



ORANGE COUNTY FIRE AUTHORITY

AGENDA

BOARD OF DIRECTORS REGULAR MEETING
Thursday, September 24, 2020
6:00 P.M.

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

Link to:

[Board of Directors Member Roster](#)

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 the 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>



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 and identify the need and the requested modification or accommodation. Please notify us as soon as is feasible, however 48 hours prior to the meeting is appreciated to enable the Authority to make reasonable arrangements to assure accessibility to the meeting.

NOTICE REGARDING PUBLIC PARTICIPATION **DURING COVID-19 EMERGENCY**

During the Statewide COVID-19 Emergency, the public is not permitted to convene in person for this public meeting. However, the public may still view and comment on the meeting as follows:

- To watch the meeting online, please go to website at www.OCFA.org
- To submit an e-comment, please email to PublicComments@ocfa.org.

You may comment on items on the agenda or not on the agenda. Your comments will be forwarded electronically and immediately to the members of the Board. Comments related to a particular agenda item will only be considered prior to the close of public comments on that item.

CALL TO ORDER

INVOCATION by OCFA Chaplain Robert Benoun

PLEDGE OF ALLEGIANCE by Director Rains

ROLL CALL

PUBLIC COMMENTS

Please refer to instructions on how to submit a public comment during COVID-19 Emergency on Page 1 of this Agenda.

REPORTS

A. Report from the Budget and Finance Committee Chair

B. Report from the Human Resources Committee Chair

C. Report from the Fire Chief:

- 25th Anniversary Presentation
- Wildfires Update and Fire Resources
- Suicide Prevention Safety Stand Down
- COVID Safety Stand Down
- Helicopter Service Update

1. PRESENTATIONS

No Items.

2. CONSENT CALENDAR

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

A. Minutes from the August 27, 2020, Special Meeting of the Board of Directors

Submitted by: Maria D. Huizar, Clerk of the Authority

Recommended Action:

Approve as submitted.

B. Carryover of FY 2019/20 Uncompleted Multi-Year Projects

Submitted by: Robert Cortez, Assistant Chief/Business Services Department, Tricia Jakubiak, Treasurer, and Stuart Lam, Budget Manager

Budget and Finance Committee approved at the September 9, 2020 meeting.

Recommended Actions:

1. Approve a budget adjustment in the FY 2020/21 General Fund (121) increasing revenues by \$7,853,974 and expenditures by \$10,468,027.
2. Approve a budget adjustment in the FY 2020/21 General Fund CIP (12110) increasing expenditures by \$4,251,843.
3. Approve a budget adjustment in the FY 2020/21 Fire Stations and Facilities Fund (123) increasing expenditures by \$6,021,771.
4. Approve a budget adjustment in the FY 2020/21 Communications and Information Systems Fund (124) increasing expenditures by \$2,948,389.
5. Approve a budget adjustment in the FY 2020/21 Fire Apparatus Fund (133) increasing expenditures by \$2,409,530.
6. Approve a budget adjustment in the FY 2020/21 Irvine Settlement Agreement Fund (139) increasing expenditures by \$1,500,000.
7. Approve a budget adjustment in the FY 2020/21 Structural Fire Entitlement Fund (171) increasing expenditures by \$1,226,020.

C. Biennial Review and Adoption of Revised Conflict of Interest Code

Submitted by: Robert Cortez, Assistant Chief/Business Services Department and Maria D. Huizar, Clerk of the Authority

Recommended Actions:

1. Continue consideration of matter to the October 22, 2020, Regular Board meeting at the request of staff.

D. Organizational Service Level Assessment Results & Approval of Next Phase of Citygate Services

Submitted by: Robert Cortez, Assistant Chief/Business Services Department

Budget and Finance Committee approved at the September 9, 2020 meeting.

Recommended Actions:

1. Receive and file the Citygate Organizational Service Level Assessment (SLA) results presentation and final reports for Field Deployment, Emergency Medical Services, Emergency Command Center, Fleet Services and Executive Leadership.
2. Approve and authorize the Purchasing Manager to issue individual Purchase Orders to Citygate Associates, LLC, under the general terms and conditions of the previously authorized Master Agreement, for each of the following:
 - a. Business Services Department SLA - \$68,356
 - b. Community Risk Reduction Department SLA - \$70,792

3. Direct staff to increase expenditures in the FY 2020/21 General Fund (121) budget by \$139,148 to fund the SLA's outlined above.

3. DISCUSSION

A. Approval of Memorandum of Understanding Orange County Fire Authority Chief Officers Association

Submitted by: Lori Zeller, Deputy Chief/Administration & Support Bureau

Recommended Action:

Approve the proposed MOU between the Orange County Fire Authority and the Orange County Fire Authority Chief Officers Association for a term of July 1, 2020, to June 30, 2023.

B. Very Large Helitanker (VLHT) Services

Submitted by: Brian Fennessy, Fire Chief

Recommended Actions:

1. Approve Funding Agreement with Southern California Edison in a form substantially consistent with the attachment and approved by legal counsel to accept funding in the amount of \$2,158,000 to fund the fixed daily standby lease cost of one CH-47 Helitanker to enhance the effectiveness of aerial responses to wildland fires.
2. Approve and authorize the Purchasing Manager to execute the Public Aircraft Lease and Service Agreement with Coulson Aviation (USA), Inc. in a form substantially consistent with the attachment and approved by legal counsel utilizing the special procurement provision in the Purchasing Ordinance for the provision of aircraft and other operational related services in an amount not to exceed \$3,283,000.
3. Approve and authorize a FY 2020/21 General Fund (121) budget adjustment to recognize funding from SCE for a revenue increase of \$2,158,000 and to increase appropriations by the same amount.
4. Review the proposed agenda item and approve the updated Cost Reimbursement Rate schedule to include the CH-47 Helitanker hourly flight rate to be effective October 1, 2020.
5. Adopt statutory and categorical exemptions from the California Environmental Quality Act (CEQA) pursuant to: (1) Title 14 of the California Code of Regulations, section 15262 for feasibility and planning studies; and (2) CEQA Guidelines section 15301 for existing facilities.

