



ORANGE COUNTY FIRE AUTHORITY

AGENDA

BOARD OF DIRECTORS REGULAR MEETING
Thursday, July 26, 2018
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 Devin Chase

PLEDGE OF ALLEGIANCE by Director Gamble

ROLL CALL

1. 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 and do not engage in dialogue with individual Board Members, Authority staff, or members of the audience.

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

CLOSED SESSION**CS1. CONFERENCE WITH LABOR NEGOTIATOR**

Agency Designated Representative: Peter Brown, Liebert Cassidy and Whitmore
Employee Organizations: Orange County Professional Firefighters Association,
Local 3631, Orange County Employees Association,
Orange County Fire Authority Managers Association,
and all unrepresented employees

Authority: Government Code Section 54957.6

CS2. CONFERENCE WITH LEGAL COUNSEL–ANTICIPATED LITIGATION

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

CS3. CONFERENCE WITH LEGAL COUNSEL–ANTICIPATED LITIGATION

Authority: Government Code Section 54956.9(c) – Initiation of Litigation (2 cases)

CS4. CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Property: 4791 Eureka Avenue, Yorba Linda, AC 92886

Negotiating Parties: Jeff Baize and Lisa Kalustian, Brookhurst Development and
Advisory Corporation; Craig Steffens, Yorba Linda Equipment Rentals;
OCFA Property Manager Patrick Bauer; and OCFA Division Chief Andy
Kovacs

Under Negotiation: Price and Terms of Payment

Authority: Government Code Section 54956.8

CLOSED SESSION REPORT

REPORTS

REPORT FROM THE HUMAN RESOURCES COMMITTEE CHAIR

REPORT FROM THE BUDGET AND FINANCE COMMITTEE CHAIR

REPORT FROM THE CLAIMS SETTLEMENT COMMITTEE CHAIR

REPORT FROM THE FIRE CHIEF

- Introduction of Assistant Chief Mark “Pokey” Sanchez/Operations Department

MINUTES

2. Minutes from the (A) June 20, 2018, Special Meeting, and (B) June 28, 2018, Board of Directors Regular Meeting

Submitted by: Sherry Wentz, Clerk of the Authority

Recommended Action:

Approve as submitted.

3. CONSENT CALENDAR

A. Fire Prevention Week Proclamation

Submitted by: Sherry Wentz, Clerk of the Authority

Recommended Action:

Approve the proposed Proclamation as submitted.

B. 2017 Urban Areas Security Initiative Grant Program Agreement to Transfer Property or Funds

Submitted by: Mark Sanchez, Assistant Chief/Operations Department

Budget and Finance Committee Recommendation: *APPROVE*

Recommended Actions:

1. Approve the FY 2017 Urban Areas Security Initiative Grant Program Agreement and authorize the Fire Chief to execute it and any necessary attachments and agreement(s) to accept and administer the UASI Grant.
2. Approve a budget adjustment to the FY 2018/19 General Fund (121) budget increasing revenues and expenditures by \$100,000.

C. Project Overview for Construction of Fire Station 10 (Yorba Linda)

Submitted by: Dave Anderson, Assistant Chief/Support Services Department

Recommended Action:

Receive and file the report.

D. July 2018 Legislative Report

Submitted by: Mark Sanchez, Assistant Chief/Operations Department

Recommended Actions:

1. Adopt a neutral position on AB 1912 (Rodriguez).
2. Direct staff to continue to monitor AB 1912 and report to the Executive Committee any amendments that significantly impact the OCFA or its member agencies.

END OF CONSENT CALENDAR

4. PUBLIC HEARING(S)

No items.

5. DISCUSSION CALENDAR

No items.

BOARD MEMBER COMMENTS

ADJOURNMENT – This evening’s meeting will be adjourned in memory of CAL FIRE Heavy Fire Equipment Operator Braden Varney from the CAL FIRE Madera-Mariposa-Merced Unit who was tragically killed in the line of duty battling the Ferguson Fire in the Sierra National Forest on July 14, 2018. The next regular meeting of the Orange County Fire Authority Board of Directors is scheduled for Thursday, August 23, 2018, 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 19th day of July 2018.

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

UPCOMING MEETINGS:

Human Resources Committee Meeting	Tuesday, August 7, 2018, 12 noon
Budget and Finance Committee Meeting	Wednesday, August 8, 2018, 12 noon
Claims Settlement Committee Meeting	Thursday, August 23, 2018, 5:00 p.m.
Executive Committee Meeting	Thursday, August 23, 2018, 5:30 p.m.
Board of Directors Meeting	Thursday, August 23, 2018, 6:00 p.m.

MINUTES ORANGE COUNTY FIRE AUTHORITY

**Board of Directors Special Meeting
Wednesday, June 20, 2018
6:00 P.M.**

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

CALL TO ORDER

A special meeting of the Orange County Fire Authority Board of Directors was called to order on June 20, 2018, at 6:00 p.m. by Chair Sachs.

INVOCATION

Senior Chaplain Dave Keehn offered the invocation.

PLEDGE OF ALLEGIANCE

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

ROLL CALL

Leah Basile, Lake Forest
Ellery Deaton, Seal Beach
Sergio Farias, San Juan Capistrano
Craig Green, Placentia
Shelley Hasselbrink, Los Alamitos
Joe Muller, Dana Point
Vince Rossini, Villa Park
Dave Shawver, Stanton
Elizabeth Swift, Buena Park

Laurie Davies, Laguna Niguel
Melissa Fox, Irvine
Carol Gamble, Rancho Santa Margarita
Dave Harrington, Aliso Viejo
Noel Hatch, Laguna Woods
Al Murray, Tustin
Ed Sachs, Mission Viejo
Todd Spitzer, County of Orange
Juan Villegas, Santa Ana

Absent:

Lisa Bartlett, County of Orange
Gene Hernandez, Yorba Linda
Don Sedgwick, Laguna Hills
Tri Ta, Westminster

Tim Brown, San Clemente
Robert Johnson, Cypress
Michele Steggell, La Palma

Also present were:

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

Assistant Chief Lori Zeller
Assistant Chief Dave Anderson
Human Resources Director Brigitte Gibb

1. PRESENTATIONS

No items.

REPORTS

No items.

PUBLIC COMMENTS (F: 11.11)

Laurie Murray, La Palma City Manager, read into the record a letter from La Palma City Council of opposition to the City of Irvine's proposal to OCFA. (Letter is on file in the Office of the Clerk.)

Director Villegas arrived at this point (6:05 p.m.).

CLOSED SESSION (F: 11.15)

CS1. CONFERENCE WITH LEGAL COUNSEL–ANTICIPATED LITIGATION

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

CS2. CONFERENCE WITH LEGAL COUNSEL–ANTICIPATED LITIGATION

Authority: Government Code Section 54956.9(c) – Initiation of Litigation (2 cases)

General Counsel David Kendig reported the Board would convene to Closed Session to consider the matters on the agenda identified as CS1 and CS2, Conference with Legal Counsel – Anticipated Litigation.

Chair Sachs recessed the meeting to Closed Session at 6:07 p.m.

Director Shawver arrived at this point (6:08 p.m.).

Director Harrington arrived at this point (6:15 p.m.).

Director Murray arrived at this point (6:34 p.m.).

Director Farias arrived at this point (6:45 p.m.).

Chair Sachs reconvened the meeting from Closed Session at 7:32 p.m., with all prior members present.

CLOSED SESSION REPORT (F: 11.15)

General Counsel David Kendig reported that the Board on motion by Director Gamble and seconded by Director Deaton, the Board authorized staff to send the City of Irvine a nice response to its proposal reiterating OCFA's existing snowball plan, the Board's continued interest in providing the Added Value Items, except the Joint Training Center, and stating that proposal items 4 and 5 are rejected. Motion carried with Directors Hatch, Spitzer, Harrington, Farias, and Fox voting in opposition.

He also reported that the Board on motion by Director Gamble and second by Director Shawver rejected Irvine's request to extend the deadline. Motion carried with Directors Villegas and Spitzer voting in opposition, with Director Fox abstaining.

There were no other reportable actions.

2. MINUTES

No items.

3. CONSENT CALENDAR

No items.

4. PUBLIC HEARING(S)

No items.

5. DISCUSSION CALENDAR

A. Ongoing Equity Discussions - City of Irvine (F: 10.3 Irvine)

Chair Sachs asked General Counsel David Kendig if it was necessary to take action on this agenda item.

General Counsel Kendig stated it was not necessary.

BOARD MEMBER COMMENTS (F: 11.13)

Director Swift announced the Grand Opening of Station 61 (Buena Park), takes place July 11, 2018, at 10:00 a.m.

Director Spitzer thanked OCFA for the deliberate cooperation with the Orange County Sheriff's Department in tackling the recent Santiago fire.

ADJOURNMENT – Chair Sachs adjourned the meeting at 7:38 p.m. The next regular meeting of the Orange County Fire Authority Board of Directors is scheduled for June 28, 2018, at 6:00 p.m.

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

MINUTES ORANGE COUNTY FIRE AUTHORITY

**Board of Directors Regular Meeting
Thursday, June 28, 2018
6:00 P.M.**

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

CALL TO ORDER

A regular meeting of the Orange County Fire Authority Board of Directors was called to order on June 28, 2018, at 6:01 p.m. by Chair Sachs.

INVOCATION

Chaplain Harry Robinson offered the invocation.

PLEDGE OF ALLEGIANCE

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

ROLL CALL

Leah Basile, Lake Forest
Carol Gamble, Rancho Santa Margarita
Shelley Hasselbrink, Los Alamitos
Noel Hatch, Laguna Woods
Al Murray, Tustin
Ed Sachs, Mission Viejo
Dave Shawver, Stanton
Elizabeth Swift, Buena Park
Juan Villegas, Santa Ana

Ellery Deaton, Seal Beach
Craig Green, Placentia
Dave Harrington, Aliso Viejo
Robert Johnson, Cypress
Vince Rossini, Villa Park
Don Sedgwick, Laguna Hills
Todd Spitzer, County of Orange
Tri Ta, Westminster

Absent: Lisa Bartlett, County of Orange
Laurie Davies, Laguna Niguel
Gene Hernandez, Yorba Linda
Michele Steggell, La Palma

Tim Brown, San Clemente
Sergio Farias, San Juan Capistrano
Joe Muller, Dana Point

Also present were:

Fire Chief Brian Fennessy
Assistant Chief Lori Smith
Human Resources Director Brigitte Gibb
Clerk of the Authority Sherry Wentz

Assistant Chief Lori Zeller
Assistant Chief Dave Anderson
General Counsel David Kendig

Chair Sachs, using his discretion as the Chair, brought forward Public Comments for both regular business and Closed Session items to the beginning of the meeting.

PUBLIC COMMENTS

Stephen Wontrobski, Mission Viejo resident, addressed the use of reserve firefighters, and Closed Session item CS1, regarding labor negotiations.

1. PRESENTATIONS

Chair Sachs and Fire Chief Fennessy joined Exchange Club representative Kay Kearney who presented to OCFA Foundation Chair Doug Davert a check donation of \$1,500; proceeds from the Best and Bravest Award Banquet.

CLOSED SESSION (F: 11.15)

CS1. CONFERENCE WITH LABOR NEGOTIATOR

Agency Designated Representative: Peter Brown, Liebert Cassidy and Whitmore
Employee Organizations: Orange County Professional Firefighters Association,
Local 3631, Orange County Employees Association,
Orange County Fire Authority Managers Association,
and all unrepresented employees
Authority: Government Code Section 54957.6

CS2. CONFERENCE WITH LEGAL COUNSEL–ANTICIPATED LITIGATION

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

CS3. CONFERENCE WITH LEGAL COUNSEL–ANTICIPATED LITIGATION

Authority: Government Code Section 54956.9(c) – Initiation of Litigation (2 cases)

CS4. THREAT TO PUBLIC SERVICES OR FACILITIES

Authority: Government Code Section 54957(a)
Consultation with Assistant Chief Dave Anderson

General Counsel David Kendig reported the Board would convene to Closed Session to consider the matters on the agenda identified as CS1 Conference with Labor Negotiator, CS2 – CS3 Conference with Legal Counsel, Anticipated Litigation, and CS4 Threat to Public Services or Facilities.

Chair Sachs recessed the meeting to Closed Session at 6:20 p.m.

Chair Sachs reconvened the meeting from Closed Session at 8:50 p.m., with all prior members present.

CLOSED SESSION REPORT (F: 11.15)

General Counsel David Kendig stated during Closed Session the City of Placentia delivered its Notice of Withdrawal; therefore, Director Green would not be returning to the Board dais. There were no additional reportable actions.

REPORTS

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

Human Resources Committee Chair Murray reported at the June 7, 2018, Special meeting, the Committee met in Closed Session to consider the matter identified on the agenda as Conference with Labor Negotiator. There was no reportable action.

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

Chair Sachs reported as there was no Budget and Finance Committee meeting there is no report.

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

Claims Settlement Committee Chair Sachs reported the Committee considered Workers' Compensation claims for claimants Terry Carson, Gregory Hosburg, Jacob Wildberger, and Robert Spiegel. There were no reportable actions.

REPORT FROM THE FIRE CHIEF (F: 11.14)

Fire Chief Fennessy presented the OCFA Strategic Goals Fiscal Year 2018/19.

MINUTES

2. Minutes from the May 24, 2018, Board of Directors Regular and Special Meeting (F: 11.06)

On motion of Director Ta and second by Director Johnson the Board of Directors voted unanimously by those present to approve the May 24, 2018, Board of Directors Regular and Special Meeting Minutes as submitted. Directors Davies, Deaton, Steggell, and Spitzer were recorded as abstentions as they were absent from the meeting.

3. CONSENT CALENDAR

No items.

4. PUBLIC HEARING(S)

No items.

5. DISCUSSION CALENDAR

A. Air Operations Program Enhancements (F: 18.09)

Fire Chief Fennessy presented a PowerPoint Presentation of the proposed Air Operations Program Enhancements.

On motion of Director Spitzer and second by Director Johnson the Board of Directors voted unanimously by those present to:

1. Approve and authorize the Fire Chief to staff one additional helicopter for 10 hours a day, 365 days a year, partially on an overtime basis.
2. Approve and authorize the Fire Chief to add two Fire Helicopter Technician (mechanic) positions and two Staff Fire Pilot positions to the Master Position Control List.
3. Approve adoption of the revised salary ranges for the Fire Helicopter Technician (mechanic) occupational series.
4. Approve a budget adjustment to the FY 2018/19 General Fund (121) budget increasing expenditures by \$2,107,262 to fund all actions herein.
5. Approve and authorize the Purchasing Manager to increase the current blanket order contracts for fuel with Epic Aviation LLC from \$100,000 to \$200,000 and for helicopter parts with Rotorcraft Support, Inc. from \$100,000 to \$500,000.

BOARD MEMBER COMMENTS (F: 11.13)

Director Harrington commended firefighters who extinguished the Aliso Viejo fire June 2, 2018. He thanked Division Chief Jeff Adams, Battalion Chief Casario, and Captain Doty for their quick work on the fire and subsequent aerial tour of the 200-acre burn area. He suggested identifying defensible positions to prepare for future fires.

Director Deaton reported the Seal Beach Council voted to remain in the OCFA, thanked Lori Zeller and Division Chief Robert Acosta for their Council presentations on OCFA service and cost analysis, and stated Seal Beach is getting the best fire/emergency services and price from the OCFA.

Director Hatch stated he was impressed by the rank and file of OCFA - remarkable and well run. He reported Laguna Woods had a fire last week and one of the three engines came from Irvine, demonstrating that OCFA is a regional response organization.

Director Shawver stated he is proud of this organization and complimented Fire Chief Fennessy on his interactions with the media. Addressing the public comments made this evening, he stated having a "private ambulance" service is poor advice.

Directors Swift announced the Grand Opening of Fire Station 61 (Buena Park) is scheduled for July 11, 2018, at 10:00 a.m.

Minutes

OCFA Board of Directors Regular Meeting

June 28, 2018

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Director Sachs complimented the Board of Directors for its unanimous vote on the Air Ops Program Enhancements. He noted touring the operations in Fullerton complimenting the mechanics who maintain the air equipment. He complimented the City of Mission Viejo public works department's partnership in working with OCFA Division Chief Capobianco to identify areas in Mission Viejo in need of fuel management. He thanked Director Sedgwick for joining the Budget and Finance Committee, and thanked Director Swift for her service on the committee.

ADJOURNMENT – Chair Sachs adjourned the meeting at 9:39 p.m. in memory of fallen Long Beach Fire Captain David Rosa, killed in the line of duty on June 25, 2018. The next regular meeting of the Orange County Fire Authority Board of Directors is scheduled for Thursday, July 26, 2018, at 6:00 p.m.

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

**FIRE PREVENTION WEEK
PROCLAMATION**

WHEREAS, fire is a serious public safety concern both locally and nationally, and homes are the locations where people are at greatest risk from fire; and

WHEREAS, U.S. fire departments respond to an estimated average of 358,500 home fires per year resulting in an annual average of 2,510 civilian fire deaths; and

WHEREAS, newer homes are built with lightweight materials that burn faster than older home constructions, with many of today's products and furnishings producing toxic gases and smoke when burned, making it impossible to see and breathe within moments; and

WHEREAS, these conditions contribute to a much smaller window of time for people to escape a home fire safely, with people having as little as one to two minutes to escape from the time the smoke alarm sounds; and

WHEREAS, Orange County residents are responsive to public education and outreach measures and can take personal steps to increase their safety from fire, especially in their homes; and

WHEREAS, the 2018 Fire Prevention Week theme, "Look. Listen. Learn. Be aware. Fire can happen anywhere," effectively serves to educate the public about three basic steps to reduce the likelihood of fire and how to safely escape in the event of one; and

WHEREAS, look for places a fire can start. Identify and address any potential fire hazards in the home. Listen for the sound of the smoke alarm and go to your outside meeting place a safe distance away from the home. Learn two ways out of every room and make sure all doors and windows leading outside open easily and are free of clutter; and

WHEREAS, taking steps to reduce the likelihood of fire and creating a home fire escape plan provide the skill set and know-how to quickly and safely escape a home fire situation.

NOW, THEREFORE BE IT RESOLVED, that the Orange County Fire Authority Board of Directors does hereby declare October 7-13, 2018, as "Fire Prevention Week" and urge Orange County residents to develop a home fire escape plan with all members of the household and practice it twice a year, and to participate in the many public safety activities and efforts of Orange County Fire Authority's fire and emergency services during Fire Prevention Week 2018.



Orange County Fire Authority
AGENDA STAFF REPORT

Board of Directors Meeting
July 26, 2018

Agenda Item No. 3B
Consent Calendar

**2017 Urban Areas Security Initiative Grant Program
Agreement to Transfer Property or Funds**

Contact(s) for Further Information

Mark Sanchez, Assistant Chief
Operations Department

marksanchez@ocfa.org

714.573.6014

Jeff Hoey, Battalion Chief
Emergency Planning and Coordination

jeffhoey@ocfa.org

714.573.6056

Summary

This annual item is submitted for approval of FY 2017 Urban Areas Security Initiative (UASI) Grant Program award and for authorization for the Fire Chief to execute the necessary Agreement(s). The Grant resources will be utilized to enhance the OCFA's ability to prevent, prepare for, respond to, and recover from, domestic and international terrorism incidents.

Prior Board/Committee Action

Budget and Finance Committee Recommendation: *APPROVE*

At its regular July 11, 2018, meeting, the Budget and Finance Committee reviewed and unanimously recommended approval of this item.

RECOMMENDED ACTION(S)

1. Approve the FY 2017 Urban Areas Security Initiative Grant Program Agreement and authorize the Fire Chief to execute it and any necessary attachments and agreement(s) to accept and administer the UASI Grant.
2. Approve a budget adjustment to the FY 2018/19 General Fund (121) budget increasing revenues and expenditures by \$100,000.

Impact to Cities/County

Not Applicable.

Fiscal Impact

The FY 2018/19 General Fund revenues and expenditures will be increased by an amount not to exceed \$100,000 for the Tactical Medic Program Training. Other UASI training, education and equipment will be reimbursed as needed.

Background

On November 13, 2003, the United States Department of Homeland Security established the UASI Grant Program through the Federal Office of Domestic Preparedness. The grant only allowed two cities in Orange County, Anaheim and Santa Ana, to apply for funds through the UASI.

To ensure these funding sources did not undermine the process already in place, all principal parties involved formed a collaborative regional effort to facilitate the needs for the entire operational area. This ensured the funds were utilized to provide for the region and not one particular jurisdiction. Beginning in FY 2006, the two UASI cities combined to form a single entity, and have divided the County into two geographic regions. The City of Santa Ana is responsible for the southwest portion of the County and the City of Anaheim is responsible for the northeast portion. Utilizing the Strategic Initiatives developed by the Urban Area Working Group, priorities were established for equipment, training, and planning.

On May 9, 2018, OCFA was notified it would be eligible for specific reimbursements/transfer of property as part of the FY 2017 UASI Grant Program. Grant funds are designated for use to reimburse costs related to training, including participant tuition, instructor participation, course delivery, and hosting. This grant agreement also allows the UASI administrator to transfer equipment to the OCFA. The UASI Grant Program has approved the OCFA Tactical Medic Training Program and will reimburse the OCFA for the training costs not to exceed \$100,000. This training program will enhance the Joint Hazards Assessment Team responses, and will assist our law enforcement partners by providing embedded tactical medics with its special operations programs.

Recommendation

This grant is very valuable to the OCFA and its member agencies; therefore, approval of the grant award is recommended. Staff may return later in the fiscal year for additional revenue and expenditure budget adjustments if additional programs are approved for reimbursement by the Grant Administrator/UASI.

Attachment(s)

FY 2017 Urban Areas Security Initiative Grant Program Agreement (On file in the Clerk's Office and available on the OCFA website.)

