by the Pension Ad Hoc Committee. As a result of the evaluations, Meyers Nave Riback Silver & Wilson ("Meyers Nave") was identified as the number one ranked firm, and the Ad Hoc Committee directed General Counsel and staff to negotiate a proposed contract for consideration by the Board of Directors.

**Project Evaluator Ranking Report for Special Counsel Legal Services (DC2177)**

	Lozano Smith LLC			Meyers Nave			Orrock Popka Fortino Tucker & Dolen		
<b>Total Cost</b>	<b>68,750.00 *</b>			<b>100,000.00</b>			<b>\$190/hour **</b>		
Evaluators	1	2	3	1	2	3	1	2	3
Project Mgmt, Value Added (10)	70	70	0	90	90	80	40	70	5
Qualifications & Experience (45)	315	405	315	360	427.5	405	247.5	315	225
Responsiveness of Proposal (45)	315	315	360	360	405	405	270	270	270
Sum of Proposal Scores 100	700	790	675	810	922.5	890	557.5	655	500
Ranking	<b>2</b>	<b>2</b>	<b>2</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>3</b>	<b>3</b>	<b>3</b>
Written Sum of Ranking	<b>6</b>			<b>3</b>			<b>9</b>		

\* Pricing exclusive of overhead expenses

\*\*Hourly rate provided, not to exceed amount was not provided

Meyers Nave has been under contract with the County of Orange since June 2016 to provide the Orange County Flood Control District specialized legal and litigation services in the areas of environmental law, including solid waste, CEQA/NEPA, water, and habitat/permitting endangered species. If the attached Professional Services Agreement (Agreement) between OCFA and Meyers Nave is approved, Meyers Nave will be representing both the County and the OCFA at the same time, in unrelated matters. As a result, Meyers Nave has requested and obtained consent for concurrent representation from the County of Orange (Attachment 1).

In order to enter into a contract with OCFA, Meyers Nave is also requesting consent from OCFA for concurrent representation (Attachment 2). The Pension Ad Hoc Committee interviewed the two principal attorneys from Meyers Nave who would be advising the Authority, and inquired at length about the firm's representation of the County and whether the concurrent representation would impair its ability to independently advise the Authority about the pension issues, particularly if the firm's legal conclusions about pension liabilities might, at times, be adverse to the County's interests. Since the pension matters for which Meyers Nave will be representing OCFA are unrelated to the environmental matters for which they represent the County, and based on the responses provided by Meyers Nave, the Ad Hoc Committee recommended that the Board proceed with appointing the firm and consenting to the concurrent representation. If approved, General Counsel and OCFA staff will continue to monitor the situation and keep the Board informed of any issues that may arise.

Attachment 3 is a proposed Agreement with Meyers Nave to provide special counsel legal services, advising the OCFA about issues related to pension liability, in an amount of \$100,000. Specifically, the 13 topics included in the scope of services are outlined on page 6-7 of RFP DC 2177, which is provided as Exhibit B to the Agreement.

### ***Schedule for Written Responses***

Meyers Nave's proposal included a Work Plan/Schedule that called for completion of the written responses to all 13 legal issues within ninety (90) days. At the request of General Counsel and OCFA staff, Meyers Nave reviewed the work schedule and staffing and has determined it can deliver the written responses within 75 days. Sections 2 and 4.2 of the proposed Agreement reflect the accelerated schedule.

### ***Travel Time/Travel Expenses***

At the request of the Pension Ad Hoc Committee, Meyers Nave has agreed that it will not be compensated for travel time nor will its travel expenses be reimbursed.

### ***Arbitration Provision***

Meyers Nave has proposed to include an arbitration provision in the Agreement that, if approved, would read as follows:

“If the parties are unable to resolve any dispute arising out of or in connection with this Agreement, the parties shall submit such dispute to final and binding arbitration in Orange County, California before the American Arbitration Association, pursuant to its then prevailing rules, except for its rules granting the arbitrator the power to determine jurisdiction, or unless the parties agree in writing to a different arbitration method or forum.

“The parties understand that by agreeing to arbitration they each give up the right to present their claims or defenses for trial by a judge or jury. The parties agree, however, that any resulting arbitration award will be supported by California law and by substantial evidence, and is subject to judicial review on that basis.

“The initial resort to the courts by either party shall not be considered a waiver of that party's right to compel arbitration under this provision. This agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws.”

The provision above is proposed by Meyers Nave, but not insisted upon, so the firm is willing to proceed without it as well. The primary advantages of arbitration is that it usually speeds the process of resolving disputes, which in turn may reduce the overall litigation costs associated with disputes. Binding arbitration would have the potential disadvantages of eliminating the right to a jury trial, significantly reducing the grounds upon which appeals could be taken in the event of errors by an arbitrator, and would involve additional shared cost of the arbitrator(s) fees and expenses.

The Pension Ad Hoc Committee discussed this request at its April 19, 2017, meeting and recommended that the Board agree to include the arbitration provision in the Agreement. In making the recommendation, the Committee considered a number of factors, including but not limited to the costs and speed with which disputes are resolved in litigation versus arbitration. In addition, although arbitration provisions often work to the disadvantage of private individuals in



medical and other contexts where a jury trial can be a valuable right, having a jury decide a dispute involving a public agency is less likely to benefit the public agency.

**Attachment(s)**

1. County of Orange, Approved Consent for Concurrent Representation
2. Meyers Nave - Request to OCFA for Consent to Concurrent Representation
3. Professional Services Agreement with Meyers Nave Riback Silver & Wilson



THE COUNTY COUNSEL  
COUNTY OF ORANGE

333 W. SANTA ANA BLVD., SUITE 407  
SANTA ANA, CA 92701  
MAILING ADDRESS: P.O. BOX 1379  
SANTA ANA, CA 92702-1379  
(714) 834-3300  
FAX: (714) 834-2359

Thomas (Mat) Miller  
Supervising Deputy  
(714) 834-6019

April 12, 2017

LEON J. PAGE  
COUNTY COUNSEL

JAMES C. HARMAN  
CHIEF ASSISTANT

JACK W. GOLDEN  
MARIANNE VAN RIPER  
SENIOR ASSISTANTS

KAREN L. CHRISTENSEN  
ADRIENNE SAURO HECKMAN  
MARK R. HOWE  
LAURA D. KNAPP  
TERI L. MAKSOUDIAN  
THOMAS A. "MAT" MILLER  
MARK D. SERVINO  
NICOLE A. SIMS  
DANA J. STITS  
SUPERVISING DEPUTIES

JASON C. BROWN  
DIRECTOR OF ADMINISTRATION

JANELLE B. PRICE  
LAURIE A. SHADE  
DANIEL H. SHEPARD  
JOYCE RILEY  
STEVEN C. MILLER  
CAROLYN S. FROST  
ROBERT N. ERVAIS  
NIKHIL G. DAFTARY  
JEANNIE SU  
WENDY J. PHILLIPS  
ANGELICA CASTILLO DAFTARY  
MICHAEL A. HAUBERT  
BRAD R. POSIN  
SAUL REYES  
AURELIO TORRE  
DEBBIE TORREZ  
JACQUELINE GUZMAN  
ANDREA COLLIER  
PAUL M. ALBARIAN  
D. KEVIN DUNN  
LORI A. TORRISI  
MASSOUD SHAMEL  
SHARON VICTORIA DURBIN  
REBECCA S. LEEDS  
NICOLE M. WALSH  
ELIZABETH A. PEJEAU  
LAUREN C. KRAMER  
GABRIEL J. BOWNE  
JULIA C. WOO  
MARK A. BATARSE  
ADAM C. CLANTON  
KRISTEN K. LECONG  
ERICA A. DIVINE  
JAMES D. P. STEINMANN  
VANESSA D. ATKINS  
SUZANNE E. SHOAI  
DEBORAH B. MORSE  
MATTHEW S. SPRISLER  
KAYLA N. WATSON  
CAROLYN M. KHOUZAM  
ANNIE J. LOO  
RONALD T. MAGSAYSAY  
JOHN P. CLEVELAND  
SAMARA BELGARDE  
CHRISTOPHER S. ANDERSON  
JUSTIN A. GRAHAM  
BRITTANY McLEAN  
JEFFREY A. STOCK  
MARK N. SANCHEZ  
GOLNAZ ZANDIEH  
CYNTHIA G. INDA  
STEPHANIE L. WATSON  
RAY DIAZ  
JESSICA PAULSON-DUFFY  
DEPUTIES

Gregory J. Newmark  
Meyers Nave  
707 Wilshire Blvd., 24<sup>th</sup> Floor  
Los Angeles, California 90017

Re: Request for Consent to Concurrent Representation

Dear Greg:

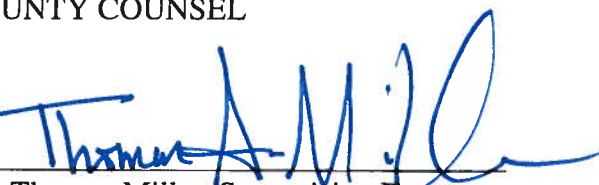
On April 11, 2017, the Orange County Board of Supervisors ("Board") considered and approved your firm's request for concurrent representation of the Orange County Fire Authority ("OCFA") regarding pension liability matters. Attached please find the signed letter approving the representation as well as the Agenda Staff Report related to this matter that was presented to the Board. As set forth therein, it is our understanding that any additional representation of OCFA beyond the advisory services related to the pension liability matters will require further waiver from the Board.

Please let us know if you have any questions or would like to discuss the above or the attached documents.

Very truly yours,

LEON J. PAGE  
COUNTY COUNSEL

By

  
Thomas Miller, Supervising Deputy

TAM:azs

Attachments (2)



## SUPPLEMENTAL AGENDA ITEM AGENDA STAFF REPORT

Agenda Item S29A  
Clerk's Use Only

RECEIVED  
CLERK OF THE BOARD

APR 03 2017

MEETING DATE: 4/11/17  
LEGAL ENTITY TAKING ACTION: Board of Supervisors  
BOARD OF SUPERVISORS DISTRICT(S): All Districts  
SUBMITTING AGENCY/DEPARTMENT: County Counsel  
DEPARTMENT HEAD REVIEW: Leon Page  
Department Head Signature  
DEPARTMENT CONTACT PERSON(S): Leon Page (714) 834-3303  
Thomas Miller (714) 834-6019

SUBJECT: Meyers Nave, Consent to Orange County Fire Authority Representation

CEO CONCUR

CEO Signature

COUNTY COUNSEL REVIEW

No Legal Objection  
Action  
Thomas A. Miller  
County Counsel Signature

CLERK OF THE BOARD  
Discussion

3 Votes Board Majority

Budgeted: N/A

Current Year Cost: N/A

Annual Cost: N/A

Staffing Impact: N/A

# of Positions: N/A

Sole Source: N/A

Current Fiscal Year Revenue: N/A

Funding Source: N/A

County Audit in last 3 years N/A

Prior Board Action: 6/28/2016 #95

### RECOMMENDED ACTION(S)

Authorize County Counsel to consent to Meyers, Nave, Riback, Silver and Wilson, PC representation of Orange County Fire Authority regarding pension liability.

### SUMMARY:

Consent to the law firm of Meyers, Nave, Riback, Silver and Wilson, PC representing the Orange County Fire Authority on pension liability matters.

### BACKGROUND INFORMATION:

On June 28, 2016, the Board selected the law firm of Meyers, Nave, Riback, Silver and Wilson, PC ("Meyers Nave") to provide the County of Orange ("County") and the Orange County Flood Control District ("District") specialized legal and litigation services in the areas of environmental law, including solid waste, CEQA/NEPA, water, and habitat/permitting endangered species. Since then Meyers Nave has provide advisory legal services to the County and the District on select project and issues. On March 30, 2017, the County Counsel's Office received the attached letter from Meyers Nave asking for a waiver of a

potential conflict that would permit Meyers Nave to represent the Orange County Fire Authority ("OCFA") on pension liability matters. The County is a member of OCFA and it is conceivable that a conflict with the County could arise in their representation of OCFA. Due to this, and as required by Section 5 of their Legal Services Agreement with the County (attached hereto), Meyers Nave has requested the Board's consent to their representation of OCFA.

Through Meyers Nave's current representation of the County and the District on environmental matters they would have no occasion to come into possession of confidential information that would relate to pension liability issues, and would not be permitted to provide legal services related to such issues to the County or District pursuant to their current contract. As such, it is possible that Meyers Nave could represent both the County/District and the OCFA on these matters concurrently without an actual conflict arising if the Board were to permit them. The County Counsel's Office has no objection to this concurrent representation and, if approved, will continue to monitor the situation and keep the Board apprised of any issues that arise.

Any future representation of OCFA by Meyers Nave that would be a conflict of interest beyond the pension liability issues would require a further consent by the County. If the waiver and consent is approved, Meyers Nave is required by the Professional Rules of Conduct not to disclose to OCFA any confidential communications with the County or the District.

**FINANCIAL IMPACT:**

N/A

**STAFFING IMPACT:**

N/A

**ATTACHMENT(S):**

Attachment A - Letter from Meyers Nave dated March 30, 2017

Attachment B - Legal Services Agreement dated June 28, 2016



707 Wilshire Blvd., 24<sup>th</sup> Floor  
Los Angeles, California 90017  
tel (213) 626-2906  
fax (213) 626-0215  
www.meyersnave.com

Gregory J. Newmark  
Attorney at Law  
gnewmark@meyersnave.com

March 30, 2017

Thomas A. Miller, Deputy County Counsel  
Office of the Orange County Counsel  
Hall of Administration  
P.O. Box 1379  
Santa Ana, CA 92702-1379

**Re: Request for Consent to Concurrent Representation**

Dear Mr. Miller:

Meyers Nave is being considered to represent the Orange County Fire Authority ("Authority"), of which the County of Orange ("County") and various cities within the County are members. The engagement would consist of delivering one or more memoranda concerning the 13 topics identified in the Request for Proposals dated December 6, 2016, (excerpt attached) including but not limited to member agency liability for the Authority's pension and other liabilities upon member withdrawal and dissolution of the Authority ("Pension Obligation Matter").

Of course, Meyers Nave is also pleased to represent the County in connection with environmental matters pursuant to a June 28, 2016, contract, including the recently concluded matter advising on the Flood Control District's Right of Entry and Use Agreement Policy and ongoing water rights work. These matters are unrelated to the matter we would handle for the Authority.

In advising the Authority in the Pension Obligation Matter, however, actual conflicts of interest will likely arise among the Authority and some of the member agencies. The possibility exists, therefore, that an actual conflict could arise between the Authority and the County if the interests of each become inconsistent with each other in the Pension Obligation Matter. We write to request your informed written consent to our representation of the Authority in the Pension Obligation Matter, as well as our continued representation of the County in connection with other unrelated matters currently existing, or in the future, where the County and the Authority are not simultaneously involved.

The relevant sections of the California Rules of Professional Conduct are discussed below.

**Rule 3-310(B):**

A member shall not accept or continue representation of a client without providing written disclosure to the client where:

- (1) The member has a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; or
- (2) The member knows or reasonably should know that:
  - (a) the member previously had a legal, business, financial, professional, or personal relationship with a party or witness in the same matter

With regard to Rule 3-310(B), we are not aware, to the best of our knowledge, of any member of our firm having or had (1) “any legal, business, financial, professional, or personal relationship with any party or witness in the same matter” (involving both the County and the Authority) or (2)(a) previous “legal, business, financial, professional, or personal relationship with a party or witness in the same matter” except for our representation of the Authority, as described above. Our representation of the Authority in the Pension Obligation Matter would be separate and unrelated to our representation of the County.

**Rule 3-310(C):**

A member shall not, without the informed written consent of each client:

- (3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter.

With regard to Rule 3-310(C)(3), the Authority appears to have no “interest” in the County’s unrelated matters for which we are counsel and therefore the Authority is not adverse to the County in those matters. Rather, our work described herein will result in our representing the County and the Authority concurrently in separate, unrelated matters. Since we have a professional duty of undivided loyalty to each current client, we need the informed written consent of both the County and the Authority to continue to represent both in unrelated matters.

**Rule 3-310(E):**

A member shall not, without the informed written consent of the client or former client, accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment.

With reference to Rule 3-310(E), we do not believe that we have obtained any confidential information from the County that would be material to the Pension Obligation Matter. However, the County may believe we have or may receive such material confidential information due to the nature of our past and current representation of the County. Consequently, we request informed written consent to the representation discussed herein.

In summary and to assist you in determining whether or not to consent to our representation of the Authority, we hereby inform you that:

- (a) We do not anticipate any foreseeable adverse effects upon the County resulting from our representation of the Authority as described herein.
- (b) We do not anticipate any foreseeable adverse effects upon the Authority resulting from our past and current representation of the County.

We ask that the County consider this consent request carefully. You may wish to confer with independent legal counsel regarding this consent, and should feel free to do so. If, after review and consideration of the foregoing, the County accepts the conditions of this conflict consent, please sign the enclosed copy of this letter and return it to me as soon as possible.

Please do not hesitate to call me if you have any questions or concerns about the foregoing.

Sincerely,



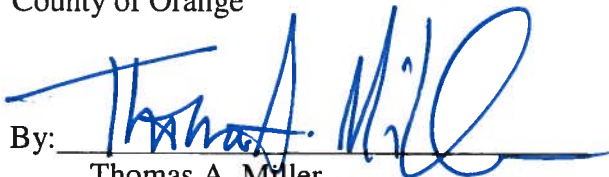
Gregory J. Newmark  
Attorney at Law

c: Conflicts Dept., Meyers Nave

County of Orange consents to the representation described above.

Dated: April 12, 2017

County of Orange

By:   
Thomas A. Miller  
County Counsel

2798410.1

### Excerpt of OCFA RFP Dated December 6, 2016:

Pursuant to the OCFA Joint Powers Agreement, each City member has the option to withdraw from the JPA in 2020. The option of some of the members to withdraw raises several questions concerning member agency liability for public pension obligations and other OCFA liabilities, including without limitation:

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 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 the 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 the OCFA's remaining liabilities?
5. How would you reconcile the opinion by OCFA's General Counsel dated June 24, 2014 with the opinion by Sidley & Austin 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? Copies of both opinions are attached hereto as Exhibit "2".
6. Could the withdrawal of members of the 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?
7. If OCFA dissolved, could OCFA's members be held liable for OCFA's unfunded pension liabilities? Put another way, could Orange County Employees Retirement System (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?
8. 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?
9. 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 the terms of the Joint Powers Agreement?
10. 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?
11. 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?
12. Upon a member's withdrawal from the OCFA, is that withdrawing member entitled to receive any portion of OCFA's real property or assets, or is such distribution subject to negotiation?
13. Upon dissolution of OCFA, must OCFA's liabilities, including pension liabilities, be settled and allocated prior to distribution of OCFA's assets?



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John Bakker  
Attorney at Law  
jbakker@meyersnave.com



March 30, 2017

David E. Kendig, General Counsel  
Attn: Jeff Bowman, Fire Chief  
Orange County Fire Authority  
1 Fire Authority Road  
Irvine, CA 92602

**Re: Request for Consent to Concurrent Representation**

Dear David:

As you know, Meyers Nave is being considered to represent the Orange County Fire Authority ("Authority"), of which the County of Orange ("County") and various cities within the County are members. The engagement would consist of delivering one or more memoranda concerning the 13 topics identified in the Request for Proposals dated December 6, 2016, including but not limited to member agency liability for the Authority's pension and other liabilities upon member withdrawal and dissolution of the Authority ("Pension Obligation Matter").

Meyers Nave also represents the County in connection with environmental matters and ongoing water rights work. These matters are unrelated to the matter we would handle for the Authority.

In advising the Authority in the Pension Obligation Matter, however, actual conflicts of interest will likely arise among the Authority and some of the member agencies. The possibility exists, therefore, that an actual conflict could arise between the Authority and the County if the interests of each become inconsistent with each other in the Pension Obligation Matter. We write to request your informed written consent to our representation of the Authority in the Pension Obligation Matter, as well as our continued representation of the County in connection with other unrelated matters currently existing, or in the future, where the County and the Authority are not simultaneously involved.

The relevant sections of the California Rules of Professional Conduct are discussed below.

**Rule 3-310(B):**

A member shall not accept or continue representation of a client without providing written disclosure to the client where:

- (1) The member has a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; or
- (2) The member knows or reasonably should know that:
  - (a) the member previously had a legal, business, financial, professional, or personal relationship with a party or witness in the same matter.

With regard to Rule 3-310(B), we are not aware, to the best of our knowledge, of any member of our firm having or had (1) “any legal, business, financial, professional, or personal relationship with any party or witness in the same matter” (involving both the Authority and the County) or (2)(a) previous “legal, business, financial, professional, or personal relationship with a party or witness in the same matter” except for our representation of the Authority, as described above. Our representation of the Authority in the Pension Obligation Matter would be separate and unrelated to our representation of the County.

**Rule 3-310(C):**

A member shall not, without the informed written consent of each client:

- (3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter.

With regard to Rule 3-310(C)(3), the Authority appears to have no “interest” in the County’s unrelated matters for which we are counsel and therefore the Authority is not adverse to the County in those matters. Rather, our work described herein will result in our representing the Authority and the County concurrently in separate, unrelated matters. Since we have a professional duty of undivided loyalty to each current client, we need the informed written consent of both the Authority and the County to continue to represent both in unrelated matters.

**Rule 3-310(E):**

A member shall not, without the informed written consent of the client or former client, accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment.

With reference to Rule 3-310(E), we do not believe that we have obtained any confidential information from the County that would be material to the Pension Obligation Matter. However, the Authority or the County may believe we have or may receive such material confidential information due to the nature of our past and current representation of the

David E. Kendig, General Counsel  
Attn: Jeff Bowman, Fire Chief  
Re: Request for Consent to Concurrent Representation  
March 30, 2017  
Page 3

County. Consequently, we request informed written consent to the representation discussed herein.