4. PUBLIC HEARING

No Items.

CLOSED SESSION

The Brown Act permits legislative bodies to discuss certain matters without members of the public present. The Board of Directors find, based on advice from the General Counsel, that discussion in open session of the following matters will prejudice the position of the authority in existing and/or anticipated litigation:

CS.1. CONFERENCE WITH LEGAL COUNSEL – POSSIBLE INITIATION OF LITIGATION pursuant to paragraph (4) of subdivision (d) of Section 54956.9 of the Government Code: One Case

CLOSED SESSION REPORT**BOARD MEMBER COMMENTS**

ADJOURNMENT – The next regular meeting of the Orange County Fire Authority Board of Directors is scheduled for Thursday, October 22, 2020, at 6:00 p.m.

AFFIDAVIT OF POSTING

I hereby certify under penalty of perjury and as required by the State of California, Government Code § 54954.2(a), that the foregoing Agenda was posted in the lobby and front gate public display case of the Orange County Fire Authority, Regional Training and Operations Center, 1 Fire Authority Road, Irvine, CA, not less than 72 hours prior to the meeting.

Maria D. Huizar, CMC
Clerk of the Authority

UPCOMING MEETINGS:

Budget and Finance Committee Meeting
Executive Committee Meeting
Board of Directors Meeting
Human Resources Committee Meeting

Wednesday, October 14, 2020, 12 noon
Thursday, October 22, 2020, 5:30 p.m.
Thursday, October 22, 2020, 6:00 p.m.
Tuesday, November 3, 2020, 12 noon

MINUTES ORANGE COUNTY FIRE AUTHORITY

**Board of Directors Special Meeting
Thursday, August 27, 2020
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 August 27, 2020, at 6:02 p.m. by Chair Hasselbrink.

INVOCATION

Chaplain Ken Krikac offered the invocation.

PLEDGE OF ALLEGIANCE

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

ROLL CALL

Chair, Shelley Hasselbrink, Los Alamitos	Vice Chair, Vince Rossini, Villa Park*
Lisa Bartlett, County of Orange*	Donald P. Wagner, County of Orange*
Sergio Farias, San Juan Capistrano*	Carol Gamble, Rancho Santa Margarita*
Dave Harrington, Aliso Viejo*	Ed Sachs, Mission Viejo*
Gene Hernandez, Yorba Linda*	Robert Johnson, Cypress*
Anthony Kuo, Irvine	Kathleen Ward, San Clemente*
Thomas Moore, Seal Beach*	Noel Hatch, Laguna Woods*
John R. O'Neill, Garden Grove*	Sandy Rains, Laguna Niguel*
Juan Villegas, Santa Ana	Dave Shawver, Stanton*
Michele Steggell, La Palma	Elizabeth Swift, Buena Park*
Tri Ta, Westminster*	Mark Tettemer, Lake Forest*
Letitia Clark, Tustin*	

Absent: Joseph Muller, Dana Point
Don Sedgwick, Laguna Hills

Also present were:

Fire Chief Brian Fennessy	Deputy Chief Pokey Sanchez
Deputy Chief Lori Zeller	Assistant Chief Randy Black
Assistant Chief Robert Cortez	Assistant Chief Kenny Dossey
Assistant Chief Jim Ruane	Communications Director Colleen Windsor
General Counsel David Kendig	Clerk of the Authority Maria Huizar

PUBLIC COMMENTS (FILE 11.11)

Craig Green, Placentia Council Member, addressed the current status of the Placentia Fire Department.

Tim Steging, President of the Orange County Professional Firefighters' Association, Local 3631, asked for support of the Board of Directors with regards to the labor negotiations.

RECESS TO CLOSED SESSION (FILE 11.15)

Chair Hasselbrink recessed the Open Session meeting to Closed Session at 6:14 p.m.

CS1. CONFERENCE WITH LABOR NEGOTIATOR

Chief Negotiator:	Peter Brown, Liebert Cassidy Whitmore
Employee Organizations:	Orange County Professional Firefighters' Association, Local 3631 and Chief Officers Association
Authority:	Government Code Section 54957.6

RECONVENE TO OPEN SESSION

Chair Hasselbrink reconvened to Open Session meeting at 7:20 p.m. with all Directors present.

CLOSED SESSION REPORT (FILE 11.15)

General Counsel David Kendig reported that the Board provided direction to the negotiator, otherwise there were no reportable actions.

REPORT

A. Report from the Fire Chief (FILE 11.14)

Fire Chief Brian Fennessy noted the recent Joint Press Conference with Sheriff Don Barnes held at Air Operations Fullerton; reported on the 4th Quarter Report on the 2019/20 Strategic Goals and Objectives; and presented the Final 2020/21 Strategic Goals and Objectives.

1. PRESENTATION

A. “Update on Collaborative Efforts on Wildland Fire Protection” by Michael O’Connell of the Irvine Ranch Conservancy (FILE 18.17A)

Michael O’Connell, President and CEO of the non-profit Irvine Ranch Conservancy provided a PowerPoint Presentation and background to the Conservancy partnership with Orange County Fire Authority for Fire Prevention of wildland areas within the Conservancy.

2. CONSENT CALENDAR

On motion of Director Hernandez and second by Director Johnson and following a roll call vote, declared passed 22-0 (Directors Muller and Sedgwick absent, and Director Farias abstained).

A. Minutes from the July 23, 2020, Regular Meeting of the Board of Directors (FILE 11.06)

Approved as submitted.

3. DISCUSSION

A. Approval of Memorandum of Understanding Orange County Professional Firefighters Association (FILE 17.04B1)

Deputy Chief Lori Zeller presented the Approval of Memorandum of Understanding Orange County Professional Firefighters Association.

On motion of Director Kuo and second by Director Villegas, and following a roll call vote, declared passed 19-4 (Directors Harrington, Moore, Tettemer, and Wagner dissented and Directors Muller and Sedgwick absent) to approve the proposed MOU between the Orange County Fire Authority and the Orange County Professional Firefighters Association for a term of September 1, 2020, to August 31, 2022.