AGREEMENT

SUB-RECIPIENT: ORANGE COUNTY FIRE AUTHORITY

City Contract Number _____

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EXHIBITS

Exhibit A	Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions
Exhibit B	Certification Regarding Lobbying
Exhibit C	Grant Assurances

AGREEMENT FOR TRANSFER OR PURCHASE OF EQUIPMENT/SERVICES OR FOR
REIMBURSEMENT OF TRAINING COSTS
FOR FY2017 URBAN AREAS SECURITY INITIATIVE (UASI)

BETWEEN
THE CITY OF SANTA ANA
AND ORANGE COUNTY FIRE AUTHORITY

THIS AGREEMENT is made and entered into this 28th day of March, 2018, by and between the CITY OF SANTA ANA, a municipal corporation (the "CITY"), and ORANGE COUNTY FIRE AUTHORITY (the "SUB-RECIPIENT" or "Contractor").

W I T N E S S E T H

WHEREAS, CITY, acting through the Santa Ana Police Department in its capacity as a Core City for the Anaheim/Santa Ana Urban Area under the FY17 Urban Areas Security Initiative, has applied for, received and accepted a grant entitled "FY 2017 Urban Areas Security Initiative" from the federal Department Of Homeland Security(DHS) Federal Emergency Management Agency (FEMA), through the State of California Governor's Office of Emergency Services (CalOES), to enhance countywide emergency preparedness (the "grant"), as set forth in the grant guidelines and assurances that are incorporated to this Agreement by reference and located at:

"U.S. Department of Homeland Security "Fiscal Year 2017 Homeland Security Grant Program (HSGP) Notice of Funding Opportunity (NOFO)"
https://www.fema.gov/media-library-data/1496691855715-4d78d65ebb300900ce6c945931eff2c6/FY_2017_HSGP_NOFO_20170601v2014_605.pdf

California Governor's Office of Emergency Services "FY2017 Homeland Security Grant Program: California Supplement to Federal Program Guidance and Application Kit"
<http://www.sacoes.org/Documents/FY%202017%20HSGP%20State%20Guidances.pdf?ID=76>

Copies of the grant guidelines shall be retained in the Anaheim/Santa Ana Grant Office.

WHEREAS, this financial assistance is administered by the CITY OF SANTA ANA ("CITY") and is overseen by the California Governor's Office of Emergency Services ("Cal-OES"); and

WHEREAS, this financial assistance is being provided to address the unique equipment, training, planning, and exercise needs of large urban areas, and to assist them in building an enhanced and sustainable capacity to prevent, respond to, and recover from threats or acts of terrorism; and

WHEREAS, the Anaheim/Santa Ana Urban Area ("ASAUA") consists of 34 cities in Orange County, including the City of Santa Ana and the City of Anaheim, the County of Orange, including the unincorporated area of the County of Orange, Santa Ana Unified School District Police, California State University, Fullerton, University of California, Irvine, Municipal Water District of Orange County, and the Orange County Fire Authority; and

WHEREAS, the Office of Grants Management ("OGM") awarded a FY17 UASI Grant of \$4,344,000 ("Grant Funds") to the CITY OF SANTA ANA, as a Core City, for use in the ASAUA; and

WHEREAS, the CITY has designated the Chief of Police, or his designee and the Santa Ana Police Department, Homeland Security Division ("UASI Grant Office") to provide for terrorism prevention and emergency preparedness; and

WHEREAS, the UASI Grant Office now wishes to distribute FY17 UASI Grant Funds throughout the ASAUA, as further detailed in this Agreement ("Agreement") to ORANGE COUNTY FIRE AUTHORITY ("SUB-RECIPIENT") and others;

WHEREAS, the CITY and SUB-RECIPIENT are desirous of executing this Agreement as authorized by the City Council and the City Manager which authorizes the CITY to prepare and execute the Agreement.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

I
INTRODUCTION

§101. Parties to the Agreement

The parties to this Agreement are:

- A. The CITY, a municipal corporation, having its principal office at 20 Civic Center Plaza, Santa Ana, CA 92702; and
- B. ORANGE COUNTY FIRE AUTHORITY, a municipal corporation, One Fire Authority Road, Irvine, CA 92602

§102. Representatives of the Parties and Service of Notices

- A. The representatives of the respective parties who are authorized to administer this Agreement and to whom formal notices, demands and communications shall be given are as follows:

- 1. The representative of the CITY OF SANTA ANA shall be, unless otherwise stated in the Agreement:

Kenneth Gominsky, Jr., Commander
Santa Ana Police Department
Homeland Security Division
60 Civic Center Plaza
Santa Ana, CA 92702
Phone: (714) 245-8040
Fax: (714) 245-8098
kgominsky@santa-ana.org

- 2. The representative of ORANGE COUNTY FIRE AUTHORITY shall be:

Jeff Hoey, Battalion Chief
ORANGE COUNTY FIRE AUTHORITY
One Fire Authority Road, Irvine, CA 92602
Phone: (714) 573-6056
E-mail: JeffHoey@ocfa.org

- B. Formal notices, demands and communications to be given hereunder by either party shall be made in writing and may be effected by personal delivery or by registered or certified mail, postage prepaid, return receipt requested and shall be deemed communicated as of the date of mailing.
- C. If the name of the person designated to receive the notices, demands or communications or the address of such person is changed, written notice shall be given, in accord with this section, within five (5) business days of said change.

§103. Independent Party

SUB-RECIPIENT is acting hereunder as an independent party, and not as an agent or employee of the CITY OF SANTA ANA. No employee of SUB-RECIPIENT is, or shall be an employee of the CITY OF SANTA ANA by virtue of this Agreement, and SUB-RECIPIENT shall so inform each employee organization and each employee who is hired or retained under this Agreement. SUB-RECIPIENT shall not represent or otherwise hold out itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of the CITY OF SANTA ANA.

§104. Conditions Precedent to Execution of This Agreement

SUB-RECIPIENT shall provide copies of the following documents to the CITY OF SANTA ANA, unless otherwise exempted.

- A. Grant Assurances in accordance with section 415C of this Agreement attached hereto as Exhibit C and made part hereof.
- B. Certifications Regarding Ineligibility, Suspension and Debarment as required by Executive Order 12549 in accordance with Section 415A12 of this Agreement and attached hereto as Exhibit A and made a part hereof.
- C. Certifications and Disclosures Regarding Lobbying in accordance with Section 415C of this Agreement and attached hereto as Exhibit B and made a part hereof. SUB-RECIPIENT shall also file a Disclosure Form at the end of each calendar quarter in which there occurs any event requiring disclosure or which materially affects the accuracy of the information contained in any Disclosure Form previously filed by SUB-RECIPIENT.

II
TERM AND SERVICES TO BE PROVIDED

§201. Time of Performance

The term of this Agreement shall commence on March 28, 2018 and end on March 31, 2020 or upon the final disbursement of all of the Grant Amount (as defined in Section 301) and any additional period of time as is required to complete any necessary close out activities. Said term is subject to the provisions herein.

§202. Use of Grant Funds

- A. CITY may, a) transfer to SUB-RECIPIENT, equipment or services purchased with grant funds and in accordance with grant guidelines set forth above; or, b) reimburse SUB-RECIPIENT for purchase of authorized equipment, exercises, services or training upon receiving prior written approval from CITY or its designee and in accordance with grant guidelines and in full compliance with all of the SUB-RECIPIENT'S purchasing and bidding procedures. SUB-RECIPIENT shall specify the equipment, services, exercises and training to be purchased using the Application for Project Funding. A paper copy of this document will be provided to SUB-RECIPIENT by CITY. In addition, copies of the document will be provided electronically to SUB-RECIPIENT by CITY. If additional copies of the document are needed, SUB-RECIPIENT may contact the Santa Ana Grant Coordinator and it will be provided.
- B. SUB-RECIPIENT shall provide any reports requested by the CITY regarding the performance of the Agreement. Reports shall be in the form requested by the CITY, and shall be provided in a timely manner.
- C. The Authorized Equipment List (AEL) is a list of the allowable equipment which may be purchased pursuant to this Agreement and is located at http://www.fema.gov/media-library-data/20130726-1825-25045-7138/fema_preparedness_grants_authorized_equipment_list.pdf, and incorporated to this Agreement by reference. A copy of the AEL shall be retained in the Anaheim/Santa Ana Grant Office. Unless otherwise stated in program guidance any equipment acquired pursuant to this Agreement shall meet all mandatory regulations and/or DHS-adopted standards to be eligible for purchase using grant funds. SUB-RECIPIENT shall provide the CITY a copy of its most current procurement guidelines and follow its own procurement requirements as long as they meet the minimum federal requirements. Federal procurement requirements for the FY 17 UASI Grant can be found at 2 Code of Federal Regulations (CFR) Part 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."

Any equipment acquired or obtained with Grant Funds:

1. Shall be made available under the California Disaster and Civil Defense Master Mutual Aid Agreement in consultation with representatives of the various fire, emergency medical, hazardous materials response services, and law enforcement agencies within the jurisdiction of the applicant;
2. Shall be consistent with needs as identified in the National Priorities and Core Capabilities, the State Homeland Security Strategy and the Anaheim/Santa Ana Urban Area and Orange County Operational Area Homeland Security Grants Strategy; and deployed in conformance with those plans;
3. Shall be made available pursuant to applicable terms of the California Disaster and Civil Defense Master Mutual Aid Agreement and deployed with personnel trained in the use of such equipment in a manner consistent with the California Law Enforcement Mutual Aid Plan or the California Fire Services and Rescue Mutual Aid Plan;
4. Shall be subject to the requirements of Title 2 CFR Part 200.313 and 200.314. For the purposes of this subsection, "Equipment" is defined as nonexpendable property that is not consumed or does not lose its identity by being incorporated into another item of equipment, which costs \$5,000 or more per unit, or is expected to have a useful life of one (1) year or more.
5. Shall be used by SUB-RECIPIENT in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer useful for the original program or project, the Equipment may be used in other activities currently or previously supported by a Federal agency.
6. Shall be made available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency.
7. Shall be recorded on a ledger. The record shall include: (a) description of the item of Equipment, (b) a serial number or other identification number, (c) the source of funding for the property (including the FAIN), (d) who holds the title, (e) the acquisition date, (f) the cost of the property, (g) percentage of Federal participation in the project costs for the Federal award under which the property was acquired, (h) location, (i) use and condition of Equipment, and (j) ultimate disposition data including the date of disposal and sale price

of the property. Records must be retained pursuant to 2 CFR Part 200.313.

8. All equipment obtained under this Agreement shall have an ASAUA identification decal affixed to it, and, when practical, shall be affixed where it is readily visible.
 9. A physical inventory of the Equipment shall be taken and the results reconciled with the Equipment records at least once every two years. Inventory shall also be taken prior to any UASI, State or Federal monitor visits.
 10. SUB-RECIPIENT shall exercise due care to preserve and safeguard equipment acquired with grant funds from damage or destruction and shall provide regular maintenance and such repairs for said equipment as necessary, in order to keep said equipment continually in good working order. Such maintenance and servicing shall be the sole responsibility of SUB-RECIPIENT, who shall assume full responsibility for maintenance and repair of the equipment throughout the life of said equipment.
 11. SUB-RECIPIENT shall identify a Point-of-Contact (POC) to be responsible for all Equipment prior to the receipt of the item(s). POC will serve as the custodian of the Equipment. SUB-RECIPIENT shall notify the CITY of any change in the POC and assume the responsibility of advising the new custodian of all UASI grant program guidelines and requirements.
- D. Any training paid pursuant to this Agreement shall conform to the guidelines as listed in FY 2017 Homeland Security Grant Program, as set forth above. All training expenses must be pre-authorized by Cal-OES at <http://www.firstrespondertraining.gov/admin>. A catalogue of Grantor approved and sponsored training courses is available at http://www.firstrespondertraining.gov/odp_webforms.
- E. Any exercise paid pursuant to this Agreement shall conform to the guidelines as listed in FY 2017 Homeland Security Grant Program, as set forth above. Detailed Homeland Security Exercise and Evaluation Program Guidance is available at <http://hseep.dhs.gov>.
- F. Any planning paid pursuant to this Agreement shall conform to the guidelines as listed in FY 2017 Homeland Security Grant Program, as set forth above.
- G. Any organizational activities paid pursuant to this Agreement shall conform to the guidelines as listed in FY 2017 Homeland Security Grant Program, as set forth above.

III PAYMENT

§301. Payment of Grant Funds and Method of Payment

- A. CITY may, a) transfer to SUB-RECIPIENT, equipment or services purchased with grant funds; or, b) reimburse SUB-RECIPIENT for the purchase of authorized equipment, exercises, services or training upon receiving prior written approval from CITY or its designee and in accordance with grant guidelines and in full compliance with all of the SUB-RECIPIENT'S purchasing and bidding procedures. SUB-RECIPIENT shall specify the equipment, exercises, services or training to be purchased using the Application for Project Funding. A paper copy of this document will be provided to SUB-RECIPIENT by CITY. If additional copies of the document are needed, SUB-RECIPIENT may contact the Santa Ana Grant Coordinator and it will be provided. Funds may be used for planning, exercises, organizational and training activities, and the purchase of equipment as described in Section 202 above.
- B. SUB-RECIPIENT shall provide invoices to the CITY requesting payment and all supporting documentation. Each reimbursement request shall be accompanied by the Reimbursement Request for Grant Expenditures detailing the expenditures made by SUB-RECIPIENT as authorized by Section 202 above. Each reimbursement request shall be submitted to the Santa Ana UASI Grant Office. For equipment for which SUB-RECIPIENT is requesting reimbursement, all appropriate back-up documentation must be attached to the reimbursement form, including invoices, proof of payment, packing slips, and Equipment Reimbursement Worksheet. For training reimbursements, SUB-RECIPIENT must include a copy of any certificates issued or a copy of the class roster verifying training attendees, proof that a CalOES tracking number has been assigned to the course, timesheets and payroll registers for all training attendees, receipts for travel expenses related to the training, and Training Reimbursement Worksheet. For regional project reimbursements, SUB-RECIPIENT must include approval from the lead agency for all submitted invoices.
- C. Payment of final invoice shall be withheld by the CITY until the SUB-RECIPIENT has turned in all supporting documentation and completed the requirements of this Agreement.
- D. It is understood that the CITY makes no commitment to fund this Agreement beyond the terms set forth herein.
- E. Funding for all periods of this Agreement is subject to the continuing availability to the CITY of federal funds for this program. The Agreement may be terminated immediately upon written notice to SUB-RECIPIENT of a loss or reduction of federal grant funds.

IV STANDARD PROVISIONS

§401. Construction of Provisions and Titles Herein

All titles or subtitles appearing herein have been inserted for convenience and shall not be deemed to affect the meaning or construction of any of the terms or provisions hereof. The language of this Agreement shall be construed according to its fair meaning and not strictly for or against either party. The word "Sub-recipient" herein and in any amendments hereto includes the party or parties identified in this Agreement. The singular shall include the plural. If there is more than one Sub-recipient as identified herein, unless expressly stated otherwise, their obligations and liabilities hereunder shall be joint and several. Use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used.

§402. Applicable Law, Interpretation and Enforcement

Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California, and the CITY. This Agreement shall be enforced and interpreted under the laws of the State of California and the CITY.

If any part, term or provision of this Agreement shall be held void, illegal, unenforceable, or in conflict with any law of a federal, state or local government having jurisdiction over this Agreement, the validity of the remaining portions of provisions shall not be affected thereby.

§403. Integrated Agreement

This Agreement sets forth all of the rights and duties of the parties with respect to the subject matter hereof, and replaces any and all previous agreements or understandings, whether written or oral, relating thereto. This Agreement may be amended only by a written instrument executed by both parties hereto.

§404. Excusable Delays

In the event that performance on the part of any party hereto shall be delayed or suspended as a result of circumstances beyond the reasonable control and without the fault and negligence of said party, none of the parties shall incur any liability to the other parties as a result of such delay or suspension. Circumstances deemed to be beyond the control of the parties hereunder shall include, but not be limited to, acts of God or of the public enemy; insurrection; acts of the Federal Government or any unit of State or Local Government in either sovereign or contractual capacity; fires; floods; epidemics; quarantine

restrictions; strikes, freight embargoes or delays in transportation; to the extent that they are not caused by the party's willful or negligent acts or omissions and to the extent that they are beyond the party's reasonable control.

§405. Breach

Except for excusable delays, if any party fails to perform, in whole or in part, any promise, covenant, or agreement set forth herein, or should any representation made by it be untrue, any aggrieved party may avail itself of all rights and remedies, at law or equity, in the courts of law. Said rights and remedies are cumulative of those provided for herein except that in no event shall any party recover more than once, suffer a penalty or forfeiture, or be unjustly compensated.

§406. Prohibition Against Assignment or Delegation

SUB-RECIPIENT may not, unless it has first obtained the written permission of the CITY:

- A. Assign or otherwise alienate any of its rights hereunder, including the right to payment; or
- B. Delegate, subcontract, or otherwise transfer any of its duties hereunder.

§407. Permits

SUB-RECIPIENT and its officers, agents and employees shall obtain and maintain all permits and licenses necessary for SUB-RECIPIENT performance hereunder and shall pay any fees required therefore. SUB-RECIPIENT further certifies to immediately notify the CITY of any suspension, termination, lapses, non renewals or restrictions of licenses, certificates, or other documents.

§408. Nondiscrimination and Affirmative Action

SUB-RECIPIENT shall comply with the applicable nondiscrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the CITY. In performing this Agreement, SUB-RECIPIENT shall not discriminate in its employment practices against any employee or applicant for employment because of such person's ancestry, familial status, race, color, religious creed (including religious dress and grooming practices), sex (which includes pregnancy, childbirth, breastfeeding, and medical conditions related to pregnancy, childbirth, or breastfeeding), gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, mental or physical disability, genetic information, medical condition, age, pregnancy, denial of medical and family care leave, or pregnancy disability (California Government Code §§ 12490, 12945, 12945.2), military or veteran status, and/or retaliation for protesting illegal discrimination related to one of these categories, or for reporting patient abuse in tax supported institutions.. SUB-RECIPIENT shall comply with Executive Order 11246, entitled "Equal

Employment Opportunity,” as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CRF Part 60).

If required, SUB-RECIPIENT shall submit an Equal Employment Opportunity Plan (“EEOP”) to the DOJ Office of Civil Rights (“OCR”) in accordance with guidelines listed at <http://www.ojp.usdoj.gov/ocr/eeop.htm>,

Any subcontract entered into by the SUB-RECIPIENT relating to this Agreement, to the extent allowed hereunder, shall be subject to the provisions of this § 408.

§409. Bonds

SUB-RECIPIENT must purchase a performance bond for any equipment item over \$250,000 or any vehicle (including aircraft or watercraft) financed with homeland security funds. SUB-RECIPIENT must provide a copy of performance bond to CITY no later than the time of reimbursement.

§410. Indemnification

Each of the parties to this Agreement is a public entity. In contemplation of the provisions of Section 895.2 of the Government Code of the State of California imposing certain tort liability jointly upon public entities, solely by reason of such entities being parties to an Agreement as defined by Section 895 of said Code, the parties hereto, as between themselves, pursuant to the authorization contained in Section 895.4 and 895.6 of said Code, will each assume the full liability imposed upon it or upon any of its officers, agents, or employees by law, for injury caused by a negligent or wrongful act or omission occurring in the performance of this Agreement, to the same extent that such liability would be imposed in the absence of Section 895.2 of said Code. To achieve the above-stated purpose, each party indemnifies and holds harmless the other party solely by virtue of said Section 895.2. The provision of Section 2778 of the California Civil Code is made a part hereto as if fully set forth herein. SUB-RECIPIENT certifies that it has adequate self insured retention of funds to meet any obligation arising from this Agreement.

§411. Conflict of Interest

- A. SUB-RECIPIENT covenants that none of its directors, officers, employees, or agents shall participate in selecting, or administering any subcontract supported (in whole or in part) by Federal funds where such person is a director, officer, employee or agent of the subcontractor; or where the selection of subcontractors is or has the appearance of being motivated by a desire for personal gain for themselves or others such as family business, etc.; or where such person knows or should have known that:
 - 1. A member of such person's immediate family, or domestic partner or organization has a financial interest in the subcontract;
 - 2. The subcontractor is someone with whom such person has or is negotiating any prospective employment; or

3. The participation of such person would be prohibited by the California Political Reform Act, California Government Code §87100 et seq. if such person were a public officer, because such person would have a "financial or other interest" in the subcontract.

B. Definitions:

1. The term "immediate family" includes but is not limited to domestic partner and/or those persons related by blood or marriage, such as husband, wife, father, mother, brother, sister, son, daughter, father in law, mother in law, brother in law, sister in law, son in law, daughter in law.
 2. The term "financial or other interest" includes but is not limited to:
 - a. Any direct or indirect financial interest in the specific contract, including a commission or fee, a share of the proceeds, prospect of a promotion or of future employment, a profit, or any other form of financial reward.
 - b. Any of the following interests in the subcontractor ownership: partnership interest or other beneficial interest of five percent or more; ownership of five percent or more of the stock; employment in a managerial capacity; or membership on the board of directors or governing body.
- C. The SUB-RECIPIENT further covenants that no officer, director, employee, or agent shall solicit or accept gratuities, favors, anything of monetary value from any actual or potential subcontractor, supplier, a party to a sub agreement, (or persons who are otherwise in a position to benefit from the actions of any officer, employee, or agent).
- D. The SUB-RECIPIENT shall not subcontract with a former director, officer, or employee within a one year period following the termination of the relationship between said person and the Contractor.
- E. Prior to obtaining the CITY'S approval of any subcontract, the SUB-RECIPIENT shall disclose to the CITY any relationship, financial or otherwise, direct or indirect, of the SUB-RECIPIENT or any of its officers, directors or employees or their immediate family with the proposed subcontractor and its officers, directors or employees.
- F. For further clarification of the meaning of any of the terms used herein, the parties agree that references shall be made to the guidelines, rules, and laws of the SUB-RECIPIENT, State of California, and Federal regulations regarding conflict of interest.
- G. The SUB-RECIPIENT warrants that it has not paid or given and will not pay or give to any third person any money or other consideration for obtaining this Agreement.

- H. The SUB-RECIPIENT covenants that no member, officer or employee of SUB-RECIPIENT shall have interest, direct or indirect, in any contract or subcontract or the proceeds thereof for work to be performed in connection with this project during his/her tenure as such employee, member or officer or for one year thereafter.
- I. The SUB-RECIPIENT shall incorporate the foregoing subsections of this Section into every agreement that it enters into in connection with this project and shall substitute the term "subcontractor" for the term "SUB-RECIPIENT" and "sub subcontractor" for "Subcontractor".