In summary and to assist you in determining whether or not to consent to our representation of the Authority, we hereby inform you that:

- (a) We do not anticipate any foreseeable adverse effects upon the Authority resulting from our past and current representation of the County.
- (b) We do not anticipate any foreseeable adverse effects upon the County resulting from our representation of the Authority as described herein.

We ask that the Authority consider this consent request carefully. You may wish to confer with independent legal counsel regarding this consent, and should feel free to do so. If, after review and consideration of the foregoing, the Authority accepts the conditions of this conflict consent, please sign the enclosed copy of this letter and return it to me as soon as possible.

Please do not hesitate to call me if you have any questions or concerns about the foregoing.

Very truly yours,



John Bakker  
Attorney at Law

c: Conflicts Dept., Meyers Nave

Orange County Fire Authority consents to the representation described above.

Orange County Fire Authority

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
David E. Kendig  
General Counsel

2798419.1

**ORANGE COUNTY FIRE AUTHORITY  
PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement") is made and entered into this 27<sup>th</sup> day of April, 2017, by and between the Orange County Fire Authority, a California Joint Powers Authority, hereinafter referred to as "OCFA", and Meyers Nave Riback Silver & Wilson, PLC, hereinafter referred to as "Firm".

**RECITALS**

WHEREAS, OCFA requires the services of a qualified firm to perform special counsel legal services to advise the OCFA about issues related to pension liability, as requested in RFP DC2177 attached hereto and incorporated herein as Exhibit "B". The requested services are hereinafter referred to as "Project"; and

WHEREAS, Firm has submitted to OCFA: (1) a Special Counsel Legal Services Proposal dated January 18, 2017, submitted in response to RFP DC2177; and (2) the Cost Proposal dated January 18, 2017, submitted in response to RFP DC2177. The two components of the proposals are attached hereto as Exhibit "A" and incorporated herein by this reference, and are hereinafter collectively referred to as "Firm's Proposal"; and

WHEREAS, based on its experience and reputation, Firm is qualified to provide the necessary services for the Project and desires to provide such services; and

WHEREAS, OCFA desires to retain the services of Firm for the Project.

NOW, THEREFORE, in consideration of the promises and mutual agreements contained herein, OCFA agrees to employ and does hereby employ Firm and Firm agrees to provide professional services as follows:

**AGREEMENT**

**1. PROFESSIONAL SERVICES**

**1.1 Scope of Services.**

In compliance with all terms and conditions of this Agreement, Firm shall provide those services specified in the Firm's Proposal. The Scope of Services includes by reference and by addendum: (1) OCFA's Request for Proposal, RFP DC2177 ("RFP"), (2) Firm's Proposal, and (3) any amendments, addendums, change orders, or modifications mutually agreed upon by the parties hereto. Firm warrants that all services shall be performed in a competent, professional and satisfactory manner in accordance with all standards prevalent in the industry. In the event of any inconsistency between the terms contained in the Firm's Proposal and OCFA's RFP and/or the terms set forth in the main body of this Agreement, the terms set forth in the main body of this Agreement and then the RFP and then the Firm's Proposal shall govern, in that order.

### **1.2 Compliance with Law.**

All services rendered hereunder shall be provided in accordance with all laws, ordinances, resolutions, statutes, rules, and regulations of OCFA and any federal, state or local governmental agency of competent jurisdiction.

### **1.3 Licenses and Permits.**

Firm shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement.

### **1.4 Familiarity with Work.**

By executing this Agreement, Firm warrants that Firm (a) has thoroughly investigated and considered the work to be performed, (b) has carefully considered how the work should be performed, and (c) fully understands any difficulties and restrictions attending performance of the work under this Agreement.

### **1.5 Care of Work.**

Firm shall adopt and follow reasonable procedures and methods during the term of the Agreement to prevent loss or damage to materials, papers or other components of the work, and shall be responsible for all such damage until acceptance of the work by OCFA, except such loss or damages as may be caused by OCFA's own negligence.

### **1.6 Additional Services.**

Firm shall perform services in addition to those encompassed in the Proposal when directed to do so in writing by the Contract Officer, provided that Firm shall not be required to perform any additional services without compensation. Any additional compensation not exceeding (on a cumulative basis) ten thousand dollars (\$10,000) must be approved in writing by the Contract Officer. Any greater increase must be approved in writing by the Fire Chief upon approval from the Executive Committee.

## **2. TIME FOR COMPLETION**

The time for completion of the services to be performed by Firm is an essential condition of this Agreement. Firm shall prosecute regularly and diligently the work of this Agreement according to the "Work Plan/Schedule" set forth in Firm's proposal except that all written response items shall be completed in not more than 75 days. Firm shall not be accountable for delays in the progress of its work caused by conditions beyond its control and without the fault or negligence of Firm. Delays shall not entitle Firm to any additional compensation regardless of the party or outside factors responsible for the delay.

### **3. COMPENSATION OF FIRM**

#### **3.1 Compensation of Firm.**

For the services rendered pursuant to this Agreement, Firm shall be compensated and reimbursed, in accordance with the hourly rates set forth in Exhibit "A," but which total amount shall not exceed One Hundred Thousand Dollars (\$100,000) for the performance of the tasks in the scope of work in the Firm's Proposal.

**3.1.1 Travel Time and Expenses.** Per the RFP and Cost Proposal, OCFA will not compensate Firm for travel time nor reimburse Firm for travel expenses.

#### **3.2 Method of Payment.**

In any month in which Firm wishes to receive payment, Firm shall submit to OCFA in the form approved by OCFA's Director of Finance, a monthly invoice for services rendered during the prior month. OCFA shall pay Firm for all expenses stated thereon which are approved by OCFA consistent with this Agreement, within thirty (30) days of receipt of Firm's invoice.

#### **3.3 Changes.**

In the event any change or changes in the work is requested by OCFA, the parties hereto shall execute an addendum to this Agreement, setting forth with particularity all terms of such addendum, including, but not limited to, any additional fees. Addenda may be entered into:

A. To provide for revisions or modifications to documents or other work product or work when documents or other work product or work is required by the enactment or revision of law subsequent to the preparation of any documents, other work product or work;

B. To provide for additional services not included in this Agreement or not customarily furnished in accordance with generally accepted practice in Firm's profession.

#### **3.4 Appropriations.**

This Agreement is subject to and contingent upon funds being appropriated therefore by the OCFA Board of Directors for each fiscal year covered by the Agreement. If such appropriations are not made, this Agreement shall automatically terminate without penalty to OCFA.

### **4. PERFORMANCE SCHEDULE**

#### **4.1 Time of Essence.**

Time is of the essence in the performance of this Agreement.

#### **4.2 Schedule of Performance.**

All services rendered pursuant to this Agreement shall be performed according to the "Work Plan/Schedule" set forth in Firm's proposal except that all written response items shall be completed in not more than 75 days. The extension of any time period specified in Exhibit "A" must be approved in writing by the Contract Officer.

#### **4.3 Force Majeure.**

The time for performance of services to be rendered pursuant to this Agreement may be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Firm, including, but not restricted to, acts of God or of a public enemy, acts of the government, fires, earthquakes, floods, epidemic, quarantine restrictions, riots, strikes, freight embargoes, and unusually severe weather if the Firm shall within ten (10) days of the commencement of such condition notify the Contract Officer who shall thereupon ascertain the facts and the extent of any necessary delay, and extend the time for performing the services for the period of the enforced delay when and if in the Contract Officer's judgment such delay is justified, and the Contract Officer's determination shall be final and conclusive upon the parties to this Agreement.

#### **4.4 Term.**

This agreement shall continue in full force and effect until the completion of all services covered by this Agreement, including any Additional Services approved in accordance with Section 1.6 above, unless the Agreement is earlier terminated in accordance with Section 8.5.

### **5. COORDINATION OF WORK**

#### **5.1 Representative of Firm.**

The following principal of the Firm is hereby designated as being the principal and representative of Firm authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith: John Bakker, Principal.

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principal is a substantial inducement for OCFA to enter into this Agreement. Therefore, the foregoing principal shall be responsible during the term of this Agreement for directing all activities of Firm and devoting sufficient time to personally supervise the services hereunder. The foregoing principal may not be changed by Firm without the express written approval of OCFA.

#### **5.2 Contract Officer.**

The Contract Officer shall be David Kendig, General Counsel, unless otherwise designated in writing by OCFA. It shall be the Firm's responsibility to keep the Contract Officer fully informed of the progress of the performance of the services and Firm

shall refer any decisions that must be made by OCFA to the Contract Officer. Unless otherwise specified herein, any approval of OCFA required hereunder shall mean the approval of the Contract Officer.

### **5.3 Prohibition Against Subcontracting or Assignment.**

The experience, knowledge, capability and reputation of Firm, its principals and employees, were a substantial inducement for OCFA to enter into this Agreement. Therefore, Firm shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of OCFA. In addition, neither this Agreement nor any interest herein may be assigned or transferred, voluntarily or by operation of law, without the prior written approval of OCFA.

### **5.4 Independent Contractor.**

Neither OCFA nor any of its employees shall have any control over the manner, mode or means by which Firm, its agents or employees, perform the services required herein, except as otherwise set forth herein. Firm shall perform all services required herein as an independent Firm of OCFA and shall remain at all times as to OCFA a wholly independent contractor with only such obligations as are consistent with that role. Firm shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of OCFA.

## **6. INSURANCE, INDEMNIFICATION AND BONDS**

### **6.1 Insurance.**

Firm shall procure and maintain, at its cost, and submit concurrently with its execution of this Agreement, general liability and property damage insurance against all claims for injuries against persons or damages to property resulting from Firm's performance under this Agreement. All policies of general liability and property damage insurance shall be primary and any other insurance, deductible, or self-insurance maintained by OCFA, its officials, officers, employees, agents or volunteers, shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions. Firm shall also carry workers' compensation insurance in accordance with California worker's compensation laws. Firm agrees to waive and obtain endorsements from its workers' compensation insurer waiving all subrogation rights under its workers' compensation insurance policy against the OCFA, its officials, officers, employees, agents and volunteers, and in the event the use of subcontractors is approved by the OCFA, Firm shall require each of its subcontractors and each subcontractor's insurer, to do likewise under their workers' compensation insurance policies. All required insurance shall be kept in effect during the term of this Agreement and shall not be cancelable without thirty (30) days written notice to OCFA of any proposed cancellation. Endorsements evidencing the foregoing, and designating OCFA, its officials, officers, employees, agents and volunteers as additional insureds under the general liability and property damage policies shall be delivered to and approved by OCFA prior to commencement of the services hereunder. The procuring of such insurance and the delivery of policies or certificates evidencing the same shall not be construed as a



limitation of Firm's obligation to indemnify OCFA, its Firms, officers and employees. The amount of insurance required hereunder shall include comprehensive general liability, personal injury and automobile liability with limits of at least one million dollars (\$1,000,000) combined single limit coverage per occurrence. Firm shall also maintain during the performance of all services professional liability coverage with limits of at least five million dollars (\$5,000,000) per claim. Coverage shall be provided by admitted insurers with an A.M. Best's Key Rating of at least A-VII. If Firm provides claims made professional liability insurance, Firm shall also agree in writing either (1) to purchase tail insurance in the amount required by this Agreement to cover claims made within three years of the completion of Firm's services under this Agreement, or (2) to maintain professional liability insurance coverage with the same carrier in the amount required by this Agreement for at least three years after completion of Firm's services under this Agreement with prior acts coverage. The Firm shall also be required to provide evidence to OCFA of the purchase of the required tail insurance or continuation of the professional liability policy.

In addition, in the event the use of subcontractors is approved by the OCFA, Firm shall be responsible for causing each subcontractor providing work or services under this Agreement to procure and maintain the same types and amounts of insurance, and in compliance with the terms set forth in this Section, including but not limited to adding the OCFA, its officials, officers, employees, agents and volunteers as additional insureds to their respective policies. Firm shall not allow any subcontractor to commence any work or services relating to this Agreement unless and until the OCFA has authorized the use of such subcontractor and Firm has provided evidence satisfactory to OCFA that the subcontractor has secured all insurance required under this Section. Firm agrees to monitor and review all such coverage and assumes all responsibility for ensuring that its own and each subcontractor's insurance coverage is provided and maintained in conformity with the requirements of this Section.

## **6.2 Indemnification.**

The Firm shall defend, indemnify and hold harmless OCFA, its officers and employees, from and against any and all actions, suits, proceedings, claims, demands, losses, costs, and expenses, including legal costs and attorneys' fees, for injury to or death of person or persons, for damage to property, including property owned by OCFA, and for errors and omissions committed by Firm, its officers, employees, subcontractors or agents, arising out of or related to Firm's performance under this Agreement, except for such loss as may be caused by OCFA's own negligence or that of its officers or employees.

## **7. RECORDS AND REPORTS**

### **7.1 Reports.**

Firm shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require.

## **7.2 Records.**

Firm shall keep such books and records as shall be necessary to properly perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. The Contract Officer shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit and make records and transcripts from such records.

## **7.3 Ownership of Documents.**

Except as may be required by rules of professional conduct governing Firm's profession, all drawings, specifications, reports, records, documents and other materials prepared by Firm in the performance of this Agreement shall be the property of OCFA and shall be delivered to OCFA upon request of the Contract Officer or upon the termination of this Agreement, and Firm shall have no claim for further employment or additional compensation as a result of the exercise by OCFA of its full rights or ownership of the documents and materials hereunder. Firm may retain copies of such documents for its own use. Firm shall have an unrestricted right to use the concepts embodied therein.

## **7.4 Release of Documents.**

All drawings, specifications, opinions, reports, records, documents and other materials prepared by Firm in the performance of services under this Agreement shall not be released publicly without the prior written approval of the Contract Officer.

# **8. ENFORCEMENT OF AGREEMENT**

## **8.1 California Law.**

This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Orange, State of California, or any other appropriate court in such county, and Firm covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

## **8.2 Waiver.**

No delay or omission in the exercise of any right or remedy of a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. No consent or approval of OCFA shall be deemed a waiver or render unnecessary OCFA's consent to or approval of any subsequent act of Firm. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

### **8.3 Rights and Remedies are Cumulative.**

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

### **8.4 Dispute Resolution.**

If the parties are unable to resolve any dispute arising out of or in connection with this Agreement, the parties shall submit such dispute to final and binding arbitration in Orange County, California before the American Arbitration Association, pursuant to its then prevailing rules, except for its rules granting the arbitrator the power to determine jurisdiction, or unless the parties agree in writing to a different arbitration method or forum.

The parties understand that by agreeing to arbitration they each give up the right to present their claims or defenses for trial by a judge or jury. The parties agree, however, that any resulting arbitration award will be supported by California law and by substantial evidence, and is subject to judicial review on that basis.

The initial resort to the courts by either party shall not be considered a waiver of that party's right to compel arbitration under this provision. This agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws.

### **8.5 Termination Prior to Expiration of Term.**

OCFA reserves the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days written notice to Firm, except that where termination is due to the fault of the Firm and constitutes an immediate danger to health, safety and general welfare, the period of notice shall be such shorter time as may be appropriate. Upon receipt of the notice of termination, Firm shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Firm shall be entitled to compensation for all services rendered prior to receipt of the notice of termination and for any services authorized by the Contract Officer thereafter.

Firm may terminate this Agreement upon thirty (30) days written notice to OCFA in the event of non-payment for services which non-payment is uncured within ten (10) days of demand therefore, or when required by the rules of professional conduct governing Firm's profession.

#### **8.6 Termination for Default of Firm.**

If termination is due to the failure of the Firm to fulfill its obligations under this Agreement, OCFA may take over the work and prosecute the same to completion by contract or otherwise, and the Firm shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated, provided that OCFA shall use reasonable efforts to mitigate damages. OCFA may withhold any payments to the Firm for the purpose of set-off or partial payment of the amounts owed to OCFA.

#### **8.7 Attorneys' Fees.**

If either party commences an action against the other party arising out of or in connection with this Agreement or its subject matter, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs of suit from the losing party.

### **9. OCFA OFFICERS AND EMPLOYEES; NON-DISCRIMINATION**

#### **9.1 Non-Liability of OCFA Officers and Employees.**

No officer or employee of OCFA shall be personally liable to the Firm, or any successor-in-interest, in the event of any default or breach by OCFA or for any amount which may become due to the Firm or its successor, or for breach of any obligation of the terms of this Agreement.

#### **9.2 Covenant Against Discrimination.**

Firm covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination or segregation in the performance of or in connection with this Agreement regarding any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry. Firm shall take affirmative action to insure that applicants and employees are treated without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry.

### **10. MISCELLANEOUS PROVISIONS**

#### **10.1 Confidentiality.**

Information obtained by Firm in the performance of this Agreement shall be treated as strictly confidential and shall not be used by Firm for any purpose other than the performance of this Agreement without the written consent of OCFA.

## **10.2 Notice.**

Any notice, demand, request, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by pre-paid, first-class mail to the address set forth below. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated forty-eight (48) hours from the time of mailing if mailed as provided in this Section.

### **TO OCFA:**

Orange County Fire Authority  
Attention: Debbie Casper  
1 Fire Authority Road  
Irvine, CA 92602

### **WITH COPY TO:**

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

### **TO FIRM:**

Meyers Nave Riback Silver & Wilson, PLC  
Attention: John Bakker  
555 12<sup>th</sup> Street, Suite 1500  
Oakland, CA 94607

## **10.2 Integrated Agreement.**

This Agreement contains all of the agreements of the parties and cannot be amended or modified except by written agreement.

## **10.3 Amendment.**

This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

## **10.4 Severability.**

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement, which shall be interpreted to carry out the intent of the parties hereunder.

**10.5 Corporate Authority.**

The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by so executing this Agreement the parties hereto are formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates stated below.

**“OCFA”**

**ORANGE COUNTY FIRE AUTHORITY**

Date:\_\_\_\_\_

By:\_\_\_\_\_

Dr. Elizabeth Swift  
Chair, Board of Directors

**APPROVED AS TO FORM.**

**ATTEST:**

By:\_\_\_\_\_

David E. Kendig  
General Counsel

\_\_\_\_\_  
Sherry A.F. Wentz  
Clerk of the Board

Date:\_\_\_\_\_

**“FIRM”**

Meyers Nave Riback Silver & Wilson, PLC

Date:\_\_\_\_\_

By:\_\_\_\_\_

John Bakker  
Principal

## **EXHIBIT A**

(1) January 18, 2017 Special Counsel Legal Services Proposal; and

(2) January 18, 2017 Cost Proposal

## Orange County Fire Authority

### SPECIAL COUNSEL LEGAL SERVICES RFP DC2177

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JOHN D. BAKKER, PRINCIPAL

[jbakker@meyersnave.com](mailto:jbakker@meyersnave.com)  
510.808.2000  
[www.meyersnave.com](http://www.meyersnave.com)

JANUARY 18, 2017

555 12th St., Suite 1500  
Oakland, California 94607

707 Wilshire Blvd., 24<sup>th</sup> Floor  
Los Angeles, California 90017

555 Capitol Mall, Suite 1200  
Sacramento, California 95814

575 Market St., Suite 2080  
San Francisco, California 94105

402 West Broadway, Suite 400  
San Diego, California 92101

555 Fifth Street, Suite 320  
Santa Rosa, California 95401





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Attachment: Team Bios



## Work Plan/Schedule

*Offeror should provide a narrative which provides an implementation work plan specifying the amount of time anticipated to produce written memoranda addressing the issues presented in the scope of work. If Offeror proposes to respond to some but not all legal issues listed on pages 6-7 above, identify by number (or description) which issues are and are not proposed to be addressed.*

We propose to respond to all 13 of the legal issues.

**Initial Document Review.** Because many of the issues involve the same key documents, we propose that the initial task in the work plan be a document review, preceded by a conference with key Authority staff to discuss the questions and assist with identifying key documents for review. This document review would encompass, at a minimum, the JPA and all amendments and the pertinent OCERS agreements and documents.

–30 days.

**Written response to Items 2–5, 8, 12–13.** These items are general questions relating to the effect of withdrawal, termination, and wind down of the Authority. We propose to provide this written response first, as it may assist in establishing the framework for the written response on the pension liability issue.

–60 days

**Written response to Items 1, 6–7, and 9–11.** These items all relate to the Authority’s pension liabilities and the effect of member withdrawal on that liability. This task is the most complicated and time-consuming, and we believe it would be more efficient to complete after the other tasks are completed.

–90 days

## Appendix A – Offeror’s Information

### APPENDIX A – OFFEROR’S INFORMATION

Please complete and/or provide all requested information. If the proposal is submitted by a corporation, please provide an additional attachment that states the names of the officers who can sign an agreement on behalf of the corporation and whether more than one officer must sign. If the proposal is by a partnership or a joint venture, state the names and addresses of all general partners and joint venture parties. If the respondent is a sole proprietorship or another entity that does business under a fictitious name, the proposal shall be in the real name of the respondent with a designation following showing “DBA (the fictitious name),” provided however, that no fictitious name shall be used unless there is a current registration with the Orange County Recorder.

The undersigned, as respondent, declares that all documents regarding this proposal have been examined and accepted and that, if awarded, will enter into a contract with the Orange County Fire Authority.