4. PUBLIC HEARING

No Items.

BOARD MEMBER COMMENTS (FILE 11.13)

Director Hernandez thanked Chief Fennessy for an update he provided to the City of Yorba Linda regarding the City of Placentia Fire Department transition.

ADJOURNMENT – Chair Hasselbrink adjourned the meeting at 7:39 p.m. The next regular meeting of the Orange County Fire Authority Board of Directors is scheduled for Thursday, September 24, 2020, at 6:00 p.m.

Maria D. Huizar, CMC
Clerk of the Authority



Orange County Fire Authority
AGENDA STAFF REPORT

Board of Directors Meeting
September 24, 2020

Agenda Item No. 2B
Consent Calendar

Carryover of FY 2019/20 Uncompleted Multi-Year Projects

Contact(s) for Further Information

Robert Cortez, Assistant Chief Business Services Department	robertcortez@ocfa.org	714.573.6012
Tricia Jakubiak, Treasurer	triciajakubiak@ocfa.org	714.573.6301
Stuart Lam, Budget Manager	stuartlam@ocfa.org	714.573.6302

Summary

This agenda item is a routine annual request for approval to carryover funding for various projects, grants, and unexpended funds that were not used in FY 2019/20 and require funding in FY 2020/21.

Prior Board/Committee Action

On September 9, 2020, the Budget and Finance Committee approved the item as recommended by a 7-0 vote (Farias and Rossini absent).

RECOMMENDED ACTION(S)

1. Approve a budget adjustment in the FY 2020/21 General Fund (121) increasing revenues by \$7,853,974 and expenditures by \$10,468,027.
2. Approve a budget adjustment in the FY 2020/21 General Fund CIP (12110) increasing expenditures by \$4,251,843.
3. Approve a budget adjustment in the FY 2020/21 Fire Stations and Facilities Fund (123) increasing expenditures by \$6,021,771.
4. Approve a budget adjustment in the FY 2020/21 Communications and Information Systems Fund (124) increasing expenditures by \$2,948,389.
5. Approve a budget adjustment in the FY 2020/21 Fire Apparatus Fund (133) increasing expenditures by \$2,409,530.
6. Approve a budget adjustment in the FY 2020/21 Irvine Settlement Agreement Fund (139) increasing expenditures by \$1,500,000.
7. Approve a budget adjustment in the FY 2020/21 Structural Fire Entitlement Fund (171) increasing expenditures by \$1,226,020.

Impact to Cities/County

The proposed adjustments to the FY 2020/21 budget will have no impact to cash contract city charges.

Fiscal Impact

Approval of the requested adjustments will accommodate a change in timing of revenues and appropriations, from FY 2019/20 to FY 2020/21, in the funds listed as per the recommended actions.

Background

The annual carryover request includes projects in the General, Capital Improvement Program and other funds, as summarized in the table below. Due to the complexity, size, timing and resources available to complete projects, as well as changes in priorities, not all projects were completed within the fiscal year. Therefore, staff is recommending to carry over the appropriations for such projects so that they may continue and be completed within fiscal year 2020/21. Carryover requests reflect simply a timing change of planned expenditures.

Fund	Revenues	Expenditures
General Fund (121)	\$7,853,974	\$10,468,027
GF Capital Improvement Program (12110)	-	\$4,251,843
Fire Stations & Facilities (123)	-	\$6,021,771
Comm. & Info Systems (124)	-	\$2,948,389
Vehicle Replacement (133)	-	\$2,409,530
Irvine Settlement Agreement (139)	-	\$1,500,000
SFF Entitlement Fund (171)	-	\$1,226,020

Staff recommends the approval of the recommended actions.

Attachment(s)

Carryover FY 2019/20 to FY 2020/21

ORANGE COUNTY FIRE AUTHORITY
Carryover FY 2019/20 to FY 2020/21

ATTACHMENT 1

Fund#	Description	Carryover Revenue	Carryover Expenditure	Budget by Category	Appropriate Fund Balance
Fund 121 - General Fund					
	Restricted				
121	US&R Grant (2018 & 2019)	\$759,528	\$759,528		\$0
121	SAFER Grant	844,852			(844,852)
121	AFG Fire Ground Survival Training Grant	866,760	866,760		0
121	CalFire Tree Pest Mitigation Grant	5,152,079	5,152,079		0
121	CalFire Fire Prevention Grant (cameras)	30,952	30,952		0
121	CalFire Augmentation/GGRF (revenues received prior years)		1,715,690		1,715,690
121	CALJAC	199,803	199,803		0
121	Maruchan Donation		380,398		380,398
			Restricted	9,105,210	
	Training				
121	Mission Driven Culture Training		396,350		396,350
121	L-Series Gettysburg Training		83,507		83,507
121	Special Operations - Air Ops Training		160,000		160,000
121	Clerk of the Authority-Virtual Training		3,000		3,000
121	Academy 51 Performance Coaching and Physician Oversight		86,833		86,833
121	Outreach & Recruitment Volunteer Training		75,000		75,000
			Training	804,690	
	Other Services & Supplies				
121	Special Operations - Aircraft Maintenance		384,000		384,000
121	Incident Management Team Logistical Support		51,868		51,868
121	Badge Purchases		37,259		37,259
121	Marketing/Advertising re: FF Trainee Recruitment		60,000		60,000
121	Drowning Prevention Program		25,000		25,000
			Other Services & Supplies	558,127	
Total: Fund 121		7,853,974	10,468,027	10,468,027	2,614,053
Fund 12110 - General Fund CIP					
	Equipment				
12110	Network, Servers, Security (P337)		334,673		334,673
12110	PCs, Laptops, Tablets, Printers (P331)		63,483		63,483
12110	Thermal Imaging Cameras (P411)		1,100,000		1,100,000
12110	Mobile Data computer system upgrade (P303)		130,567		130,567
12110	800 MHz Radios (P332)		137,106		137,106
12110	High Pressure Airbags (P410)		170,000		170,000
			Equipment	1,935,829	
	Fire Station Improvements				
12110	Enterprise Phone/Public Address System Upgrade (P408)		1,157,232		1,157,232
12110	Station Bathroom Gender Accommodation (P413)		233,750		233,750
12110	FS#26 Kitchen, Flooring and Bathroom Remodel (P414)		243,492		243,492
12110	Dormitory Privacy - FS#53 (P416)		77,000		77,000
12110	Dormitory Repairs - FS#41 (P417)		265,000		265,000
12110	Bathroom Modification - FS#13 (P418)		227,165		227,165
12110	Kitchen Remodel - FS#6 (P420)		77,273		77,273
12110	FS#32 New Security Fencing, Automatic Gate (P425)		35,102		35,102
			Fire Station Improvements	2,316,014	
Total: Fund 12110		-	4,251,843	4,251,843	4,251,843