§412. Restriction on Disclosures

Any reports, analysis, studies, drawings, information, or data generated as a result of this Agreement are to be governed by the California Public Records Act (California Government Code Sec. 6250, et seq.).

§413. Statutes and Regulations Applicable To All Grant Contracts

- A. SUB-RECIPIENT shall comply with all applicable requirements of state, federal, county and SUB-RECIPIENT laws, executive orders, regulations, program and administrative requirements, policies and any other requirements governing this Agreement. SUB-RECIPIENT shall comply with state and federal laws and regulations pertaining to labor, wages, hours, and other conditions of employment. SUB-RECIPIENT shall comply with new, amended, or revised laws, regulations, and/or procedures that apply to the performance of this Agreement. These requirements include, but are not limited to:

- 1. Office of Management and Budget (OMB)

SUB-RECIPIENT shall comply with 2 Code of Federal Regulation (CFR) Part 200 (Uniform Administrative, Cost Principles, and Audit Requirements for Federal Awards).

- 2. Single Audit Act

If Federal funds are used in the performance of this Agreement, SUB-RECIPIENT shall adhere to the rules and regulations of the Single Audit Act, 31 USC Sec. 7501 et seq.; Title 2 Code of Federal Regulations, Part 200, Subpart F Audit Requirements; and any administrative regulation or field memos implementing the Act. When reporting under on the FY17 UASI Grant Program under the Single Audit Act, SUB-RECIPIENT shall use Catalog of Federal Domestic Assistance (CFDA) Program Number 97.067 "Homeland Security Grant Program"; Grant Identification Number 2017-0083; and identify the CITY OF SANTA ANA as the Pass-Through.

3. Americans with Disabilities Act

SUB-RECIPIENT hereby certifies that it will comply with the Americans with Disabilities Act, 42 USC §§ 12101, et seq., and its implementing regulations. SUB-RECIPIENT will provide reasonable accommodations to allow qualified individuals with disabilities to have access to and to participate in its programs, services and activities in accordance with the provisions of the Americans with Disabilities Act. SUB-RECIPIENT will not discriminate against persons with disabilities or against persons due to their relationship to or association with a person with a disability. Any subcontract entered into by the SUB-RECIPIENT, relating to this Agreement, to the extent allowed hereunder, shall be subject to the provisions of this paragraph.

4. Political and Sectarian Activity Prohibited

None of the funds, materials, property or services provided directly or indirectly under this Agreement shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office. Neither shall any funds provided under this Agreement be used for any purpose designed to support or defeat any pending legislation or administrative regulation. None of the funds provided pursuant to this Agreement shall be used for any sectarian purpose or to support or benefit any sectarian activity.

If this Agreement provides for more than \$100,000 in grant funds or more than \$150,000 in loan funds, SUB-RECIPIENT shall submit to the CITY a Certification Regarding Lobbying and a Disclosure Form, if required, in accordance with 31 USC §1352. A copy of the Certificate is attached hereto as Exhibit B. No funds will be released to SUB-RECIPIENT until the Certification is filed.

SUB-RECIPIENT shall file a Disclosure Form at the end of each calendar quarter in which there occurs any event requiring disclosure or which materially affects the accuracy of any of the information contained in any Disclosure Form previously filed by SUB-RECIPIENT. SUB-RECIPIENT shall require that the language of this Certification be included in the award documents for all sub-awards at all tiers and that all subcontractors shall certify and disclose accordingly.

5. Records Inspection

In accordance with 2 CFR §200.336, at any time during normal business hours and as often as the CITY, the U.S. Comptroller General, and/or the Auditor General of the State of California may deem necessary, SUB-RECIPIENT shall make available for examination all of its records with respect to all matters covered by this Agreement. The CITY, the U.S. Comptroller General and/or the Auditor General of the State of California shall have the authority to

audit, examine and make excerpts or transcripts from records, including SUB-RECIPIENT'S invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.

SUB-RECIPIENT agrees to provide any reports requested by the CITY regarding performance of the Agreement.

6. Records Maintenance

Records, in their original form, shall be maintained in accordance with requirements prescribed by the CITY with respect to all matters covered on file for all documents specified in this Agreement. Original forms are to be maintained on file for all documents specified in this Agreement. Such records shall be retained for a period of three (3) years after the CITY receives notification of grant closeout from CalOES and after final disposition of all pending matters. "Pending matters" include, but are not limited to, an audit, litigation or other actions involving records. The CITY may, at its discretion, take possession of, retain and audit said records. Records, in their original form pertaining to matters covered by this Agreement, shall at all times be retained within the County of Orange unless authorization to remove them is granted in writing by the CITY.

7. Subcontracts and Procurement

SUB-RECIPIENT shall comply with the federal and SUB-RECIPIENT standards in the award of any subcontracts. For purposes of this Agreement, subcontracts shall include but not be limited to purchase agreements, rental or lease agreements, third party agreements, consultant service contracts and construction subcontracts.

SUB-RECIPIENT shall ensure that the terms of this Agreement with the CITY are incorporated into all Subcontractor Agreements. The SUB-RECIPIENT shall submit all Subcontractor Agreements to the CITY for review prior to the release of any funds to the subcontractor. The SUB-RECIPIENT shall withhold funds to any subcontractor agency that fails to comply with the terms and conditions of this Agreement and their respective Subcontractor Agreement.

8. Labor

SUB-RECIPIENT shall comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements, and the Hatch Act (5 USC §§1501-1508 and 7324-7328).

SUB-RECIPIENT shall comply with the Federal Fair Labor Standards Act (29 USC §201) regarding wages and hours of employment. None of the funds shall be used to promote or deter Union/labor organizing activities. CA Gov't Code Sec. 16645, et seq.

SUB-RECIPIENT shall comply with provisions which require every employer to be insured to protect workers who may be injured on the job at all times during the performance of the work of this Agreement, as per the workers compensation laws set forth in California Labor Code §§ 3700 et seq.

9. Civil Rights

SUB-RECIPIENT shall comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681- 1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination against those with disabilities or access and functional needs; (d) The Age Discrimination act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) Public Health Service Act of 1912 (42 U.S.C. §§ 290), relating to confidentiality of patient records regarding substance abuse treatment; (f) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601, et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing as implemented by the Department of Housing and Urban Development at 24 C.F.R. Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units-i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground floor units in buildings without elevators)-be designed and constructed with certain accessible features (See 24 C.F.R. § 100.201); (g) Executive Order 11246, which prohibits federal contractors and federally assisted construction contractors and subcontractors, who do over \$10,000 in Government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identification, or national origin; (h) Executive Order 11375, which bans discrimination on the basis of race, color, religion, sex, sexual orientation, gender identification, or national origin in hiring and employment in both the United States federal workforce and on the part of government contractors; (i) California Public Contract Code §10295.3, which prohibits discrimination based on domestic partnerships and those in same sex marriages; (j) DHS policy to ensure the equal treatment of faith-based organizations, under which all applicants and recipients must comply with equal treatment policies and requirements

contained in 6 C.F.R. Part 19; (k) Any other nondiscrimination provisions in the specific statute(s) under which application for federal assistance is being made; and (l) The requirements of any other nondiscrimination statute(s) which may apply to the application. (

10. Environmental

SUB-RECIPIENT shall comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

SUB-RECIPIENT shall comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190); the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA; and Executive Order 12898 which focuses on the environmental and human health effects of federal actions on minority and low-income populations with the goal of achieving environmental protection for all communities; (b) Executive Order (EO) 11514; (c) notification of violating facilities pursuant to EO 11738; (d) protection of wetlands pursuant to EO 11990; (e) evaluation of flood hazards in floodplains in accordance with EO 11988; (f) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451, et seq.); (g) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401, et seq.); (h) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); (i) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205); and (j) Flood Disaster Protection Act of 1973 §102(a) (P.L. 93-234).

SUB-RECIPIENT shall comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271, et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

SUB-RECIPIENT shall comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801, et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

SUB-RECIPIENT shall comply with the Federal Water Pollution Control Act (33 U.S.C. 1251-1387) which restores and maintains the chemical, physical and biological integrity of the Nation's waters.

SUB-RECIPIENT shall comply with the Federal Clean Water Act (CWA) (33 U.S.C §1251 et seq.), which establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters.

SUB-RECIPIENT shall comply with Federal Clean Air Act of 1955 (42 U.S.C. § 7401) which regulates air emissions from stationary and mobile sources.

SUB-RECIPIENT shall ensure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of this project are not listed in the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal Grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

SUB-RECIPIENT shall comply with the Energy Policy and Conservation Act (P.L. 94-163, 89 Stat. 871).

SUB-RECIPIENT shall not be: (1) in violation of any order or resolution promulgated by the State Air Resources Board or an air pollution district; (2) subject to a cease and desist order pursuant to § 13301 of the California Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) determined to be in violation of federal law relating to air or water pollution.

By signing this Agreement, SUB-RECIPIENT ensures that it is in compliance with the California Environmental Quality Act (CEQA), Public Resources Code §21000, et seq., CEQA Guidelines (California Code of Regulations, Title 14 Division 6, Chapter 3, §§ 15000-15387), and is not impacting the environment negatively.

11. Preservation

SUB-RECIPIENT shall comply with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1, et seq.).

12. Suspension and Debarment

SUB-RECIPIENT shall comply with Federal Register, Volume 68, Number 228, regarding Suspension and Debarment, and SUB-

RECIPIENT shall submit a Certification Regarding Debarment required by Executive Order 12549 and any amendment thereto. Said Certification shall be submitted to the CITY concurrent with the execution of this Agreement and shall certify that neither SUB-RECIPIENT nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department head or agency. SUB-RECIPIENT shall require that the language of this Certification be included in the award documents for all sub-award at all tiers and that all subcontractors shall certify accordingly.

As required by Executive Orders (EO) 12549 and 12689, and 2 CFR §200.212 and codified in 2 CFR Part 180, Debarment and Suspension, SUB-RECIPIENT will provide protection against waste, fraud and abuse by debarring or suspending those persons deemed irresponsible in their dealings with the Federal government.

13. Drug-Free Workplace

SUB-RECIPIENT shall comply with the federal Drug-Free Workplace Act of 1988, 41 USC §701, 44 CFR Part 67; the California Drug-Free Workplace Act of 1990, CA Gov't Code §§ 8350-8357.

14. Financial Management

SUB-RECIPIENT will comply with 31 U.S.C §3729 which sets forth that no subgrantee, recipient or subrecipient shall submit a false claim for payment, reimbursement or advance.

15. Reporting – Accountability

SUB-RECIPIENT agrees to comply with applicable provisions of the Federal Funding Accountability and Transparency Act (FFATA) (2 CFR Chapter 1, Part 170), specifically (a) the reporting of subawards obligating \$25,000 or more in federal funds and (b) executive compensation data for first-tier subawards. This includes the provisions of FFATA, which includes requirements on executive compensation, and also requirements implementing the Act for the non-Federal entity at 2 CFR part 25 Financial Assistance Use of Universal Identifier and Central Contractor Registration and 2 CFR part 170 Reporting Subaward and Executive Compensation Information.

SUB-RECIPIENT must also comply with statutory requirements for whistleblower protections at 10 U.S.C. §2409, 41 U.S.C. §4712, and 10 U.S.C. §2324, 41 U.S.C. §4304 and §4310 and 31 U.S.C. §6101 et seq.

16. Human Trafficking

SUB-RECIPIENT will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. §7104) which prohibits grant award recipients or a subrecipient from (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect (2) Procuring a commercial sex act during the period of time that the award is in effect or (3) Using forced labor in the performance of the award or subawards under the award.

17. Freedom of Information Act

SUB-RECIPIENT acknowledges that all information submitted in the course of applying for funding under this program or provided in the course of an entity's grant management activities which is under Federal control is subject to the Freedom of Information Act (FOIA), 5 U.S.C. §552. SUB-RECIPIENT should also consult State and local laws and regulations regarding the release of information, which should be considered when reporting sensitive matters in the grant application, needs assessment and strategic planning process.

18. California Public Records Act

SUB-RECIPIENT acknowledges that all information submitted in the course of applying for funding under this program or provided in the course of an entity's grant management activities may be subject to the California Public Records Act (California Government Code §§6250-6276.48), which requires inspection and/or disclosure of governmental records to the public upon request, unless exempted by law.

B. Statutes and Regulations Applicable To This Particular Grant

SUB-RECIPIENT shall comply with all applicable requirements of state and federal laws, executive orders, regulations, program and administrative requirements, policies and any other requirements governing this particular grant program. SUB-RECIPIENT shall comply with new, amended, or revised laws, regulations, and/or procedures that apply to the performance of this Agreement. These requirements include, but are not limited to:

1. Title 2 Code of Federal Regulations (CFR) Part 200; EO 12372; Department of Justice (DOJ) Office of Judicial Programs (OJP) Office of the Comptroller, U.S. Department of Homeland Security, Preparedness Directorate Financial Management Guide; U.S. Department of Homeland Security, Office of Grants and Training, FY 2017 Homeland Security Grant Program –Notice of Funding Opportunity; ODP WMD Training Course Catalogue; and DOJ Office for Civil Rights.

Standardized Emergency Management System (SEMS) requirements as stated in the California Emergency Services Act, Government Code Chapter 7 of Division 1 of Title 2, § 8607.1(e) and CCR Title 19, §§ 2445-2448.

Provisions of 44 CFR applicable to grants and cooperative agreements, including Part 18, Administrative Review Procedures; Part 20, Criminal Justice Information Systems; Part 22, Confidentiality of Identifiable Research and Statistical Information; Part 23, Criminal Intelligence Systems Operating Policies; Part 30, Intergovernmental Review of Department of Justice Programs and Activities; Part 35, Nondiscrimination on the Basis of Disability in State and Local Government Services; Part 38, Equal Treatment of Faith-based Organizations; Part 42, Nondiscrimination/Equal employment Opportunities Policies and Procedures; Part 61, Procedures for Implementing the National Environmental Policy Act; Part 63, Floodplain Management and Wetland Protection Procedures; Part 64, Floodplain Management and Wetland Protection Procedures; Federal laws or regulations applicable to federal Assistance Programs; Part 69, New Restrictions on Lobbying; Part 70, Uniform Administrative Requirements for Grants and Cooperative Agreements (including sub-awards) with Institutions of Higher Learning, Hospitals and other Non-Profit Organizations; and Part 83, Government- Wide Requirements for a Drug Free Workplace (grants).

2. Travel Expenses

SUB-RECIPIENT as provided herein may be compensated for SUB-RECIPIENT'S reasonable travel expenses incurred in the performance of this Agreement, to include travel and per diem, unless otherwise expressed. Travel including in-State and out-of-State travel shall not be reimbursed without prior written authorization from the UASI Grant Office.

SUB-RECIPIENT'S travel and per diem reimbursement costs shall be reimbursed based on the SUB-RECIPIENT'S travel policies and procedures. If SUB-RECIPIENT does not have established travel policies and procedures, SUB-RECIPIENT'S reimbursement rates shall not exceed the amounts established under 5 U.S.C 5701-11, ("Travel and Subsistence Expenses; Mileage Allowances"), or by the Administrator of General Services, or by the President (or his or her designee) pursuant to any provisions of such subchapter must apply to travel under federal awards (48 CFR 31.205-46(a)).

3. Personally Identifiable Information

SUB-RECIPIENT collecting Personally Identifiable Information (PII) must have a publically-available policy that describes what PII they collect, how they plan to use the PII, whether they share PII with third parties, and how individuals may have their PII corrected where appropriate. DHS defines personally identifiable information (PII) as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual.

4. Hotel and Motel Fire Safety Act of 1990

SUB-RECIPIENT must ensure that all conference, meeting, convention, or training space funded in whole or in part with Federal funds complies with Section 6 of the fire prevention and control guidelines of the Federal Fire Prevention and Control Act of 1974, 15 U.S.C. §2225a.

5. Terrorist Financing E.O. 13224

SUB-RECIPIENT must comply with U.S. Executive Order 13224 and U.S. law that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism.

6. USA Patriot Act of 2001

SUB-RECIPIENT must comply with the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA Patriot Act), which amends 18 U.S.C. §§175-175c.

7. Acknowledgement of Federal Funding from DHS

SUB-RECIPIENT must acknowledge their use of federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.

8. Federal Debt Status

SUB-RECIPIENT is required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. See OMB Circular A-129.

9. Fly America Act of 1974

SUB-RECIPIENT must comply with Preference for U.S. Flag Air Carriers: (air carriers holding certificates under 49 U.S.C. § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942

10. Noncompliance

SUB-RECIPIENT understands that failure to comply with any of the above assurances may result in suspension, termination or reduction of grant funds, and repayment by SUB-RECIPIENT to CITY of any unlawful expenditures.

C. Compliance With Grant Assurances

To obtain the Grant Funds, the Grantor required an authorized representative of the CITY to sign certain promises regarding the way the Grant Funds would be spent ("Grant Assurances"), attached hereto as Exhibit C. By signing these Grant Assurances, the CITY became liable to the Grantor for any funds that are used in violation of the grant requirements. SUB-RECIPIENT shall be liable to the Grantor for any funds the Grantor determines SUB-RECIPIENT used in violation of these Grant Assurances. SUB-RECIPIENT shall indemnify and hold harmless the CITY for any sums the Grantor determines SUB-RECIPIENT used in violation of the Grant Assurances.

§414. Federal, State and Local Taxes

Federal, State and local taxes shall be the responsibility of SUB-RECIPIENT as an independent party and not as a CITY employee.

§415. Inventions, Patents and Copyrights

A. Reporting Procedure for Inventions

If any project produces any invention or discovery (Invention) patentable or otherwise under title 35 of the U.S. Code, including, without limitation, processes and business methods made in the course of work under this Agreement, the SUB-RECIPIENT shall report the fact and disclose the Invention promptly and fully to the CITY. The CITY shall report the fact and disclose the Invention to the Grantor. Unless there is a prior agreement between the CITY and the Grantor, the Grantor shall determine whether to seek protection on the Invention. The Grantor shall determine how the rights in the Invention, including rights under any patent issued thereon, will be allocated and administered in order to protect the public interest consistent with the policy ("Policy") embodied in the Federal Acquisition Regulations

System, which is based on Ch. 18 of title 35 U.S.C. Sections 200, et seq. (Pub. L. 95-517, Pub. L. 98-620, 37 CFR part 401); Presidential Memorandum on Government Patent Policy to the Heads of the Executive Departments and Agencies, dated 2/18/1983); and Executive Order 12591, 4/10/87, 52 FR 13414, 3 CFR, 1987 Comp., p. 220 (as amended by Executive Order 12618, 12/22/87, 52 FR 48661, 3 CFR, 1987 Comp., p. 262). SUB-RECIPIENT hereby agrees to be bound by the Policy, and will contractually require its personnel to be bound by the Policy.

B. Rights to Use Inventions

CITY shall have an unencumbered right, and a non-exclusive, irrevocable, royalty- free license, to use, manufacture, improve upon, and allow others to do so for all government purposes, any Invention developed under this Agreement.

C. Copyright Policy

1. Unless otherwise provided by the terms of the Grantor or of this Agreement, when copyrightable material ("Material") is developed under this Agreement, the author or the CITY, at the CITY'S discretion, may copyright the Material. If the CITY declines to copyright the Material, the CITY shall have an unencumbered right, and a non-exclusive, irrevocable, royalty- free license, to use, manufacture, improve upon, and allow others to do so for all government purposes, any Material developed under this Agreement.
2. The Grantor shall have an unencumbered right, and a non-exclusive, irrevocable, royalty-free license, to use, manufacture, improve upon, and allow others to do so for all government purposes, any Material developed under this Agreement or any Copyright purchased under this Agreement.
3. SUB-RECIPIENT shall comply with all applicable requirements in the Code of Federal Regulations related to copyrights and copyright policy.

D. Rights to Data

The Grantor and the CITY shall have unlimited rights or copyright license to any data first produced or delivered under this Agreement. "Unlimited rights" means the right to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform and display publicly, or permit others to do so; as required by 48 CFR 27.401. Where the data are not first produced under this Agreement or are published copyrighted data with the notice of 17 U.S.C. Section 401 or 402, the Grantor acquires the data under a copyright license as set forth in 48 CFR 27.404(f)(2) instead of unlimited rights. (48 CFR 27.404(a)).

E. Obligations Binding on Subcontractors

SUB-RECIPIENT shall require all subcontractors to comply with the obligations of this section by incorporating the terms of this section into all subcontracts.

F. Patents and Intellectual Property Rights

Unless otherwise provided by law, SUB-RECIPIENT is subject to the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and codified in 35 U.S.C. § 200 et seq. SUB-RECIPIENT is subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from financial assistance awards located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. § 401.14.

§416. Minority, Women, And Other Business Enterprise Outreach Program

It is the policy of the CITY to provide minority business enterprises (MBEs), women business enterprises (WBEs) and all other business enterprises an equal opportunity to participate in the performance of all SUB-RECIPIENT contracts, including procurement, construction and personal services. This policy applies to all Contractors and Sub-Contractors.

V

DEFAULTS, SUSPENSION, TERMINATION, AND AMENDMENTS

§501. Defaults

Should SUB-RECIPIENT fail for any reason to comply with the contractual obligations of this Agreement within the time specified by this Agreement, the CITY reserves the right to terminate the Agreement, reserving all rights under state and federal law.

§502. Amendments

Any change in the terms of this Agreement, including changes in the services to be performed by SUB-RECIPIENT and any increase or decrease in the amount of compensation which are agreed to by the CITY and SUB-RECIPIENT shall be incorporated into this Agreement by a written amendment properly executed and signed by the person authorized to bind the parties thereto.

SUB-RECIPIENT agrees to comply with all future CITY Directives, or any rules, amendments or requirements promulgated by the CITY affecting this Agreement.

VI
ENTIRE AGREEMENT

§601. Complete Agreement

This Agreement contains the full and complete Agreement between the two parties. Neither verbal agreement nor conversation with any officer or employee of either party shall affect or modify any of the terms and conditions of this Agreement.