Firm’s Legal Name: Meyers Nave Riback Silver & Wilson	
Firm Parent or Ownership: Not applicable	
Address: 707 Wilshire Blvd., 24th Floor, Los Angeles, CA 90017	
Firm Telephone No. 213.626.2906	Firm Fax No. 213.626.0215
Firm’s Tax I.D. Number: 94-3050358	Incorporated: YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
Legal form of company: (partnership, corporation, joint venture) Professional law corporation	
Length of time your firm has been in business: 30 years	Length of time at current location: Varies by office and by lease.
Number of employees and Number of Current Clients Current headcount is 131. We currently have between 300-575 clients, depending on matter status.	

**Management person responsible for direct contact with the Orange County Fire Authority and service required for this Request for Proposal (RFP).**

Name: John D. Bakker	Title: Principal
Telephone No.: 800.464.3559	E-mail: jbakker@meyersnave.com

**Person responsible for the day-to-day servicing of the account:**

Name: John D. Bakker	Title: Principal
Telephone No.: 800.464.3559	E-mail: jbakker@meyersnave.com

Please indicate if you are subject to the Party and Participant disclosure requirements. Yes **No**  
If yes, you are required to submit form/s (see Appendix G).

\*For additional information please see page 8 “Campaign Contribution Disclosure”.

## Appendix C – Proposal Questionnaire

***Provide a general description of the law firm's financial condition and identify any conditions (e.g., bankruptcy, pending litigation, planned office closures, impending merger) that may impede Offeror's ability to provide legal services.***

Meyers Nave has maintained strong financial health throughout our firm's 30-year history. We are not facing bankruptcy, pending litigation, or any impending mergers. We will be consolidating our five San Francisco office attorneys within our Oakland office in order to achieve greater economies of scale while maintaining our exceptional service levels for San Francisco-based clients.

## Relevant Experience

***Describe the law firm's experience in performing legal services of a similar nature for public pension systems, special districts, municipalities or other local public agencies including but not limited to any specific experience with (a) public pension liability and (b) exit provisions for members of a joint powers association. Include, at a minimum, the name of the contracting agency, type of legal services provided, the contract period, and the name, address and telephone number of a contact person (this may include the references listed in Appendix B). Highlight the participation in such work by key personnel proposed for assignment to the legal services described in this RFP.***

Meyers Nave attorneys work extensively with JPAs throughout California. We have helped JPA clients accomplish everything from coordinating emergency communication systems to building critical transportation and utility related infrastructure. We have experience in forming and representing such entities, including serving as general counsel and special counsel in a variety of disciplines. Our JPA clients have included the Northern California Power Agency, the San Joaquin Area Flood Control Agency, Siskiyou County Flood Control and Water Conservation District, various Bay Area transportation authorities, East Bay Municipal Utility District and East Bay Regional Communications Authority.

We have a thorough grasp of Government Code Sections 6500 *et seq.*—the basic statutes concerning the formation and operation of joint powers agreements and JPAs. However, these state statutes set forth comparatively few parameters for JPAs. Often, determining what is productive to include in JPA formation agreements and bylaws is a matter of experience, not simply reading the statutes.

Meyers Nave also has significant experience with restructuring JPA agreements and handling the withdrawal of JPA members from their respective authorities.

- As General Counsel to the California Housing Authority Risk Management Authority (CHARMA), a JPA founded in 1986 by four municipal housing authorities for a self-insurance pooling arrangement, we successfully defended the JPA in 2010 against a \$2.5 million claim filed by the Oakland Housing Authority following its withdrawal. An arbitrator's decision instead awarded \$626,000 to CHARMA along with \$112,000 in attorneys' fees.
- As General Counsel to the Northern California Power Agency, we have negotiated withdrawal agreements and revised other affected contracts upon the withdrawal of members from this JPA, including the City of Roseville and the Turlock Irrigation District.
- Currently, our proposed co-lead counsel for OCFA, **John D. Bakker**, is representing the **City of Tracy** in the process of reforming a JPA to which it belongs, the South [San Joaquin] County Fire Authority. The City and its member partner, Tracy Rural Fire Protection District, desire to change the framework of the JPA to give the board more independence and to allow for expansion to include additional members. **(Please see the References section for our contact at the District.)**
- John also assisted with the wind-down of a financially strapped joint powers agency in Alameda County, including a JPA amendment to facilitate the dissolution of the agency. The wind-down required contributions from member agencies, all of which were jointly and severally liable for portions of the agency's liabilities under the express terms of the joint powers agreement.
- In addition, John advised two Contra Costa County fire protection districts on consolidation and governance proposals arising out of a countywide municipal service review process for fire service. He also advised a city in Contra Costa County served by a fire district on its options for improving fire service in its community.
- Our other co-lead counsel, **Eddie Kreisberg**, has advised a number of public agencies on pension liability and other pension-related issues. For example, he counseled the **Moraga-Orinda Fire Protection District** when it contemplated switching District employees from one pension system to another – a complex decision with many resulting ramifications. **(Please see the References section for our contact at the District. John Bakker is also the District's General Counsel)**
- Eddie has also negotiated numerous labor contracts involving pensions and interactions with PERS and 1937 Act retirement systems. His clients include the cities of Santa Clara, Fremont, Stockton, Milpitas, City and County of San Francisco; the Crescent City Harbor

District; the Novato Sanitary District; the Menlo Park Fire Protection District and the San Ramon Valley Fire Protection District.

- As lead negotiator for the **City of National City** in talks with the National City Police Officers Association and the National City Firefighters Association, Eddie successfully achieved successor MOUs that included a second-tier retirement for new hires, employee contributions to CalPERS, and other concessions. National City was among the first cities in San Diego County to reform pension obligations to a more sustainable level prior to the Legislature's passage of the Public Employees' Pension Reform Act of 2013 (PEPRA). **(Please see the References section for our contact at the City.)**
- Eddie was also an early member of the team in *Retired Employees Assoc. of Orange County v. County of Orange*, in which Meyers Nave successfully defended the County in a federal lawsuit brought by the 6,000-member REAOC, challenging the methodology and rates set for retiree health care and asserting "vested rights" to retiree healthcare benefits in an attempt to force the County to reinstate a practice that subsidized their health insurance premiums. The *Daily Journal* named this case a "Top Defense Verdict." The County's actuary estimated the unfunded liabilities related to the retiree medical program to be \$1.4 billion.

## Staffing

### ***How many partners and associates have left your law firm in the last three (3) years?***

Seven partners (three of whom retired) and 14 associates have left, but nearly as many have joined the firm in this period.

### ***What type of tasks does your law firm assign to paralegals or law clerks?***

While under the supervision of our project manager and senior-level attorney(s), paralegals typically perform tasks such as database planning, development and management; legal and fact research from library sources, and/or Westlaw, and/or project records within litigation databases; fact gathering and retrieving information; drafting and analyzing basic discovery materials; and collecting, compiling, and utilizing technical information to make recommendations to supervising attorneys.

## Performance

***Within the last three (3) years, has your law firm been subject to any civil litigation for malpractice arising out of its performance of any legal services for any firm client? If so, provide: (1) the name, and court case identification number for each case; (b) the jurisdiction in which it was filed; and (c) the outcome of the litigation (i.e., whether the case is pending, a judgment was entered, a settlement was reached, or the case was dismissed).***

In May 2014, the City of Bell filed a complaint in Los Angeles Superior Court against Meyers Nave Riback Silver & Wilson relating to the firm's role as Interim City Attorney during a brief period after corruption among the city's elected officials became public. The suit was dismissed.

## Contract and Conflicts

***State any exceptions to or deviations from the provisions of the Professional Services Agreement (Exhibit "1").***

Meyers Nave does not request any exceptions or deviations.

***Confirm that you have run a conflict check for each of the OCFA member agencies and OCERS. State and briefly explain any potential conflicts identified.***

Meyers Nave has performed on conflict check for each of the OCFA member agencies as well as the Orange County Employees Retirement System (OCERS). We have identified the relationships described below, which do not include any significant potential conflicts.

***If your firm were selected, do you anticipate that it would have to obtain conflict waivers from any current or past firm client(s)? If so, identify such clients and describe the potential conflict(s).***

We would need to obtain a waiver from our sole current client, the County of Orange, regarding our representation of OCFA in this matter, which is unrelated to our work for the County.

***Are you aware of any other ethical conflicts or other related issues which would limit your firm's ability to provide legal services to OCFA?***

No.

***List and briefly explain any current and/or past representation of any party adverse to OCFA, any OCFA member agency, and/or to OCERS.***

In 2007, our firm was joined by an attorney who represented the City of Rancho Santa Margarita in a lawsuit against another OCFA member, the County of Orange, in a dispute over an area claimed by the former as part of its incorporation in 2000.

We have also represented parties in cases where OCFA members were non-adverse related parties, non-adverse co-defendants, client-friendly real parties in interest, or potentially adverse. There are no instances of adverse representation other than the Rancho Santa Margarita case.

***List and briefly explain any current and/or past representation of any OCFA member agency and/or OCERS.***

a) Our only current client among the 24 members of OCFA is the County of Orange, which we are currently advising on environmental and telecommunications access issues.

b) In *Retired Employees Assoc. of Orange County v. County of Orange*, Meyers Nave successfully defended the County in a federal lawsuit brought by the 6,000-member REAOC, challenging the methodology and rates set for retiree health care and asserting “vested rights” to retiree healthcare benefits in an attempt to force the County to reinstate a practice that subsidized their health insurance premiums. The *Daily Journal* named this case a “Top Defense Verdict.” Our successful representation continued as the matter went to the Ninth Circuit, to the California Supreme Court, back to the District Court, and again to the Ninth Circuit—where we secured a major victory with a decision affirming steps the county took to reduce its long-term costs for retiree health insurance. The County’s actuary estimated the unfunded liabilities related to the retiree medical program to be \$1.4 billion.

b) The cities of Irvine, Lake Forest and Rancho Santa Margarita are former Meyers Nave clients, last represented by our firm in 2004, 2011, and 2007, respectively.

c) We have no client relationship, past or present, with the 20 other OCFA member agencies.

d) Interaction with OCERS occurred in relation to *Retired Employees Assoc. of Orange County v. County of Orange*, as described in item b).

***If you are submitting a joint proposal, please specify how work will be coordinated between the law firms listed in the proposal to avoid overlapping or inconsistent services.***

Meyers Nave would coordinate and provide all services; we are not submitting a joint proposal.



## Prospective Advice

***Please provide your assessment of whether any written advice provided by your firm to OCFA should be shared with the member agencies, or should such advice be shared only with the OCFA Board of Directors?***

The Board of Directors may elect to waive the attorney-client privilege and share our advice with the member agencies. The Authority Board may or may not determine that such a waiver is in the best interests of the Authority, but it is difficult to offer an assessment without having the work completed. Though, it seems likely that the Board will decide it is necessary to share the legal conclusions with the members in order to allow members to make individual and collective decisions that affect the Authority's future.

## Appendix D – Issue List

***Please identify by number (e.g., 1-13) the issues listed in the scope of work on pages 6-7 that your law firm is qualified to advise on.***

1–13.

***As to any of the numbered issues you have not identified as being areas where your law firm is qualified to advise on, can you identify another law firm you believe is qualified to so advise? If so, please provide name of firm(s) and contact information.***

Not applicable.

***As those numbered issues you have identified as being areas where your law firm is qualified to advise on, are there subparts you feel unqualified to advise on? If so and you can you identify another law firm you believe is qualified to so please provide the name of the firm and contact information.***

Not applicable.

## Appendix B – References

***List of References:*** Describe the legal services provided for up to five (5) other public pension systems or public agencies in California. Please complete Appendix B – References; include the agency contact, email address and telephone number. These agencies may be contacted.

**Client Contact**

**Date of Project & Description of Services**

**City of Tracy**

Bill Sartor  
City Attorney  
attorney@ci.tracy.ca.us  
209.831.6130

John D. Bakker began representing the City in October 2016 in the process of reforming a JPA to which it belongs, the South [San Joaquin] County Fire Authority. This matter is ongoing.

**Moraga-Orinda Fire District**

Stephen Healy  
Fire Chief  
shealy@mofd.org  
925.258.4512

Meyers Nave has provided General Counsel services since 2005; John Bakker has served as GC since 2013. Eddie Kreisberg has been lead labor negotiator for the District and provided pension-related advice.

**City of National City**

Stacey Stevenson  
Director of Administrative Services  
sstevenson@nationalcityca.gov  
619.336.4308

Eddie Kreisberg has served as lead labor negotiator for the City since 2009 and advised on pension-related matters.

**Project Team**

**Provide the following details about the proposed legal team. a. Please include the names, title, qualifications, training and expertise of the Lead Counsel, other attorney(ies) and legal professionals (e.g., paralegals) that will be conducting work on this assignment, including their relevant experience advising public pension systems or public agencies and length of time with the law firm.**

**Lead Counsel**



**John Bakker, Principal**

**California Bar Number:** 198563

**Education:**

Hastings College of the Law, JD, 1998

University of California at Berkeley, BA History, 1995

Since joining Meyers Nave in 2001, John has focused almost entirely on public agency clients. John is an experienced and knowledgeable advisor on the full range of public law issues. His

areas of focus include government finance (Propositions 13, 62, and 218), Political Reform Act compliance (lobbying, conflicts, campaign finance), elections (initiative and referendum), the Cortese-Knox-Hertzberg Local Government Reorganization Act (annexations, incorporations, and reorganizations), land use, and telecommunications, energy and public utilities.

Currently, John serves as City Attorney for the City of Dublin, Chief Assistant City Attorney of Walnut Creek, and General Counsel for the Bayshore Sanitary District, the Moraga-Orinda Fire District, the Kensington Fire Protection District, the Napa Sanitation District and the Tamalpais Community Services District.

John is now assisting with the resolution of a financially strapped joint powers agency in Alameda County, including a JPA amendment to facilitate the dissolution of the agency. John is familiar not only with the statutes governing JPAs, but also issues relating to the range of powers which JPAs may, or may not, exercise.

Recently, John advised two Contra Costa County fire protection districts on consolidation and governance proposals arising out of a countywide municipal service review process for fire service. He also advised a city in Contra Costa County served by a fire district on its options for improving fire service in its community.

One of John's particular specialties is the formation of new governmental entities. At his former firm in Santa Barbara, Hatch & Parent, John was involved in the development of the initial operating procedures for the Chino Basin Watermaster. He also advised on a matter that resulted in a published appellate decision involving LAFCO laws: *Embarcadero Municipal Improvement District v. County of Santa Barbara*. In the course of this work, he became intimately familiar with all aspects of LAFCO law. Subsequently, he has represented LAFCOs, citizens' groups, special districts, cities and counties in all manner of LAFCO proceedings.



**Edward L. Kreisberg, Principal**

**California Bar Number:** 179528

**Education:**

University of California at Davis School of Law, JD, 1995

University of California at Berkeley, BA, Economics and History, 1990

Since joining Meyers Nave in 1999, Eddie has specialized in providing labor and employment litigation, advice, arbitration, administrative hearing, and negotiation services to public and private employers throughout California. The *Daily Journal* recognized Eddie as one of the "Top Labor and Employment Lawyers" in California for 2011.

Eddie represents employers in discrimination, harassment, retaliation, wage and hour, benefits, and labor agreement lawsuits. He has special expertise in layoffs and furloughs, accommodation of disabilities, discipline, grievances, the Family Medical Leave Act (FMLA), the California Family Rights Act (CFRA), pension, health, privacy, Public Employment Relations Board (PERB) charges, overtime, the Public Safety Officers Procedural Bill of Rights Act and the Firefighters Procedural Bill of Rights Act, drug and alcohol issues, and violence in the workplace.

Eddie also represents employers in discipline, grievance, and interest arbitrations, as well as administrative hearings before civil service commissions, PERB, the California Public Employees' Retirement System (CalPERS), the Department of Labor and the Employment Development Department. He also audits public agency rules, labor contracts, job descriptions and payroll practices to ensure compliance with wage and hour laws.

Eddie has negotiated numerous labor contracts that typically encompass cost reductions and/or pension and health reform, including negotiations for the cities of Santa Clara, Fremont, Stockton, Milpitas, City and County of San Francisco; the Crescent City Harbor District; the Menlo Park Fire Protection District, Moraga-Orinda Fire Protection District and San Ramon Valley Fire Protection District, and the Novato Sanitary District.

For example, as lead negotiator for the City of National City in talks with the National City Police Officers Association and the National City Firefighters Association, Eddie successfully achieved successor MOUs that included a second-tier retirement for new hires, employee contributions to CalPERS, and other concessions. National City was among the first cities in San Diego County to reform pension obligations to a more sustainable level prior to the Legislature's passage of the Public Employees' Pension Reform Act of 2013 (PEPRA).



**Brandon W. Halter, Associate**

**California Bar Number:** 289687

**Education:**

Harvard Law School, J.D.  
UC San Diego, B.A.

Brandon joined Meyers Nave in 2016 as an associate working with the Trial and Litigation and Labor and Employment Practice Groups. He has extensive experience handling complex civil litigation involving significant individual and class-based claims in both state and federal courts, including matters pending simultaneously in multiple different jurisdictions. He also has represented clients in international and domestic arbitrations. He earned his J.D. from Harvard

Law School and is admitted to practice in state courts in California and New York, as well as U.S. District Courts in the Northern and Eastern Districts of California.



**Susan Griffin, Paralegal**

**Education:**

California State University, Sacramento

Susan Griffin is a paralegal in the firm's Labor and Employment, Crisis Management, and Trial and Litigation practices. Susan began her legal career in the Bay Area in 1985. Trained on the job, she honed her litigation and discovery skills at a number of law firms including Heller Ehrman, LLP and Brobeck, Phleger & Harrison, LLP

***Include a statement that key personnel proposed will be available to perform the Offeror's legal services for the duration of the contract acknowledging that no person designated as "key" to the project shall be removed or replaced without the prior written concurrence of the Authority.***

Key personnel proposed for OCFA's legal services will be available for the duration of any contract and no person designated as "key" shall be removed or replaced without OCFA's prior written concurrence.

***Partnership Strength and Value-Added Benefits: Provide a specific description of the exceptional, value-added features or capabilities beneficial to the OCFA that your law firm brings. This could be through existing relationships or experience with past clients or projects.***

In order to develop the best approach for our clients, we do not limit our analysis to the narrow legal and factual issues presented by a particular matter. We work with our clients to understand how their objectives are affected by the matters on which we are retained to provide counsel. The outcome of this process is that many of our clients view us as not only legal counsel, but also as strategic counsel available to advise and interact with in-house attorneys. As we have already said, our team possesses unique insight into how California's complex public law system can impact JPAs. We look forward to collaborating with OCFA to use this insight to identify not only constraints and ways to address them, but also opportunities and ways to pursue them.

# W-9 Form

<p><b>W-9</b> Form (Rev. August 2013) Department of the Treasury Internal Revenue Service</p>	<p><b>Request for Taxpayer Identification Number and Certification</b></p>	<p>Give Form to the requester. Do not send to the IRS.</p>														
<p>Print or type See Specific Instructions on page 2.</p>	<p>Name (as shown on your income tax return) <b>MEYERS, NAVE, RIBACK, SILVER &amp; WILSON</b></p>															
	<p>Business name/disregarded entity name, if different from above</p>															
	<p>Check appropriate box for federal tax classification:</p> <p><input type="checkbox"/> Individual/sole proprietor    <input checked="" type="checkbox"/> C Corporation    <input type="checkbox"/> S Corporation    <input type="checkbox"/> Partnership    <input type="checkbox"/> Trust/estate</p> <p><input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____</p> <p><input type="checkbox"/> Other (see instructions) ▶ _____</p>															
	<p>Exemptions (see instructions):</p> <p>Exempt payee code (if any) _____</p> <p>Exemption from FATCA reporting code (if any) _____</p>															
	<p>Address (number, street, and apt. or suite no.) <b>555 12TH STREET, SUITE 1500</b></p> <p>City, state, and ZIP code <b>OAKLAND CA 94607</b></p>	<p>Requester's name and address (optional)</p>														
<p>List account number(s) here (optional)</p>																
<p><b>Part I Taxpayer Identification Number (TIN)</b></p> <p>Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see <i>How to get a TIN</i> on page 3.</p> <p><b>Note.</b> If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.</p>																
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="9" style="text-align: center;">Social security number</td> </tr> <tr> <td style="width: 33.33%; text-align: center;">[ ] [ ] [ ]</td> <td style="width: 3.33%; text-align: center;">-</td> <td style="width: 33.33%; text-align: center;">[ ] [ ] [ ]</td> <td style="width: 3.33%; text-align: center;">-</td> <td style="width: 26.67%; text-align: center;">[ ] [ ] [ ] [ ] [ ] [ ]</td> </tr> </table>			Social security number									[ ] [ ] [ ]	-	[ ] [ ] [ ]	-	[ ] [ ] [ ] [ ] [ ] [ ]
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Employer identification number																
9 4	-	3 0 5 0	-	3 5 8												
<p><b>Part II Certification</b></p> <p>Under penalties of perjury, I certify that:</p> <ol style="list-style-type: none"> <li>The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and</li> <li>I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and</li> <li>I am a U.S. citizen or other U.S. person (defined below), and</li> <li>The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.</li> </ol> <p><b>Certification instructions.</b> You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.</p>																
<p><b>Sign Here</b></p> <p>Signature of U.S. person ▶ </p> <p>Date ▶ 8.18.14</p>																
<p><b>General Instructions</b></p> <p>Section references are to the Internal Revenue Code unless otherwise noted.</p> <p><b>Future developments.</b> The IRS has created a page on <a href="http://irs.gov">irs.gov</a> for information about Form W-9, at <a href="http://www.irs.gov/w9">www.irs.gov/w9</a>. Information about any future developments affecting Form W-9 (such as legislation enacted after we release it) will be posted on that page.</p> <p><b>Purpose of Form</b></p> <p>A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, payments made to you in settlement of payment card and third party network transactions, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.</p> <p>Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:</p> <ol style="list-style-type: none"> <li>Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),</li> <li>Certify that you are not subject to backup withholding, or</li> <li>Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and</li> </ol> <p>4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct.</p> <p><b>Note.</b> If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.</p> <p><b>Definition of a U.S. person.</b> For federal tax purposes, you are considered a U.S. person if you are:</p> <ul style="list-style-type: none"> <li>An individual who is a U.S. citizen or U.S. resident alien,</li> <li>A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,</li> <li>An estate (other than a foreign estate), or</li> <li>A domestic trust (as defined in Regulations section 301.7701-7).</li> </ul> <p><b>Special rules for partnerships.</b> Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.</p>																



## Appendix G – Party And Participant Disclosure Forms

### ORANGE COUNTY FIRE AUTHORITY PARTY DISCLOSURE FORM

Party's Name: Meyers Nave Riback Silver & Wilson

Party's Address: 555 12th St., Suite 1500, Oakland, CA 94607

Party's Telephone: 1-800-464-3559

Solicitation Title and Number: DC2177 -- Special Counsel Legal Services

Based on the party disclosure information provided, are you or your firm subject to party disclosures?