ORANGE COUNTY FIRE AUTHORITY
Carryover FY 2019/20 to FY 2020/21

ATTACHMENT 1

Fund#	Description	Carryover Revenue	Carryover Expenditure	Budget by Category	Appropriate Fund Balance
Fund 123 - Fire Stations and Facilities					
	Fire Station Improvements				0
123	Replacement of Fire Station 10 Yorba Linda) (P503)		1,712,231		1,712,231
123	Fire Station 49 Apparatus Bay Floor Reconstruction (P253)		1,032,570		1,032,570
123	Retrofit existing Station Fire Life Safety Systems (P258)		270,000		270,000
123	Construction of new FS#12 (Laguna Woods) (P553)		500,000		500,000
	Fire Station Improvements			3,514,801	
	Other Facility Improvements				
123	RFOTC Training Grounds Expansion and Upgrade (P251)		1,598,739		1,598,739
123	Infrastructure Security Enhancements (P247)		641,062		641,062
123	US&R Warehouse Training Center Improvements (P246)		267,169		267,169
	Other Facility Improvements			2,506,970	
Total: Fund 123		-	6,021,771	6,021,771	6,021,771
Fund 124 - Communications & Information Systems					
	Communications & Equipment				
124	OCFA Enterprise Audio Video Equipment Upgrades (P350)		278,720		278,720
	Communications & Equipment			278,720	
	Applications and Systems Upgrade				
124	RFOTC Data Ctr Fire Suppression Sys Upgrade (P348)		967,262		967,262
124	Incident Reporting Application Replacement (P325)		142,881		142,881
124	CRR Automation-IFP Replacement (P326)		760,448		760,448
124	TheHive Cloud Upgrade (P351)		100,000		100,000
124	EMS Immunization Tracking (P352)		82,515		82,515
	Applications and Systems Upgrade			2,053,106	
	Business Continuity				
124	OCFA Disaster Recovery Co-Location Facility (P349)		616,563		616,563
	Business Continuity			616,563	
Total: Fund 124		-	2,948,389	2,948,389	2,948,389
Fund 133 - Vehicle Replacement Fund					
133	Haz Mat Support Vehicle		1,042,973		1,042,973
133	Heavy Rescue		835,000		835,000
133	US&R Support Vehicle		208,524		208,524
133	Paramedic Squad		273,033		273,033
133	Trailer - IT/IMT		50,000		50,000
Total: Fund 133		-	2,409,530	2,409,530	2,409,530
Fund 139 - Irvine Settlement Agreement Fund					
139	Joint Training Facility Design Allocation		1,000,000		1,000,000
139	Bidirectional Amplifiers		500,000		500,000
Total: Fund 139		-	1,500,000	1,500,000	1,500,000
Fund 171 - Structural Fire Fund Entitlement Fund					
171	Balance of remaining SFF funds		1,226,020		1,226,020
Total: Fund 171		-	1,226,020	1,226,020	1,226,020



Orange County Fire Authority
AGENDA STAFF REPORT

Board of Directors Meeting
September 24, 2020

Agenda Item No. 2C
Consent Calendar

Biennial Review and Adoption of Revised Conflict of Interest Code

Contact(s) for Further Information

Robert Cortez, Assistant Chief
Business Services Department

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714.573.6012

Maria D. Huizar,
Clerk of the Authority

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714.573.6041

Summary

The Political Reform Act requires that every local agency review its Conflict of Interest Code biennially to ensure that its designated positions are up to date. The Clerk of the Authority, General Counsel, Purchasing Manager, and Executive Management have reviewed the existing Code and recommend that the Board adopt the attached Resolution revising the Conflict of Interest Code for the Orange County Fire Authority (OCFA) (Attachment 1).

Prior Board/Committee Action(s)

The Board adopted its last revised Conflict of Interest Code on October 25, 2018.

RECOMMENDED ACTION(S)

1. Adopt the proposed Resolution entitled A RESOLUTION OF THE BOARD OF DIRECTORS OF THE ORANGE COUNTY FIRE AUTHORITY ADOPTING A CONFLICT OF INTEREST CODE WHICH SUPERSEDES ALL PRIOR CONFLICT OF INTEREST CODES, and;
2. Direct the Clerk of the Authority to submit the adopted Resolution to the Orange County Board of Supervisors, as the Code reviewing body, for approval.

Impact to Cities/County

Not Applicable.

Fiscal Impact

Not Applicable.

Background

The Political Reform Act ("Act") (Gov. Code §8100 *et. seq.*) requires every public agency to adopt and implement a Conflict of Interest Code and review biennially to ensure that it is consistent with provisions of state law and organizational structure. Proposed revisions to the Code must be approved by the reviewing body. Since the Orange County Fire Authority's jurisdictional

boundaries are within the County of Orange, the County Board of Supervisors is our code reviewing body, and therefore must approve any amendments.

The Act prohibits a public official from using his or her official position to influence a governmental decision in which he or she has a financial interest. Every state and local agency must adopt a conflict of interest code that identifies all officials and employees within the agency who make governmental decisions based on the positions they hold, notwithstanding temporary assignments. The individuals in the designated positions must disclose their financial interests as specified in the agency's Conflict of Interest Code ("Code").