§602. Number of Pages and Attachments

This Agreement is executed in two (2) duplicate originals, each of which is deemed to be an original. This Agreement includes twenty-seven (28) pages and three (3) Exhibits which constitute the entire understanding and agreement of the parties.

IN WITNESS WHEREOF, the City and ORANGE COUNTY FIRE AUTHORITY have caused this Agreement to be executed by their duly authorized representatives on the date first set forth above.

ATTEST:

CITY OF SANTA ANA, a municipal
Corporation of the State of California

By: _____
Maria D. Huizar
Clerk of the Council

By: _____
Raul Godinez II
City Manager

RECOMMENDED FOR APPROVAL:

By: _____
David Valentin
Acting Chief of Police

SUB-RECIPIENT
ORANGE COUNTY FIRE AUTHORITY
DUNS # 07-2527005



APPROVED AS TO FORM:

By: _____
Tamara Bogosian
Assistant City Attorney

By: _____

Printed Name _____

Title _____

APPROVED AS TO FORM

By: _____

Printed Name _____

Title _____

EXHIBIT A
CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER
RESPONSIBILITY MATTERS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under the applicable CFR covering New Restrictions on Government-wide Debarment and Suspension (Nonprocurement). The certification shall be treated as a material representation of fact upon which reliance will be placed when the Agency determines to award the covered transaction or cooperative agreement.

As required by Executive Order 12549, Debarment and Suspension, and implemented under the applicable CFR, for prospective participants in covered transactions, as defined in the applicable CFR

A. The applicant certifies that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal State or local) with commission of any of these offenses enumerated in paragraph (1) (b) of this certification; and
- (d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

Authorized Agent Signature

Printed or Typed Name

Title

Address: _____

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this document, the prospective recipient of Federal assistance funds is providing the certification as set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective recipient of Federal assistance funds knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective recipient of Federal assistance funds shall provide immediate written notice to the person to whom this agreement is entered, if at any time the prospective recipient of Federal assistance funds learns that its certification was erroneous, when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549.
5. The prospective recipient of Federal assistance funds agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective recipient of Federal assistance funds further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Procurement or Non Procurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

EXHIBIT B
CERTIFICATION REGARDING LOBBYING
Certification for Contracts, Grants, Loans
and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL "Disclosure Form to Report Lobbying" in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352 Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

AGREEMENT NUMBER

CONTRACTOR/BORROWER/AGENCY

NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

SIGNATURE

DATE



EXHIBIT B
CERTIFICATION REGARDING LOBBYING
Certification for Contracts, Grants, Loans
and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL "Disclosure Form to Report Lobbying" in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352 Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

AGREEMENT NUMBER

CONTRACTOR/BORROWER/AGENCY

NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

SIGNATURE

DATE

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this document, the prospective recipient of Federal assistance funds is providing the certification as set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective recipient of Federal assistance funds knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective recipient of Federal assistance funds shall provide immediate written notice to the person to whom this agreement is entered, if at any time the prospective recipient of Federal assistance funds learns that its certification was erroneous, when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549.
5. The prospective recipient of Federal assistance funds agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective recipient of Federal assistance funds further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Procurement or Non Procurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

EXHIBIT C
California Governor's Office of Emergency Services
Standard Assurances
(For All Cal OES Federal Grant Programs)

Name of Applicant: _____
Address: _____
City: _____ State: _____ Zip Code: _____
Telephone Number: _____ Fax Number: _____
E-Mail Address: _____



As the duly authorized representative of the Applicant, I hereby certify that the Applicant has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay any non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application, within prescribed timelines.

I further acknowledge that the Applicant is responsible for reviewing and adhering to all requirements within the:

- (a) Applicable Federal Regulations (see below);
- (b) Federal Program Notice of Funding Opportunity (NOFO);
- (c) California Supplement to the NOFO; and
- (d) Federal and State Grant Program Guidelines.

Federal Regulations

Government cost principles, uniform administrative requirements and audit requirements for federal grant programs are housed in Title 2, Part 200 of the Code of Federal Regulations (CFR) and in updates issued by the Office of Management and Budget (OMB) on <http://www.whitehouse.gov/omb/>.

Significant state and federal grant award requirements (some of which appear in the documents listed above) are called out below. The Applicant hereby agrees to comply with the following:

1. Proof of Authority

The Applicant will obtain written authorization from the city council, governing board or authorized body in support of this project. This written authorization must specify that the Applicant and the city council, governing board or authorized body agree:

- (a) To provide all matching funds required for said project and that any cash match will be appropriated as required.
- (b) Any liability arising out of the performance of this agreement shall be the responsibility of the Applicant and the city council, governing board or authorized body.
- (c) Grant funds shall not be used to supplant expenditures controlled by the city council, governing board or authorized body.
- (d) The official executing this agreement is, in fact, authorized to do so.

This Proof of Authority must be maintained on file and readily available upon request.

2. Period of Performance

The Applicant will initiate work after approval of the award and complete all work within the period of performance specified in the grant.

Initials _____

3. Lobbying and Political Activities

As required by Section 1352, Title 31 of the United States Code (U.S.C.), for persons entering into a contract, grant, loan or cooperative agreement from an agency or requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan, the Applicant certifies that:

- (a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- (b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- (c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

The Applicant will also comply with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and §§7324- 7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.

Finally, the Applicant agrees that federal funds will not be used, directly or indirectly, to support the enactment, repeal, modification or adoption of any law, regulation or policy without the express written approval from the California Governor's Office of Emergency Services (Cal OES) or the federal awarding agency.

4. Debarment and Suspension

As required by Executive Orders 12549 and 12689, and 2 C.F.R. §200.212 and codified in 2 C.F.R. Part 180, Debarment and Suspension, the Applicant will provide protection against waste, fraud, and abuse by debarring or suspending those persons deemed irresponsible in their dealings with the federal government. The Applicant certifies that it and its principal, subgrantees, recipients or subrecipients:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
- (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain,

Initials _____

- or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application had one or more public transaction (federal, state, or local) terminated for cause or default.

Where the Applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

5. Non-Discrimination and Equal Employment Opportunity

The Applicant will comply with all federal statutes relating to non-discrimination. These include, but are not limited to, the following:

- (a) Title VI of the Civil Rights Act of 1964 (Public Law (P.L.) 88-352 and 42 U.S.C. §2000d et. seq.) which prohibits discrimination on the basis of race, color, or national origin and requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services;
- (b) Title IX of the Education Amendments of 1972, (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex in any federally funded educational program or activity;
- (c) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. §794), which prohibits discrimination against those with disabilities or access and functional needs;
- (d) Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability and requires buildings and structures be accessible to those with disabilities and access and functional needs (42 U.S.C. §§ 12101-12213.);
- (e) Age Discrimination Act of 1975, (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age;
- (f) Public Health Service Act of 1912 (42 U.S.C. §§ 290), relating to confidentiality of patient records regarding substance abuse treatment;
- (g) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §3601 et seq.), relating to nondiscrimination in the sale, rental or financing of housing as implemented by the Department of Housing and Urban Development at 24 C.F.R. Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units—i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)—be designed and constructed with certain accessible features (See 24 C.F.R. § 100.201);
- (h) Executive Order 11246, which prohibits federal contractors and federally assisted construction contractors and subcontractors, who do over \$10,000

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in Government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identification, or national origin;

- (i) Executive Order 11375, which bans discrimination on the basis of race, color, religion, sex, sexual orientation, gender identification, or national origin in hiring and employment in both the United States federal workforce and on the part of government contractors;
- (j) California Public Contract Code §10295.3, which prohibits discrimination based on domestic partnerships and those in same sex marriages;
- (k) DHS policy to ensure the equal treatment of faith-based organizations, under which all applicants and recipients must comply with equal treatment policies and requirements contained in 6 C.F.R. Part 19;
- (l) Any other nondiscrimination provisions in the specific statute(s) under which application for federal assistance is being made; and
- (m) The requirements of any other nondiscrimination statute(s) which may apply to the application.

In addition to the items listed in (a) through (m), the Applicant will comply with California's Fair Employment and Housing Act (FEHA). FEHA prohibits harassment and discrimination in employment because of ancestry, familial status, race, color, religious creed (including religious dress and grooming practices), sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth, or breastfeeding), gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, mental and physical disability, genetic information, medical condition, age, pregnancy, denial of medical and family care leave, or pregnancy disability leave (California Government Code §§ 12940, 12945, 12945.2), military and veteran status, and/or retaliation for protesting illegal discrimination related to one of these categories, or for reporting patient abuse in tax supported institutions.

6. Drug-Free Workplace

As required by the Drug-Free Workplace Act of 1988 (41 U.S.C. §701 et seq.), the Applicant certifies that it will maintain a drug-free workplace and a drug-free awareness program as outlined in the Act.

7. Environmental Standards

The Applicant will comply with state and federal environmental standards, which may be prescribed pursuant to the following, as applicable:

- (a) California Environmental Quality Act (CEQA) (California Public Resources Code §§ 21000- 21177), to include coordination with the city or county planning agency;
- (b) CEQA Guidelines (California Code of Regulations, Title 14, Division 6, Chapter 3, §§ 15000- 15387);
- (c) Federal Clean Water Act (CWA) (33 U.S.C. § 1251 et seq.), which establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters;
- (d) Federal Clean Air Act of 1955 (42 U.S.C. § 7401) which regulates air

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- emissions from stationary and mobile sources;
- (e) Institution of environmental quality control measures under the National Environmental Policy Act (NEPA) of 1969 (P.L. 91-190); the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA; and Executive Order 12898 which focuses on the environmental and human health effects of federal actions on minority and low-income populations with the goal of achieving environmental protection for all communities;
 - (f) Evaluation of flood hazards in floodplains in accordance with Executive Order 11988;
 - (g) Executive Order 11514 which sets forth national environmental standards;
 - (h) Executive Order 11738 instituted to assure that each federal agency empowered to enter into contracts for the procurement of goods, materials, or services and each federal agency empowered to extend federal assistance by way of grant, loan, or contract shall undertake such procurement and assistance activities in a manner that will result in effective enforcement of the Clean Air Act and the Federal Water Pollution Control Act Executive Order 11990 which requires preservation of wetlands;
 - (i) The Safe Drinking Water Act of 1974, (P.L. 93-523);
 - (j) The Endangered Species Act of 1973, (P.L. 93-205);
 - (k) Assurance of project consistency with the approved state management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.);
 - (l) Conformity of Federal Actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §7401 et seq.);
 - (m) Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

The Applicant shall not be: 1) in violation of any order or resolution promulgated by the State Air Resources Board or an air pollution district; 2) subject to a cease and desist order pursuant to § 13301 of the California Water Code for violation of waste discharge requirements or discharge prohibitions; or 3) determined to be in violation of federal law relating to air or water pollution.

8. Audits

For subrecipients expending \$750,000 or more in federal grant funds annually, the Applicant will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and Title 2 of the Code of Federal Regulations, Part 200, Subpart F Audit Requirements.

9. Access to Records

In accordance with 2 C.F.R. §200.336, the Applicant will give the awarding agency, the Comptroller General of the United States and, if appropriate, the state, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award.

The Applicant will require any subrecipients, contractors, successors, transferees and

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assignees to acknowledge and agree to comply with this provision.

10. Conflict of Interest

The Applicant will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

11. Financial Management

False Claims for Payment The Applicant will comply with 31 U.S.C §§ 3729-3733 which sets forth that no recipient shall submit a false claim for payment, reimbursement or advance.

12. Reporting - Accountability

The Applicant agrees to comply with applicable provisions of the Federal Funding Accountability and Transparency Act (FFATA) (P.L. 109-282), specifically (a) the reporting of subawards obligating \$25,000 or more in federal funds and (b) executive compensation data for first-tier subawards. This includes the provisions of FFATA, which includes requirements for executive compensation, and also requirements implementing the Act for the non-federal entity at 2 C.F.R. Part 25 Financial Assistance Use of Universal Identifier and Central Contractor Registration and 2 C.F.R. Part 170 Reporting Subaward and Executive Compensation Information.

13. Whistleblower Protections

The Applicant also must comply with statutory requirements for whistleblower protections at 10 U.S.C. § 2409, 41 U.S.C. § 4712, and 10 U.S.C. § 2324, 41 U.S.C. § 4304 and § 4310.

14. Human Trafficking

The Applicant will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. § 7104) which prohibits grant award recipients or a subrecipient from: (1) engaging in trafficking in persons during the period of time that the award is in effect; (2) procuring a commercial sex act during the period of time that the award is in effect; or (3) using forced labor in the performance of the award or subawards under the award.

15. Labor Standards

The Applicant will comply with the following federal labor standards:

- (a) The Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), as applicable, and the Copeland Act (40 U.S.C. § 3145 and 18 U.S.C. § 874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally-assisted construction contracts or subcontracts; and
- (b) The Federal Fair Labor Standards Act (29 U.S.C. § 201 et al.) as they apply to employees of institutes of higher learning (IHE), hospitals and other non-profit organizations.

16. Worker's Compensation

The Applicant must comply with provisions which require every employer to be insured to protect workers who may be injured on the job at all times during the

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performance of the work of this Agreement, as per the workers compensation laws set forth in California Labor Code §§ 3700 et seq.

17. Property-Related

If applicable to the type of project funded by this federal award, the Applicant will:

- (a) Comply with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of federal participation in purchase;
- (b) Comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires subrecipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more;
- (c) Assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), Executive Order 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. § 469a-1 et seq.); and
- (d) Comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4831 and 24 CFR Part 35) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

18. Certifications Applicable Only to Federally-Funded Construction Projects

For all construction projects, the Applicant will:

- (a) Not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the federal awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with federal assistance funds to assure nondiscrimination during the useful life of the project;
- (b) Comply with the requirements of the awarding agency with regard to the drafting, review and approval of construction plans and specifications; and
- (c) Provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progressive reports and such other information as may be required by the assistance awarding agency or State.

19. Use of Cellular Device While Driving is Prohibited

Applicants are required to comply with California Vehicle Code sections 23123 and 23123.5. These laws prohibit driving a motor vehicle while using an electronic wireless communications device to write, send, or read a text-based communication. Drivers are also prohibited from the use of a wireless telephone without hands-free listening and talking, unless to make an emergency call to 911, law enforcement, or similar services.

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20. California Public Records Act and Freedom of Information Act

The Applicant acknowledges that all information submitted in the course of applying for funding under this program, or provided in the course of an entity's grant management activities that are under Federal control, is subject to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the California Public Records Act, California Government Code section 6250 et seq. The Applicant should consider these laws and consult its own State and local laws and regulations regarding the release of information when reporting sensitive matters in the grant application, needs assessment, and strategic planning process.

HOMELAND SECURITY GRANT PROGRAM - PROGRAM SPECIFIC ASSURANCES / CERTIFICATIONS

21. Reporting Accusations and Findings of Discrimination

If during the past three years the recipient has been accused of discrimination on any basis the recipient must provide a list of all such proceedings, pending or completed, including outcome and copies of settlement agreements to the DHS Financial Assistance Office and the DHS Office for Civil Rights and Civil Liberties (CRCL) by e-mail at crcl@hq.dhs.gov or by mail at U.S. Department of Homeland Security Office for Civil Rights and Civil Liberties, Building 410, Mail Stop #0190, Washington, D.C. 20528.

If the courts or administrative agencies make a finding of discrimination on grounds of race, color, national origin (including LEP), sex, age, disability, religion, or familial status against the recipient, or the recipients settle a case or matter alleging such discrimination, recipients must forward a copy of the complaint and findings to the DHS Financial Assistance Office and the CRCL by e-mail or mail at the addresses listed above.

The United States has the right to seek judicial enforcement of these obligations.

22. Acknowledgment of Federal Funding from DHS

All recipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.

23. Activities Conducted Abroad

All recipients must ensure that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

24. Best Practices for Collection and Use of Personally Identifiable Information (PII)

DHS defines personally identifiable information (PII) as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. All recipients who collect PII

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are required to have a publically-available privacy policy that describes standards on the usage and maintenance of PII they collect. Recipients may also find the DHS Privacy Impact Assessments: Privacy Guidance and Privacy template a useful resource respectively.

25. Copyright

All recipients must affix the applicable copyright notices of 17 U.S.C. §§ 401 or 402 and an acknowledgement of U.S. Government sponsorship (including the award number) to any work first produced under federal financial assistance awards.

26. Duplication of Benefits

Any cost allocable to a particular federal financial assistance award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other federal financial assistance awards to overcome fund deficiencies, to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions, or for other reasons. However, these prohibitions would not preclude recipients from shifting costs that are allowable under two or more awards in accordance with existing federal statutes, regulations, or the federal financial assistance award terms and conditions.

27. Energy Policy and Conservation Act

All recipients must comply with the requirements of 42 U.S.C. § 6201 which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.

28. Federal Debt Status

All recipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. See OMB Circular A-129.

29. Fly America Act of 1974

All recipients must comply with Preference for U.S. Flag Air Carriers: (air carriers holding certificates under 49 U.S.C. § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942

30. Hotel and Motel Fire Safety Act of 1990

In accordance with Section 6 of the Hotel and Motel Fire Safety Act of 1990, all recipients must ensure that all conference, meeting, convention, or training space funded in whole or in part with federal funds complies with the fire prevention and control guidelines of the Federal Fire Prevention and Control Act of 1974, as amended, 15 U.S.C. § 2225a.

31. Non-supplanting Requirements

All recipients who receive federal financial assistance awards made under programs

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that prohibit supplanting by law must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.

32. Patents and Intellectual Property Rights

Unless otherwise provided by law, recipients are subject to the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and codified in 35 U.S.C. § 200 et seq. All recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from financial assistance awards located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. § 401.14.

33. SAFECOM

All recipients who receive federal financial assistance awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

34. Terrorist Financing

All recipients must comply with Executive Order 13224 and U.S. law that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. Recipients are legally responsible to ensure compliance with the Order and laws.

35. Reporting of Matters Related to Recipient Integrity and Performance

If the total value of the recipient's currently active grants, cooperative agreements, and procurement contracts from all federal assistance offices exceeds \$10,000,000 for any period of time during the period of performance of this federal financial assistance award, you must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. Part 200, Appendix XII, the full text of which is incorporated here by reference in the award terms and conditions.

36. USA Patriot Act of 2001

All recipients must comply with requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act), which amends 18 U.S.C. §§ 175–175c.

37. Use of DHS Seal, Logo, and Flags

All recipients must obtain permission from their DHS Financial Assistance Office, prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

IMPORTANT

The purpose of the assurance is to obtain federal and state financial assistance, including any and all federal and state grants, loans, reimbursement, contracts, etc. The

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Applicant recognizes and agrees that state financial assistance will be extended based on the representations made in this assurance. This assurance is binding on the Applicant, its successors, transferees, assignees, etc. Failure to comply with any of the above assurances may result in suspension, termination, or reduction of grant funds.

All appropriate documentation, as outlined above, must be maintained on file by the Applicant and available for Cal OES or public scrutiny upon request. Failure to comply with these requirements may result in suspension of payments under the grant or termination of the grant or both and the subrecipient may be ineligible for award of any future grants if the Cal OES determines that any of the following has occurred: (1) the recipient has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

All of the language contained within this document must be included in the award documents for all subawards at all tiers. All recipients are bound by the Department of Homeland Security Standard Terms and Conditions 2017, Version 7.0, hereby incorporated by reference, which can be found at: <https://www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions>.

Applicant: _____

Signature of Authorized Agent: _____

Printed Name of Authorized Agent: _____

Title: _____ Date: _____



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Orange County Fire Authority
AGENDA STAFF REPORT

Board of Directors Meeting
July 26, 2018

Agenda Item No. 3B
Consent Calendar

**2017 Urban Areas Security Initiative Grant Program
Agreement to Transfer Property or Funds**

Contact(s) for Further Information

Mark Sanchez, Assistant Chief
Operations Department

marksanchez@ocfa.org

714.573.6014

Jeff Hoey, Battalion Chief
Emergency Planning and Coordination

jeffhoey@ocfa.org

714.573.6056

Summary

This annual item is submitted for approval of FY 2017 Urban Areas Security Initiative (UASI) Grant Program award and for authorization for the Fire Chief to execute the necessary Agreement(s). The Grant resources will be utilized to enhance the OCFA's ability to prevent, prepare for, respond to, and recover from, domestic and international terrorism incidents.

Prior Board/Committee Action

Budget and Finance Committee Recommendation: *APPROVE*

At its regular July 11, 2018, meeting, the Budget and Finance Committee reviewed and unanimously recommended approval of this item.

RECOMMENDED ACTION(S)

1. Approve the FY 2017 Urban Areas Security Initiative Grant Program Agreement and authorize the Fire Chief to execute it and any necessary attachments and agreement(s) to accept and administer the UASI Grant.
2. Approve a budget adjustment to the FY 2018/19 General Fund (121) budget increasing revenues and expenditures by \$100,000, due to an additional grant award from the FY 2016 Grant Program.

Impact to Cities/County

Not Applicable.

Fiscal Impact

The FY 2018/19 General Fund revenues and expenditures will be increased by an amount not to exceed \$100,000 for the Tactical Medic Program Training. Other UASI training, education and equipment will be reimbursed as needed.

Background

On November 13, 2003, the United States Department of Homeland Security established the UASI Grant Program through the Federal Office of Domestic Preparedness. The grant only allowed two cities in Orange County, Anaheim and Santa Ana, to apply for funds through the UASI.

To ensure these funding sources did not undermine the process already in place, all principal parties involved formed a collaborative regional effort to facilitate the needs for the entire operational area. This ensured the funds were utilized to provide for the region and not one particular jurisdiction. Beginning in FY 2006, the two UASI cities combined to form a single entity, and have divided the County into two geographic regions. The City of Santa Ana is responsible for the southwest portion of the County and the City of Anaheim is responsible for the northeast portion. Utilizing the Strategic Initiatives developed by the Urban Area Working Group, priorities were established for equipment, training, and planning.