No ☒ If no, check the box and sign below. Yes ☐ If yes, check the box, sign below and complete the form.

Date: 1/11/2017



Signature of Party and/or Agent

***To be completed only if campaign contributions have been made in the preceding twelve (12) months. Attach additional copies if needed.***

Board Member(s) to whom you and/or your agent made campaign contributions and dates of contribution(s) in the preceding 12 months:

Name of Member: \_\_\_\_\_

Name of Contributor (if other than Party): \_\_\_\_\_

Date(s): \_\_\_\_\_

Amount(s): \_\_\_\_\_

Name of Member: \_\_\_\_\_

Name of Contributor (if other than Party): \_\_\_\_\_

Date(s): \_\_\_\_\_

Amount(s): \_\_\_\_\_

Name of Member: \_\_\_\_\_

Name of Contributor (if other than Party): \_\_\_\_\_

Date(s): \_\_\_\_\_

Amount(s): \_\_\_\_\_

## Appendix F – Certification Of Proposal


In responding to RFP Number DC2177, the undersigned Offeror(s) agrees to provide services for OCFA per the specifications. Offeror further agrees to the terms and conditions specified herein the following terms and conditions that are a part of this proposal and any resulting contract. *If there are any exceptions they must be stated in an attachment included with the offer.*

- A. The Offeror hereby certifies that the individual signing the submittal is an authorized agent for the Offeror and has the authority to legally bind the Offeror to the Contract. Signature below verifies that the Offeror has read, understands, and agrees to the conditions contained herein and on all of the attachments and agenda.
- B. The submission of the offer did not involve collusion or other anti-competitive practices.
- C. The Offeror has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, meal or service to a public servant in connection with the submitted offer.
- D. *The Offeror has submitted the Party, Participant (Agent) Disclosure Form if applicable.*
- E. The Offeror shall not discriminate against any employee or applicant for employment in violation of Federal or State law.
- F. The Offeror complies fully with the Federal Debarment Certification regarding debarment suspension, ineligibility and voluntary exclusion.

**Independent Price Determination:** I certify that this offer is made without prior understanding, arrangement, agreement, or connection with any corporation, firm or person submitting an offer for the same services, and is in all respects fair and without collusion or fraud. I certify that I have not entered into any arrangement or agreement with any Orange County Fire Authority public officer. I understand collusive bidding is a violation of State and Federal law and can result in fines, prison sentences, and civil damage awards. I agree to abide by all conditions of this offer and certify that I am authorized to sign this agreement for the Offeror.

### TO THE ORANGE COUNTY FIRE AUTHORITY:

The Undersigned hereby offers and shall furnish the services in compliance with all terms, scope of work, conditions, specifications, and amendments in the Request for Proposal which is incorporated by reference as fully set forth herein. The representations herein are made under penalty of perjury.

<u>Meyers Nave Riback Silver &amp; Wilson</u>		
Name of Firm		
<u>707 Wilshire Blvd., 24th Floor</u>		
Address		
<u>Los Angeles</u>	<u>CA</u>	<u>90017</u>
City	State	Zip
	<u>01/11/2017</u>	
Signature of Person Authorized to Sign	Date	
<u>John D. Bakker</u>	<u>Principal</u>	
Printed Name	Title	





**John D. Bakker**  
**Principal**

555 12th Street, Suite 1500  
Oakland, CA 94607

T: 510.808.2000  
F: 510.444.1108  
jbakker@meyersnave.com

**Practice Groups**  
Land Use

Municipal and Special District Law  
Public Finance  
Public Power and Telecommunications

**California Bar Number**  
198563

**Education**  
Hastings College of the Law, JD, 1998  
University of California at Berkeley, BA  
History, 1995

**Practicing Since:** 1998

**Joined Meyers Nave:** January 2001

John Bakker chairs the firm's flagship practice group, Municipal and Special District Law, overseeing the work of more than 30 attorneys who serve as city attorneys to municipalities throughout the state. John is an experienced and knowledgeable advisor on the full range of public law issues. His areas of focus include government finance (Propositions 13, 62, and 218), Political Reform Act compliance (lobbying, conflicts, campaign finance), elections (initiative and referendum), the Cortese-Knox-Hertzberg Local Government Reorganization Act (annexations, incorporations, and reorganizations), land use, and telecommunications, energy and public utilities. John has advised municipal clients on these and other public law issues and advised private clients on the procedures for incorporating new cities. Currently, John serves as City Attorney for the City of Dublin, Chief Assistant City Attorney of Walnut Creek, and General Counsel for the Bayshore Sanitary District, the Moraga Orinda Fire District, the Kensington Fire Protection District, the Napa Sanitation District and the Tamalpais Community Services District.

Many of the firm's clients rely on John's knowledge of funding issues related to utility and other public infrastructure projects. He has advised clients on development impact fees; the adoption and increase of water, sewer, stormwater and solid waste service charges; and water and sewer connection and capacity charges. In advising cities on comprehensive updates to their development impact fee programs, John reviews supporting documentation, ensures compliance with the Mitigation Fee Act and constitutional requirements, and prepares necessary legislation. He has also advised several cities in disputes with developers over the application of impact fees to their projects. John has also served as an expert on Proposition 218 proceedings in a patent infringement lawsuit.

In connection with these and related utility and infrastructure matters, John frequently advises clients on compliance with Proposition 13, Proposition 218 and the Mitigation Fee Act.

John has particular knowledge of all aspects of Local Agency Formation Commission (LAFCO) proceedings. At his former firm, John worked on a matter that resulted in a published appellate decision involving LAFCO laws: *Embarcadero Municipal Improvement District v. County of Santa Barbara* (2001) 88 Cal.App.4th 781. In the course of this work, he became intimately familiar with all aspects of the LAFCO law. Subsequently, he has represented LAFCOs, citizens groups, special districts and cities in all manner of LAFCO proceedings. This representation of citizens groups has focused on citizens working their way through the complicated LAFCO process leading to the incorporation of a new city. Notably, John:

- Advised the newly incorporated City of Rancho Cordova in a dispute with LAFCO and the County on the legality of the City's revenue neutrality obligations imposed during the incorporation proceeding;
- Advised special district clients wishing to oppose incorporations and other proposals that negatively impacted the districts;
- Advised a special district client on competing proposals to either incorporate the Goleta Valley or annex it to the City of Santa Barbara;
- Assisted city clients with a number of large-scale annexations and sphere of influence proceedings; and
- Served as conflicts counsel to the Del Norte LAFCO in a proceeding initiated by the County to dissolve a water district.

In connection with his LAFCO and finance work, John has developed an expertise in other arcane areas of local-government finance. In particular, John has advised many of the firm's clients in disputes relating to the allocation of property tax revenues to cities, counties, and special districts. In addition, John was retained by the League of California Cities to pursue litigation against the State challenging a provision of the 2011-2012 State Budget that reallocates vehicle license fee revenue in a manner that the League asserts violates state law provisions of the State Constitution (Propositions 22 and 1A) that prohibits state raids on local revenues.

John is Co-chair of the firm's Public Power and Telecommunications Practice Group, advising firm clients on a range of telecommunications and cable television matters. During law school, he interned at the California Public Utilities Commission and worked on matters including the implementation of the Telecommunications Act of 1996. He has advised clients on the Act's provisions which preempt local land use authority over wireless and wireline facilities and ham radio antennas. He has also advised clients on the impact of state law provisions granting telephone corporations a right to use public rights of way for telecommunications facilities. John has been heavily involved in responding to AT&T's entry into the video programming market, both before and after the enactment of the Digital Infrastructure and Video Competition Act of 2006. Recently, John negotiated a WiFi agreement with AT&T on behalf of the City of Napa.

### **Published Decisions**

- *Concerned Dublin Citizens v. City of Dublin* (2013) 214 Cal. App. 4th 1301



**Edward Kreisberg**  
**Principal**

555 12th Street, Suite 1500  
Oakland, CA 94607

T: 510.808.2000  
F: 510.444.1108  
ekreisberg@meyersnave.com

**Practice Group**  
Labor and Employment

**California Bar Number**  
179528

**Education**  
University of California at Davis School of Law, JD, 1995  
University of California at Berkeley, BA Economics and History, 1990

**Practicing Since:** 1995

Edward (Eddie) Kreisberg specializes in providing labor and employment litigation, advice, arbitration, administrative hearing, and negotiation services to public and private employers throughout California. The *Daily Journal* recognized Eddie as one of the “Top Labor and Employment Lawyers” in California for 2011.

Eddie represents employers in discrimination, harassment, retaliation, wage and hour, benefits, and labor agreement lawsuits. He has special expertise in layoffs and furloughs, accommodation of disabilities, discipline, grievances, the Family Medical Leave Act (FMLA), the California Family Rights Act (CFRA), pension, health, privacy, Public Employment Relations Board (PERB) charges, overtime, the Public Safety Officers Procedural Bill of Rights Act and the Firefighters Procedural Bill of Rights Act, drug and alcohol, and violence in the workplace.

Eddie also represents employers in discipline, grievance, and interest arbitrations, as well as administrative hearings before civil service commissions, PERB, the California Public Employees’ Retirement System (CalPERS), the Department of Labor and the Employment Development Department. He also audits public agency rules, labor contracts, job descriptions and payroll practices to ensure compliance with wage and hour laws.

Eddie is a sought-after negotiator and advisor on all aspects of labor relations. His work includes negotiating and advising on successor Memoranda of Understanding (MOUs), side letters, personnel rules, employee handbooks, department policies, civil service rules, past practices and employer-employee relations resolutions. He has assisted employers with the complete range of representation issues, including organizing campaigns, elections, petitions to certify, de-certify and modify units, and related meet and confer grievance and unfair labor practice proceedings. Eddie also has drafted and met with unions on Employer Employee Relations Rules governing unit and representation processes. Eddie’s comprehensive experience includes

serving as counsel to neutral Commissions and Boards that rule on representation petitions and related disputes.

Eddie previously clerked for federal Magistrate Judge Louisa Porter in the U.S. District Court, Southern District of California; advised Congressman Robert T. Matsui on legislation and policy issues; and interned in the Office of Congressman Mel Levine. He has clerked for both an insurance defense law firm and the Alaska office of a national firm representing Native American governments.



**Brandon W. Halter**  
**Associate**

555 12th Street, Suite 1500  
Oakland, California 94607

T: 510.808.2000  
F: 510.444.1108  
bhalter@meyersnave.com

**Practice Group**

Trial and Litigation  
Labor and Employment  
California Public Utilities Commission

**Bar Numbers**

289687 (CA)  
4927729 (NY)

**Education**

Harvard Law School, J.D.  
UC San Diego, B.A.

**Practicing Since:** 2010

Brandon W. Halter is a member of the Trial and Litigation, Labor and Employment, and California Public Utilities Commission Practice Groups. He has extensive experience handling complex civil litigation involving significant individual and class-based claims in both state and federal courts, including matters pending simultaneously in multiple different jurisdictions. He also has represented clients in international and domestic arbitrations.

Brandon has worked on cases in a broad range of substantive fields, including employment discrimination, peace officer defense, data privacy, white collar/investigations, intellectual property and antitrust. His clients are public entities, including many different types of special districts, as well as various industries, such as manufacturing, energy, healthcare, technology and retail.

Brandon has experience handling all aspects of litigation including: drafting correspondence, memoranda, pleadings, briefs and motions; taking and defending depositions; preparing fact and expert witnesses for trial; conducting legal research; and managing discovery.

Brandon's employment law experience includes defending against a putative class of employees asserting discrimination-based claims, and asserting claims against former employees accused of violating obligations to their former employer. He also counsels public employers regarding employment issues ranging from wage and hour compliance to anti-discrimination statutes, and has conducted investigations into allegations of potential misconduct in a number of different settings.

He earned his J.D. from Harvard Law School and is admitted to practice in state courts in California and New York, as well as U.S. District Courts in the Northern and Eastern Districts of California.



**Susan Griffin**  
**Paralegal**

555 12<sup>th</sup> Street, Suite 1500  
Oakland, CA 94607

T: 510.808.2000  
F: 510.444.1108  
sgriffin@meyersnave.com

**Practice Groups**

Labor and Employment  
Crisis Management  
Trial and Litigation

**Education**

Studied psychology at  
California State University, Sacramento

**Paralegal Education**

California B & P Code Section 6450(c)(4)

Susan Griffin is a paralegal in the firm's Labor and Employment, Crisis Management, and Trial and Litigation practices.

Susan began her legal career in the Bay Area in 1985. Trained on the job, she honed her litigation and discovery skills at a number of law firms including Heller Ehrman, LLP and Brobeck, Phleger & Harrison, LLP.

Over the years, Susan has managed all phases of discovery, including many large document collections and productions. Susan is well versed in leading-edge document management and litigation support systems and tools, including iManage and Concordance. She is also skilled in a number of software applications, including Word, Adobe, Excel and PowerPoint. Before joining Meyers Nave, Susan also gained project management and paralegal supervisory experience.

At Meyers Nave, she is regularly sought out for her cite-checking, trial preparation, and calendaring skills.

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**Proposal Costs** - The fee information is relevant to a determination of whether the fee is fair and reasonable in light of the services to be provided. This section shall include the proposed costs to provide the services as described in your proposal. *OCFA will not compensate for travel time or reimburse travel expenses.* OCFA will not separately reimburse costs not included in the proposal.

**1. As to each numbered issue or subpart identified in [the] Issue List, provide your estimated cost of providing the requested written advice, including any cost reimbursement(s). Identify key personnel required to complete the task, their hourly rate, and the number of hours expected to be expended by such personnel to complete the task.**

**Key attorneys and hourly rates:**

John D. Bakker, \$400  
Edward L. Kreisberg, \$365  
Brandon W. Halter, \$285

**Issue numbers with hour estimates, continued:**

6. ELK, 10; BWH, 20  
7. ELK, 10; BWH, 25  
8. JDB, 5; BWH, 10  
9. ELK, 10; BWH, 20  
10. ELK, 5; BWH, 15  
11. ELK, 5; BWH, 15  
12. JDB, 5; BWH, 10  
13. JDB, 5; BWH, 25

**Issue numbers w/ attorney time estimates**

1. JDB, 5 hours; ELK, 5; BWH, 20  
2. JDB, 5; BWH, 5  
3. JDB, 5; BWH, 5  
4. JDB, 5; BWH, 5  
5. JDB, 5; BWH, 5

**2. Provide your estimated costs for meeting with the OCFA Board of Directors. Assume attendance at three (3) meetings, at two (2) hours per meeting.**

With the additional assumptions that John Bakker will attend all three meetings; Eddie Kreisberg will join John for one meeting; and they will spend two hours preparing for each meeting: Total costs would be \$6260.

**3. State whether you are willing to provide an overall "not-to-exceed" amount for all services proposed. If you are, include your "not-to-exceed" figure.**

Our not-to-exceed figure for the services proposed is \$100,000.

**4. Indicate whether your law firm offers discounted rates to public agencies such as OCFA and/or whether you discount your rates for any other reason. If so, are these discounted rates reflected in the quoted hourly rates?**

Meyers Nave provides services to public agencies at discounted rates compared to our private entity market rates. Our discounted hourly rates for public agencies are quoted above.



## **EXHIBIT B**

### **Request for Proposal, RFP DC2177**





## ORANGE COUNTY FIRE AUTHORITY

### Notice of Request for Proposals

#### Special Counsel Legal Services

**DATE: December 6, 2016**

**RFP Number: DC2177**

The Orange County Fire Authority (OCFA) is seeking proposals from qualified law firms to provide special counsel legal services.

**Proposals must be received by no later than 11:00 A.M., January 18, 2017**

**Provided that they are received by OCFA Purchasing Department no later than the deadline above, proposals may be hand delivered, overnighted, or mailed to Orange County Fire Authority, Purchasing Department, 1 Fire Authority Road, Building C, Irvine, CA 92602. Alternatively, proposals may be submitted electronically online through PlanetBids.**

#### **LATE PROPOSALS WILL NOT BE ACCEPTED**

Any questions concerning this RFP can be submitted on-line via the Q&A module available through PlanetBids.com (OCFA's e-procurement system) before **January 5, 2017 at 11:00 a.m.** OCFA will publish a response to all inquiries through the e-procurement system and/or may issue an addendum as a result.

One (1) hard copy, one (1) duplicate hard copy, and one (1) electronic copy in PDF or Word (on CD or DVD), of the proposal shall be sent to the attention of the Purchasing & Materials Manager, within said time limit, in a sealed envelope. The words "SEALED PROPOSAL" with the REQUEST FOR PROPOSAL TITLE, REQUEST FOR PROPOSAL NUMBER, PROPOSAL DUE DATE AND TIME and OFFEROR'S NAME AND ADDRESS shall be written on the envelope. *If you opt to submit hard copies of your proposal, please submit the Offer/Cost Proposal in a separate sealed envelope marked as such.* Another option is to submit your proposal electronically through the PlanetBids website. If you elect to submit your proposal electronically through Planetbids, no additional copies or digital media will be required. There will be no public opening of proposals.

If you have any questions, please contact Debbie Casper, C.P.M., CPPB, Purchasing & Materials Manager, at (714) 573-6641 or via e-mail at: [debbiecasper@ocfa.org](mailto:debbiecasper@ocfa.org).

Regards,

A handwritten signature in cursive script that reads "Debbie Casper".

Debbie Casper, C.P.M., CPPB  
Purchasing & Materials Manager

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## **SECTION I: PROPOSAL INFORMATION**

### **INTRODUCTION**

The Orange County Fire Authority ("OCFA" or the "Authority") is seeking proposals from qualified law firms to provide special counsel legal services in the area(s) of municipal law, public pension law, and municipal bankruptcy as further described in this RFP.

### **AGENCY BACKGROUND**

The OCFA was formed on March 1, 1995, transitioning from the Orange County Fire Department to a Joint Powers Authority ("JPA") as allowed by California State Government Code 6500 et seq. The OCFA is an independent organizational entity similar to a special district. The service area includes twenty-three member cities, the unincorporated areas of Orange County, California, including State and Federal Responsibility areas. A twenty-five member Executive Board of Directors governs the OCFA. This Board includes an elected official appointed to represent each of the twenty-three member cities and two representatives from the County Board of Supervisors. The OCFA is managed by an appointed Fire Chief who reports to the Executive Board of Directors.

The OCFA is the largest regional fire service organization in Orange County and one of the largest in California. Emergency response services are provided to a community of over 1.75 million residents in a 575 square mile area. The OCFA's authorized staffing level is 1,372 full-time positions. These personnel provide front-line services, including prevention, education, dispatch, emergency response and technical and administrative support.

The OCFA directly serves the following jurisdictions:

Aliso Viejo	Lake Forest	Santa Ana
Buena Park	La Palma	Seal Beach
Cypress	Los Alamitos	Stanton
Dana Point	Mission Viejo	Tustin
Irvine	Placentia	Villa Park
Laguna Hills	Rancho Santa Margarita	Westminster
Laguna Niguel	San Clemente	Yorba Linda
Laguna Woods	San Juan Capistrano	Unincorporated areas of the County of Orange

The OCFA also serves other jurisdictions pursuant to mutual aid and other agreements.

### **ESTIMATED RFP SCHEDULE**

Proposal Posting Date	<b>December 6, 2016</b>
Online Q & A	<b>January 5, 2017 at 11:00 a.m.</b>
Due date for Proposals	<b>January 18, 2017 no later than 11:00 a.m.</b>
Initial Review/Prequalification	<b>January 25, 2017</b>
Tentative Interviews with Finalist	<b>February 2017</b>
Award Contract (Tentative)	<b>March 2017</b>

Proposals submitted will be evaluated initially by staff based on the criteria listed in this RFP. Following staff's initial review and pre-qualification, the three (3) highest scoring proposals ("Finalists") will be referred to an ad hoc committee of the Board of Directors ("Ad Hoc Committee") who will conduct interviews and make a recommendation to the full Board of Directors for approval and award of the contract(s), if desired. It is anticipated that staff's initial evaluation will be completed by the end of **January 2017**, interviews and negotiations with the Ad Hoc Committee are expected to conclude by **February 2017**, with the

recommendation for award being made to the Board of Directors for consideration at its **March 2017** meeting.

### **TERM/FORM OF AGREEMENT**

Proposals should reflect services and fees for an initial one-year term, with annual renewal(s) at the option of the Authority. OCFA's Professional Services Agreement template is attached hereto as Exhibit "1". The contract is subject to the satisfactory negotiation of terms, including a price acceptable to both the OCFA and the selected law firm.