The law requires positions and disclosure categories to be included in the Code and requires individuals holding those positions to report their financial interests on a form called the Statement of Economic Interests (FPPC Form 700). The designated positions and certain consultants who hold positions that involve making or participating in the making of decisions, which may foreseeably have a material effect on the holder's financial interests must file the statement within specified periods of assuming or leaving office, and annually while holding the position.

Consultants

Consultants are currently included in the Conflict of Interest Code as potential filers. Staff has developed a questionnaire that will be sent to all consultants upon the approval of a contract that they will all be required to complete (Attachment 3). The completed questionnaire will be evaluated by the Clerk of the Authority and using the Written Determination Form (Attachment 4) decide whether an FPPC Form 700 is required to be filed. Consultants that will be required to file are deemed to "participate in making a governmental decision" including but are not limited to:

- Negotiating, providing advice by way of research, investigation, or preparation of reports or analyses that will be relied upon as unbiased advice by an OCFA decision-maker;
- Providing services that an OCFA employee functioning as a project manager would typically provide concerning procurements using public funds. Examples include preparing contract scopes of work, specifications, or cost estimates; assisting with contract negotiations; determining whether OCFA should make payment on an invoice; and crafting evaluation factors to be used in a procurement.

If applicable, it is not the business or firm providing services that is considered the consultant. The individual(s) working for the firm who provide the services are considered the consultants. These individuals would file statements of economic interests based on their personal financial interests and are subject to disqualification and other laws affecting public officials, in the same manner as other designed filers. The Questionnaire and Determination process will assist staff in identifying such consultants that would then be designed filers.

Procurement Process Committee Members

For several years, the Orange County Fire Authority Purchasing Division has required employees and outside participants serving on a procurement evaluation committee to file a Conflict of Interest and Non-Disclosure Statement (Attachment 2).

The language and intent of the Conflict of Interest and Non-Disclosure Statement is similar to the Statement of Economic Interest; however, some procurement processes are significant in scope

and/or responsibility that may require full disclosure as provided for in the FPPC Form 700. The Purchasing Manager will utilize the consultants' questionnaire and determination forms as noted above to help determine if the employee/committee members participating in the procurement process should complete the FPPC Form 700. Prior to agreeing to serve as a committee member, the individual must agree to file either the Conflict of Interest and Disclosure Form or the FPPC Form 700 as determined by the Purchasing Manager and disclose any potential conflict of interest including financial interest, business interests, gifts, etc. Disclosure applies 12-months prior to commencement of the procurement process. Members filing an FPPC Form 700 form will be required to file an Assuming and Leaving Office Statement, in the same manner as other filers, if they are not already filing as designated filers.

The reason for including some procurement committee members as FPPC Form 700 filers, whose work is temporary in nature, is to avoid any potential conflicts of interest whether real or perceived and to protect the agency. Interests may arise during the testing of equipment, the selection of a vendor and/or preparing specifications on projects deemed significant in scope, amount, or deliberated over several months.

California Code of Regulations

The Fair Political Practices Commission has adopted a regulation containing a model conflict of interest code, which can be incorporated by reference and made part of the local agency's conflict of interest code (2 Cal. Code of Regulations § 18730) ("FPPC Model Code"). In October of 2018, the Board of Directors adopted the Model Code (Attachment 5). The FPPC Model together with the list of designated positions and the disclosure categories collectively constitutes the OCFA Conflict of Interest Code.

Recommended changes

Pursuant to State requirements, several classifications were reviewed and based on their duties to *make or participate in governmental decisions* are requested to be added to the list of designated filers.

Pursuant to FPPC definition, a public official makes a governmental decision, if the person:

- (1) Authorizes or directs any action;
- (2) Vote on matters;
- (3) Appoint a person;
- (4) Obligates or commits his or her agency to *any course of action*; or
- (5) Enters into any contractual agreement on behalf of his or her agency.

A public official participates in the making of a governmental decision, if the person provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review

After consideration of the above and review of classifications within the Authority, staff proposes the following changes:

ADDITIONS TO LIST OF CONFLICT OF INTEREST CODE FILERS:

<u>Department and Classification:</u>	<u>Disclosure Category</u>
Assistant Clerk of the Authority	OC-05
Assistant Treasurer	OC-27
Emergency Communications Center Manager	OC-41
Fire Battalion Chief (Spec Developer for Apparatus)	OC-41
Fire Battalion Chief (Spec Developer for PPE's)	OC-05
Fire Battalion Chief (US&R Logistics)	OC-05
Fire Captain (Spec Developer for Apparatus)	OC-41
Fire Captain (US&R Logistics)	OC-05
Fire Community Relations / Education Supervisor	OC-41
Fire Engineer (US&R Logistics)	OC-05
Firefighter/Paramedic (US&R Logistics)	OC-05
Geographic Information Systems Supervisor	OC-08
Legislative Analyst	OC-41
Payroll and Accounts Payable Manager	OC-11
Procurement Evaluation Committee Members	vary
Public Relations Manager	OC-41
Risk Management Safety Officer	OC-12
US&R Warehouse and Logistics Specialist	OC-05

Attachment(s)

1. Proposed Resolution including List of Designated Positions (Redline)
2. Conflict of Interest and Non-Disclosure Statement
3. Questionnaire to Determine Filing Obligation
4. Written Determination
5. Code of Regulations of FPPC § 18730

RESOLUTION NO. 2020-XX

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
ORANGE COUNTY FIRE AUTHORITY ADOPTING A
CONFLICT OF INTEREST CODE WHICH SUPERSEDES
ALL PRIOR CONFLICT OF INTEREST CODES**

WHEREAS, the Political Reform Act of 1974, Government Code Section 81000 et. seq. (“the Act”), requires a local government agency to adopt a Conflict of Interest Code pursuant to the Act; and

WHEREAS, the Fair Political Practices Commission has adopted a regulation, Title 2, California Code of Regulations, Section 18730, which contains terms for a standard model Conflict of Interest Code, which, together with amendments thereto, may be adopted by public agencies and incorporated by reference to save public agencies time and money by minimizing the actions required of such agencies to keep their codes in conformity with the Political Reform Act.