On May 9, 2018, OCFA was notified it would be eligible for additional funds for specific reimbursements/transfer of property as part of the FY 2017~~6~~ UASI Grant Program. The 2016 Grant funds were not fully utilized by some agencies, which is why the OCFA has been awarded additional funds from this prior grant. Grant funds are designated for use to reimburse costs related to training, including participant tuition, instructor participation, course delivery, and hosting. This grant agreement also allows the UASI administrator to transfer equipment to the OCFA. The UASI Grant Program has approved the OCFA Tactical Medic Training Program and will reimburse the OCFA for the training costs not to exceed \$100,000. This training program will enhance the Joint Hazards Assessment Team responses, and will assist our law enforcement partners by providing embedded tactical medics with its special operations programs.

Though the OCFA has not received notification that we are receiving 2017 grant funds, UASI has changed its award process, which includes execution of a subrecipient agreement in advance of any grant award. In order to be eligible for the OCFA to receive grant funds for reimbursement or equipment, OCFA must have the 2017 executed agreement on file with UASI.

Recommendation

This grant is very valuable to the OCFA and its member agencies; therefore, approval of the grant award is recommended. Staff may return later in the fiscal year for additional revenue and expenditure budget adjustments if additional programs are approved for reimbursement by the Grant Administrator/UASI.

Attachment(s)

FY 2017 Urban Areas Security Initiative Grant Program Agreement (On file in the Clerk's Office and available on the OCFA website.)



Orange County Fire Authority
AGENDA STAFF REPORT

Board of Directors
July 26, 2018

Agenda Item No. 3C
Consent Calendar

Project Overview for Construction of Fire Station 10 (Yorba Linda)

Contact(s) for Further Information

Dave Anderson, Assistant Chief Support Services Department	daveanderson@ocfa.org	714.573.6006
Patrick Bauer, Property Manager	patrickbauer@ocfa.org	714.573.6471

Summary

This item provides a high-level overview of the OCFA's budget and project plan to construct replacement Fire Station 10 (Yorba Linda).

Prior Board/Committee Action

Not Applicable.

RECOMMENDED ACTION(S)

Receive and file the report.

Impact to Cities/County

Construction of a replacement for Fire Station 10 (Yorba Linda) will enhance OCFA's ability to provide regional services with a larger facility, required to accommodate a regional fire truck.

Fiscal Impact

There is currently \$3,750,000 allocated in the FY 2018/19 budget and \$3,750,000 allocated in the FY 2019/20 budget for the replacement Fire Station 10. The total amount of \$7.5 million was divided over two fiscal years with the anticipation of needing funds to purchase an acceptable lot, initial design, and development costs in the current fiscal year. After regional organization and operational needs are decided (e.g. division/battalion headquarters, specialty resources, etc.), additional funds required for construction will be determined after site acquisition and securing an engineer's estimate. At that point, if needed, staff will be able to refine its budgetary needs and request any budget adjustment to the Board in FY 2019/20.

Background

Yorba Linda is proceeding through a large redevelopment project of its downtown, and the City has expressed its desire to have Fire Station 10 relocated out of the redevelopment area. In addition, the existing station has exceeded its service life and, due to regional expansions, is not large enough to house the additional needed area resources (apparatus and personnel).

With Yorba Linda's Downtown Redevelopment efforts and modifications to Lemon Street progressing, staff in conjunction with a real estate advisor have evaluated and identified a number of potential sites; both public and private. As allowed by law, staff intends to provide the Board with information relating to real property negotiations in Closed Session.

Attachment(s)

None.



Orange County Fire Authority
AGENDA STAFF REPORT

Board of Directors Meeting
July 26, 2018

Agenda Item No. 3D
Consent Calendar

July 2018 Legislative Report

Contact(s) for Further Information

Mark Sanchez, Assistant Chief
Operations Department

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714.573.6012

Jay Barkman, Legislative Analyst

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714.573.6048

Summary

This item is submitted to update Directors on amendments to AB 1912 (Rodriguez).

Prior Board/Committee Action

A review of AB 1912 was presented at both the Executive Committee and Board of Directors meetings on May 24, 2018. The Board approved staff's recommendation to "seek amendments" excluding liabilities of Structural Fire Fund cities and to avoid reporting of OCFA's retirement liabilities by member agencies.

This item has been scheduled for Executive Committee's consideration at its July 26, 2018, meeting.

RECOMMENDED ACTION(S)

1. Adopt a neutral position on AB 1912 (Rodriguez).
2. Direct staff to continue to monitor AB 1912 and report to the Executive Committee any amendments that significantly impact the OCFA or its member agencies.

Impact to Cities/County

Not Applicable.

Fiscal Impact

Not Applicable.

Background

AB 1912 (Rodriguez) JPA Pension Liability

Staff Recommendation:

Status: Senate Appropriations Committee

Reviewed by: Lori Zeller, Assistant Chief Business Services

AB 1912 by Assemblymember Rodriguez (D-Pomona) was amended on July 3, 2018. The author and public employee groups, which includes Orange County Professional Firefighters Association (OCPFA), Local 3631, introduced the bill in response to a 2015 delinquency by a Joint Powers Authority (JPA). In 2014, the East San Gabriel Valley Human Services Consortium discontinued services and terminated most of its employees. The JPA was comprised of the cities of Azusa, Covina, Glendora, and West Covina.

According to supporters and the committee analysis, when the JPA could meet its California Public Employees Retirement System's (CalPERS) obligations, per the committee analysis staff report "CalPERS then sought payments from the JPA's member agencies." However, those four cities responded that they were under no obligation to pay the amount owed. Prior to the most recent amendments, the bill would have held all members of a JPA to be jointly and severally liable for all obligations to a public retirement system. This was seen as requiring local agencies to report pension liabilities belonging to and being paid by JPAs.

The amended bill proposes that an apportionment of pension liabilities be triggered only if a JPA terminates its retirement plan, dissolves, or ceases operation. It is believed that with these revisions, AB 1912 will no longer require member agencies to report the JPA's pension liabilities. Once a JPA terminates its retirement plan, dissolves or ceases operation, member agencies of a JPA will need to mutually agree on dividing the liability, so that the sum of the allocations equals 100%. Failing mutual agreement, the bill requires the board of a retirement system assign liability based on either the population of each member or the portion of service received. A member agency of the JPA is allowed to challenge the board's determination. In that case, the dispute would be referred to an arbitrator.

The bill states that member agencies, boards, or the arbitrator may also include a former member of the agency in the apportionment of liability.

Staff discussed the amendments with member agencies city managers and communicated to them the OCFA's auditor's view that the bill, as amended, would not require their cities to report OCFA's retirement liabilities. Staff recommends that OCFA adopt a neutral position and monitor the bill for future amendments. OCFA has been informed that the League of California Cities is considering a neutral position.

Attachment(s)

AB 1912 Bill Text

AMENDED IN SENATE JULY 3, 2018
AMENDED IN SENATE JUNE 20, 2018
AMENDED IN ASSEMBLY MAY 9, 2018
AMENDED IN ASSEMBLY APRIL 19, 2018
AMENDED IN ASSEMBLY MARCH 19, 2018
CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 1912

Introduced by Assembly Member Rodriguez

January 23, 2018

An act to amend Section 6508.1 of, to add Sections 6508.2, 20574.1, and 20575.1 to, and to repeal and add Section 20577.5 of, the Government Code, relating to public agencies, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1912, as amended, Rodriguez. Public employees' retirement: joint powers agreements: liability.

(1) Existing law establishes various public agency retirement systems, including, among others, the Public Employees' Retirement System, the State Teachers' Retirement System, the Judges' Retirement System II, and various county retirement systems pursuant to the County Employees Retirement Law of 1937. These systems provide defined pension benefits to public employees based on age, service credit, and amount of final compensation.

The Joint Exercise of Powers Act generally authorizes 2 or more public agencies, by agreement, to jointly exercise any common power.

Under the act, if an 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, liabilities, and obligations of the agency are the debts, liabilities, and obligations of the parties to the agreement, unless the agreement specifies otherwise. The act also authorizes a party to a joint powers agreement to separately contract for, or assume responsibilities for, specific debts, liabilities, or obligations of the agency.

This bill would eliminate that authorization, and would specify that if an agency established by a joint powers agreement participates in, or contracts with, a public retirement system, member agencies, both current and former to the agreement, would be required, ~~upon prior to~~ a termination or a decision to dissolve or cease ~~the~~ operations of the agency, to mutually agree as to the apportionment of the agency's retirement obligations among ~~themselves, within 60 calendar days,~~ *themselves*, provided that the agreement equals ~~the total~~ *100% of the* retirement liability of the agency. If the member agencies are unable to mutually agree to the apportionment, the bill would require ~~them to be jointly and severally liable for the retirement liability of the agency; the board to apportion the retirement liability of the agency to each member agency based on the share of service received from the agency, or the population of each member agency, as specified, and would establish procedures allowing a member agency to challenge the board's determination through the arbitration process.~~ The bill would also provide that if a judgment is rendered against an agency or a party to the agreement for a breach of its obligations to the retirement system, the time within which a claim for injury may be presented or an action commenced against the other party that is subject to the liability determined by the judgment begins to run when the judgment is rendered. The bill would specify that those provisions apply *both* retroactively to ~~all parties, both current and former, to the joint powers agreement; a member agency, or current and former member agency, that has an agreement with the board on or before January 1, 2019, and to new agreements with the board on or after that date.~~

(2) The Public Employees' Retirement Law (PERL) creates the Public Employees' Retirement System (PERS), which provides a defined benefit to members of the system, based on final compensation, credited service, and age at retirement, subject to certain variations. PERL vests management and control of PERS in its Board of Administration.

~~(3) Existing~~

Existing law authorizes the governing board of a contracting agency to terminate its membership with PERS, subject to specified criteria. Existing law requires the PERS board to enter into a specified agreement with the governing body of a terminating agency, upon request of that agency, to ensure that final compensation is calculated in the same manner as benefits of nonterminating agencies, and that related necessary adjustments in the employer's contribution rate are made and benefits adequately funded, including a lump-sum payment at termination, if agreed to by the terminating agency and the board. Existing law requires a terminating agency to notify the PERS board of its intention to enter into this agreement within a specified period of time. Existing law authorizes the PERS board to choose not to enter into an agreement to terminate if the board determines that it is not in the best interests of PERS. Existing law requires all plan assets and liabilities of a terminating agency to be deposited in a single pooled account, the terminated agency pool subaccount within the Public Employees' Retirement Fund, a continuously appropriated fund.

This bill would also require the PERS board to enter into the above-described agreement upon request of a member agency of a terminating agency formed under the Joint Exercise of Powers Act, and would require a member agency to notify the PERS board of its intention to enter into this agreement within a specified period of time. The bill would authorize the board, if it determines that it is not in the best interests of the retirement system, to choose not to enter into that agreement. To the extent that the bill would increase any lump-sum payments made by a terminating agency and deposited into a subaccount within the Public Employees' Retirement Fund, the bill would make an appropriation. The bill would also provide that if the governing body of a terminating agency or the governing bodies of its member agencies do not enter into an agreement, the member agencies would then assume the retirement obligations for their retirement systems.

(4)

(3) Existing law makes a terminated agency liable to the system for any deficit in funding for earned benefits, interest, and for reasonable and necessary costs of collection, including attorney's fees. Existing law provides that the board has a lien on the assets of a terminated contracting agency, as specified, and that assets shall also be available to pay actual costs, including attorney's fees necessarily expended for collection on the lien.

This bill would extend that liability and lien to all of the parties of a terminating agency that was formed under the Joint Exercise of Powers Act. To the extent that these changes would increase deposits in the Public Employees' Retirement Fund, the bill would make an appropriation.

(5)

(4) Existing law authorizes the board of PERS to elect not to impose a reduction, or to impose a lesser reduction, on a terminated plan if the board has made all reasonable efforts to collect the amount necessary to fully fund the liabilities of the plan and the board finds that not reducing the benefits, or imposing a lesser reduction, will not impact the actuarial soundness of the terminated agency pool.

This bill would eliminate that provision. The bill would require the board, prior to exercising its authority to reduce benefits, to consider and exhaust all options and necessary actions, including evaluating whether to bring a civil action against any member agencies to a terminated agency formed by an agreement under the Joint Exercise of Powers Act to compel payment of the terminated public agency's pension obligations. The bill would also specify that the board is entitled to reasonable attorney's fees in addition to other costs. The bill would also set forth related legislative findings.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares as follows:
- 2 (a) Retirement security is important to families, workers, and
- 3 communities, as well as to the local, regional, and statewide
- 4 economies, and provides financial security and dignity to those
- 5 who retire.
- 6 (b) A defined benefit plan offers, among other types of
- 7 retirement plans, a guarantee of financial security in retirement.
- 8 (c) A Joint Power Authority (JPA) created pursuant to the Joint
- 9 Exercise of Powers Act (Chapter 5 (commencing with Section
- 10 6500) of Division 7 of Title 1 of the Government Code) provides
- 11 important services and benefits to its geographical areas and
- 12 communities.

1 (d) A JPA may offer a defined benefit plan to attract, recruit,
2 and retain highly skilled employees toward providing services and
3 fulfilling its purpose.

4 (e) Employees who have been promised a retirement allowance
5 and the other benefits of a defined benefit plan by their employer
6 should be provided those benefits after reaching the requisite age,
7 based on years of service and an established benefit formula, as
8 promised by that employer.

9 (f) Further, an employee who accepts employment with a JPA
10 employer that promises a defined benefit plan may detrimentally
11 rely on the retirement benefit, as committed by the employer,
12 during his or her employment and retirement from that employer.

13 (g) Moreover, a JPA might have limited sources of revenue,
14 and an inability to increase, or secure additional sources of revenue,
15 that may lead to financial distress or insolvency of the JPA, absent
16 the financial surety of its member agencies and for the retirement
17 benefits of the JPA's employees.

18 (h) Thus, member agencies of a JPA should not be permitted
19 to absolve themselves of financial liability, in whole or in part,
20 that may result in a reduction of a retirement benefit to an employee
21 or retiree of a JPA of which the agencies are, or were, members.

22 (i) Therefore, in order to ensure that the board of a public
23 retirement system is meeting its fiduciary duties and responsibilities
24 to its members and the system, the board should be required to
25 consider and exhaust all options and necessary actions and be
26 permitted to seek legal redress on behalf of its members if an action
27 by the governing body of the JPA may result in a reduction of
28 retirement benefits to the employees or retirees of a JPA.

29 (j) Further, to ensure that the board is meeting its fiduciary duties
30 and responsibilities, contracts with the retirement system by a JPA
31 must protect present and future retirees of the JPA.

32 (k) For purposes of this section, "public retirement system"
33 means any pension or retirement system of a public employer,
34 including, but not limited to, an independent retirement plan offered
35 by a public employer that the public employer participates in or
36 offers to its employees for the purpose of providing retirement
37 benefits, or a system of benefits for public employees that is
38 governed by Section 401(a) of Title 26 of the United States Code.

39 SEC. 2. Section 6508.1 of the Government Code is amended
40 to read:

6508.1. (a) 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, liabilities, and obligations of the agency shall be debts, liabilities, and obligations of the parties to the agreement, unless the agreement specifies otherwise. However, the parties to the agreement may not agree otherwise with respect to the retirement liabilities of the agency if the agency contracts with a public retirement system.

(b) For purposes of this section, “public retirement system” means any pension or retirement system of a public employer, including, but not limited to, an independent retirement plan offered by a public employer that the public employer participates in or offers to its employees for the purpose of providing retirement benefits, or a system of benefits for public employees that is governed by Section 401(a) of Title 26 of the United States Code.

SEC. 3. Section 6508.2 is added to the Government Code, to read:

6508.2. (a) (1) ~~Upon~~ *Prior to a termination pursuant to Section 20570, 20571, or 20572, or a decision by the governing body of the agency to dissolve or to cease the operations of the agency, member agencies of an agency established by agreement under this chapter that participates in, or contracts with, a public retirement system, member agencies, both current and former, to the agreement, including all amendments thereto, shall mutually agree as to the apportionment of the agency’s retirement obligations among themselves, within 60 calendar days, provided that the agreement equals 100 percent of the total retirement liability of the agency. A copy of this mutual agreement, signed by all parties thereto, shall be provided to the board, which shall be reflected in the agreement with the board. If the member agencies are unable to mutually agree to apportionment of the total retirement liability of the agency, pursuant to this section, the member agencies shall be jointly and severally liable for the retirement liability of the agency. agree, the board shall apportion the retirement liability of the agency to each member agency based on the share of service received from the agency, or population of each member agency, such that the apportionment equals one hundred percent of the retirement liability of the agency, which shall be reflected in the agreement with the board.*

1 ~~(2) This section also applies to an agency that merges or reforms~~
2 ~~and continues an agreement with the public retirement system.~~

3 (2) A member agency may challenge the determination by the
4 board to apportion the retirement liability of the agency. However,
5 a member, or a former member, that is not identified by the board
6 pursuant to subdivision (a) shall not be permitted to challenge a
7 determination by the board.

8 (A) A challenge pursuant to paragraph (2) of subdivision (a)
9 shall be referred to an arbitrator who shall, at his or her discretion,
10 apportion the liability among the member agencies such that the
11 apportionment equals 100 percent of the retirement liability of the
12 agency.

13 (B) The final decision by the arbitrator shall be binding on all
14 member agencies to the decision, and all costs of arbitration shall
15 be equally shared among the current, or current and former,
16 members of the agency that are subject to the decision. The
17 arbitrator shall submit an official copy of his or her final
18 determination to the board within seven calendar days of the
19 decision.

20 (3) Mutual agreement among the member agencies, or a
21 determination by the board, as to the apportionment of the
22 retirement liability of the agency pursuant to paragraph (1) of
23 subdivision (a), or a decision by the arbitrator pursuant to
24 paragraph (2) of subdivision (a), may include the apportionment
25 of retirement liability to a former member of the agency.

26 (b) An agency shall not be permitted to terminate pursuant to
27 Section 20570, 20571, or 20572, nor shall a decision by the
28 governing body of the agency to dissolve, become effective until
29 a final decision, pursuant to paragraph (1) or paragraph (2) of
30 subdivision (a), is final.

31 (c) This section shall apply retroactively to a member agency,
32 or current and former member agency, that has an agreement in
33 existence with the board on or before January 1, 2019. In addition,
34 this section shall apply to a new agreement between an agency
35 and the board on or after January 1, 2019. However, this section
36 shall not apply to an agency established pursuant to this chapter
37 that has dissolved prior to January 1, 2019.

38 ~~(3)~~

39 (d) For purposes of this section, “board” means the board of
40 any pension or retirement system of a public employer, including,

1 but not limited to, an independent retirement plan offered by a
2 public employer that the public employer participates in or offers
3 to its employees for the purpose of providing retirement benefits,
4 or a system of benefits for public employees that is governed by
5 Section 401(a) of Title 26 of the United States Code.

6 ~~(b)~~

7 (e) Notwithstanding any other law, if a judgment is rendered
8 against an agency or a party to the agreement for a breach to its
9 obligations to the public retirement system, the time within which
10 a claim for injury may be presented or an action commenced
11 against any other party that is subject to the liability determined
12 by the judgment begins to run when the judgment is rendered.

13 ~~(e) This section shall apply retroactively to all parties, both~~
14 ~~current and former, to the agreement.~~

15 SEC. 4. Section 20574.1 is added to the Government Code, to
16 read:

17 20574.1. In lieu of the procedure set forth in Section 20574,
18 all parties to a terminating agency that was formed by an agreement
19 under Chapter 5 (commencing with Section 6500) of Division 7
20 of Title 1 shall be liable to the system for any deficit in funding
21 for earned benefits, as determined pursuant to Section 20577,
22 interest at the actuarial rate from the date of termination to the date
23 the agency pays the system, and reasonable and necessary costs
24 of collection, including attorney's fees. The board shall have a lien
25 on the assets of a terminated contracting agency and on the assets
26 of all parties to the terminating contracting agency, subject only
27 to a prior lien for wages, in an amount equal to the actuarially
28 determined deficit in funding for earned benefits of the employee
29 members of the agency, interest, and collection costs. The assets
30 shall also be available to pay actual costs, including attorney's
31 fees, necessarily expended for collection of the lien.

32 SEC. 5. Section 20575.1 is added to the Government Code, to
33 read:

34 20575.1. (a) Notwithstanding any other provision of this part
35 to the contrary, upon request of a terminating agency formed by
36 an agreement under Chapter 5 (commencing with Section 6500)
37 of Division 7 of Title 1 or of any member agency to the agreement,
38 the board shall enter into an agreement with the governing body
39 of a terminating agency or the governing body of the member
40 agency in order to ensure that (1) the final compensation used in

1 the calculation of benefits of its employees shall be calculated in
2 the same manner as the benefits of employees of agencies that are
3 not terminating, regardless of whether they retire directly from
4 employment with the terminating agency or continue in other
5 public service; and (2) related necessary adjustments in the
6 employer's contribution rate are made, from time to time, by the
7 board prior to the date of termination to ensure that benefits are
8 adequately funded or any other actuarially sound payment
9 technique, including a lump-sum payment at termination, is agreed
10 to by the governing body of the terminating agency and the board.

11 (b) A terminating agency formed by an agreement under Chapter
12 5 (commencing with Section 6500) of Division 7 of Title 1 that
13 will cease to exist or its member agency shall notify the board not
14 sooner than three years nor later than one year prior to the
15 terminating agency's termination date of its intention to enter into
16 agreement pursuant to this section. The terms of the agreement
17 shall be reflected in an amendment to the agency's contract with
18 the board.

19 (c) If the board, itself, determines that it is not in the best
20 interests of the system, it may choose not to enter into an agreement
21 pursuant to this section.

22 (d) If the governing body of a terminating agency formed by
23 an agreement under Chapter 5 (commencing with Section 6500)
24 of Division 7 of Title 1 or the governing bodies of its member
25 agencies do not enter into an agreement pursuant to this section,
26 the member agencies shall assume the retirement obligations on
27 their retirement systems.

28 SEC. 6. Section 20577.5 of the Government Code is repealed.

29 SEC. 7. Section 20577.5 is added to the Government Code, to
30 read:

31 20577.5. The board shall, prior to exercising authority granted
32 pursuant to Section 20577, consider and exhaust all options and
33 necessary actions, including evaluating whether to bring a civil
34 action against any and all of the member agencies that are parties
35 to a terminated agency formed by an agreement under Chapter 5
36 (commencing with Section 6500) of Division 7 of Title 1 to compel
37 payment of the terminated agency's retirement obligations pursuant

- 1 to Section 20575.1, and shall be entitled to reasonable attorney's
- 2 fees in addition to other costs.