### **GENERAL INFORMATION**

The successful proposal will be one that demonstrates the ability of the law firm ("Offeror") to meet the requirements of this solicitation. Sealed proposals will be accepted up to the date and time stated herein. Proposals must be prepared in conformance with the instructions provided. (Please note that a second sealed envelope with the proposed rate(s) will be required to be submitted in the primary sealed proposal envelope.)

Only those Offerors with verifiable experience as it relates to the requirements of this solicitation will be considered during the evaluation process.

To be considered responsive, Offerors must respond to this solicitation in accordance with the requirements, specifications, commercial terms, and provisions as described and set forth herein.

Any Offeror who wishes its proposal to be considered is responsible for making certain that the Purchasing Department receives the proposal by the announced time. No oral, telegraphic, facsimile, or telephonic proposals or modifications will be considered unless specified. Proposals received after the scheduled submittal deadline will be returned unopened. Proposals must bear original signatures when the proposal is not submitted electronically. Please note that there will be no public opening of proposals. Proposal information shall not be made public until all contracts are awarded. At that time the executed contracts will become public information. Please direct any questions regarding this proposal to Debbie Casper, C.P.M., CPPB, Purchasing & Materials Manager, via telephone (714) 573-6641 or e-mail: [debbiecasper@ocfa.org](mailto:debbiecasper@ocfa.org).

The OCFA reserves the right to negotiate with any Offeror(s) as necessary to serve the best interest of the Authority and negotiate the final contract(s) with the most responsive, responsible Offeror(s). OCFA reserves the right to waive, at its discretion, any irregularity or informality, which the OCFA deems correctable or otherwise not warranting rejection of the RFP. OCFA reserves the right to reject any and all proposals and to accept any proposal or portion thereof. No obligation, either expressed or implied, exists on the part of the OCFA to make an award or to pay any costs incurred in the preparation or submission of a proposal. All costs associated with the preparation or submission of proposals covered by this RFP are solely the responsibility of the Offeror(s).

By submitting a proposal, the Offeror acknowledges understanding of the rules as defined in this RFP. Compliance with all of the terms and conditions of the agreement is mandatory for companies providing services to OCFA.

The intent of the OCFA is to award one or more contracts to the Offeror or Offerors who are recommended by the Ad Hoc Committee. Please provide your response to all the information requested in this RFP so that you can be assessed to the best advantage.

## SECTION II: SCOPE OF WORK

The OCFA desires to hire a qualified, competent law firm(s) having significant expertise and experience in municipal law, public pension law, and/or municipal bankruptcy and the ability to advise the OCFA Board of Directors on the questions and legal issues outlined below.

### **PROJECT BACKGROUND/OBJECTIVES**

The OCFA was formed on March 1, 1995, transitioning from the Orange County Fire Department to a Joint Powers Authority ("JPA") as allowed by California State Government Code 6500 et seq. The OCFA Joint Powers Agreement, as amended, is available at <http://www.ocfa.org/Transparency/Transparency.aspx>.<sup>1</sup> The OCFA is comprised of 24 member agencies:

Aliso Viejo	Lake Forest	Santa Ana
Buena Park	La Palma	Seal Beach
Cypress	Los Alamitos	Stanton
Dana Point	Mission Viejo	Tustin
Irvine	Placentia	Villa Park
Laguna Hills	Rancho Santa Margarita	Westminster
Laguna Niguel	San Clemente	Yorba Linda
Laguna Woods	San Juan Capistrano	County of Orange

Of the members, fifteen cities are called Structural Fire Fund ("SFF") members, whose portion of the property tax designated for fire protection is sent directly to the Authority through the County. The eight remaining members are called "Cash Contract Cities". Each Cash Contract City pays the OCFA for fire protection services on an agreed-upon schedule.

Pursuant to the OCFA Joint Powers Agreement, each City member has the option to withdraw from the JPA in 2020. The option of some of the members to withdraw raises several questions concerning member agency liability for public pension obligations and other OCFA liabilities, including without limitation:

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 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 the 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 the OCFA's remaining liabilities?
5. How would you reconcile the opinion by OCFA's General Counsel dated June 24, 2014 with the opinion by Sidley & Austin dated September 20, 2013, which opined that members of a Joint

<sup>1</sup> It should be noted that the Second Amendment to the Amended Joint Powers Agreement was invalidated by court ruling and is therefore not operative. See the unpublished opinion of the Court of Appeal attached as Exhibit "3".

Powers Authority might be liable for takings damages arising from the JPA's activities? Copies of both opinions are attached hereto as Exhibit "2".

6. Could the withdrawal of members of the 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?
7. If OCFA dissolved, could OCFA's members be held liable for OCFA's unfunded pension liabilities? Put another way, could Orange County Employees Retirement System (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?
8. 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?
9. 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 the terms of the Joint Powers Agreement?
10. 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?
11. 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?
12. Upon a member's withdrawal from the OCFA, is that withdrawing member entitled to receive any portion of OCFA's real property or assets, or is such distribution subject to negotiation?
13. Upon dissolution of OCFA, must OCFA's liabilities, including pension liabilities, be settled and allocated prior to distribution of OCFA's assets?

### **MINIMUM QUALIFICATIONS & EXPERIENCE**

Offerors must meet the following minimum requirements to be considered responsive. Joint proposals will be accepted. Failure to meet these minimum requirements may cause the submitted proposal to be eliminated from further consideration in the evaluation process.

1. All attorneys performing services for the OCFA on behalf of Offeror must be admitted to practice in the State of California and be members in good standing with the State Bar of California.
2. The Offeror's attorney with primary responsibility for the services provided to OCFA ("Lead Counsel"), must have at least ten (10) years' experience providing legal services for special districts, municipalities, public pension systems, or other local public agencies.
3. The Offeror must have experience advising public agency boards, commissions, councils and elected officials and demonstrated legal expertise in municipal law, public pension law, and/or municipal bankruptcy.

All Offerors are to provide a statement in the transmittal letter describing how their law firm – inclusive of any other law firm included in a joint proposal – meets the minimum qualifications.

## **DELIVERABLES**

The selected Offeror(s) will provide legal memoranda to the OCFA Board of Directors concerning the public pension obligation and liability issues raised in the Project Background/Objectives section above and will be expected to meet with and counsel the Board of Directors on such matters as requested.

## **SECTION III: GENERAL INSTRUCTIONS TO OFFERORS**

### **ACCEPTANCE PERIOD**

Unless otherwise specified herein, proposals are firm for a period of one hundred eighty (180) days.

### **JOINT PROPOSALS**

OCFA will consider joint proposals. Where two or more law firms desire to submit a single proposal in response to this RFP, they should do so as a joint venture and not on a prime-subcontractor basis. The Authority intends to contract directly with each law firm providing services in connection with this solicitation.

### **AMENDMENT OF REQUEST FOR PROPOSAL**

The Offeror shall acknowledge receipt of a Request for Proposal Amendment by signing and returning the document by the specified due date and time. Amendments (addendums) may be obtained from the OCFA website at: [www.ocfa.org](http://www.ocfa.org). It is the Offeror's responsibility to obtain a copy of any amendment relevant to this solicitation. Any interested Offerors without Internet access may obtain a copy of this solicitation by calling (714) 573-6640, or a copy may be picked up during regular business hours. OCFA takes no responsibility for informing recipients of changes to the original solicitation document. Failure to submit signed amendments with the proposal response may be grounds for deeming submittal non-responsive.

### **RESERVATION OF RIGHTS**

Notwithstanding any other provision of this RFP, OCFA reserves the right to:

1. Conduct pre-award discussion or pre-award negotiations with any or all responsive responsible Offerors;
2. Request that the Offeror furnish additional information;
3. Accept or reject any or all proposals, or portions thereof;
4. Issue multiple awards, if it is in the best interest of the Authority;
5. Limit and/or determine the actual contract services to be included in the contract; or
6. Reissue the RFP.

The OCFA reserves the unilateral right to modify or amend this RFP in writing at any time for any reason the OCFA determines to be in its best interest. The OCFA also reserves the right to cancel or reissue the RFP at its sole discretion. OCFA reserves the right to accept or reject any or all proposals and the right to waive minor irregularities in any proposal. Waiver of one irregularity does not constitute waiver of any other irregularities.



## **CAMPAIGN CONTRIBUTIONS DISCLOSURE**

In conformance with the statutory requirements of the State of California Government Code Section 84308, part of the Political Reform Act and Title 2, California Code of Regulations 18438 through 18438.8, regarding campaign contributions to members of appointed Boards of Directors, Offeror is required to complete the Party and Participant Disclosure Forms provided in Appendix G of this RFP and submit as part of the proposal, if applicable. Offeror is required to submit only one copy of the completed form(s) as part of its proposal. This/these form(s) should be included in the original proposal. The Offeror must complete the form entitled "Party Disclosure Form". Lobbyists or agents representing the Offeror in this procurement must complete the form entitled "Participant Disclosure Form". Reporting of campaign contributions is a requirement from the proposed submittal date up and until the OCFA Board of Directors takes action on this solicitation.

## **CANCELLATION OF SOLICITATION**

The OCFA may cancel this solicitation at any time.

## **CERTIFICATION**

By signature on the Certification of Proposal page, solicitation amendment(s), or cover letter accompanying the submittal documents, Offeror certifies:

- A. The submission of the proposal did not involve collusion or other anti-competitive practices.
- B. The Offeror shall not discriminate against any employee or applicant for employment in violation of Federal or State law.
- C. The Offeror has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, meal or service to a public servant in connection with the submitted offer.
- D. The Offeror hereby certifies that the individual signing the submittal is an authorized agent for the Offeror and has the authority to legally bind the Offeror to the contract.
- E. The Offeror hereby certifies, its principal and their subcontractors, if any, are not debarred, suspended or otherwise excluded by the United States Government.

## **CONFIDENTIAL INFORMATION**

All responses to this RFP become the property of OCFA and will be kept confidential until such time as recommendation for award of all contracts has been announced. Thereafter, proposals are subject to public inspection and disclosure under the California Public Records Act. If an Offeror believes that any portion of its proposal is exempt from public disclosure, such portion may be marked "confidential." OCFA will use reasonable means to ensure that such confidential information is safeguarded but will not be held liable for inadvertent disclosure of such materials, data and information. Proposals marked "confidential" in their entirety will not be honored and OCFA will not deny public disclosure of all or any portion of proposals so marked. By submitting information with portions marked "confidential", the Offeror represents it has a good faith belief that such material is exempt from disclosure under the California Public Records Act and agrees to reimburse OCFA for, and to indemnify, defend and hold harmless OCFA, its officers, fiduciaries, employees and agents from and against: (a) any and all claims, damages, losses, liabilities, suits, judgments, fines, penalties, costs and expenses including, without limitation, attorneys' fees, expenses and court costs of any nature whatsoever (collectively, "Claims") arising from or relating to OCFA's non-disclosure of any such designated portions of a proposal if disclosure is deemed required by law or court order. Additionally, the Offeror shall upon request of OCFA, directly defend any action for disclosure of any information marked confidential.

## **COMPLIANCE WITH LAWS**

All proposals shall comply with current federal, state, and other laws relative thereto.

## **DISCUSSIONS**

The OCFA reserves the right to conduct discussions with Offerors for the purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the proposal in order to clarify an offer and assure full understanding of, and responsiveness to, solicitation requirements.

## **DISQUALIFICATION OF OFFEROR(S)**

If there is reason to believe that collusion exists among the Offerors, other than joint proposals, OCFA may refuse to consider proposals from participants in such collusion. No person, firm, or corporation under the same or different name, shall make, file, or be interested in more than one proposal for the same work unless alternate proposals are called for. A person, firm, or corporation who has submitted a sub-proposal to an Offeror, is not thereby disqualified from submitting a sub-proposal or quoting prices to other Offerors. Reasonable grounds for believing that any Offeror is interested in more than one proposal for the same work will cause the rejection of all proposals for the work in which an Offeror is interested. If there is reason to believe that collusion exists among the Offerors, OCFA may refuse to consider proposals from participants in such collusion. Offerors shall submit as part of their proposal documents the completed Non-Collusion Affidavit provided herein.

## **DISPUTES RELATING TO PROPOSAL PROCESS AND AWARD**

In the event a dispute arises concerning the proposal process prior to the award of the contract, the party wishing resolution of the dispute shall submit a request in writing to the Purchasing Manager. An Offeror may appeal the recommended award or denial of award, provided the following stipulations are met:

1. Appeal must be in writing.
2. Appeal must be submitted within seven (7) calendar days of the date of notification of recommended award or denial of award.
3. An appeal of a denial of award can only be brought on the following grounds:
  - a. Failure of OCFA to follow the selection procedures and adhere to the requirements as specified in the RFP or any addenda or amendments.
  - b. A violation of conflict of interest as provided by California Government Code Section 87100 et seq.
  - c. A relevant violation of State or Federal law.

## **INQUIRIES**

Any question related to this RFP shall be directed to the Purchasing Manager, Debbie Casper, C.P.M., CPPB. Any requests to change the form of the Professional Services Agreement or other forms, or types or amounts of required insurance or endorsements shall be made at this state (at least 10 days prior to submittal deadline) as well. Questions and comments regarding this solicitation must be submitted in writing, either by mail, facsimile or e-mail to the Purchasing Manager, Orange County Fire Authority, 1 Fire Authority Road Bldg. C, Irvine, California, 92602, faxed to (714) 368-8845 or e-mailed to: [debbiecasper@ocfa.org](mailto:debbiecasper@ocfa.org), no later than ten (10) calendar days before the submittal deadline. The questioner's company name, address, phone and fax number, and contact person must be included with the questions or comments. Any correspondence related to a solicitation should refer to the appropriate Request for Proposal number, page and paragraph number. An envelope containing questions should be identified as such; otherwise it may not be opened until after the official proposal due date and time. Oral interpretations or clarifications will be without legal effect. Only questions answered by a formal written amendment to the Request for Proposal will be binding. Answers will be sent to all known proposal holders.

## **LATE PROPOSALS**

Late proposals will be rejected and not opened.

## **NEGOTIATIONS**

Exclusive or concurrent negotiations may be conducted with responsible Offeror(s) for the purpose of altering or otherwise changing the conditions, terms and price of the proposed contract unless prohibited. Offerors shall be accorded fair and equal treatment in conducting negotiations and there shall be no disclosure of any information derived from proposals submitted by competing Offerors. Exclusive or concurrent negotiations shall not constitute a contract award nor shall it confer any property rights to the successful Offeror. In the event the OCFA deems that negotiations are not progressing, OCFA may formally terminate these negotiations and may enter into subsequent concurrent or exclusive negotiations with the next most qualified law firm(s).

## **OBJECTIONS**

Any objections as to the structure, content or distribution of this RFP must be submitted in writing to Purchasing Manager less than five (5) working days before the proposal due date. Objections must be as specific as possible, and identify the RFP section number and title, as well as a description and rationale for the objection.

## **PREPARATION OF PROPOSAL**

- A. All proposals shall incorporate the forms provided in this RFP package. It is permissible to copy these forms as required. Facsimiles or electronic mail proposals shall not be considered.
- B. The proposal form and any solicitation amendments must be signed and returned with the proposal. The forms submitted shall be signed by a person authorized to submit an offer. An authorized signature on the proposal form, proposal amendment(s), or cover letter accompanying the proposal documents shall constitute an irrevocable offer to provide services specified herein. Offeror shall submit any additional requested documentation, signifying intent to be bound by the terms of the agreement.
- C. The authorized person signing the proposal shall initial erasure, interlineations or other modifications on the proposal.
- D. Periods of time, stated as a number of days, shall be in calendar days.
- E. It is the responsibility of all Offerors to examine the entire RFP package and seek clarification of any requirement that may not be clear and to check all responses for accuracy before submitting a proposal. Negligence in preparing a proposal confers no right of withdrawal after due date and time.
- F. OCFA shall not reimburse the cost of developing, presenting, submitting or providing any response to this solicitation.

## **PROPOSAL OPENING AND RESULTS**

Please note that there will be no public opening of proposals. The list of law firms participating in the solicitation will be available when the recommendation(s) for award of contracts is made to the OCFA Board of Directors.

## **PROPOSAL FORMAT**

One (1) hard copy original, one (1) duplicate hard copy, and one (1) electronic copy in PDF or Word (on Digital Media), of each proposal should be submitted as specified in the RFP. The original copy of the proposal should be clearly labeled "Original". If you elect to submit your proposal electronically through Planetbids.com, no additional copies of digital media will be required. The material should be in sequence

according to the RFP. The sections of the submittal should be clearly identifiable, including all the items listed in the Proposal Requirements, and all signed amendments if required. Failure to include the requested information may have a negative impact on the evaluation of the Offeror's proposal.

### **PUBLIC RECORD**

All proposals submitted in response to this Request for Proposal shall become the property of OCFA and, subject to the Confidential Information provisions above, shall become a matter of public record available for review subsequent to the award notification.

### **WHERE TO SUBMIT PROPOSAL**

In order to be considered, the Offeror must complete and submit its proposal to OCFA Purchasing Office at the location indicated, prior to or at the exact date and time indicated on the Notice of Request for Proposals page. The Offeror's proposal shall be submitted in a sealed envelope. The words "SEALED PROPOSAL" with the REQUEST FOR PROPOSAL TITLE, REQUEST FOR PROPOSAL NUMBER, PROPOSAL DUE DATE AND TIME and OFFEROR'S NAME AND ADDRESS shall be written on the envelope. Alternatively, proposals may be submitted electronically through PlanetBids.

### **WITHDRAWAL OF PROPOSAL**

At any time prior to the specified solicitation due date and time, an Offeror may formally withdraw the proposal by a written letter, facsimile or electronic mail timely received by OCFA from the Offeror or a designated representative. Telephonic or oral withdrawals shall not be considered.

## **SECTION IV: PROPOSAL REQUIREMENTS**

To achieve a uniform review process and obtain the maximum degree of comparability, it is required that the proposals be organized in the manner specified. Proposals will only be accepted from Offerors that meet the minimum qualifications. All Offerors are expected to provide detailed answers to the proposal requirements listed below. The answers provided will be relevant in the evaluation process of the proposal. Additional information, if provided, should be separately identified in the proposal.

Proposals (submittals) shall include, at a minimum, the following:

- 1) ***Transmittal letter:*** Letter should be on the Offeror's letterhead. The letter should explain the Offeror's understanding, approach and strategy for achieving the objectives outlined in the scope of work. The Offeror must state specifically how the law firm meets the minimum qualifications stated on page 7. The letter must be signed by an individual authorized to bind the Offeror.
- 2) ***Work Plan/Schedule:*** Offeror should provide a narrative which provides an implementation work plan specifying the amount of time anticipated to produce written memoranda addressing the issues presented in the scope of work. If Offeror proposes to respond to some but not all legal issues listed on pages 6-7 above, identify by number (or description) which issues are and are not proposed to be addressed.
- 3) ***Offeror's detailed information:*** Provide a brief profile of the law firm(s) including the types of services offered, the year founded, form of organization (corporation, partnership, sole proprietorship), including number of years in business, location of office(s), number of employees, and number of clients you have currently. The Offeror must provide the number of years of experience for each practice area identified. Please complete Appendix A - Offeror's Information.
- 4) ***Proposal Questionnaire:*** Provide responses to Appendix C – Proposal Questionnaire.

- 5) **List of References:** Describe the legal services provided for up to five (5) other public pension systems or public agencies in California. Please complete Appendix B – References; include the agency contact, email address and telephone number. These agencies may be contacted as references.
- 6) **Project Team:** Provide the following details about the proposed legal team.
  - a. Please include the names, title, qualifications, training and expertise of the Lead Counsel, other attorney(ies) and legal professionals (e.g., paralegals) that will be conducting work on this assignment, including their relevant experience advising public pension systems or public agencies and length of time with the law firm.
  - b. Furnish brief resumes (not more than two [2] pages each) for the proposed key attorneys, the law firm's managing partner or legal services manager, and all key legal personnel that will be assigned to the OCFA's legal service contract, including paralegals and associates.
  - c. Include a statement that key personnel proposed will be available to perform the Offeror's legal services for the duration of the contract acknowledging that no person designated as "key" to the project shall be removed or replaced without the prior written concurrence of the Authority.
- 7) **Partnership Strength and Value-Added Benefits:** Provide a specific description of the exceptional, value-added features or capabilities beneficial to the OCFA that your law firm brings. This could be through existing relationships or experience with past clients or projects.
- 8) **Offer/Cost Proposal:** The pricing should include the total price to complete a portion or all of the performance requirements and deliverables requested by OCFA in this RFP. See the Appendix E – Pricing Information. **The Offer/Cost Proposal must be submitted in a sealed envelope separate from the main proposal packet if submitting a hard copy. If proposal is submitted electronically online, please upload cost proposal to the Cost File.**
- 9) **W-9:** Provide an IRS W-9 Form with submittal.
- 10) **Party Participant and Agent Disclosure Forms:** In conformance with the statutory requirements of the State of California Government Code Section 84308, part of the Political Reform Act and Title 2, California Code of Regulations 18438 through 18438.8, regarding campaign contributions to members of appointed Boards of Directors, Offeror is required to complete the Party and Participant Disclosure Forms provided in Appendix G and submit as part of the proposal, if applicable.

## SECTION V: EVALUATION OF PROPOSALS AND AWARD

### **STAFF EVALUATION**

All proposals will initially be reviewed by an evaluation committee comprised of OCFA staff and General Counsel for compliance with the scope of work including documented capability to perform the prescribed work in a satisfactory manner. Offerors should respond to all requirements in the order in which they are presented. The evaluation committee will evaluate compliant proposals based on the following criteria:

- A. Responsiveness of the Proposal (maximum points 45)** – This set of criteria assesses how well the Offeror responds to and demonstrates understanding of the OCFA's requirements as set forth in the scope of work. It assesses how well the Offeror's proposal meets the required specifications and objectives in the solicitation including the quality and completeness of the proposal.
- B. Qualifications & Experience (maximum points 45)** – This set of criteria assesses the Offeror's history of performance and demonstrated ability in providing legal services of a similar nature and experience working with public agencies in addition to the qualifications and experience of key-

personnel assigned to the project team. Previous experiences with the Offeror may be taken into consideration when evaluating qualifications and experience.