WHEREAS, the Orange County Fire Authority **previously adopted the Conflict of Interest Code as set forth in Resolution No. 2018-06**, and that Code now requires updating; and

WHEREAS, amendments to the Act have in the past and foreseeably will in the future require conforming amendments to be made to the Conflict of Interest Code; and

WHEREAS, **the persons holding designated positions defined in Exhibit A attached to and made part of this resolution shall file a Statement of Economic Interest pursuant to the requirements of the Conflict of Interest Code.**

WHEREAS, the disclosure categories as defined in Exhibit B are attached to and made a part of this resolution and shall require the designated positions to disclose pursuant to identified categories.

WHEREAS, this Resolution shall take effect immediately following the County of Orange Board of Supervisors approval of said resolution.

NOW THEREFORE, THE BOARD OF DIRECTORS OF THE ORANGE COUNTY FIRE AUTHORITY, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The terms of Title 2, California Code of Regulations, Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission were approved by the Board of Directors on October 25, 2018 and hereby incorporated by reference and, together with Exhibits A and B constitutes the Conflict of Interest Code of the Orange County Fire Authority.

SECTION 2. The provisions of all Conflict of Interest Codes and Amendments thereto previously adopted by the Orange County Fire Authority are hereby superseded.

SECTION 3. The Filing Officer is hereby authorized to forward a copy of this Resolution to the Clerk of the Orange County Board of Supervisors for review and approval by the Orange County Board of Supervisors as required by California Government Code Section 87303.

PASSED, APPROVED, AND ADOPTED this ____ day of _____ 2020.

SHELLY HASSELBRINK, CHAIR
Board of Directors

ATTEST:

MARIA D. HUIZAR, CMC
Clerk of the Authority

APPROVED AS TO FORM:

By: _____
DAVID E. KENDIG,
General Counsel



ORANGE COUNTY FIRE AUTHORITY CONFLICT OF INTEREST CODE

The Political Reform Act, Government Code Sections 81000, et seq., requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair Political Practices Commission has adopted a regulation (2 Cal. Code of Regs. Section 18730) which contains the terms of a standard Conflict of Interest Code, which may be incorporated by reference in an agency's code. After public notice and hearing it may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of Title 2 California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This regulation and the attached Appendix designating officials and employees and establishing disclosure categories, shall constitute the Conflict of Interest Code of the Orange County Fire Authority.

DESIGNATED EMPLOYEES

Designated employees (excluding consultants) shall file Statements of Economic Interests with the Clerk of the Orange County Board of Supervisors who will make the statements available for public inspection and reproduction (Government Code Section 81008). Consultants shall file Statements of Economic Interests with the Orange County Fire Authority Clerk of the Authority.

OFFICIALS WHO MANAGE PUBLIC INVESTMENTS

Officials who manage public investments, as defined by 2 Cal. Code of Regs. §18700.3, are NOT subject to the Authority's code, but are subject to the disclosure requirements of the Act (Government Code Section 87200 et seq.). [Regs. §18730(b)(3)]. These positions are listed here for informational purposes only.

It has been determined that the positions listed below are Orange County Fire Authority officials who manage public investments:

Board of Directors
Fire Chief
Treasurer
Deputy Chief / Administration & Support Bureau
Assistant Chief / Business Services Department

These positions shall file original Statements of Economic Interests with the Clerk of the Orange County Board of Supervisors.

The disclosure categories and requirements for these positions are set forth in Article 2 of Chapter 7 of the Political Reform Act, Government Code Section 87200 et seq. They generally require the **full** disclosure of interests in real property in the agency's jurisdiction, as well as investments, business positions and sources of income (including gifts, loans, and travel payments), **Disclosure Category OC-41**.

ORANGE COUNTY FIRE AUTHORITY

CONFLICT OF INTEREST CODE LIST OF DESIGNATED POSITIONS

Designated Position	Disclosure Category
Accounting Manager	OC-27
Assistant Chief / Business Services Department	OC-41
Assistant Chief / Community Risk Services Department	OC-41
Assistant Chief / Emergency Medical Services Department	OC-41
Assistant Chief / Field Operations Services Department	OC-41
Assistant Chief / Logistics Department	OC-41
Assistant Clerk of the Authority	OC-05
Assistant Fire Marshal	OC-29
Assistant Information Technology Manager	OC-08
Assistant Purchasing Agent	OC-05 OC-41
Assistant Treasurer	OC-27
Board of Directors	OC-41
Buyer	OC-05 OC-41
Clerk of the Authority	OC-05
Construction Manager	OC-32
Consultant	vary OC-30
Deputy Chief / Administration and Support Bureau	OC-41
Deputy Chief / Emergency Operations Bureau	OC-41
Deputy Fire Marshal	OC-29
Director of Communications (Corporate Communications)	OC-41
Emergency Communications Center Manager	OC-41
EMS Coordinator	OC-05
EMS Medical Director	OC-05
Facilities Maintenance Manager	OC-41
Finance Manager	OC-27

Designated Position	Disclosure Category
Fire Battalion Chief (Emergency Command Center)	OC-05
Fire Battalion Chief (Emergency Medical Services)	OC-05
Fire Battalion Chief (Spec Developer for Apparatus)	OC-41
Fire Battalion Chief (Spec Developer for PPEs)	OC-05
Fire Battalion Chief (US&R Logistics)	OC-05
Fire Captain (Spec Developer for Apparatus)	OC-41
Fire Captain (Spec Developer for PPEs)	OC-05
Fire Captain (US&R Logistics)	OC-05
Fire Chief	OC-41
Fire Community Relations / Education Supervisor	OC-41
Fire Division Chief	OC-41
Fire Engineer (Spec Developer for Apparatus)	OC-41
Fire Engineer (US&R Logistics)	OC-05
Fire Prevention Analyst	OC-29
Fire Prevention Specialist	OC-29
Fire Safety Engineer	OC-29
Firefighter/Paramedic (US&R Logistics)	OC-05
Fleet Services Manager	OC-05
Fleet Services Supervisor	OC-05
General Counsel	OC-30
Geographic Information Systems Supervisor	OC-08
Human Resources Director	OC-11
Human Resources Manager	OC-11
Information Technology Manager	OC-08
Information Technology Supervisor	OC-08
Legislation Analyst	OC-41
Organizational Development and Training Program Manager	OC-05
Payroll and Accounts Payable Manager	OC-11