O



ORANGE COUNTY FIRE AUTHORITY

SUPPLEMENTAL AGENDA

BOARD OF DIRECTORS REGULAR MEETING

Thursday, July 26, 2018

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.

The following items are added to the above stated agenda in the location noted below. These items are posted in conformance with the Brown Act and are to be considered as part of the regular agenda.

CLOSED SESSION

CS5. CONFERENCE WITH LABOR NEGOTIATOR

Negotiators: Lori Zeller, Assistant Chief/Business Services Department; and Brigitte Gibb, Director of Human Resources

Employee: Fire Chief

Authority: Government Code Section 54957.6

CONSENT CALENDAR

3E. Acceptance of 2018 California Governor's Office of Emergency Services Urban Search and Rescue Radioactive Dispersal Device Exercise Reimbursement Agreement

Submitted by: Mark Sanchez, Assistant Chief/Operations Department

Recommended Action:

Approve and authorize the Fire Chief, or his designee, to execute a Reimbursement Agreement with California Governor's Office of Emergency Services for California Task Force 5 to plan and host the 2018 Urban Search and Rescue Radioactive Dispersal Device Exercise.

DISCUSSION CALENDAR

5A. Amendment to Fire Chief Employment Agreement

Submitted by: Brigitte Gibb, Director/Human Resources

Recommended Action:

Following the Closed Session negotiation of amendment terms, approve Amendment No. 1 to the Fire Chief's employment agreement.

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 Training and Operations Center, 1 Fire Authority Road, Irvine, CA, not less than 72 hours prior to the meeting. Dated this 23rd day of July 2018.

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

The exercise is scheduled to take place in November 2018 at the Del Valle Training Facility in Los Angeles County. Participants in the exercise include CA-TF1 (Los Angeles City), CA-TF2 (Los Angeles County), CA-TF5 (Orange County), CA-TF6 (Riverside County), and CA-TF8 (San Diego County). The below budget has been established as Cal OES' limit of reimbursement to complete the exercise:

Agreement Funds:	Component Amount	Total Grant Funding
• Contracted Site Services (i.e. heavy equipment rentals, sanitary stations, dumpsters, debris removal, etc)	\$ 37,500.00	
• Consumables (i.e. lumber, fasteners, cutting supplies, fuel, small tools, food, etc)	240,600.00	
• Support Fees (i.e. busses, financial legal services, cash rehab supplies, etc)	12,000.00	
• Personnel Costs (backfill and overtime for all participating agencies for planning, preparing and attending the exercise etc)	201,081.60	
Total Agreement Reimbursement Amount		\$491,181.60

Approval of the proposed agreement will allow the OCFA, and the other Task Forces, to be reimbursed for planning, hosting, and participating in the Cal OES sponsored US&R Task Force RDD Exercise in 2018. As the host agency, OCFA will use these funds to provide all the contract site services, consumables, and support needed to run the exercise. OCFA will also reimburse other participating agencies for their personnel costs, to the limit established in the exercise budget. To the extent necessary, OCFA may absorb our own expenses (straight time costs not allowed to be reimbursed by the agreement) in excess of the reimbursement amount. Funds per the Agreement are available for use beginning March 1, 2018, through December 31, 2018.

Attachment(s)

Proposed Agreement

AGREEMENT NUMBER

6037-2018

REGISTRATION NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below:

AGENCY'S NAME

California Governor's Office of Emergency Services (Cal OES)

CONTRACTOR'S NAME

Orange County Fire Authority

2. The term of this

Agreement is: March 1, 2018, or upon approval whichever is later, through December 31, 2018

3. The Maximum amount of \$491,181.60

Agreement is: Four Hundred Ninety-One Thousand One Hundred Eighty-One Dollars and Sixty Cents.

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

Exhibit A – Statement of Work	4 Pages
Exhibit B – Budget Detail and Payment Provisions	1 Page
Exhibit B1 – Cost Worksheet	1 Page
Exhibit C – Terms and Conditions (GTCs 04/2017)*	1 Page
Exhibit D – Special Terms and Conditions	2 Pages
Exhibit E – Additional Provisions	1 Page

Items shown with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto.
These documents can be viewed at www.ols.dgs.ca.gov/Standard+Language

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)

Orange County Fire Authority

BY (Authorized Signature)



DATE SIGNED(Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Jeff Adams, Division Chief

ADDRESS

1 Fire Authority Road
Irvine, CA 92602

Agency

AGENCY NAME

California Governor's Office of Emergency Services

BY (Authorized Signature)



DATE SIGNED(Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Tabitha Stout, Assistant Director of Administrative Services

ADDRESS

3650 Schriever Avenue
Mather, CA 95655

**California Department of General
Services Use Only**

☐ Exempt per:

**EXHIBIT A
STATEMENT OF WORK (SOW)**

**URBAN SEARCH AND RESCUE
RADIOACTIVE DISPERSAL DEVICE EXERCISE REIMBURSEMENT**

1. OBJECTIVE

This Agreement between the California Governor's Office of Emergency Services, (Cal OES) and the Orange County Fire Authority (CA-Task Force-5) hereinafter referred to as the "Fire Agency", shall govern the reimbursements for the Fire Agency's costs of backfilling positions, overtime costs, related travel costs, consumables, contracted site services, and support fees, in order to allow the Fire Agency staff the ability to plan, prepare, attend, and participate in a Cal OES sponsored Urban Search and Rescue (US&R) Task Force Radioactive Dispersal Device (RDD) Exercise in 2018. The intent of this agreement is to provide the Fire Agency reimbursement in order to mobilize the US&R Task Force and its rostered members to an assigned Cal OES provided US&R RDD Exercise.

This reimbursement will allow the Fire Agency to maintain regular staffing to avoid any degradation of services or reduction in emergency response capabilities to the Fire Agency community during the assigned US&R RDD Exercises, due to the absence of one (1) or more trainees.

2. TERM/PERIOD OF PERFORMANCE

The period of performance for the Agreement shall be March 1, 2018, or upon approval, whichever is later, through December 31, 2018, with the option to extend for one additional twelve (12) month term at the original rates evaluated and considered.

Pursuant to California Public Contract Code sections 10295 and 10335, reimbursement for costs under this Agreement will only be made for costs incurred after the date of formal approval of this Agreement by the California Department of General Services.

Consistent with the terms and conditions of the original solicitation, and upon mutual consent, Cal OES and the Fire Agency may execute written amendments.

3. BUDGETED AMOUNT

The initial award of this Agreement shall not exceed \$491,181.60 and there is no obligation on Cal OES' part to utilize the entire amount. Any increases in the budgeted amount will be at the rates evaluated and considered herein.

4. MANDATORY QUALIFICATIONS

Attendee must be a rostered member of the State/National US&R Task Force. Required participation in the exercises is necessary in order for the backfilling, overtime costs, and any related travel costs, to be reimbursable.

5. PROJECT DELIVERABLES

Cal OES will develop and implement a US&R RDD Exercise to evaluate and prepare for emergency readiness, simulating a radioactive contaminated environment. The staff attending the exercise will help assure that the Fire Agency is prepared for major radiation-related emergencies and disasters requiring the deployment of State/National US&R Task Forces in California.

As such, in order to allow the Fire Agency the ability to maintain its regular staffing and response capabilities necessary to protect the health and safety of their communities, Cal OES will reimburse the Fire Agency for any vacated positions that require backfilling, overtime, or any related travel costs incurred by Fire Agency employees, consistent with the California Fire Assistance Act (CFAA) rates and protocols, for and during the time of planning, preparing, and attending the exercise, for negotiated costs up to the amount contained in Exhibit B-1, Cost Sheet for Personnel Costs. Cal OES will also reimburse for contracted site services, consumables, and support fees, up to the amounts contained in Exhibit B-1, Cost Sheet.

6. CAL OES RESPONSIBILITIES

Cal OES will provide the previously mentioned financial resources to ensure the Fire Agency can attend the US&R RDD Exercise. As such, in order to allow the Fire Agency the ability to maintain its regular staffing and response capabilities necessary to protect the health and safety of their communities, Cal OES will reimburse the Fire Agency for any positions that require to be backfilled or for any overtime cost incurred by Fire Agency employees for and during the time of planning, preparing, and attending of the exercise, for negotiated costs up to the amount contained in Exhibit B-1, Cost Sheet. Cal OES will also reimburse for contracted site services, consumables, and support fees up to the amounts contained in Exhibit B-1, Cost Sheet.

7. FIRE AGENCY RESPONSIBILITIES

- A. The Fire Agency shall designate a Contract Manager to whom Cal OES communications will be addressed and who has the authority to act on all aspects of this agreement.
- B. The Fire Agency shall back-fill positions as required due to Fire Agency staff attending the US&R RDD exercise provided by Cal OES.
- C. The Fire Agency shall initially pay any costs associated for any positions that require backfill or for any overtime cost incurred by the Fire Agency employees for and during the time of planning, preparing, and attending the exercise.
- D. Civilian personnel not otherwise covered by the California Fire Assistance Agreement shall be paid at the rate and method formally negotiated and agreed upon prior to the exercise, between the Fire Agency and the Civilians rostered for the exercise in those positions, (Canine Search Specialist, Structural Specialist, Medical Team Manager).
- E. The Fire Agency shall initially pay any costs associated for planning and preparation, contracted site services, consumables, and support fees.

8. ACCEPTANCE OF SERVICES

Payment for services performed under this Agreement shall be in accordance with the Cost Sheet, Exhibit B-1. Acceptance criteria shall consist of the following:

- A. Payment for tasks performed under this Agreement shall be as stated in Exhibit B-1, Cost Sheet. It shall be Cal OES' sole determination as to whether the task and deliverables identified in this Agreement have been successfully completed and are acceptable.
- B. Invoices shall be due and payable, and payment shall be made, only after completion of the exercise and acceptance of the invoice by Cal OES.
- C. In the event not all Fire Agency staff rostered to the US&R RDD Exercise participate, Cal OES reserves the right to reduce the invoice by the number of Fire Agency staff rostered for the exercise who failed to participate.
- D. Invoices shall be submitted monthly in arrears, identifying staff name, classification, period of service, and the costs per category as shown on the Exhibit B-1, Cost Sheet.
- E. The Fire Agency costs related to failure by exercise-rostered staff to participate in the assigned exercise shall be costs of the Fire Agency, and shall not be billed to Cal OES.
- F. The Fire agency will provide Cal OES with documentation that all members rostered for the assigned exercise have participated in it.
- G. In the event not all Fire Agency staff participates in the assigned exercise, Cal OES reserves the right to reduce the invoice in proportion to the number of Fire Agency students not successfully completing the course to total Fire Agency students successfully completing the course.

9. PROBLEM ESCALATION

The parties acknowledge and agree certain technical and project related problems or issues may arise, and such matters shall be brought to Cal OES' attention. Problems or issues shall normally be reported in regular status reports. There may be instances, however, where the severity of the problem justifies escalated reporting. To this extent the Fire Agency will determine the level of severity and notify the appropriate Cal OES personnel. Cal OES personnel notified, and the time period taken to report the problem or issue, shall be at a level commensurate with the severity of the problem or issue. Cal OES personnel include, but are not limited to, the following:

First Level: Joe Gear, Assist. Fire Chief, Special Ops/Fire & Rescue Branch, (916) 475-1663

Second Level: Larry Collins, Dep. Fire Chief, Special Ops/Fire & Rescue Branch, (916) 845-8751

Third Level: Kim Zagaris, Chief, Fire and Rescue Branch, (916) 845-8726

10. TERMINATION OF AGREEMENT

Cal OES reserves the right to terminate this Agreement subject to 30 days' written notice to the Fire Agency. In the event of such termination, Cal OES shall pay all amounts due the Fire Agency for all services rendered and accepted prior to termination.

This Agreement may be suspended or cancelled without notice, if Cal OES' premises or equipment are destroyed by fire or other catastrophe, or so substantially damaged that it is impractical to continue service, or in the event the Fire Agency is unable to render service as a result of any action by any governmental authority.

11. PROJECT REPRESENTATIVES

The authorized representatives during the term of this Agreement are identified in the tables below.

For project related inquiries:

The California Governor's Office of Emergency Services		Fire Agency	
NAME:	Assistant Chief Joe Gear	NAME:	Jeff Adams
ADDRESS:	3650 Schriever Avenue Mather, CA 95655	ADDRESS:	1 Fire Authority Road Irvine, CA 92602
PHONE:	(916) 475-1663	PHONE:	(714) 323-2061
EMAIL:	Joe.gear@caloes.ca.gov	EMAIL:	jeffadams@ocfa.org

For administrative Agreement inquiries:

The California Governor's Office of Emergency Services		Fire Agency	
NAME:	Jesse Flores, Contract Analyst	NAME:	Jeff Adams
ADDRESS:	3650 Schriever Avenue Mather, CA 95655	ADDRESS:	1 Fire Authority Road Irvine, CA 92602
PHONE:	(916) 845-8459	PHONE:	(714) 323-2061
EMAIL:	Jesse.Flores@caloes.ca.gov	EMAIL:	jeffadams@ocfa.org

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

1. Payment for services performed under this Agreement shall be in accordance with the Cost Sheet, Exhibit B-1. It shall be Cal OES's sole determination as to whether a service has been successfully completed and is acceptable.
2. Invoices shall be submitted **in triplicate** after services are rendered and shall include the following information:
 - A. Agreement No.
 - B. Contractor
 - C. Service
 - D. Itemized Cost
 - E. Invoice Date

Invoices shall be due and payable, and payment shall be made, only after Cal OES's Contract Manager's acceptance of services.

3. The Contractor's costs related to items such as travel and per diem shall be inclusive in the Cost Sheet, Exhibit B-1, and **will not be paid separately** as part of this Agreement.
4. Submit invoices to:

California Governor's Office of Emergency Services
Attention: Accounting Unit
3650 Schriever Ave.
Mather, CA 95655

5. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, Cal OES shall have no liability to pay any funds whatsoever to the Contractor or to furnish any other considerations under this Agreement and the Contractor shall not be obligated to perform any provisions of this Agreement.
6. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, Cal OES shall have the option to either cancel this Agreement with no liability occurring to Cal OES, or offer an amendment to the Contractor to reflect the reduced amount.
7. All payments will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

EXHIBIT B-1
COST SHEET

Contracted Site Services (To include, but not limited to, heavy equipment rentals, sanitary stations, dumpsters, debris removal, parking lot sweepers)	\$37,500.00
Consumables (To include, but not limited to, lumber supplies, fasteners, reinforced concrete, cutting supplies, fuel, small tools, PPE, office supplies, food)	\$240,600.00
Support Fees (To include, but not limited to, buses, financial and legal services and cache rehab supplies)	\$12,000.00
Personnel Costs (Backfill and overtime for planning, preparing, and attending the exercise)	\$201,081.60
Contract Total	\$491,181.60

Receipts and supporting documents for eligible reimbursements, must accompany the invoice for payment and be sent to Cal OES within two weeks of administering deliverables for processing.

Fire Agency travel reimbursements, while on approved program business, will be reimbursed based on the policies and rates determined by the California Department of Human Resources (Cal HR) for excluded state employees and contractors. These rates and policies can be found at: <http://www.calhr.ca.gov/employees/Pages/travel-rules-excluded.aspx>. Reimbursement for travel expenses shall not be made for expenses incurred within 50 miles of the Fire Agency's home or headquarters.

Above cost to be completed based on the classification levels staff utilized at the Fire Agency.

Invoices shall be submitted monthly in arrears, in triplicate, identifying staff name, classification, period of service, and the costs per category shown above.

The Fire Agency will only be reimbursed based on the above costs. No other costs will be reimbursed without prior approval.

EXHIBIT C
TERMS AND CONDITIONS

The General Terms and Conditions (GTCs) 04/2017 are hereby incorporated by reference and can be accessed by visiting the following link:

<http://www.dgs.ca.gov/LinkClick.aspx?fileticket=x6TrRwzYLxs%3d&tabid=6133&portalid=32&mid=10104>

EXHIBIT D
SPECIAL TERMS AND CONDITIONS

1. AGREEMENTS FUNDED BY THE FEDERAL GOVERNMENT

- A. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the Agreement were executed after that determination was made.
- B. This Agreement is valid and enforceable only if sufficient funds are made available to the Cal OES by the United States Government for the Fiscal Year(s) 18/19 covered by this Agreement for the purposes of this program. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress, which may affect the provisions, terms, or funding of this Agreement in any manner.
- C. It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.
- D. The department has the option to void the Agreement under the 30-day cancellation clause or to amend the Agreement to reflect any reduction of funds.

2. DISPUTES

If the Fire Agency believes that there is a dispute or grievance between the Fire Agency and Cal OES arising out of or relating to this Agreement, the Fire Agency shall first discuss and attempt to resolve the issue informally with the agency contract manager. If the issue cannot be resolved at this level, Fire Agency shall follow the following procedures:

- A. If the issue cannot be resolved informally with the Contract Manager, Fire Agency shall submit, in writing, a grievance report together with any evidence to the Contract Manager's Supervisor. The grievance report must state the issues in the dispute, the legal authority, or other basis for the Fire Agency's position and the remedy sought. Within ten (10) working days of receipt of the written grievance report from the Fire Agency, the Supervisor shall make a determination on the problem, and shall respond in writing to the Fire Agency indicating the decision and reasons therefore. Should the Fire Agency disagree with the Supervisor's decision, Fire Agency may appeal to the next level, following the procedure listed below.
- B. The Fire Agency must submit a letter of appeal to the Agency Secretary explaining why the Supervisor's decision is unacceptable. The letter must include, as an attachment, copies of the Fire Agency's original grievance report, evidence originally submitted, and response from Supervisor. Fire Agency's letter of appeal must be submitted within ten (10) working days of the receipt of the Supervisor's written decision. The Secretary or designee shall, within twenty (20) working days of receipt of Fire Agency's letter of appeal, review the issues raised and shall render a written decision to the Fire Agency. If the Secretary or designee fails to render a final decision within (20) working days after receipt of Fire Agency's letter of appeal, it shall be

deemed a final decision adverse to the Fire Agency's contentions. The decision of the Secretary or designee shall be conclusive and binding regarding the dispute unless the Fire Agency commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.

3. AUDIT

The awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. The parties agree to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. The parties agree to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the parties agree to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code, § 8546.7, Pub. Contract Code, § 10115 et CCR Title 2, Section 1896).

4. LIMITATION OF LIABILITY

It is mutually understood between the parties that due to the nature of this Agreement, it is difficult to foresee or determine potential damages in the event of negligence or breach of this Agreement by Cal OES. Cal OES' liability under this Agreement will not exceed the actual costs paid by the Fire Agency, up to the amount of this Agreement, for the following: (1) any positions that required backfilling, overtime, or any related travel costs by Fire Agency employees, consistent with the California Fire Assistance Act (CFAA) rates and protocols, for planning, preparing, and attending the exercise, and (2) any contracted site services, consumables, or support fees. There will be no recovery for consequential damages.

EXHIBIT E
ADDITIONAL PROVISIONS

1. INSURANCE REQUIREMENTS

The STATE and LOCAL Agency shall each provide proof of insurance in a form acceptable to the other party at no cost one to the other, to cover all services provided and use of local government facilities covered by this agreement. If LOCAL AGENCY is insured and/or self-insured in whole or in part for any losses, LOGAL AGENCY shall provide a completed Certification of Self-Insurance or certificate of insurance, executed by a duly authorized officer of LOCAL AGENCY. Upon receipt of LOCAL AGENCY, the STATE shall provide a letter from DGS, Office of Risk and Insurance Management, executed by a duly authorized officer of STATE. If commercially insured in whole or in part, a certificate of such coverage executed by the insurer or its authorized representative shall be provided.

Said commercial insurance or self-insurance coverage by the LOCAL AGENCY shall include the following:

- A. Fire protection and emergency services – Any commercial insurance shall provide at least general liability for \$2 million combined single limit per occurrence.
- B. The STATE its officers, agents, employees, and servants are included as additional insured for the purpose of this agreement.
- C. The STATE shall receive thirty (30) days prior to written notice of any cancellation or change to the policy at the addresses listed below:

California Governor's Office of Emergency Services
Procurement and Logistical Services
3650 Schriever Avenue
Mather, CA 95655

WORKERS COMPENSATION: (only applies where local government employees/volunteers are supervised by the STATE. STATE contract employees' workers' compensation is included as part of the contract personnel benefit rate.)

- A. Workers' Compensation and related benefits for those persons, whose use or employment is contemplated herein, shall be provided in the manner prescribed by California Labor Codes, State Interagency Agreements and other related laws, rules, insurance policies, collective bargaining agreements, and memorandums of understanding.



Orange County Fire Authority
AGENDA STAFF REPORT

Board of Directors Meeting
July 26, 2018

Agenda Item No. 3E
Consent Calendar

**Acceptance of 2018 California Governor's Office of Emergency Services
Urban Search and Rescue Radioactive Dispersal Device Exercise
Reimbursement Agreement**

Contact(s) for Further Information

Mark Sanchez, Assistant Chief
Operations Department

marksanchez@ocfa.org

714.573.6014

Jeff Adams, Division Chief
Division 5

jeffadams@ocfa.org

949.389.0055

Summary

This item is submitted for approval and acceptance of the 2018 California Governor's Office of Emergency Services (Cal OES) Urban Search and Rescue (US&R) Radioactive Dispersal Device (RDD) Exercise Reimbursement Agreement.

Prior Board/Committee Action

Not Applicable.

RECOMMENDED ACTION(S)

1. Approve and authorize the Fire Chief, or his designee, to execute a Reimbursement Agreement with California Governor's Office of Emergency Services for California Task Force 5 to plan and host the 2018 Urban Search and Rescue Radioactive Dispersal Device Exercise.
2. Approve a Budget Adjustment in the General Fund (121) increasing revenues and expenditures in the amount of \$491,181.60 for the purposes of completing this training exercise.

Impact to Cities/County

Not Applicable.