**C. Project Management and Value Added Benefits (maximum points 10)** – This set of criteria assesses the Offeror's ability to perform the tasks as outlined in the scope of work including, without limitation, consideration of the work plan schedule submitted with the Offeror's proposal and any partnership strength and value added benefits identified by Offeror.

Cost proposals will not be considered at this stage.

### **AD HOC COMMITTEE EVALUATION**

Following its review of proposals, the evaluation committee will refer the three highest scoring proposals ("Finalists") to the Ad Hoc Committee, who will conduct interviews with each of the Finalists. The Ad Hoc Committee will take into consideration the information provided during the interview process when evaluating the qualifications of the Offeror(s). OCFA shall not reimburse the Offeror for the costs associated with the interview process. Interviews will be held at a time and place specified by OCFA. The Offeror(s)' key project team members will be invited to attend the interview. Each interview will last approximately twenty (20) minutes, with the time allocated between Offeror's presentation and question and answer period. The Offerors should be prepared to discuss at the interview, their specific experience providing services similar to those described in the RFP, project approach, estimated work effort, available resources, and other pertinent things that distinguish an Offeror's law firm(s) from others. Offeror's proposed costs will be distributed to the Ad Hoc Committee; however, cost will only be one factor considered and the lowest price proposal will not necessarily be selected. OCFA is looking for the best value versus the lowest price. While cost is important, other criteria are also significant and the OCFA may not select the lowest cost proposal. The objective is to choose the proposal that offers the highest quality services and will achieve the project's goals and objectives within a reasonable budget. Based on its review of the proposals and the information gathered during the interview process, the Ad Hoc Committee will make a recommendation for award of contract(s) to the full OCFA Board of Directors. The Ad Hoc Committee may recommend that contract(s) be awarded for legal services in connection with some, all, or none of the issues.

### **NOTICE OF INTENT TO AWARD/EXECUTION OF CONTRACT**

Following the Ad Hoc Committee interviews, a notification of OCFA'S intent to award contract ("Notice of Intent to Award") will be sent to the successful Offeror(s). Following receipt of the Notice of Intent to Award, and no more than ten (10) days prior to submittal of the recommendation for award of contract to the Board of Directors, the successful Offeror(s) shall submit the following items to the Purchasing & Materials Manager or designee:

- A. Two (2) hard copy originals of the Professional Services Agreement ("PSA"), in a form approved by OCFA General Counsel, signed by an individual(s) duly authorized to bind the Offeror.
- B. Evidence of insurance coverage consisting of certificates of insurance and original endorsements as required per the PSA (see Exhibit "1").

In case of failure of the Offeror(s) to execute and return the PSA and all required documents within the time allowed, the OCFA may, at its option, consider that the Offeror(s) has/have abandoned the contract.

Following the Board of Directors' acceptance and approval of the Ad Hoc Committee's recommendation for award of contract, OCFA shall return one fully executed copy of the PSA to Offeror(s).

## APPENDIX A – OFFEROR’S INFORMATION

Please complete and/or provide all requested information. If the proposal is submitted by a corporation, please provide an additional attachment that states the names of the officers who can sign an agreement on behalf of the corporation and whether more than one officer must sign. If the proposal is by a partnership or a joint venture, state the names and addresses of all general partners and joint venture parties. If the respondent is a sole proprietorship or another entity that does business under a fictitious name, the proposal shall be in the real name of the respondent with a designation following showing “DBA (the fictitious name),” provided however, that no fictitious name shall be used unless there is a current registration with the Orange County Recorder.

The undersigned, as respondent, declares that all documents regarding this proposal have been examined and accepted and that, if awarded, will enter into a contract with the Orange County Fire Authority.

Firm's Legal Name:	
Firm Parent or Ownership:	
Address:	
Firm Telephone No.	Firm Fax No.
Firm's Tax I.D. Number:	Incorporated: YES _____ NO _____
Legal form of company: (partnership, corporation, joint venture)	
Length of time your firm has been in business:	Length of time at current location:
Number of employees and Number of Current Clients	

***Management person responsible for direct contact with the Orange County Fire Authority and service required for this Request for Proposal (RFP).***

Name:	Title:
Telephone No.:	E-mail:

***Person responsible for the day-to-day servicing of the account:***

Name:	Title:
Telephone No.:	E-mail:

***Please indicate if you are subject to the Party and Participant disclosure requirements. Yes No  
If yes, you are required to submit form/s (see Appendix G).***

***\*For additional information please see page 8 “Campaign Contribution Disclosure”.***

## APPENDIX B – REFERENCES

Describe fully at least five contracts performed by your law firm that demonstrate your ability to provide the services included with the scope of work. Attach additional pages if needed. OCFA reserves the right to contact each of the references listed for additional information regarding their experience with your company.

Client Agency Name	
Contact Individual & Title	
E-mail/Telephone number	
Date of Project & Description of services provided including contract amount	
Client Agency Name	
Contact Individual & Title	
E-mail/Telephone number	
Date of Project & Description of services provided including contract amount	
Client Agency Name	
Contact Individual & Title	
E-mail/Telephone number	
Date of Project & Description of services provided including contract amount	
Client Agency Name	
Contact Individual & Title	
E-mail/Telephone number	
Date of Project & Description of services provided including contract amount	
Client Agency Name	
Contact Individual & Title	
E-mail/Telephone number	
Date of Project & Description of services provided including contract amount	



## APPENDIX C – PROPOSAL QUESTIONNAIRE

1. Provide a general description of the law firm's financial condition and identify any conditions (e.g., bankruptcy, pending litigation, planned office closures, impending merger) that may impede Offeror's ability to provide legal services.
2. Describe the law firm's experience in performing legal services of a similar nature for public pension systems, special districts, municipalities or other local public agencies including but not limited to any specific experience with (a) public pension liability and (b) exit provisions for members of a joint powers association. Include, at a minimum, the name of the contracting agency, type of legal services provided, the contract period, and the name, address and telephone number of a contact person (this may include the references listed in Appendix B). Highlight the participation in such work by key personnel proposed for assignment to the legal services described in this RFP.
3. How many partners and associates have left your law firm in the last three (3) years?
4. What type of tasks does your law firm assign to paralegals or law clerks?
5. Within the last three (3) years, has your law firm been subject to any civil litigation for malpractice arising out of its performance of any legal services for any firm client? If so, provide: (1) the name, and court case identification number for each case; (b) the jurisdiction in which it was filed; and (c) the outcome of the litigation (i.e., whether the case is pending, a judgment was entered, a settlement was reached, or the case was dismissed).
6. State any exceptions to or deviations from the provisions of the Professional Services Agreement (Exhibit "1"). Any such deviation or exception must have also been requested in the form of a pre-submittal inquiry (see "Inquiries" on page 10 above). Where Offeror wishes to propose alternatives to the Authority's contractual requirements, these should be thoroughly explained. If no contractual exceptions are noted, Offeror will be deemed to have accepted the form of the contract requirements as set forth in Exhibit "1".
7. Confirm that you have run a conflict check for each of the OCFA member agencies and OCERS. State and briefly explain any potential conflicts identified.
8. If your firm were selected, do you anticipate that it would have to obtain conflict waivers from any current or past firm client(s)? If so, identify such clients and describe the potential conflict(s).
9. Are you aware of any other ethical conflicts or other related issues which would limit your firm's ability to provide legal services to OCFA?
10. List and briefly explain any current and/or past representation of any party adverse to OCFA, any OCFA member agency, and/or to OCERS.
11. List and briefly explain any current and/or past representation of any OCFA member agency and/or OCERS.
12. If you are submitting a joint proposal, please specify how work will be coordinated between the law firms listed in the proposal to avoid overlapping or inconsistent services.
13. Please provide your assessment of whether any written advice provided by your firm to OCFA should be shared with the member agencies, or should such advice be shared only with the OCFA Board of Directors?

## APPENDIX D – ISSUE LIST

- Please identify by number (e.g., 1-13) the issues listed in the scope of work on pages 6-7 that your law firm is qualified to advise on.
- As to any of the numbered issues you *have not* identified as being areas where your law firm is qualified to advise on, can you identify another law firm you believe is qualified to so advise? If so, please provide name of firm(s) and contact information.
- As those numbered issues you have identified as being areas where your law firm is qualified to advise on, are there subparts you feel unqualified to advise on? If so and you can you identify another law firm you believe is qualified to so please provide the name of the firm and contact information.

## APPENDIX E – PRICING INFORMATION

**Proposal Costs** - The fee information is relevant to a determination of whether the fee is fair and reasonable in light of the services to be provided. This section shall include the proposed costs to provide the services as described in your proposal. **OCFA will not compensate for travel time or reimburse travel expenses.** OCFA will not separately reimburse costs not included in the proposal.

**Special Instructions:** **Pricing response is to be provided in a separate sealed envelope.**

1. As to each numbered issue or subpart identified in Appendix D – Issue List, provide your estimated cost of providing the requested written advice, including any cost reimbursement(s). Identify key personnel required to complete the task, their hourly rate, and the number of hours expected to be expended by such personnel to complete the task.
2. Provide your estimated costs for meeting with the OCFA Board of Directors. Assume attendance at three (3) meetings, at two (2) hours per meeting.
3. State whether you are willing to provide an overall "not-to-exceed" amount for all services proposed. If you are, include your "not-to-exceed" figure.
4. Indicate whether your law firm offers discounted rates to public agencies such as OCFA and/or whether you discount your rates for any other reason. If so, are these discounted rates reflected in the quoted hourly rates?
5. Include any additional pricing information you would like OCFA to consider.

**Term of Offer:** It is understood and agreed that this offer may not be withdrawn for a period of **one hundred eighty days** (180) from the proposal submittal deadline, and at no time during the term of the contract(s) in the case of award of the contract(s) to the Offeror(s).

## APPENDIX F – CERTIFICATION OF PROPOSAL

In responding to **RFP Number DC2177**, the undersigned Offeror(s) agrees to provide services for OCFA per the specifications. Offeror further agrees to the terms and conditions specified herein the following terms and conditions that are a part of this proposal and any resulting contract. **If there are any exceptions they must be stated in an attachment included with the offer.**

- A. The Offeror hereby certifies that the individual signing the submittal is an authorized agent for the Offeror and has the authority to legally bind the Offeror to the Contract. Signature below verifies that the Offeror has read, understands, and agrees to the conditions contained herein and on all of the attachments and agenda.
- B. The submission of the offer did not involve collusion or other anti-competitive practices.
- C. The Offeror has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, meal or service to a public servant in connection with the submitted offer.
- D. **The Offeror has submitted the Party, Participant (Agent) Disclosure Form if applicable.**
- E. The Offeror shall not discriminate against any employee or applicant for employment in violation of Federal or State law.
- F. The Offeror complies fully with the Federal Debarment Certification regarding debarment suspension, ineligibility and voluntary exclusion.

**Independent Price Determination:** I certify that this offer is made without prior understanding, arrangement, agreement, or connection with any corporation, firm or person submitting an offer for the same services, and is in all respects fair and without collusion or fraud. I certify that I have not entered into any arrangement or agreement with any Orange County Fire Authority public officer. I understand collusive bidding is a violation of State and Federal law and can result in fines, prison sentences, and civil damage awards. I agree to abide by all conditions of this offer and certify that I am authorized to sign this agreement for the Offeror.

### TO THE ORANGE COUNTY FIRE AUTHORITY:

The Undersigned hereby offers and shall furnish the services in compliance with all terms, scope of work, conditions, specifications, and amendments in the Request for Proposal which is incorporated by reference as fully set forth herein. The representations herein are made under penalty of perjury.

---

Name of Firm

---

Address

---

City

---

State

---

Zip

---

Signature of Person Authorized to Sign

---

Date

---

Printed Name

---

Title

## APPENDIX G – PARTY AND PARTICIPANT DISCLOSURE FORMS

### ORANGE COUNTY FIRE AUTHORITY - PARTY DISCLOSURE

The attached Party Disclosure Form must be completed and submitted by the Offeror and subcontractors with the proposal by all firms subject to the campaign contribution disclosure requirements stated on page 8 of this solicitation.

The Participant Disclosure Form must be completed by lobbyists or agents representing the Offeror in this procurement.

It is anticipated that a recommendation for award of contract will be presented to the Board of Directors of the OCFA for approval. (Please see next page for definitions of these terms.)

#### IMPORTANT NOTICE

Basic Provisions of Government Code Section 84308

- A. If you are an applicant for, or the subject of, any contract award, you are prohibited from making a campaign contribution of more than \$250 to any board member. This prohibition begins on the date the solicitation is initiated, and the prohibition ends three months after a final decision is rendered by the Board of Directors. In addition, no board member may solicit or accept a campaign contribution of more than \$250 from you during this period.
- B. These prohibitions also apply to your agents, and, if you are a closely held corporation, to your majority shareholder as well. These prohibitions also apply to your subcontractor(s), joint venturer(s), and partner(s) in this proceeding. Also included are parent companies and subsidiary companies directed and controlled by you, and political action committees directed and controlled by you.
- C. You must file the attached disclosure form and disclose whether you or your agent(s) have in the aggregate contributed more than \$250 to any board member during the 12-month period preceding the contract award.
- D. If you or your agent have in the aggregate contributed more than \$250 to any individual board member during the 12 months preceding the decision on the contract award or proceeding, that board member must disqualify himself or herself from the decision. However, disqualification is not required if the board member returns the campaign contribution within 30 days from the time the director knows, or should have known, about both the contribution and the fact that you are a party in the proceeding. The Party Disclosure Form should be completed and filed with your proposal, or with the first written document you file or submit after the proceeding commences.

A proceeding involving "a license, permit, or other entitlement for use" includes all business, professional, trade and land use licenses and permits, and all other entitlements<sup>1</sup> for use, including all entitlements for land use, all contracts<sup>2</sup> (other than competitively bid, labor or personal employment contracts), and all franchises.

- E. Your "agent" is someone who represents you in connection with a proceeding involving a license, permit or other entitlement for use. If an individual acting as an agent is also acting in his or her capacity as an employee or member of a law, architectural, engineering, consulting firm, or similar business entity, both the business entity and the individual are "agents."

- F. To determine whether a campaign contribution of more than \$250 has been made by you, campaign contributions made by you within the preceding 12 months must be aggregated with those made by your agent within the preceding 12 months or the period of the agency, whichever is shorter. Contributions made by your majority shareholder (if a closely held corporation), your subcontractor(s), your joint venturer(s), and your partner(s) in this proceeding must also be included as part of the aggregation. Campaign contributions made to different directors are not aggregated.
- G. A list of the current members of the Board of Directors is attached.

This notice summarizes the major requirements of Government Code Section 84308 of the Political Reform Act and 2 Cal. Adm. Code Sections 18438-18438.8 as it relates to contract awards.

<sup>1</sup> *Entitlement for the purposes of this form refers to contract award.*

<sup>2</sup> *All Contracts for the purposes of this form refer to the contract award of this specific solicitation.*

**ORANGE COUNTY FIRE AUTHORITY**  
**PARTY DISCLOSURE FORM**

Party's Name: \_\_\_\_\_

Party's Address: \_\_\_\_\_  
\_\_\_\_\_

Party's Telephone: \_\_\_\_\_

Solicitation Title and Number: \_\_\_\_\_

Based on the party disclosure information provided, are you or your firm subject to party disclosures?

No ☐ If no, check the box and sign below. Yes ☐ If yes, check the box, sign below and complete the form.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Party and/or Agent

***To be completed only if campaign contributions have been made in the preceding twelve (12) months. Attach additional copies if needed.***

Board Member(s) to whom you and/or your agent made campaign contributions and dates of contribution(s) in the preceding 12 months:

**Name of Member:** \_\_\_\_\_

**Name of Contributor (if other than Party):** \_\_\_\_\_

**Date(s):** \_\_\_\_\_

**Amount(s):** \_\_\_\_\_

**Name of Member:** \_\_\_\_\_

**Name of Contributor (if other than Party):** \_\_\_\_\_

**Date(s):** \_\_\_\_\_

**Amount(s):** \_\_\_\_\_

**Name of Member:** \_\_\_\_\_

**Name of Contributor (if other than Party):** \_\_\_\_\_

**Date(s):** \_\_\_\_\_

**Amount(s):** \_\_\_\_\_

## **ORANGE COUNTY FIRE AUTHORITY PARTICIPANT (AGENT) DISCLOSURE**

The Participant Disclosure Form must be completed by lobbyists or agents representing the Offeror in this procurement. (Please see next page for definitions of these terms.)

It is anticipated that a recommendation for award of this contract will be presented to the Board of Directors of the OCFA for approval.

### **IMPORTANT NOTICE**

Basic Provisions of Government Code Section 84308

- A. If you are a participant in a proceeding involving any contract award, you are prohibited from making a campaign contribution of more than \$250 to any board member. This prohibition begins on the date you begin to actively support or oppose an application for contract award pending before the OCFA or any of its affiliated agencies, and continues until three months after a final decision is rendered on the application or proceeding by the Board of Directors.

No board member may solicit or accept a campaign contribution of more than \$250 from you and/or your agency during this period if the board member knows or has reason to know that you are a participant.

- B. The attached disclosure form must be filed if you or your agent has contributed more than \$250 to any board member for the OCFA or any of its affiliated agencies during the 12-month period preceding the beginning of your active support or opposition (The disclosure form will assist the board members in complying with the law).

If you or your agent have made a contribution of more than \$250 to any board member during the 12 months preceding the decision in the proceeding, that board member must disqualify himself or herself from the decision. However, disqualification is not required if the member returns the campaign contribution within 30 days from the time the director knows, or should have known, about both the contribution and the fact that you are a participant in the proceeding

The Participant Disclosure Form should be completed and filed with the proposal submitted by a party, or should be completed and filed the first time that you lobby in person, testify in person before, or otherwise directly act to influence the vote of the board members of the OCFA or any of its affiliated agencies.

1. An individual or entity is a "participant" in a proceeding involving an application for a license, permit or other entitlement for use if:
- a. The individual or entity is not an actual party to the proceeding, but does have a significant financial interest in the Authority's or one of its affiliated agencies' decisions in the proceeding.

### **AND**

- b. The individual or entity, directly or through an agent, does any of the following:
- (2) Communicates directly, either in person or in writing, with a board member of the OCFA or any of its affiliated agencies for the purpose of influencing the member's vote on the proposal;



- (3) Communicates with an employee of the OCFA or any of its affiliated agencies for the purpose of influencing a member's vote on the proposal; or
  - (4) Testifies or makes an oral statement before the Board of Directors of the OCFA or any of its affiliated agencies.
- 2. A proceeding involving "a license, permit, or other entitlement for use" includes all business, professional, trade and land use licenses and permits, and all other entitlements for use, including all entitlements for land use; all contracts (other than competitively bid, labor, or personal employment contracts) and all franchises.
- 3. Your "agent" is someone who represents you in connection with a proceeding for this proposed involving a contract award. If an agent acting as an employee or member of a law, architectural, engineering, or consulting firm, or a similar business entity or corporation, both the business entity or corporation and the individual are agents.
- 4. To determine whether a campaign contribution of more than \$250 has been made by a participant or his or her agent, contributions made by the participant within the preceding 12 months shall be aggregated with those made by the agent within the preceding 12 months or the period of the agency, whichever is shorter. Campaign contributions made to different members are not aggregated.
- 5. A list of the members and alternates of the Board of Directors is attached.

This notice summarizes the major requirements of Government Code Section 84308 and 2 Cal. Adm. Code Sections 18438-18438.8.

**ORANGE COUNTY FIRE AUTHORITY**  
**PARTICIPANT DISCLOSURE FORM**

***To be completed only if campaign contributions have been made in the preceding twelve (12) months. Attach additional copies if needed.***

Prime's Firm Name: \_\_\_\_\_

Party's Name: \_\_\_\_\_

Party's Address: \_\_\_\_\_  
\_\_\_\_\_

Party's Telephone: \_\_\_\_\_

Solicitation Title and Number: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Party and/or Agent

Board Member(s) to whom you and/or your agent made campaign contributions and dates of contribution(s) in the preceding 12 months:

**Name of Member:** \_\_\_\_\_

**Name of Contributor (if other than Party):** \_\_\_\_\_

**Date(s):** \_\_\_\_\_

**Amount(s):** \_\_\_\_\_

**Name of Member:** \_\_\_\_\_

**Name of Contributor (if other than Party):** \_\_\_\_\_

**Date(s):** \_\_\_\_\_

**Amount(s):** \_\_\_\_\_

**Name of Member:** \_\_\_\_\_

**Name of Contributor (if other than Party):** \_\_\_\_\_

**Date(s):** \_\_\_\_\_

**Amount(s):** \_\_\_\_\_

## ORANGE COUNTY FIRE AUTHORITY

### Board of Directors

**Gene Hernandez, Chairman**

City of Yorba Linda

**Phillip Tsunoda, Director**

City of Aliso Viejo

**Joseph Muller, Director**

City of Dana Point

**Michele Steggell, Director**

City of La Palma

**Laurie Davies, Director**

City of Laguna Niguel

**Dwight Robinson, Director**

City of Lake Forest

**Ed Sachs, Director**

City of Mission Viejo

**Carol Gamble, Director**

City of Rancho Santa Margarita

**\*TBD**

City of San Juan Capistrano

**\*TBD**

City of Seal Beach

**Al Murray, Director**

City of Tustin

**Tri Ta, Director**

City of Westminster

**Todd Spitzer, Director**

County of Orange

**Elizabeth Swift, Vice Chairman**

City of Buena Park

**Rob Johnson, Director**

City of Cypress

**Jeffrey Lalloway, Director**

City of Irvine

**Don Sedgwick, Director**

City of Laguna Hills

**Noel Hatch, Director**

City of Laguna Woods

**Shelley Hasselbrink, Director**

City of Los Alamitos

**Craig Green, Director**

City of Placentia

**Bob Baker, Director**

City of San Clemente

**Vicente Sarmiento, Director**

City of Santa Ana

**David John Shawver, Director**

City of Stanton

**\*TBD**

City of Villa Park

**Lisa Bartlett, Director**

County of Orange

\* New Board members to be determined

## **EXHIBIT 1 – *SAMPLE PROFESSIONAL SERVICES AGREEMENT***

**ORANGE COUNTY FIRE AUTHORITY  
PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by and between the Orange County Fire Authority, a public agency, hereinafter referred to as "OCFA", and \_\_\_\_\_, a \_\_\_\_\_, hereinafter referred to as "Firm".