Designated Position	Disclosure Category
Procurement Evaluation Committee Members	vary
Property Manager	OC-41
Public Relations Manager	OC-41
Purchasing and Materials Manager	OC-05
Risk Management Analyst	OC-12
Risk Management Safety Officer	OC-12
Risk Manager	OC-12
Senior Fire Apparatus Parts Specialist	OC-05
Senior Fire Prevention Specialist	OC-29
Service Center Supervisor	OC-05
Supervising Purchasing Agent	OC-05
Treasurer *	OC-41
US&R Warehouse and Logistics Specialist	OC-05

ORANGE COUNTY FIRE AUTHORITY

CONFLICT OF INTEREST CODE

DISCLOSURE CATEGORIES/DESCRIPTIONS

Required filers must review Form 700 Schedules and complete forms as mandated by the specific Disclosure Category designated.

DISCLOSURE CATEGORY	DISCLOSURE DESCRIPTION*
OC-05	All INVESTMENTS in, BUSINESS POSITIONS and INCOME, (including gifts, loans, and travel payments) from <u>sources that provide services, supplies, materials, machinery, equipment</u> (including training and consulting services) used by the County Department, Authority or District, as applicable.
OC-08	All INVESTMENTS in, BUSINESS POSITIONS with and INCOME, (including gifts, loans and travel payments) from <u>sources that develop or provide computer hardware/software, voice data communications, or data processing goods, supplies, equipment, or services</u> (including training and consulting services) used by the County Department, Authority or District, as applicable.
OC-11	All interests in REAL PROPERTY in Orange County or located entirely or partly within the Authority or District boundaries as applicable, as well as INVESTMENTS in, BUSINESS POSITIONS with and INCOME (including gifts, loans and travel payments) from sources that are <u>engaged in the supply of equipment related to recruitment, employment search & marketing, classification, training, or negotiation with personnel; employee benefits, and health and welfare benefits.</u>
OC-12	All interests in REAL PROPERTY in Orange County, the District, or Authority, as applicable, as well as INVESTMENTS in, BUSINESS POSITIONS with and INCOME (including gifts, loans and travel payments) from sources that <u>invest funds or engage in the business of insurance</u> including, but not limited to insurance companies, carriers, holding companies, underwriters, brokers, solicitors, agents, adjusters, claims managers and actuaries; from financial institutions including but not limited to, banks, savings & loan associations and credit unions or sources that have filed a claim, or have a claim pending, against Orange County, the Authority or the District, as applicable.
OC-27	All INVESTMENTS in, BUSINESS POSITIONS with and sources of INCOME (including gifts, loans, and travel payments) from sources that are <u>engaged in banking and/or investment business.</u>

DISCLOSURE CATEGORY	DISCLOSURE DESCRIPTION*
OC-29	All INVESTMENTS in, BUSINESS POSITIONS with and INCOME (including gifts, loans, and travel payments) from <i>sources that are subject to inspection or regulation</i> by the County Department, Authority or District, as applicable.
OC-30	<p><i>Consultants</i> shall be included in the list of designated employees and shall disclose pursuant to the BROADEST CATEGORY in the code subject to the following limitation:</p> <p>The County Department Head/Director/General Manager/Superintendent/etc. may determine that a particular consultant, although a “designated position,” is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements in this section.</p> <p>Such written determination shall include a description of the consultant’s duties and based upon that description, a statement of the extent of disclosure required. The determination of disclosure is a public record and shall be filed with the Form 700 and retained by the Filing Officer for public inspection.</p>
OC-32	All INVESTMENTS in, BUSINESS POSITIONS with and INCOME (including gifts loans and travel payments) from sources that are <i>engaged in any real estate activity</i> within the geographical boundaries of the County, District or Authority as applicable, including but not limited to real estate appraisal, development, construction, sales, brokerage, leasing, lending, insurance or property management.
OC-41	All interests in REAL PROPERTY in Orange County, the District or Authority, as applicable, as well as INVESTMENTS in, BUSINESS POSITIONS with and INCOME (including gifts, loans and travel payments) from <i>sources that provide or which it is foreseeable will provide services, supplies, materials, machinery, vehicles, or equipment</i> (including training and consulting services) used by the County Department, Authority or District, as applicable.

* As used herein, the terms “Department,” “County Department,” “District” and “Authority” shall all mean “Orange County Fire Authority”



CONFLICT OF INTEREST AND NON-DISCLOSURE STATEMENT
SOLICITATION NO. _____
 (Description)

You have been asked to participate in the development of a competitive solicitation and/or the evaluation of offers received in response to a competitive solicitation. It is essential that the integrity of the solicitation process be maintained to ensure that the maximum amount of competition is received, and that each bidder/offeror is given fair and equal consideration. The specifications and/or scope of services must be written to encourage maximum and fair competition. The written responses to the solicitation and any subsequent field testing, clarifications and/or negotiations must stand alone. You are required to be particularly objective and guard against any tendency to favor a particular firm or individual. Previous experiences with the bidder/offeror may be taken into consideration when evaluating qualifications and experience as stated in the solicitation. Offers from the following firms may be evaluated:

(List of Firms)

NON-CONFLICT OF INTEREST

The term "conflict of interest" refers to situations in which financial or other personal considerations may adversely affect or have the appearance of adversely affecting an evaluator's judgment in the review process of proposals received in relation to the above solicitation. You are required to report to the Purchasing Manager any actual or potential conflict of interest. By initialing below, you certify the following:

_____ I certify that neither I nor any member of my immediate family has a material personal or financial relationship with any bidder/offeror, or with a direct competitor of any bidder/offeror under consideration by this proposal evaluation committee. I further certify that no relationship, bias or ethical conflict exists which will prevent me from evaluating any offer solely on its merits and in accordance with the solicitation evaluation criteria.