Fiscal Impact

\$491,181.60 increase in General Fund (Fund 121) revenue and expenditures in the FY 2018/19 General Fund (121) budget.

Background

To help ensure the readiness of our California Task Force 5 (CA-TF5) Urban Search and Rescue responders, the OCFA California Task Force 5 has agreed to plan and host the 2018 US&R RDD exercise. The objective of the exercise is to evaluate the various participating Task Forces readiness by simulating a radioactive contaminated environment. The staff and responders attending the exercise will help ensure the OCFA, and other participating agencies, are prepared for major radiation-related emergencies and disasters requiring the deployment of the State/National US&R Task Forces in California.

The exercise is scheduled to take place in November 2018 at the Del Valle Training Facility in Los Angeles County. Participants in the exercise include CA-TF1 (Los Angeles City), CA-TF2 (Los Angeles County), CA-TF5 (Orange County), CA-TF6 (Riverside County), and CA-TF8 (San Diego County). The below budget has been established as Cal OES' limit of reimbursement to complete the exercise:

Agreement Funds:	Component Amount	Total Grant Funding
• Contracted Site Services (i.e. heavy equipment rentals, sanitary stations, dumpsters, debris removal, etc)	\$ 37,500.00	
• Consumables (i.e. lumber, fasteners, cutting supplies, fuel, small tools, food, etc)	240,600.00	
• Support Fees (i.e. busses, financial legal services, cash rehab supplies, etc)	12,000.00	
• Personnel Costs (backfill and overtime for all participating agencies for planning, preparing and attending the exercise etc)	201,081.60	
Total Agreement Reimbursement Amount		\$491,181.60

Approval of the proposed agreement will allow the OCFA, and the other Task Forces, to be reimbursed for planning, hosting, and participating in the Cal OES sponsored US&R Task Force RDD Exercise in 2018. As the host agency, OCFA will use these funds to provide all the contract site services, consumables, and support needed to run the exercise. ~~OCFA will also reimburse other participating agencies for their personnel costs, to the limit established in the exercise budget.~~ To the extent necessary, OCFA may absorb our own expenses (straight time costs not allowed to be reimbursed by the agreement) in excess of the reimbursement amount. Funds per the Agreement are available for use beginning March 1, 2018, through December 31, 2018.

Attachment(s)

Proposed Agreement

EDMUND G. BROWN JR.
GOVERNOR



MARK S. GHILARDUCCI
DIRECTOR

July 18, 2018

Brian Fennessy, Fire Chief
Orange County Fire Authority
1 Fire Authority Rd.
Irvine, California 92602

Subject: Agreement # 6037-2018

Dear Chief Fennessy,

Attached you will find the updated Agreement (STD 213) between the California Governor's Office of Emergency Services (Cal OES) and the Orange County Fire Authority, Sponsoring Agency for California state/national US&R Task Force 5 (CA-TF5), for the US&R RDD (Radiation Dispersal Device, "dirty bomb") exercise being planned for November 2018 at the Del Valle Regional Training Facility.

This Agreement is for CA-TF5 to participate in the exercise (and to assist with planning) as the "host" US&R Task Force (Cal OES Fire & Rescue Chief Zagaris and Deputy Chief Collins would like to thank you and CA-TF5 for agreeing to be the "host" US&R Task Force for exercise planning purposes).

Please print out **two (2)** copies of the Agreement signature page, and **one (1)** copy of the additional pages, and sign in **blue ink**.

(NOTE: Double-sided documents will not be accepted)

Return the entire packet with original signatures, via overnight mail, to my attention at the following address:

California Governor's Office of Emergency Services
Attention: Jesse Flores (Contracts Unit)
3650 Schriever Avenue
Mather, CA 95655

When I receive the signed STD 213's, I will obtain the appropriate Cal OES signatures and mail an executed copy to you for your records.

Feel free to contact me or Fire & Rescue Division Chief Kim Zagaris (916-765-2199) or Special Operations & Haz Mat Section Deputy Chief Larry Collins (916-716-2498) with any questions or concerns you may have.

Thank you,
Jesse Flores, Contract Analyst
(916) 845-8459

AGREEMENT NUMBER

6037-2018

REGISTRATION NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below:

AGENCY'S NAME

California Governor's Office of Emergency Services (Cal OES)

CONTRACTOR'S NAME

Orange County Fire Authority

2. The term of this

Agreement is: March 1, 2018, or upon approval whichever is later, through December 31, 2018

3. The Maximum amount of \$491,181.60

Agreement is: Four Hundred Ninety-One Thousand One Hundred Eighty-One Dollars and Sixty Cents.

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

Exhibit A – Statement of Work	4 Pages
Exhibit B – Budget Detail and Payment Provisions	1 Page
Exhibit B1 – Cost Worksheet	1 Page
Exhibit C – Terms and Conditions (GTCs 04/2017)*	1 Page
Exhibit D – Special Terms and Conditions	2 Pages
Exhibit E – Additional Provisions	1 Page

Items shown with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto.
These documents can be viewed at www.ols.dgs.ca.gov/Standard+Language

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)

Orange County Fire Authority

BY (Authorized Signature)



DATE SIGNED(Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Jeff Adams, Division Chief

ADDRESS

1 Fire Authority Road
Irvine, CA 92602

Agency

AGENCY NAME

California Governor's Office of Emergency Services

BY (Authorized Signature)



DATE SIGNED(Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Tabitha Stout, Assistant Director of Administrative Services

ADDRESS

3650 Schriever Avenue
Mather, CA 95655

**California Department of General
Services Use Only**

☐ Exempt per:

EXHIBIT A
STATEMENT OF WORK (SOW)

URBAN SEARCH AND RESCUE
RADIOACTIVE DISPERSAL DEVICE EXERCISE REIMBURSEMENT

1. OBJECTIVE

This Agreement between the California Governor's Office of Emergency Services, (Cal OES) and the Orange County Fire Authority (CA-Task Force-5) hereinafter referred to as the "Fire Agency", shall govern the reimbursements for the Fire Agency's costs of backfilling positions, overtime costs, related travel costs, consumables, contracted site services, and support fees, in order to allow the Fire Agency staff the ability to plan, prepare, attend, and participate in a Cal OES sponsored Urban Search and Rescue (US&R) Task Force Radioactive Dispersal Device (RDD) Exercise in 2018. The intent of this agreement is to provide the Fire Agency reimbursement in order to mobilize the US&R Task Force and its rostered members to an assigned Cal OES provided US&R RDD Exercise.

This reimbursement will allow the Fire Agency to maintain regular staffing to avoid any degradation of services or reduction in emergency response capabilities to the Fire Agency community during the assigned US&R RDD Exercises, due to the absence of one (1) or more trainees.

2. TERM/PERIOD OF PERFORMANCE

The period of performance for the Agreement shall be March 1, 2018, or upon approval, whichever is later, through December 31, 2018, with the option to extend for one additional twelve (12) month term at the original rates evaluated and considered.

Pursuant to California Public Contract Code sections 10295 and 10335, reimbursement for costs under this Agreement will only be made for costs incurred after the date of formal approval of this Agreement by the California Department of General Services.

Consistent with the terms and conditions of the original solicitation, and upon mutual consent, Cal OES and the Fire Agency may execute written amendments.

3. BUDGETED AMOUNT

The initial award of this Agreement shall not exceed \$491,181.60 and there is no obligation on Cal OES' part to utilize the entire amount. Any increases in the budgeted amount will be at the rates evaluated and considered herein.

4. MANDATORY QUALIFICATIONS

Attendee must be a rostered member of the State/National US&R Task Force. Required participation in the exercises is necessary in order for the backfilling, overtime costs, and any related travel costs, to be reimbursable.

5. PROJECT DELIVERABLES

Cal OES will develop and implement a US&R RDD Exercise to evaluate and prepare for emergency readiness, simulating a radioactive contaminated environment. The staff attending the exercise will help assure that the Fire Agency is prepared for major radiation-related emergencies and disasters requiring the deployment of State/National US&R Task Forces in California.

As such, in order to allow the Fire Agency the ability to maintain its regular staffing and response capabilities necessary to protect the health and safety of their communities, Cal OES will reimburse the Fire Agency for any vacated positions that require backfilling, overtime, or any related travel costs incurred by Fire Agency employees, consistent with the California Fire Assistance Act (CFAA) rates and protocols, for and during the time of planning, preparing, and attending the exercise, for negotiated costs up to the amount contained in Exhibit B-1, Cost Sheet for Personnel Costs. Cal OES will also reimburse for contracted site services, consumables, and support fees, up to the amounts contained in Exhibit B-1, Cost Sheet.

6. CAL OES RESPONSIBILITIES

Cal OES will provide the previously mentioned financial resources to ensure the Fire Agency can attend the US&R RDD Exercise. As such, in order to allow the Fire Agency the ability to maintain its regular staffing and response capabilities necessary to protect the health and safety of their communities, Cal OES will reimburse the Fire Agency for any positions that require to be backfilled or for any overtime cost incurred by Fire Agency employees for and during the time of planning, preparing, and attending of the exercise, for negotiated costs up to the amount contained in Exhibit B-1, Cost Sheet. Cal OES will also reimburse for contracted site services, consumables, and support fees up to the amounts contained in Exhibit B-1, Cost Sheet.

7. FIRE AGENCY RESPONSIBILITIES

- A. The Fire Agency shall designate a Contract Manager to whom Cal OES communications will be addressed and who has the authority to act on all aspects of this agreement.
- B. The Fire Agency shall back-fill positions as required due to Fire Agency staff attending the US&R RDD exercise provided by Cal OES.
- C. The Fire Agency shall initially pay any costs associated for any positions that require backfill or for any overtime cost incurred by the Fire Agency employees for and during the time of planning, preparing, and attending the exercise.
- D. Civilian personnel not otherwise covered by the California Fire Assistance Agreement shall be paid at the rate and method formally negotiated and agreed upon prior to the exercise, between the Fire Agency and the Civilians rostered for the exercise in those positions, (Canine Search Specialist, Structural Specialist, Medical Team Manager).
- E. The Fire Agency shall initially pay any costs associated for planning and preparation, contracted site services, consumables, and support fees.

8. ACCEPTANCE OF SERVICES

Payment for services performed under this Agreement shall be in accordance with the Cost Sheet, Exhibit B-1. Acceptance criteria shall consist of the following:

- A. Payment for tasks performed under this Agreement shall be as stated in Exhibit B-1, Cost Sheet. It shall be Cal OES' sole determination as to whether the task and deliverables identified in this Agreement have been successfully completed and are acceptable.
- B. Invoices shall be due and payable, and payment shall be made, only after completion of the exercise and acceptance of the invoice by Cal OES.
- C. In the event not all Fire Agency staff rostered to the US&R RDD Exercise participate, Cal OES reserves the right to reduce the invoice by the number of Fire Agency staff rostered for the exercise who failed to participate.
- D. Invoices shall be submitted monthly in arrears, identifying staff name, classification, period of service, and the costs per category as shown on the Exhibit B-1, Cost Sheet.
- E. The Fire Agency costs related to failure by exercise-rostered staff to participate in the assigned exercise shall be costs of the Fire Agency, and shall not be billed to Cal OES.
- F. The Fire agency will provide Cal OES with documentation that all members rostered for the assigned exercise have participated in it.
- G. In the event not all Fire Agency staff participates in the assigned exercise, Cal OES reserves the right to reduce the invoice in proportion to the number of Fire Agency students not successfully completing the course to total Fire Agency students successfully completing the course.

9. PROBLEM ESCALATION

The parties acknowledge and agree certain technical and project related problems or issues may arise, and such matters shall be brought to Cal OES' attention. Problems or issues shall normally be reported in regular status reports. There may be instances, however, where the severity of the problem justifies escalated reporting. To this extent the Fire Agency will determine the level of severity and notify the appropriate Cal OES personnel. Cal OES personnel notified, and the time period taken to report the problem or issue, shall be at a level commensurate with the severity of the problem or issue. Cal OES personnel include, but are not limited to, the following:

First Level: Joe Gear, Assist. Fire Chief, Special Ops/Fire & Rescue Branch, (916) 475-1663

Second Level: Larry Collins, Dep. Fire Chief, Special Ops/Fire & Rescue Branch, (916) 845-8751

Third Level: Kim Zagaris, Chief, Fire and Rescue Branch, (916) 845-8726

10. TERMINATION OF AGREEMENT

Cal OES reserves the right to terminate this Agreement subject to 30 days' written notice to the Fire Agency. In the event of such termination, Cal OES shall pay all amounts due the Fire Agency for all services rendered and accepted prior to termination.

This Agreement may be suspended or cancelled without notice, if Cal OES' premises or equipment are destroyed by fire or other catastrophe, or so substantially damaged that it is impractical to continue service, or in the event the Fire Agency is unable to render service as a result of any action by any governmental authority. In the event of such suspension or cancellation, Cal OES shall pay all amounts due the Fire Agency for all services rendered prior to suspension or cancellation.

11. PROJECT REPRESENTATIVES

The authorized representatives during the term of this Agreement are identified in the tables below.

For project related inquiries:

The California Governor's Office of Emergency Services		Fire Agency	
NAME:	Assistant Chief Joe Gear	NAME:	Jeff Adams
ADDRESS:	3650 Schriever Avenue Mather, CA 95655	ADDRESS:	1 Fire Authority Road Irvine, CA 92602
PHONE:	(916) 475-1663	PHONE:	(714) 323-2061
EMAIL:	Joe.gear@caloes.ca.gov	EMAIL:	jeffadams@ocfa.org

For administrative Agreement inquiries:

The California Governor's Office of Emergency Services		Fire Agency	
NAME:	Jesse Flores, Contract Analyst	NAME:	Jeff Adams
ADDRESS:	3650 Schriever Avenue Mather, CA 95655	ADDRESS:	1 Fire Authority Road Irvine, CA 92602
PHONE:	(916) 845-8459	PHONE:	(714) 323-2061
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 - B. Contractor
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 - D. Itemized Cost
 - E. Invoice Date

Invoices shall be due and payable, and payment shall be made, only after Cal OES's Contract Manager's acceptance of services.

3. The Contractor's costs related to items such as travel and per diem shall be inclusive in the Cost Sheet, Exhibit B-1, and **will not be paid separately** as part of this Agreement.
4. Submit invoices to:

California Governor's Office of Emergency Services
Attention: Accounting Unit
3650 Schriever Ave.
Mather, CA 95655

5. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, Cal OES shall have no liability to pay any funds whatsoever to the Contractor or to furnish any other considerations under this Agreement and the Contractor shall not be obligated to perform any provisions of this Agreement.
6. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, Cal OES shall have the option to either cancel this Agreement with no liability occurring to Cal OES, or offer an amendment to the Contractor to reflect the reduced amount.
7. All payments will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

EXHIBIT B-1
COST SHEET

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Contract Total	\$491,181.60

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Fire Agency travel reimbursements, while on approved program business, will be reimbursed based on the policies and rates determined by the California Department of Human Resources (Cal HR) for excluded state employees and contractors. These rates and policies can be found at: <http://www.calhr.ca.gov/employees/Pages/travel-rules-excluded.aspx>. Reimbursement for travel expenses shall not be made for expenses incurred within 50 miles of the Fire Agency's home or headquarters.

Above cost to be completed based on the classification levels staff utilized at the Fire Agency.

Invoices shall be submitted monthly in arrears, in triplicate, identifying staff name, classification, period of service, and the costs per category shown above.

The Fire Agency will only be reimbursed based on the above costs. No other costs will be reimbursed without prior approval.

EXHIBIT C
TERMS AND CONDITIONS

The General Terms and Conditions (GTCs) 04/2017 are hereby incorporated by reference and can be accessed by visiting the following link:

<http://www.dgs.ca.gov/LinkClick.aspx?fileticket=x6TrRwzYLxs%3d&tabid=6133&portalid=32&mid=10104>

EXHIBIT D
SPECIAL TERMS AND CONDITIONS

1. AGREEMENTS FUNDED BY THE FEDERAL GOVERNMENT

- A. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the Agreement were executed after that determination was made.
- B. This Agreement is valid and enforceable only if sufficient funds are made available to the Cal OES by the United States Government for the Fiscal Year(s) 18/19 covered by this Agreement for the purposes of this program. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress, which may affect the provisions, terms, or funding of this Agreement in any manner.
- C. It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.
- D. The department has the option to void the Agreement under the 30-day cancellation clause or to amend the Agreement to reflect any reduction of funds.

2. DISPUTES

If the Fire Agency believes that there is a dispute or grievance between the Fire Agency and Cal OES arising out of or relating to this Agreement, the Fire Agency shall first discuss and attempt to resolve the issue informally with the agency contract manager. If the issue cannot be resolved at this level, Fire Agency shall follow the following procedures:

- A. If the issue cannot be resolved informally with the Contract Manager, Fire Agency shall submit, in writing, a grievance report together with any evidence to the Contract Manager's Supervisor. The grievance report must state the issues in the dispute, the legal authority, or other basis for the Fire Agency's position and the remedy sought. Within ten (10) working days of receipt of the written grievance report from the Fire Agency, the Supervisor shall make a determination on the problem, and shall respond in writing to the Fire Agency indicating the decision and reasons therefore. Should the Fire Agency disagree with the Supervisor's decision, Fire Agency may appeal to the next level, following the procedure listed below.
- B. The Fire Agency must submit a letter of appeal to the Agency Secretary explaining why the Supervisor's decision is unacceptable. The letter must include, as an attachment, copies of the Fire Agency's original grievance report, evidence originally submitted, and response from Supervisor. Fire Agency's letter of appeal must be submitted within ten (10) working days of the receipt of the Supervisor's written decision. The Secretary or designee shall, within twenty (20) working days of receipt of Fire Agency's letter of appeal, review the issues raised and shall render a written decision to the Fire Agency. If the Secretary or designee fails to render a final decision within (20) working days after receipt of Fire Agency's letter of appeal, it shall be

deemed a final decision adverse to the Fire Agency's contentions. The decision of the Secretary or designee shall be conclusive and binding regarding the dispute unless the Fire Agency commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.

3. AUDIT

The awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. The parties agree to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. The parties agree to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the parties agree to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code, § 8546.7, Pub. Contract Code, § 10115 et CCR Title 2, Section 1896).

4. LIMITATION OF LIABILITY

It is mutually understood between the parties that due to the nature of this Agreement, it is difficult to foresee or determine potential damages in the event of negligence or breach of this Agreement by Cal OES. Cal OES' liability under this Agreement will not exceed the actual costs paid by the Fire Agency, up to the amount of this Agreement, for the following: (1) any positions that required backfilling, overtime, or any related travel costs by Fire Agency employees, consistent with the California Fire Assistance Act (CFAA) rates and protocols, for planning, preparing, and attending the exercise, and (2) any contracted site services, consumables, or support fees. There will be no recovery for consequential damages.

EXHIBIT E
ADDITIONAL PROVISIONS

1. INSURANCE REQUIREMENTS

The STATE and LOCAL Agency shall each provide proof of insurance in a form acceptable to the other party at no cost one to the other, to cover all services provided and use of local government facilities covered by this agreement. If LOCAL AGENCY is insured and/or self-insured in whole or in part for any losses, LOGAL AGENCY shall provide a completed Certification of Self-Insurance or certificate of insurance, executed by a duly authorized officer of LOCAL AGENCY. Upon receipt of LOCAL AGENCY, the STATE shall provide a letter from DGS, Office of Risk and Insurance Management, executed by a duly authorized officer of STATE. If commercially insured in whole or in part, a certificate of such coverage executed by the insurer or its authorized representative shall be provided.

Said commercial insurance or self-insurance coverage by the LOCAL AGENCY shall include the following:

- A. Fire protection and emergency services – Any commercial insurance shall provide at least general liability for \$2 million combined single limit per occurrence.
- B. The STATE its officers, agents, employees, and servants are included as additional insured for the purpose of this agreement.
- C. The STATE shall receive thirty (30) days prior to written notice of any cancellation or change to the policy at the addresses listed below:

California Governor's Office of Emergency Services
Procurement and Logistical Services
3650 Schriever Avenue
Mather, CA 95655

WORKERS COMPENSATION: (only applies where local government employees/volunteers are supervised by the STATE. STATE contract employees' workers' compensation is included as part of the contract personnel benefit rate.)

- A. Workers' Compensation and related benefits for those persons, whose use or employment is contemplated herein, shall be provided in the manner prescribed by California Labor Codes, State Interagency Agreements and other related laws, rules, insurance policies, collective bargaining agreements, and memorandums of understanding.



Orange County Fire Authority
AGENDA STAFF REPORT

Board of Directors Meeting
July 26, 2018

Agenda Item No. 5A
Discussion Calendar

Amendment to Fire Chief Employment Agreement

Contact(s) for Further Information

Brigette Gibb, Director
Human Resources

brigettegibb@ocfa.org

714.573.6353

Summary

This agenda item is submitted to request approval of an amendment to the Fire Chief's employment agreement.

Prior Board/Committee Action

On March 15, 2018, Brian Fennessy was appointed Fire Chief and an initial employment agreement was approved (Attachment 1).

RECOMMENDED ACTION(S)

Following the Closed Session negotiation of amendment terms, approve Amendment No. 1 to the Fire Chief's employment agreement.

Impact to Cities/County

Not Applicable.

Fiscal Impact

The Fire Chief employment agreement is funded by appropriations in the FY 2018/19 budget for salaries and benefits for the Fire Chief position.

Background

The proposed Amendment No. 1 to the Fire Chief's employment agreement will be circulated after the Closed Session negotiations, which will take place prior to the consideration of this item.

Attachment(s)

1. Fire Chief Employment Agreement
2. Amendment No. 1 to Fire Chief Employment Agreement (to be circulated after Closed Session negotiations)

**AGREEMENT BETWEEN
ORANGE COUNTY FIRE AUTHORITY
AND
BRIAN FENNESSY
FOR EMPLOYMENT AS FIRE CHIEF**

THIS EMPLOYMENT AGREEMENT (the "Agreement") is made, entered into, and effective this 16th day of April 2018 ("Effective Date"), by and between the Orange County Fire Authority ("OCFA"), a California Joint Powers Authority and Brian Fennessy, an individual (hereinafter referred to as "Fire Chief"). OCFA and Fire Chief are sometimes hereinafter individually referred to as "party" and are hereinafter collectively referred to as the "parties."