**RECITALS**

WHEREAS, OCFA requires the services of a firm for the \_\_\_\_\_, hereinafter referred to as "Project"; and

WHEREAS, Firm has submitted to OCFA a proposal dated \_\_\_\_\_, a copy of which is attached hereto as Exhibit "A" and is incorporated herein by this reference; and

WHEREAS, based on its experience and reputation, Firm is qualified to provide the necessary services for the Project and desires to provide such services; and

WHEREAS, OCFA desires to retain the services of Firm for the Project.

NOW, THEREFORE, in consideration of the promises and mutual agreements contained herein, OCFA agrees to employ and does hereby employ Firm and Firm agrees to provide professional services as follows:

**AGREEMENT**

**1. PROFESSIONAL SERVICES**

**1.1 Scope of Services.**

In compliance with all terms and conditions of this Agreement, Firm shall provide those services specified in the "Proposal" attached hereto as Exhibit "A." Firm warrants that all services shall be performed in a competent, professional and satisfactory manner in accordance with all standards prevalent in the industry. In the event of any inconsistency between the terms contained in Exhibit "A" and the terms set forth in the main body of this Agreement, the terms set forth in the main body of this Agreement shall govern.

**1.2 Compliance with Law.**

All services rendered hereunder shall be provided in accordance with all laws, ordinances, resolutions, statutes, rules, and regulations of OCFA and any federal, state or local governmental agency of competent jurisdiction.

### **1.3 Licenses and Permits.**

Firm shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement.

### **1.4 Familiarity with Work.**

By executing this Agreement, Firm warrants that Firm (a) has thoroughly investigated and considered the work to be performed, (b) has investigated the site of the work and become fully acquainted with the conditions there existing, (c) has carefully considered how the work should be performed, and (d) fully understands the facilities, difficulties and restrictions attending performance of the work under this Agreement. Should the Firm discover any latent or unknown conditions materially differing from those inherent in the work or as represented by OCFA, Firm shall immediately inform OCFA of such fact and shall not proceed with any work except at Firm's risk until written instructions are received from the Contract Officer.

### **1.5 Care of Work.**

Firm shall adopt and follow reasonable procedures and methods during the term of the Agreement to prevent loss or damage to materials, papers or other components of the work, and shall be responsible for all such damage until acceptance of the work by OCFA, except such loss or damages as may be caused by OCFA's own negligence.

### **1.6 Additional Services.**

Firm shall perform services in addition to those specified in the Proposal when directed to do so in writing by the Contract Officer, provided that Firm shall not be required to perform any additional services without compensation. Any additional compensation not exceeding ten percent (10%) of the original Agreement sum must be approved in writing by the Contract Officer. Any greater increase must be approved in writing by \_\_\_\_\_.

## **2. TIME FOR COMPLETION**

The time for completion of the services to be performed by Firm is an essential condition of this Agreement. Firm shall prosecute regularly and diligently the work of this Agreement according to the schedules set forth in Firm's proposal. Firm shall not be accountable for delays in the progress of its work caused by any condition beyond its control and without the fault or negligence of Firm. Delays shall not entitle Firm to any additional compensation regardless of the party responsible for the delay.

### **3. COMPENSATION OF FIRM**

#### **3.1 Compensation of Firm.**

For the services rendered pursuant to this Agreement, Firm shall be compensated and reimbursed, in accordance with the terms set forth in Exhibit "A," in an amount not to exceed \$\_\_\_\_\_.

#### **3.2 Method of Payment.**

In any month in which Firm wishes to receive payment, Firm shall no later than the first working day of such month, submit to OCFA in the form approved by OCFA's Director of Finance, an invoice for services rendered prior to the date of the invoice. OCFA shall pay Firm for all expenses stated thereon which are approved by OCFA consistent with this Agreement, within thirty (30) days of receipt of Firm's invoice.

#### **3.3 Changes.**

In the event any change or changes in the work is requested by OCFA, the parties hereto shall execute an addendum to this Agreement, setting forth with particularity all terms of such addendum, including, but not limited to, any additional fees. Addenda may be entered into:

A. To provide for revisions or modifications to documents or other work product or work when documents or other work product or work is required by the enactment or revision of law subsequent to the preparation of any documents, other work product or work;

B. To provide for additional services not included in this Agreement or not customarily furnished in accordance with generally accepted practice in Firm's profession.

#### **3.4 Appropriations.**

This Agreement is subject to and contingent upon funds being appropriated therefore by the OCFA Board of Directors for each fiscal year covered by the Agreement. If such appropriations are not made, this Agreement shall automatically terminate without penalty to OCFA.

### **4. PERFORMANCE SCHEDULE**

#### **4.1 Time of Essence.**

Time is of the essence in the performance of this Agreement.

#### **4.2 Schedule of Performance.**

All services rendered pursuant to this Agreement shall be performed within the time periods prescribed in Firm's proposal, attached hereto as Exhibit "A". The extension of any time period specified in Exhibit "A" must be approved in writing by the Contract Officer.

#### **4.3 Force Majeure.**

The time for performance of services to be rendered pursuant to this Agreement may be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Firm, including, but not restricted to, acts of God or of a public enemy, acts of the government, fires, earthquakes, floods, epidemic, quarantine restrictions, riots, strikes, freight embargoes, and unusually severe weather if the Firm shall within ten (10) days of the commencement of such condition notify the Contract Officer who shall thereupon ascertain the facts and the extent of any necessary delay, and extend the time for performing the services for the period of the enforced delay when and if in the Contract Officer's judgment such delay is justified, and the Contract Officer's determination shall be final and conclusive upon the parties to this Agreement.

#### **4.4 Term.**

Unless earlier terminated in accordance with Section 8.5 of this Agreement, this Agreement shall continue in full force and effect until satisfactory completion of the services but not exceeding \_\_\_\_\_ from the date hereof, unless extended by mutual written agreement of the parties.

### **5. COORDINATION OF WORK**

#### **5.1 Representative of Firm.**

The following principal of the Firm is hereby designated as being the principal and representative of Firm authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:  
\_\_\_\_\_.

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principal is a substantial inducement for OCFA to enter into this Agreement. Therefore, the foregoing principal shall be responsible during the term of this Agreement for directing all activities of Firm and devoting sufficient time to personally supervise the services hereunder. The foregoing principal may not be changed by Firm without the express written approval of OCFA.



## **5.2 Contract Officer.**

The Contract Officer shall be \_\_\_\_\_, unless otherwise designated in writing by OCFA. It shall be the Firm's responsibility to keep the Contract Officer fully informed of the progress of the performance of the services and Firm shall refer any decisions that must be made by OCFA to the Contract Officer. Unless otherwise specified herein, any approval of OCFA required hereunder shall mean the approval of the Contract Officer.

## **5.3 Prohibition Against Subcontracting or Assignment.**

The experience, knowledge, capability and reputation of Firm, its principals and employees, were a substantial inducement for OCFA to enter into this Agreement. Therefore, Firm shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of OCFA. In addition, neither this Agreement nor any interest herein may be assigned or transferred, voluntarily or by operation of law, without the prior written approval of OCFA.

## **5.4 Independent Contractor.**

Neither OCFA nor any of its employees shall have any control over the manner, mode or means by which Firm, its agents or employees, perform the services required herein, except as otherwise set forth herein. Firm shall perform all services required herein as an independent Firm of OCFA and shall remain at all times as to OCFA a wholly independent contractor with only such obligations as are consistent with that role. Firm shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of OCFA.

# **6. INSURANCE, INDEMNIFICATION AND BONDS**

## **6.1 Insurance.**

Firm shall procure and maintain, at its cost, and submit concurrently with its execution of this Agreement, public liability and property damage insurance against all claims for injuries against persons or damages to property resulting from Firm's performance under this Agreement. All policies of public liability and property damage insurance shall be primary and any other insurance, deductible, or self-insurance maintained by OCFA, its officials, officers, employees, agents or volunteers, shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions. Firm shall also carry workers' compensation insurance in accordance with California worker's compensation laws. Firm agrees to waive and obtain endorsements from its workers' compensation insurer waiving all subrogation rights under its workers' compensation insurance policy against the OCFA, its officials, officers, employees, agents and volunteers, and require each of its subcontractors, if any, and each subcontractor's insurer, to do likewise under their workers' compensation

insurance policies. All required insurance shall be kept in effect during the term of this Agreement and shall not be cancelable without thirty (30) days written notice to OCFA of any proposed cancellation. OCFA's certificate evidencing the foregoing and designating OCFA, its officials, officers, employees, agents and volunteers as additional named insureds shall be delivered to and approved by OCFA prior to commencement of the services hereunder. The procuring of such insurance and the delivery of policies or certificates evidencing the same shall not be construed as a limitation of Firm's obligation to indemnify OCFA, its Firms, officers and employees. The amount of insurance required hereunder shall include comprehensive general liability, personal injury and automobile liability with limits of at least one million dollars (\$1,000,000) combined single limit coverage per occurrence and professional liability coverage with limits of at least one million (\$1,000,000). Coverage shall be provided by admitted insurers with an A.M. Best's Key Rating of at least A-VII. If Firm provides claims made professional liability insurance, Firm shall also agree in writing either (1) to purchase tail insurance in the amount required by this Agreement to cover claims made within three years of the completion of Firm's services under this Agreement, or (2) to maintain professional liability insurance coverage with the same carrier in the amount required by this Agreement for at least three years after completion of Firm's services under this Agreement. The Firm shall also be required to provide evidence to OCFA of the purchase of the required tail insurance or continuation of the professional liability policy.

In addition, Firm shall be responsible for causing any subcontractor providing work or services under this Agreement to procure and maintain the same types and amounts of insurance, and in compliance with the terms set forth in this Section, including but not limited to adding the OCFA, its officials, officers, employees, agents and volunteers as additional named insureds to their respective policies. Firm shall not allow any subcontractor to commence any work or services relating to this Agreement unless and until it has provided evidence satisfactory to OCFA that the subcontractor has secured all insurance required under this Section. Firm agrees to monitor and review all such coverage and assumes all responsibility for ensuring that each subcontractor's insurance coverage is provided and maintained in conformity with the requirements of this Section.

## **6.2 Indemnification.**

The Firm shall defend, indemnify and hold harmless OCFA, its officers and employees, from and against any and all actions, suits, proceedings, claims, demands, losses, costs, and expenses, including legal costs and attorneys' fees, for injury to or death of person or persons, for damage to property, including property owned by OCFA, and for errors and omissions committed by Firm, its officers, employees, subcontractors or agents, arising out of or related to Firm's performance under this Agreement, except for such loss as may be caused by OCFA's own negligence or that of its officers or employees.

## **7. RECORDS AND REPORTS**

### **7.1 Reports.**

Firm shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require.

### **7.2 Records.**

Firm shall keep such books and records as shall be necessary to properly perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. The Contract Officer shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit and make records and transcripts from such records.

### **7.3 Ownership of Documents.**

All drawings, specifications, reports, records, documents and other materials prepared by Firm in the performance of this Agreement shall be the property of OCFA and shall be delivered to OCFA upon request of the Contract Officer or upon the termination of this Agreement, and Firm shall have no claim for further employment or additional compensation as a result of the exercise by OCFA of its full rights or ownership of the documents and materials hereunder. Firm may retain copies of such documents for its own use. Firm shall have an unrestricted right to use the concepts embodied therein.

### **7.4 Release of Documents.**

All drawings, specifications, reports, records, documents and other materials prepared by Firm in the performance of services under this Agreement shall not be released publicly without the prior written approval of the Contract Officer.

## **8. ENFORCEMENT OF AGREEMENT**

### **8.1 California Law.**

This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Orange, State of California, or any other appropriate court in such county, and Firm covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

### **8.2 Waiver.**

No delay or omission in the exercise of any right or remedy of a non-defaulting party on any default shall impair such right or remedy or be construed as a

waiver. No consent or approval of OCFA shall be deemed to waiver or render unnecessary OCFA's consent to or approval of any subsequent act of Firm. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

### **8.3 Rights and Remedies are Cumulative.**

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

### **8.4 Legal Action.**

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain injunctive relief, a declaratory judgment, or any other remedy consistent with the purposes of this Agreement.

### **8.5 Termination Prior to Expiration of Term.**

OCFA reserves the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days written notice to Firm, except that where termination is due to the fault of the Firm and constitutes an immediate danger to health, safety and general welfare, the period of notice shall be such shorter time as may be appropriate. Upon receipt of the notice of termination, Firm shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Firm shall be entitled to compensation for all services rendered prior to receipt of the notice of termination and for any services authorized by the Contract Officer thereafter.

Firm may terminate this Agreement, with or without cause, upon thirty (30) days written notice to OCFA.

### **8.6 Termination for Default of Firm.**

If termination is due to the failure of the Firm to fulfill its obligations under this Agreement, OCFA may take over the work and prosecute the same to completion by contract or otherwise, and the Firm shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated, provided that OCFA shall use reasonable efforts to mitigate damages, and OCFA may withhold any payments to the Firm for the purpose of set-off or partial payment of the amounts owed to OCFA.

### **8.7 Attorneys' Fees.**

If either party commences an action against the other party arising out of or in connection with this Agreement or its subject matter, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs of suit from the losing party.

## **9. OCFA OFFICERS AND EMPLOYEES; NON-DISCRIMINATION**

### **9.1 Non-Liability of OCFA Officers and Employees.**

No officer or employee of OCFA shall be personally liable to the Firm, or any successor-in-interest, in the event of any default or breach by OCFA or for any amount which may become due to the Firm or its successor, or for breach of any obligation of the terms of this Agreement.

### **9.2 Covenant Against Discrimination.**

Firm covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination or segregation in the performance of or in connection with this Agreement regarding any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry. Firm shall take affirmative action to insure that applicants and employees are treated without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry.

## **10. MISCELLANEOUS PROVISIONS**

### **10.1 Confidentiality.**

Information obtained by Firm in the performance of this Agreement shall be treated as strictly confidential and shall not be used by Firm for any purpose other than the performance of this Agreement without the written consent of OCFA.

### **10.2 Notice.**

Any notice, demand, request, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by pre-paid, first-class mail to the address set forth below. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated forty-eight (48) hours from the time of mailing if mailed as provided in this Section.

Orange County Fire Authority  
Attention: \_\_\_\_\_  
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 Firm:

[Name]

Attention: \_\_\_\_\_

[Address]

**10.2 Integrated Agreement.**

This Agreement contains all of the agreements of the parties and cannot be amended or modified except by written agreement.

**10.3 Amendment.**

This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

**10.4 Severability.**

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement, which shall be interpreted to carry out the intent of the parties hereunder.

**10.5 Corporate Authority.**

The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by so executing this Agreement the parties hereto are formally bound to the provisions of this Agreement.

**[Signatures on Next Page]**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates stated below.

**“OCFA”**

**ORANGE COUNTY FIRE AUTHORITY**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Jeff Bowman, Fire Chief

**APPROVED AS TO FORM.**

**ATTEST:**

By: \_\_\_\_\_

DAVID E. KENDIG  
GENERAL COUNSEL

By: \_\_\_\_\_

Sherry A.F. Wentz  
Clerk of the Board

Date: \_\_\_\_\_

**“FIRM”**

**[FIRM NAME]**

Date: \_\_\_\_\_

By: \_\_\_\_\_

**EXHIBIT 2 – OCFA GENERAL COUNSEL OPINION (6/24/2014)  
AND SIDLEY & AUSTIN OPINION (9/20/2013)**



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

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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.<sup>1</sup>

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:

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<sup>1</sup> 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"<sup>2</sup>) 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.<sup>3</sup> 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,

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<sup>2</sup> 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.

<sup>3</sup> 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."<sup>4</sup>

"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."<sup>5</sup>

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."<sup>6</sup>

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.<sup>7</sup> 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.

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<sup>4</sup> Cal. Gov't Code § 6508.1 [emphasis added]

<sup>5</sup> JPA Agreement, Article I, Section 1 [emphasis added.]

<sup>6</sup> JPA Agreement, Article VI, Section 3 [emphasis added.]

<sup>7</sup> 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

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**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.<sup>1</sup> 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.

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<sup>1</sup> 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."<sup>2</sup>

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

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<sup>2</sup> 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."<sup>3</sup> 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).

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<sup>3</sup> 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.<sup>4</sup>

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

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<sup>4</sup> 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.

**EXHIBIT 3 – *ORANGE COUNTY V. COUNTY OF ORANGE (3/15/2015)***  
***(UNPUBLISHED OPINION)***

**FILED**

Mar 15, 2016

Deputy Clerk: D. Johnson

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

ORANGE COUNTY FIRE AUTHORITY  
et al.,

Plaintiffs and Appellants,

v.

COUNTY OF ORANGE,

Defendant and Respondent.

G050687

(Super. Ct. No. 30-2013-00694527)

**O P I N I O N**

Appeal from a judgment of the Superior Court of Orange County, William D. Claster, Judge. Affirmed.

Richards, Watson & Gershon, T. Peter Pierce and Stephen D. Lee for Plaintiff and Appellant Orange County Fire Authority.

Snell & Wilmer, Mary-Christine Sungaila, Jenny Hua, and Brian Daluiso; Rutan & Tucker, Todd O. Litfin; Jarvis, Fay, Doporto & Gibson and Benjamin Peters Fay; Haynes and Boone and Mary-Christine Sungaila for Plaintiff and Appellant City of Irvine.

Nicholas S. Chrisos, County Counsel, Marianne Van Riper, Senior Assistant County Counsel, Mark D. Servino and Adam C. Clayton, Deputy County Counsel for Defendant and Respondent County of Orange.

\* \* \*

The Orange County Fire Authority (the Authority) was formed in 1995 “to provide fire suppression, protection, prevention and related and incidental services” to its members. The County of Orange (the County), the City of Irvine (Irvine), and 22 other cities in the County are currently members of the Authority. The residents of several Authority members, most prominently Irvine, have consistently paid more to the Authority than it costs to provide services within the boundaries of their respective municipalities. This occurs because of the Authority’s primary funding mechanism — a structural fire fund (SFF) share of property taxes collected by the County from residents who reside within geographical areas serviced by the Authority. Irvine’s famously robust real estate values have resulted in the Authority receiving more money than it needs to provide the level of service it has selected for its members. Almost since the inception of the Authority, Irvine has objected to its residents paying more to the Authority than it costs to provide fire protection in Irvine.

Facing the threat of Irvine potentially opting out of membership in the Authority, and with the agreement of 20 of its members, the Authority amended its joint powers agreement in 2014. The amendment provided that members whose residents’ property taxes overfund the Authority (including Irvine) will receive “jurisdictional equity adjustment payments” from any surplus funds available to the Authority. The Authority and Irvine filed an action to confirm the legitimacy of this amendment. The

County opposed the action, arguing among other things that Government Code section 6503.1 and the Authority's joint powers agreement prohibited such payments.<sup>1</sup>

Ruling on competing motions for judgment on the pleadings, the court agreed with the County that the amendment was "invalid and unenforceable." We affirm. The basis for the payments is that Irvine residents are paying too much for the services they receive. As conceded by the Authority and Irvine, section "6503.1 ostensibly prohibits [the Authority] from simply rebating SFF property taxes to the Over-Funded SFF Jurisdictions for uses unrelated to the provision of Fire Services." To approve the Authority's attempt to circumvent this rule by claiming the payments to Irvine are made from other "unrestricted" funds would wrongly honor form over substance. The Authority cannot be allowed to transfer its funds to Irvine, without strings attached requiring the funds to be spent for fire protection purposes.

## FACTS

"[T]he facts alleged in the pleading attacked must be accepted as true, although the court may consider matters subject to judicial notice . . . ." (*Tiffany v. Sierra Sands Unified School Dist.* (1980) 103 Cal.App.3d 218, 225.) Because this appeal turns on whether the court correctly granted judgment on the pleadings to the County, our recitation of facts focuses on the allegations of the Fire Authority and Irvine in the first amended complaint, as well as the contents of the operative documents attached to this complaint and other judicially noticeable documents.

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All statutory references are to the Government Code unless otherwise stated.

### *Back in the Old Days*

Fifteen of the cities that are current members of the Fire Authority (including Irvine) have never had their own fire department. Instead, these cities entered into agreements with the County for the provision of services by the County fire department. Policy control was wielded solely by the County's board of supervisors.

Prior to the enactment of Proposition 13 in 1978 (see Cal. Const., art. X111 A), SFF property taxes were imposed by the County on residents in jurisdictions where the County provided fire services. The County could adjust the amount of these taxes to reflect the estimated cost of providing services to each jurisdiction.

Since Proposition 13, however, the County has been limited to collecting property taxes equal to 1 percent of the total assessed value of real properties located within the County. (See *City of Scotts Valley v. County of Santa Cruz* (2011) 201 Cal.App.4th 1, 7 (*Scotts Valley*).) This significantly reduced the amount of property tax revenues available to local agencies. A statutory scheme was enacted to allocate property tax proceeds among the various local agencies receiving property taxes when Proposition 13 was approved. (*Id.* at pp. 8-9.) The SFF rate was established as a fixed statutory formula and was not, therefore, tethered to the actual cost of providing services.

The County did not (prior to Proposition 13) and does not now receive SFF property taxes from residents of cities to whom fire services were not provided prior to 1978. These cities had their own fire departments, but some have subsequently sought fire protection services from the County (and later, the Authority) on a "cash contract" basis.

### *The Creation of the Authority in 1995*

As time passed, cities receiving fire services from the County sought additional input into fire protection policy decisions and the use of revenues received by the County for the provision of fire services.

“[T]wo or more public agencies by agreement may jointly exercise any power common to the contracting parties . . . .” (§ 6502.) In 1995, a joint powers authority agreement created the Authority, a new public entity composed of (at the time) 19 public agency members, including the County. Each member was entitled to appoint a director to the Authority’s board, except the County was allotted two director positions.

A joint powers agreement “shall state the purpose of the agreement or the power to be exercised. [It] shall provide for the method by which the purpose will be accomplished or the manner in which the power will be exercised.” (§ 6503.) The purpose of the agreement was the joint exercise of the members’ powers to “provide fire suppression, protection, prevention and related and incidental services . . . .” The other powers listed in the joint powers agreement consisted of means by which the Authority might fulfill its basic fire protection purpose, e.g., to enter and assume contracts, employ agents, lease and acquire property, invest surplus funds, incur liabilities, sue and be sued, obtain financing, advocate for legislation, levy fees, impose taxes, hire professionals, purchase insurance, and adopt rules.

Two types of members joined the Authority — those for which the County received SFF property taxes and cash contract cities. As stated in the agreement, the “County receives [SFF property taxes] from the unincorporated area and all member Cities except [six listed cities]. On behalf of the Cities receiving SFF, and the unincorporated area, County shall pay all SFF it receives to the Authority to meet budget expenses and fund reserves in accordance with the County’s normal tax apportionment procedures pursuant to [California law] and the County’s tax apportionment schedules.”

For member cities whose property owners are not subject to SFF allocations from their 1 percent property tax payments, the Authority bills them pursuant to a formula intended to estimate the cost of providing services.

Article IV, section 4 of the joint powers agreement, titled “Equity,” is particularly important to this case. The original “Equity” provision limited the ability to



overcharge any individual member for services, but its operative language seems to be limited to cash contract cities: “The County and each member City shall be member agencies in equal standing in the Authority. It is understood that the cost of service shall not be adjusted by reason of equity for any member agency for a period of three (3) fiscal years from the effective date of Authority formation. After the Authority’s first three fiscal years, any new annual adjustment to the cost for fire services to each member for reasons of equity must be fair and equitable to all members and may not exceed two (2) percent of the member’s immediately prior annual contribution. Upon approval of two-thirds of all of the directors of the Board, another method may be utilized in lieu of the foregoing formula as long as such method is fair and equitable to all members.” This provision did not discuss adjustments to SFF taxes paid by the County to the Authority.

However, the original joint powers agreement contemplated that SFF funds could be provided directly to cities in one situation, the termination of the agreement. “The Authority may vote to terminate this Agreement . . . . If termination occurs, all surplus money and property of the Authority shall be conveyed or distributed to each member in proportion to all funds provided to the Authority by that member or by the County on behalf of that member during its membership, whether SFF or cash contract amounts. . . . In any such distribution, the amount of SFF derived from each incorporated or unincorporated city area[] shall be considered as received from that member in the same manner as cash contract payments have contributed to surplus assets.”<sup>2</sup>

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This provision certainly satisfies one statutory requirement for joint powers agreements. “The agreement shall provide that after the completion of its purpose, any surplus money on hand shall be returned in proportion to the contributions made.” (§ 6512.) Whether the particular termination provision here is consistent with section 6503.1 is a different question, though one not before this court.

*Amendment and Restatement of Joint Powers Agreement in 1999*

In 1999, the (at the time) 20 members of the Authority amended and restated the joint powers agreement. Much of the agreement remained the same, including the County's obligation to remit all SFF property taxes to the Fire Authority. Significant changes were made to the cost calculation methodology for cash contract cities.

The most important change for purposes of this case was the "Equity" provision of the joint powers agreement, which previously dealt exclusively with adjustments to cash contract cities. Now, this provision provided a way to use excess SFF funds to compensate cities whose residents' property taxes exceeded the cost of providing services.

"Annually after the conclusion of each fiscal year and consideration of the audited financial statements for that year, and after consideration of the Authority's financial needs, the Board of Directors in its sole discretion shall determine whether sufficient unencumbered funds from that fiscal year are available for additional services or resources to [SFF] members. In the event the Board determines that (1) such funds are available, (2) a distribution is warranted, and (3) that it is appropriate to do so, it shall allocate those funds, or any portion thereof, to a restricted [SFF] Entitlement fund."

"Those [SFF] members whose [SFF] revenues were greater than the cost to serve . . . shall receive a pro rata allocation from the Entitlement fund, based on the relative amounts by which, respectively, those [SFF] revenues exceeded said cost to serve." Such allocations "may thereafter be used for Board-approved and Authority-related service or resource enhancements to such Structural Fire Fund members." No SFF "member will be entitled to receive cash payments or reimbursements" rather than enhanced fire protection services.

*State's Adoption of Section 6503.1 in 2002*

In direct response to perceived misuses of property tax funds by the Authority, a law was passed in 2002 prohibiting the use of property taxes received by the Authority (and any similarly positioned agency) on expenditures not related to fire protection purposes. (§ 6503.1 [“When property tax revenues of a county of the second class are allocated by that county to an agency formed for the purpose of providing fire protection pursuant to this chapter, those funds may only be appropriated for expenditure by that agency for fire protection purposes”].)

Like the trial court, we take judicial notice of a bill analysis prepared for legislators describing the motivation behind the law. “Proposition 13’s implementing legislation . . . locked the portion of fire service property taxes into statute. When the County and these cities joined [the Authority], they turned over their share of property taxes dedicated to fire service. Cities that provided their own fire services prior to Proposition 13 do not have statutorily defined property taxes proportions for fire service. When they joined [the Authority], they negotiated their payments . . . . These cities are called ‘cash contract’ cities.”

“In 1996, [the Authority] conducted an equity study on its revenues from its participating jurisdictions after . . . some SFF cities expressed concerns over their payments. The [Authority] study concluded that [it] collected proportionally more property taxes within the borders of the SFF cities than cash contract cities. In response, [the Authority] concluded that they should address the funding inequities.”

“A 1999 amendment to the JPA agreement created a fund to benefit SFF cities. This fund offers extra services to SFF cities when financial conditions allow. SFF cities receive funding and/or services for renovations like preemption devices for traffic signals, tree trimming in city parks, landscaping projects, and other maintenance. The City of Irvine, for example, has received approximately \$3.4 million in funding and services. [¶] Many are concerned about this practice, and negotiations produced an

agreement that [the Authority] should spend its money only on fire-related services.” (Sen. Rules Com., Off. Of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 2193 (2001-2002) as amended May 14, 2002.)

*First Amendment to Amended Joint Powers Agreement — 2010*

The amended joint powers agreement was amended by the Fire Authority’s members (23 at the time), effective July 2010. Many of the changes again pertained to the cost calculation methodology and service fees charged to cash contract cities. Also added was a provision altering the funding of the SFF entitlement fund. This first amendment is not at issue in this appeal.

*Second Amendment to Amended Joint Powers Agreement — 2014*

The amount of SFF property tax generated from Irvine continued to significantly exceed the Authority’s cost of providing services to Irvine. Prior efforts to allocate additional funds to the SFF entitlement fund were not deemed sufficient to address this perceived inequity.

The Authority formed a working group in March 2012 to explore options. The working group recommended the adoption of a second amendment to the amended joint powers agreement. A required two-thirds majority of directors eventually approved this amendment.

Pursuant to the second amendment, “those SFF Jurisdictions whose SFF rate exceeds the Average SFF Rate (the ‘Over-Funded SFF Jurisdictions’) may receive a payment from [the Authority] from unrestricted revenues of [the Authority], i.e., from revenues other than SFF. This payment, referred to . . . as a Jurisdictional Equity Adjustment Payment or JEAP, is predicated upon the application of a formula set forth in the Second Amendment.” Irvine also was authorized to receive an “Additional Equity Adjustment” because its SFF property taxes are “significantly higher than the cost of

providing Fire Services.” It was estimated that Irvine would receive at least \$134.5 million in equity payments by June 30, 2030, if the second amendment is allowed to operate as written.

These payments “may only be paid from [the Authority’s] unrestricted revenues not generated from property taxes, and may not be made from SFF property taxes.” In other words, to comply with section 6503.1, the second amendment provided for payments to Irvine with money collected from the cash contract cities or other unrestricted funds (not SFF funds). “SFF are restricted funds and shall not be used to pay [equity adjustment payments].”

### *Procedural History*

The operative complaint acknowledges that section 6503.1 prohibits the Authority “from simply rebating SFF property taxes to the Over-Funded SFF Jurisdictions for uses unrelated to the provision of Fire Services.” The Authority claims the second amendment is necessary to prevent Irvine from leaving the Authority and forming its own fire department. This would “significantly impact [the Authority’s] revenues” and thereby jeopardize the Authority’s ability to continue providing fire protection services.

The Authority and Irvine seek a validation of the second amendment under Code of Civil Procedure section 860 and/or section 53511. In the alternative, declaratory relief under Code of Civil Procedure section 1060 is sought. The County opposed issuance of relief in favor of the Authority and Irvine.

The parties filed dueling motions for judgment on the pleadings. The court denied plaintiffs’ motion and granted the County’s motion.

The court agreed with the County that the proposed equity adjustment payments to Irvine would violate the joint powers agreement. “The parties to the [joint powers] agreement may provide that (a) contributions from the treasuries may be made for the purpose set forth in the agreement . . . .” (§ 6504.) As conceded in the operative complaint, all of the Authority’s funds are limited “by Section 6504’s requirement that they be made for the purpose for which [the Authority was] formed.” The purpose of the agreement was the joint exercise of the members’ powers to provide “fire suppression, protection, prevention and related and incidental services . . . .” In sum, all of the Authority’s funds (whether SFF property taxes, payments by cash contract cities, or otherwise) must be spent for fire protection purposes as defined by the agreement. The Authority and Irvine contended the payments are related to the purpose of the agreement, both because creating an equitable funding mechanism relates to fire protection purposes and because keeping Irvine in the Authority will promote the survival of the Authority.

The court’s view differed. “[T]he Equity Adjustment Payments have nothing to do with fire protection, suppression, prevention or related services. Thus, the payments are not used for fighting fires, taking steps (such as clearing brush) to prevent fires or buying equipment for those purposes. Rather, they are, plain and simple, refunds to Irvine and several other cities that have ‘overpaid’ for the fire protection services they are receiving. There are no restrictions on how the refunds may be used by the cities. Indeed, they are not even limited to the tree-trimming and landscaping that apparently was allowed to take place under the 1999 Amended Agreement. Put another way, the equity payments are [the Authority’s] blank check for the cities to spend on virtually any conceivable municipal purpose.” As the court noted to counsel for the Fire Authority at the hearing, “the implication of what you’re saying is that . . . anything that a limited powers agency does to ensure its survival is . . . within its limited purpose. Anything.” Counsel responded, “That’s the logical extension of the argument, but . . . I don’t think we are on the outer margins of that here in this particular case.” Relatedly, the court also

concluded that the contemplated payments are improper gifts of public funds by the Authority to Irvine.

The court disagreed (at least for purposes of granting judgment on the pleadings) with the County's argument that the second amendment violated section 6503.1. "For better or worse, the [Authority] has come up with a mechanism that skirts the restrictions contained in Section 6503.1." "To the extent that the County contends that it has evidence that the [Authority] is actually commingling property tax revenues with Service Charges in a single account and that, therefore, the [Authority] is violating Section 6503.1 when it makes equity adjustment payments (since a percentage of any such payments would necessarily consist of property tax revenues), that argument pertains to implementation of the Second Amendment, and not whether the [amendment] is lawful on its face."

## DISCUSSION

Our review of the court's grant of judgment on the pleadings, including the court's interpretation of the joint powers agreement, is de novo. (*Quantification Settlement Agreement Cases* (2011) 201 Cal.App.4th 758, 797; *Stevenson Real Estate Services, Inc. v. CB Richard Ellis Real Estate Services, Inc.* (2006) 138 Cal.App.4th 1215, 1220.) "If the trial court's ruling on a motion for judgment on the pleadings is correct upon any theory of law applicable to the case, we will affirm it, even if we may disagree with the trial court's rationale." (*Stevenson Real Estate Services, Inc.*, at p. 1220.)

The County claims the payments to Irvine are improper for three distinct reasons: (1) such payments violate the joint powers agreement because they are not consistent with the purpose of the agreement; (2) such payments are a gift of public funds; and (3) such payments violate section 6503.1 because they are not made for fire

protection purposes. We agree with much in the court's lengthy, well-reasoned ruling. In our view, however, the equity adjustment payments violate section 6503.1 on their face; it simply does not matter whether the Authority commingles SFF property taxes with other sources of funding. Because we agree with the County that the second amendment violates section 6503.1 as a matter of law, we affirm the judgment. We need not discuss whether these payments violate the joint powers agreement itself or are a gift of public funds.

“When property tax revenues of a county of the second class are allocated by that county to an agency formed for the purpose of providing fire protection pursuant to this chapter, those funds may only be appropriated for expenditure by that agency for fire protection purposes.” (§ 6503.1, subd. (a); see §§ 28020-28023 [Orange County is county of the second class as defined by statute].) “As used in this section, ‘fire protection purposes’ means those purposes directly related to, and in furtherance of, providing fire prevention, fire suppression, emergency medical services, hazardous materials response, ambulance transport, disaster preparedness, rescue services, and related administrative costs.” (§ 6503.1, subd. (b).) Hence, by statute, property tax revenues (e.g., the SFF funds provided by the County to the Authority) cannot be appropriated for non-fire protection purposes (as defined by the statute).

Courts “““must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences.””” (Robert J. v. Catherine D. (2009) 171 Cal.App.4th 1500, 1516.) The legislative purpose is clear, based on the language of the statute and its accompanying legislative history: The Authority should spend its funds obtained from property taxes solely for fire protection purposes. The Authority is not allowed to spend property taxes for anything else.



But is section 6503.1 limited to “those funds” (i.e., property taxes allocated to the Authority)? Can the Authority do whatever it wants with other funds (e.g., those received from cash contract cities), regardless of whether doing so makes a mockery of section 6503.1? The nature of a local agency’s acts “must be determined from the substance of the action taken regardless of its designation. [Citation.] The end attained and not the form of the transaction must be considered by the court in determining its substance and legal effect.” (*Hicks v. Board of Supervisors* (1977) 69 Cal.App.3d 228, 237; *id.* at pp. 240-244 [affirming writ relief provided to district attorney when board of supervisors attempted to control investigative and prosecutorial functions under guise of budgetary process].) The justification for the equity adjustment payments is the overpayment by the residents of Irvine (and others) of SFF property taxes received by the Authority. The effect of the equity adjustment payments is to refund some portion of this overpayment to Irvine. Money is fungible. Regardless of whether the Authority truly keeps its sources of funding separate, each dollar refunded to Irvine is a dollar not being spent for fire protection purposes. The economic reality of the second amendment is the appropriation of property tax revenues for something other than fire protection purposes, namely the redistribution of property tax revenues to fit the Authority’s view of what is equitable (and what will mollify Irvine).

The plain text of section 6503.1 does not require approval of the second amendment. Nothing in section 6503.1 indicates the Authority can avoid its prohibitions through clever accounting. It is reasonable to interpret section 6503.1 as applying to the economic reality of an appropriation rather than merely the insincere form of such appropriation. (See Civ. Code, § 3528 [“The law respects form less than substance”].) We decline to construe section 6503.1 in a manner that would undermine its purpose.

The Authority and Irvine protest that courts are required to interpret contracts to be lawful if at all possible. (See *Quantification Settlement Agreement Cases*, *supra*, 201 Cal.App.4th at p. 798; Civ. Code, § 1643.) Nothing in the pleadings indicates the way in which Irvine or other cities will spend equity payments. If one assumes that Irvine will spend every dollar it receives from the Authority for fire protection services as defined by section 6503.1, then could one not also assume the Authority has complied with section 6503.1? Because of the procedural posture of this case, we put to one side the implausibility of Irvine spending the equity adjustment payments on fire protection services (after all, the Authority could already spend extra money for such services in Irvine under the existing agreement, and Irvine was dissatisfied with that state of affairs). The better rejoinder to this point is that the second amendment obligates the Authority to “appropriate” (§ 6503.1, subd. (a)) funds to Irvine without any requirement that the funds be used for fire protection purposes.

Like the trial court, we do not discount “the financial concerns of both Irvine and [the Authority]. The overfunding problem described in the pleadings [appears to be] legitimate and long-standing.” The Authority apparently has too much revenue and too few worthy projects to which those revenues can be put to work. Irvine is understandably irritated that property taxes taken from its residents perpetually overfund the Authority. We have no reason to question the premise that the return of some of these funds to Irvine would result in more productive uses of taxpayer dollars. To put a fine point on it, section 6503.1 and the result in this case might be characterized as wasteful and illogical.

Nor do we question legislative judgments of the participating Authority members that it would be both equitable and prudent to refund money to Irvine, rather than to allow the Authority to keep control over funds it apparently does not need (and thereby potentially agitate Irvine into departing from the Authority). Certainly, there is nothing wrong with the Authority raising only the amount of money needed from cash

contract cities to pay for their fair share. One can reasonably ask why it makes sense to prevent Irvine from bringing “its” rightful share of Authority funding back home.

The proper framing of the question is not as simple as the Authority and Irvine would have it, however. ““There is no equitable way to share property tax revenues, only different degrees of inequity. . . . The allocation of property tax revenues is a “zero-sum game,” in which there must be a loser for every winner.”” (*Scotts Valley, supra*, 201 Cal.App.4th at p. 10.) Looking only at SFF property taxes used to fund the Authority is superficial. Property taxes fund innumerable government functions in the County. The Authority and its participating members cannot intelligently address whether it would be equitable to return some of the Authority’s surplus to Irvine by looking only at the Authority’s budget in isolation.

The County, not the Authority, is the proper forum for adjusting the allocation of SFF property tax revenues. By state law, SFF property taxes are allocated to and controlled by the County, not the individual cities whose residents’ property taxes comprise SFF funds. The County agreed in forming the Authority to transfer all SFF dollars to the Authority, with the understanding that SFF funds would be used for fire services (not to funnel SFF funds to high real property value members). Nothing in section 6503.1 prohibits the Authority members from agreeing that the County will no longer provide all SFF funds automatically to the Authority. In this way, excessive funds could be put to work elsewhere.

Local agencies<sup>3</sup> may adopt resolutions “to transfer any portion of its property tax revenues” to other local agencies (Rev. & Tax. Code, § 99.02, subd. (b)) if each of four conditions exists, including “[t]he transferring agency determines that revenues are available for this purpose” (*id.*, subd. (f)(1)) and “the transfer will not impair the ability of the transferring agency to provide existing services” (*id.*, subd. (f)(3)). “If

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<sup>3</sup> “‘Local agency’ means a city, county, and special district.” (Rev. & Tax. Code, § 95, subd. (a).)

the board of supervisors . . . concurs with the proposed transfer of property tax revenue, the board . . . shall, by resolution, notify the county auditor of the approved transfer.” (*Id.*, subd. (c).) “Upon receipt of notification from the board of supervisors or the city council, the county auditor shall make the necessary adjustments . . . .” (*Id.*, subd. (d).)

Thus, there is at least one process whereby some of the SFF property taxes paid by Irvine residents can be reallocated for other purposes. First, the Authority would need to release the County from its contractual obligation to transmit all SFF funds to the Authority. Then the process provided by Revenue and Taxation Code section 99.02 could be followed to determine if a transfer of funds to a different local agency (e.g., Irvine) would be appropriate.<sup>4</sup> The Authority and Irvine avoided this process, preferring to cut the County out of the loop. Beyond the fact that this violates section 6503.1, this method of reallocating property taxes does not tend to advance the cause of reaching the most equitable distribution of property taxes possible given the constraints of the post-Proposition 13 system. Only the County can bring the breadth of perspective necessary to deciding whether transferring additional dollars to Irvine would be a fit use of revenues not deemed necessary for fire protection services. Perhaps there are other county-wide services that need additional funding more than Irvine. Perhaps Irvine already receives a higher percentage of property tax revenues back from the County than other cities in the County. There is no way of weighing these concerns in a political process limited to the operation of the Authority.

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<sup>4</sup> If Irvine withdraws from the Authority, it is not as if its residents’ SFF taxes would automatically be transferred to Irvine. As noted in the joint powers agreement, “Withdrawal by a [SFF] city may be subject to property tax transfer negotiations and such additional notices as required by law.”

## DISPOSITION

The judgment is affirmed. The County's request for judicial notice is granted. The County shall recover costs incurred on appeal.

IKOLA, J.

WE CONCUR:

ARONSON, ACTING P. J.

FYBEL, J.