RECITALS

WHEREAS, OCFA desires to appoint Brian Fennessy as its Fire Chief effective April 16, 2018; and

WHEREAS, Brian Fennessy, by virtue of his training, education, and experience, is fully qualified to fill the position and desires to serve as OCFA's Fire Chief; and

WHEREAS OCFA and Brian Fennessy therefore desire to enter into this Agreement to specify the terms and conditions of Fire Chief's employment with the OCFA.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

Section 1: Term

- A. Brian Fennessy's date of appointment as Fire Chief shall be April 16, 2018. Fire Chief shall serve at the sole pleasure of OCFA. OCFA, acting through the Board of Directors, may terminate Fire Chief's employment at any time and without cause or reason by giving him written notice of that termination at least thirty (30) days in advance of the date of termination. Subject to OCFA's right to terminate Fire Chief's at-will employment at any time with or without cause, the Term of this Agreement is two years from the Effective Date, and shall automatically be extended for one additional twelve month period on each annual anniversary of the Effective Date of the Agreement (commencing with April 16, 2019), unless OCFA notifies Fire Chief of its intent not to extend the Agreement at least seven (7) months prior to expiration of the original Term or any subsequent automatic extensions of the Term.

- B. Fire Chief may resign from his employment at any time upon thirty (30) days written notice to the Board of Directors; provided, however, that notice shall not be required in the event Fire Chief resigns pursuant to a request for resignation by the Board of Directors.

Section 2: General Duties

Fire Chief shall perform the duties of Fire Chief as set forth in the job description for the position and in compliance with all applicable state and federal laws. Fire Chief shall also perform such other functions and duties, not inconsistent with the terms of this Agreement, as the OCFA, by and through its Board of Directors, may legally assign.

Section 3: Devotion to OCFA Business and Hours of Work

- A. Brian Fennessy's position as Fire Chief is considered a full-time position. Fire Chief shall devote his time, ability, and attention to the business of OCFA during the term of this Agreement.
- B. Fire Chief shall not engage in any other business, educational, or professional pursuits whatsoever, or directly or indirectly render any service of a business, commercial, or professional nature to any other person or organization, whether for compensation or otherwise, without the prior consent of the Board of Directors. However, the expenditure of reasonable amounts of time for educational, charitable, or personal, activities shall not be deemed a breach of this Agreement if those activities do not conflict or interfere with the professional services required under this Agreement; such limited activities shall not require the prior consent of the Board of Directors.
- C. Nothing in this Agreement prohibits Fire Chief from making passive personal investments or conducting private business affairs if those activities are not deemed to be a conflict of interest under local, state or Federal law or conflict or materially interfere with the professional services required under this Agreement.
- D. Fire Chief's duties may involve expenditures of time in excess of the regularly established workday or in excess of a forty-hour workweek and may also include time outside normal office hours (including but not limited to attendance at Board meetings). Fire Chief is classified as an exempt employee under the Fair Labor Standards Act ("FLSA") and shall not be entitled to any additional compensation for hours worked in excess of forty (40) in a work week.

Section 4: Performance Evaluation

The Board of Directors, in closed session, shall review and evaluate the performance of Fire Chief at least once each year during the term of this Agreement. Upon execution of this Agreement by both parties, the Board shall schedule time, and allocate the funds if necessary, to develop mutually agreeable goals, objectives, and performance standards which will be applied during such annual performance evaluations. The review and evaluation are to be completed in

accordance with criteria developed jointly by the Board of Directors and Fire Chief. Such review is to include a written statement of the findings provided to Fire Chief, and an adequate opportunity for Fire Chief to discuss this evaluation with the Board of Directors. The Board of Directors may retain, at its sole discretion, the services of a professional facilitator or qualified labor negotiator to assist the Board in completing this annual performance evaluation process. Failure of the Board to review and evaluate the performance of Fire Chief pursuant to this section shall not affect the right of the OCFA to terminate Fire Chief's employment and shall not be considered a breach of this Agreement.

Section 5: Salary

- A. As compensation for the services to be performed hereunder, effective April 16, 2018, OCFA agrees to provide Fire Chief an annual base salary of \$240,000 payable in equal installments at the same time and in the same manner that OCFA employees are paid. The OCFA shall also deduct from his annual base salary any applicable sums that Fire Chief is obligated to pay because of participation in plans or programs described in Section 6 of this Agreement.
- B. After completion of Fire Chief's first full year of service, Fire Chief will receive a non-base building increase equal to \$20,000, which must be approved by Resolution of the Board.
- C. After the first year, future annual non-base building increases will be awarded automatically to ensure that the Fire Chief's salary when combined with this increase will equal five percent (5%) above the salary of Fire Chief's highest paid subordinate, excluding overtime. Such increases will be subject to deductions and withholdings of any and all sums required for federal or state income tax, and other deductions or withholdings required by then-current state, federal or local law.
- D. Any increases in the annual base salary of Fire Chief, to the extent provided, may be made effective at any time and shall be made at the sole discretion of the Board of Directors. Increases in Fire Chief's annual base salary approved by the Board of Directors shall not require an amendment to this Agreement to be effective. Such increases may be set forth in an annual personnel and salary resolution or other Resolution approved by the Board.
- E. Fire Chief's compensation as discussed under this Section 5 is not tied to the compensation of any other OCFA employee or group of OCFA employees, except as expressly provided in this Agreement.

Section 6: Benefits and Leaves of Absence

A. Executive Management Benefits

Except as otherwise provided herein, Fire Chief shall receive all benefits provided to Executive Management employees as set forth in the Personnel and Salary Resolution (and any

changes thereto adopted by the Board of Directors) and provided consistent with the Public Employment Pension Reform Act. This provision shall be automatically amended whenever the Board of Directors adopts a new resolution or takes action to modify these benefits for Executive Management employees.

Sick Leave. Fire Chief shall be advanced forty (40) hours of sick leave upon commencement of employment. Fire Chief will not begin to accrue sick leave until such time as the advanced forty (40) hours would have been earned according to the Personnel and Salary Resolution for Executive Management. At that time, sick leave accrual will resume at the rate specified in the Personnel and Salary Resolution for Executive Management Employees.

Paid Annual Leave. In the pay period which includes April 16, 2018, Fire Chief shall receive the pro-rated equivalent of Paid Annual Leave based on a calendar year allotment of one hundred sixty (160) hours. In the first pay period of each subsequent calendar year, Fire Chief will receive Paid Annual Leave hours in an amount which will bring his total hours to no more than one hundred sixty (160). Paid Annual Leave may not be cashed-out during employment, but any remaining hours will be cashed out upon separation of employment.

Vacation. Fire Chief shall not accrue vacation time.

B. Retirement Benefits

The Board of Directors has authorized enrollment in the Orange County Employment Retirement System ("OCERS") in the retirement safety plan of 2.7% at age 57 for safety employees hired after January 1, 2013. OCFA is responsible for paying the entire employer cost of Fire Chief's benefit in accordance with the rate determined by OCERS. Fire Chief is responsible for paying the employee/member contribution toward his OCERS retirement benefit (currently based on age of entry). Fire Chief shall always be responsible for full payment of the employee/member contribution as may be amended from time to time by OCERS.

C. Personal Vehicle Business Mileage Reimbursement

Employee shall be entitled to the use of an OCFA vehicle primarily for OCFA purposes. Any limited personal use shall conform with Part 3, Section 8 of the OCFA Personnel and Salary Resolution. Where the term "Fire Chief" is used in that provision, for purposes of this Agreement only, it shall be replaced with Board of Directors.

D. Professional Development

OCFA acknowledges its interest in the continuing professional development of Fire Chief and agrees to pay all reasonable and appropriate expenses associated with professional dues and subscriptions and/or attendance at conferences, training opportunities, and meetings of organizations concerned with Fire Chief /fire-rescue services profession. Such expenses shall be approved in advance by the Board of Directors during its annual budget process.

E. General Business Expenses

The OCFA recognizes that Fire Chief may incur expenses of a non-personal, job-related nature that are reasonably necessary to Fire Chief's service to the OCFA. The OCFA agrees to either pay such expenses in advance or to reimburse the expenses, so long as the expenses are incurred and submitted according to the OCFA's normal expense reimbursement procedures or such other procedure as may be designated by the Board of Directors. To be eligible for reimbursement, all expenses must be supported by documentation meeting the OCFA's normal requirements and must be submitted within time limits established by the OCFA.

F. Relocation Costs

The OCFA agrees to reimburse Fire Chief in an amount not to exceed seven thousand five dollars (\$7,500.00) for costs and expenses associated with relocating to Orange County.

G. Administrative Leave Pending an Investigation

Because Fire Chief is an "at-will" employee, the OCFA is not obligated to pay Fire Chief pending an investigation into any alleged misconduct by Fire Chief. Notwithstanding the foregoing, in the event that the Authority determines, in its sole discretion, that it is in the best interest of the OCFA for Fire Chief to be placed on paid administrative leave pending such an investigation, Fire Chief shall fully reimburse any salary provided for that purpose if the misconduct for which Fire Chief was under investigation results in Fire Chief being convicted of a crime involving an abuse of his office or position as defined in Section 7.A.2 of this Agreement. Fire Chief shall fully reimburse such salary no later than six (6) months after the date such conviction becomes final and no longer subject to appeal.

Section 7: Termination and Separation Pay

A. Termination by OCFA for Reasons Other Than "Cause"

1. If OCFA terminates this Agreement (thereby terminating Fire Chief's employment) without cause or for reasons other than "cause" as defined in Paragraph B below, and if Fire Chief timely executes and delivers to OCFA an original "Separation Agreement and General Release" in the form attached hereto as Attachment 1, and does not thereafter timely exercise his right to revoke said Separation Agreement and General Release, the OCFA shall pay Fire Chief a lump sum severance benefit equal to the monthly salary of Fire Chief at the time of separation multiplied by six (6).

2. Such Separation Pay is considered a cash settlement related to the termination of Fire Chief and shall therefore be fully reimbursed to the OCFA by Fire Chief if Fire Chief is convicted of a crime involving an abuse of his office or position. Abuse of office or position shall have the meaning set forth in Government Code section 53243.4, as may be amended, of either (1) an abuse of public authority, including, but not limited to, waste, fraud, and violation of the law under color of authority, or (2) a crime against

public justice, including, but, not limited to, a crime described in Title 7 (commencing with Section 92 of Part 1 of the Penal Code). Fire Chief shall fully reimburse such Separation Pay no later than six (6) months after the date such conviction becomes final and no longer subject to appeal.

B. Termination by OCFA With Cause

If the OCFA terminates this Agreement (thereby terminating Fire Chief's employment) with cause, Fire Chief shall not be entitled to any Separation Pay. As used in this Agreement, "cause" shall mean any of the following:

1. Conviction of a felony; or
2. Conviction of a misdemeanor arising out of Fire Chief's duties or performance under this Agreement; or
3. Misappropriation of public funds; or
4. Willful abandonment of duties consisting of the failure to report to work for five (5) consecutive working days (for reasons not medically related) and not notifying staff or the Board of Directors of his leave status; or
5. A willful and intentional failure to carry out materially significant and legally constituted policy decisions made by the Board of Directors; or
6. Any other intentional or grossly negligent action or inaction by Fire Chief that: (a) materially and substantially impedes or disrupts the operations of the OCFA or its organizational units; (b) is materially detrimental to employees or public safety; (c) violates properly established rules or procedures of the OCFA causing a material and substantial adverse impact on the OCFA; or (d) has a material and substantial adverse effect on the OCFA's interests as clearly delineated by properly established Board of Directors action, policy, regulations, ordinances, or OCFA Code provisions.

C. Termination by Fire Chief

Fire Chief may resign from his employment as Fire Chief and terminate this Agreement at any time upon giving at least thirty (30) days advance written notice to the Board of Directors during the term of this Agreement. Fire Chief shall not be entitled to any Separation Pay if he resigns.

Section 8: Confidential Information

Fire Chief acknowledges that in the course of his employment contemplated herein, Fire Chief will be given or will have access to confidential and proprietary documents and information relating to the OCFA, its residents, businesses, employees, and customers ("Confidential Information"). Such Confidential Information may include, but is not limited to, all information

given to or otherwise accessible to Fire Chief that is not public information or would be exempt from public disclosure as confidential, protected, exempt, or privileged information. Fire Chief shall hold the Confidential Information in trust for the OCFA's benefit and shall not disclose the Confidential Information to others not otherwise entitled to receive it without the express written consent of the OCFA. All Confidential Information shall be promptly returned to the OCFA immediately upon the effective date of any termination or resignation.

Section 9: Indemnification

A. Except for an act of misappropriation of public funds, or an indictment, the filing of an information, a plea of guilty or a plea of *nolo contendere* for a crime involving moral turpitude, OCFA shall defend, hold harmless and indemnify Fire Chief against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring within the scope of his employment as Fire Chief, using legal counsel of the OCFA's choosing in its sole discretion, in accordance with the provisions of California Government Code section 825, applicable provisions of the Tort Claims Act, and other applicable law. In the event there is a conflict of interest between the OCFA and Fire Chief in such a case such that independent counsel is required for Fire Chief, the OCFA shall pay the reasonable fees of such independent counsel as determined in the sole discretion of the Board of Directors. OCFA may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered therefrom.

B. In the event that the OCFA provides funds for the legal criminal defense of Fire Chief, Fire Chief shall fully reimburse said funds to the OCFA if Fire Chief is convicted of a crime involving an abuse of his office or position as defined in Section 7.A.2 of this Agreement. Fire Chief shall fully reimburse to OCFA such criminal legal defense fees no later than six (6) months after the date such conviction becomes final and no longer subject to appeal.

Section 10: Notices

Any notices to be given hereunder by either party to the other shall be in writing and may be transmitted by personal delivery or by registered or certified mail, return receipt requested. Notices delivered personally shall be deemed communicated as of the date of actual receipt. Mailed notices shall be deemed communicated as of the date they are delivered.

Any notices required by this Agreement shall be addressed as follows:

IF TO OCFA:

Orange County Fire Authority
ATTN: Board of Directors
1 Fire Authority Road
Irvine, California 92602

IF TO FIRE CHIEF:

Brian Fennessy
[Address on File with Human Resources Department]

Section 11: Entire Agreement

This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the employment of Fire Chief by OCFA and contains all of the covenants and agreements between the parties with respect to that employment in any manner whatsoever. Each party to this Agreement acknowledges that no representation, inducement, promise, or agreement, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which is not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding on either party.

Section 12: Modifications

Any modification of this Agreement shall be effective only if it is in writing and signed by the parties.

Section 13: Effect of Waiver

The failure of either party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

Section 14: Partial Invalidity

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in anyway.

Section 15: Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of California and all applicable OCFA Codes, Ordinances, Policies and Resolutions.

Section 16: Bonding

OCFA shall bear the full cost of any fidelity or other bonds required of Fire Chief under any law or ordinance, or any insurance policies in lieu thereof.

Section 17: OCFA's Policies and Procedures

The terms and conditions of Fire Chief's employment, including additional employment benefits of Fire Chief not specifically provided for in this Agreement, shall be governed by

OCFA's personnel policies and procedures and administrative regulations, to the extent not inconsistent with the provisions of this Agreement. In the event of any such inconsistency or conflict, the provisions of this Agreement shall govern.

Section 18: Fire Chief's Independent Review

Fire Chief acknowledges that he has had the opportunity to conduct, and has conducted, an independent review of the financial and legal effects of this Agreement. Fire Chief acknowledges that he has made an independent judgment upon the financial and legal effects of the Agreement and has not relied upon any representation of the OCFA, its elected or appointed officers and officials, agents or employees other than those expressly set forth in this Agreement. Fire Chief acknowledges that he has been advised to obtain, and has to the full extent of his choosing, availed himself of, legal counsel of his choosing with respect to the terms and provisions of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date reflected above.

"OCFA"

Orange County Fire Authority,
a California Joint Powers Authority

By: _____


Ed Sachs


Chairman, OCFA Board of Directors

ATTEST:


Sherry A.F. Wentz
Clerk of the Authority

APPROVED AS TO FORM:

WOODRUFF, SPRADLIN & SMART, APC


David E. Kendig
OCFA General Counsel

"FIRE CHIEF"


Brian Fennessy

ATTACHMENT 1
Separation Agreement and General Release

This Separation Agreement and General Release ("Separation Agreement") is entered into by Brian Fennessy ("Fire Chief") and Orange County Fire Authority ("Employer"), in light of the following facts:

RECITALS

- A. Fire Chief's employment by Employer, and the Employment Agreement under which he was employed, have been terminated effective _____, 20__.
- B. Fire Chief is hereby informed that he has twenty-one (21) days from the effective date of the termination when he received this Agreement to consider it. Employer hereby advises Fire Chief to consult with an attorney before signing this Agreement.
- C. Fire Chief acknowledges that for a period of seven (7) days following the signing of this Separation Agreement ("Revocation Period"), he may revoke this Separation Agreement. This Separation Agreement shall not become effective or enforceable until the Revocation Period has expired.
- D. Fire Chief acknowledges that the Salary Payment referenced in paragraph 1 of this Separation Agreement represents all compensation due and payable to him through his termination. Fire Chief also acknowledges that Employer has made this Salary Payment without regard to whether he signs this Separation Agreement. The Salary Payment does not constitute consideration for this Separation Agreement.
- E. Fire Chief acknowledges that the Separation Pay referenced in paragraph 2 of this Separation Agreement is in excess of all amounts that are due and owing to him as a result of his employment by Employer.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

- 1. Receipt of Salary Payment. Fire Chief hereby acknowledges receipt of a check for all salary owing ("Salary Payment") from Employer.
- 2. Separation Pay. Following return to Employer of this Separation Agreement signed by Fire Chief and expiration of the Revocation Period, not having been revoked by Fire Chief, Employer shall make the applicable Separation Pay provided for under his Employment Agreement with Employer.

3. General Release. In consideration of the Separation Pay to be given to Fire Chief, and other good and valuable consideration, Fire Chief hereby releases and discharges Employer and its past and present elected and appointed officials and officers, employees, representatives, agents and attorneys, from all rights, claims, causes of action, and damages, both known and unknown, in law or in equity, concerning and/or arising out of his employment with Employer which he now has, or ever had, including but not limited to any rights, claims, causes of action, or damages arising under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Fair Labor Standards Act of 1938, the Americans with Disabilities Act, the Meyers-Milias Brown Act, the Vocational Rehabilitation Act of 1973, the Family and Medical Leave Act of 1993, the California Moore-Brown-Roberti Family Rights Act, the California Unruh Civil Rights Act, the California Fair Employment and Housing Act, the California Labor Code, under any other federal, state, or local employment practice legislation, or under federal or state common law, including wrongful discharge, express or implied contract, breach of public policy, or violation of due process rights.

Fire Chief hereby waives and relinquishes all rights and benefits afforded by Section 1542 of the Civil Code of California. Fire Chief understands and acknowledges the significance and consequences of this specific waiver of Section 1542. Section 1542 of the Civil Code of California states as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of Employer and its past and present elected and appointed officials and officers, employees, representatives, agents and attorneys, Fire Chief expressly acknowledges that this General Release is intended to include in its effect, without limitation, all claims which he does not know or suspect to exist in his favor.

Fire Chief further acknowledges that he has read this General Release, that he understands that this is a general release, and that he intends to be legally bound by the same.

4. Complete Agreement. Except for the applicable provisions of the parties' Employment Agreement, which are referenced herein, this is the entire agreement between Fire Chief and Employer with respect to the subject matter hereof and this Separation Agreement supersedes all prior and contemporaneous oral and written agreements and discussions. It may only be amended in writing.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the dates reflected below.

"FIRE CHIEF"

Dated: _____

By: _____

ORANGE COUNTY FIRE AUTHORITY

Dated: _____

By: _____

**FIRST AMENDMENT TO THE EMPLOYMENT AGREEMENT
BETWEEN ORANGE COUNTY FIRE AUTHORITY AND BRIAN FENNESSY**

This First Amendment ("Amendment") to the Agreement for Appointment of Brian Fennessy to the Position of Fire Chief ("Agreement") is entered into this 26th day of July, 2018, by and between Brian Fennessy and the Orange County Fire Authority ("Authority").

RECITALS

WHEREAS, the Authority's Board of Directors (the "Board") has appointed Chief Fennessy to the position of Fire Chief in accordance with the terms and conditions set forth in the Agreement which was entered into and effective April 16, 2018, and Chief Fennessy desires to continue to serve in this capacity and under the terms set forth therein;

WHEREAS, the parties desire to amend the Agreement on the terms and conditions set forth in this Addendum;

NOW, THEREFORE, in consideration of the mutual covenants specified herein, the parties agree as follows:

1. The parties hereby replace Section 5.C. in its entirety which states the following: "After the first year, future annual non-base building increases will be awarded automatically to ensure that the Fire Chief's salary when combined with this increase will equal five percent (5%) above the salary of Fire Chief's highest paid subordinate, excluding overtime. Such increases will be subject to deductions and withholdings of any and all sums required for federal or state income tax, and other deductions or withholdings required by then-current state, federal, or local law."

2. Section 5.C. is amended to read as follows: "After the first year increase set forth in Section 5.B., future adjustments to compensation or benefits, if any, shall be negotiated after or concurrently with the performance evaluations conducted pursuant to Section 4. Both parties acknowledge that any such compensation or benefit adjustments shall be discretionary with the Board of Directors."

3. Except as otherwise expressly provided in this Amendment, all of the terms and conditions of the Agreement remain in full force and effect.

Dated this 26th day of July, 2018.

BRIAN FENNESSY

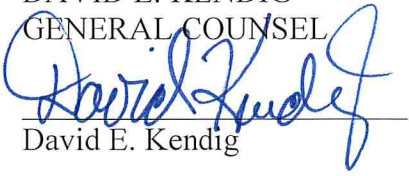


Brian Fennessy

APPROVED AS TO FORM:

ORANGE COUNTY FIRE AUTHORITY

DAVID E. KENDIG
GENERAL COUNSEL



David E. Kendig



Ed Sachs
Chairman, OCFA Board of Directors