NON-DISCLOSURE

The confidentiality of the process shall be maintained. Therefore, committee members shall not give individual opinions to bidders/offerors, comment on committee deliberations to people outside of the solicitation process, or share information provided by one bidder/offeror with another prior to award. Any inquiries regarding the evaluation of this particular solicitation must be directed to the Purchasing Manager. By initialing below, you certify the following:

_____ I shall keep all evaluation proceedings in strict confidence prior to contract award. I will do my best to base my recommendation for contract award solely upon the evaluation criteria in the solicitation and each bidder/offeror's response.

VIOLATION OF POLICY

In addition to any penalty contained in any provision of Federal or State law or policy, individuals who violate OCFA Policy or Procedure may be subject to discipline up to and including termination.

ACKNOWLEDGMENT

I have read, understand, and agree to the above, and certify that I will adhere to the instructions presented to the committee for reviewing the received proposals or developing a scope of services. I know of no conflict of interest on my part which would compromise my objectivity, nor do I have any personal interest in seeing that a specific bidder is awarded the contract. I agree to report promptly any Direct or Indirect Financial Interest or Other Interest situation that arises during the process to the Purchasing Manager and fully comply with said provisions.

 Print Name

 Signature

 Date



ORANGE COUNTY FIRE AUTHORITY

P. O. Box 57115, Irvine, CA 92619-7115 • 1 Fire Authority Road, Irvine, CA 92602-0125

Brian Fennessy, Fire Chief

(714) 573-6000

www.ocfa.org

QUESTIONNAIRE TO DETERMINE CONFLICT OF INTEREST CODE FILING OBLIGATION

Designated filers, as defined by Section 18701 of the Regulations of the Fair Political Practices Commission, Title 2, Division 6 of the California Code of Regulations, are required to file a Statement of Economic Interests within 30 days of assuming office / approval of a contract with the Orange County Fire Authority, and within 30 days of completion of service.

The answers to the following questionnaire will help to determine whether the scope of duties to be performed includes the making or participating in the making of governmental decisions which may foreseeably have a material effect on the consultant's/evaluation committee member's own financial interests.

TO BE COMPLETED BY OCFA STAFF:

Purchasing/

Project Manager _____

Department: _____

Email: _____

Phone _____

Consultant Name

(if applicable): _____

Project

Description: _____

Contract Term:

Begins: _____

Ends: _____

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

RESIDENTIAL SPRINKLERS AND SMOKE ALARMS SAVE LIVES

TO BE COMPLETED BY CONSULTANT OR PURCHASING MANAGER:

A.	Will consultant/evaluation committee members make governmental decisions as follow:		
	1. Approve a rate, rule or regulation?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
	2. Adopt or enforce a law?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
	3. Issue, deny, suspend or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
	4. Authorize the agency to enter into, modify, or renew a contract provided it is the type of contract which requires agency approval?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
	5. Grant agency approval to a contract which requires agency approval and to which the agency is a party, or to the specifications for such a contract?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
	6. Grant agency approval to a plan, design, report study, or similar item?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
	7. Adopt or grant agency approval of policies, standards, or guidelines for the agency, or for any subdivision thereof?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
	8. Evaluate, test, or recommend specialized equipment to be included in the scope of RFP/RFQ or for final approval?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
B.	Will the consultant serve in a staff capacity with the agency and in that capacity perform the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the Conflict of Interest Code?	YES <input type="checkbox"/>	NO <input type="checkbox"/>
C.	Will the consultant/evaluation committee members manage public investments?	YES <input type="checkbox"/>	NO <input type="checkbox"/>

Please complete questionnaire in its entirety and remit to the Clerk of the Authority at coa@ocfa.org within 5 days of entering into a contract with OCFA. If you have any questions, please contact project manager directly.



ORANGE COUNTY FIRE AUTHORITY

P. O. Box 57115, Irvine, CA 92619-7115 • 1 Fire Authority Road, Irvine, CA 92602-0125

Brian Fennessy, Fire Chief

(714) 573-6000

www.ocfa.org

WRITTEN DETERMINATION REGARDING CONFLICT OF INTEREST CODE FILING OBLIGATION

Pursuant to the duly adopted Conflict of Interest Code, this document shall serve as the written determination regarding the following consultant/evaluation committee, the retention of whose services are under consideration by the Authority:

Consultant Name

(if applicable):

Project

Description:

Contract Term:

Begins:

Ends:

Based upon review of the attached Conflict of Interest Questionnaire, it is hereby determined that:

_____ This consultant's/evaluation committee duties are *limited in scope* and thus will be required to complete a Conflict of Interest and Non-Disclosure Statement.

_____ This consultant's/evaluation committee duties are *significant in scope* and thus will be required to comply with the disclosure requirements in the Conflict of Interest Code (FPPC Form 700).

The Statement of Economic Interests shall be filed with the Clerk of the Authority Office no later than 30 days after the OCFA has rendered said determination to file an FPPC Form 700 or within 7 days of commencing the procurement process for the evaluation committee members.

The Statement of Economic Interests shall disclose all financial interests within the following disclosure categories, as delineated in the Conflict of Interest Code:

Reviewed by:

Maria D. Huizar
Clerk of the Authority

Date

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

§ 18730. Provisions of Conflict of Interest Codes.

(a) Incorporation by reference of the terms of this regulation along with the designation of employees and the formulation of disclosure categories in the Appendix referred to below constitute the adoption and promulgation of a conflict of interest code within the meaning of Section 87300 or the amendment of a conflict of interest code within the meaning of Section 87306 if the terms of this regulation are substituted for terms of a conflict of interest code already in effect. A code so amended or adopted and promulgated requires the reporting of reportable items in a manner substantially equivalent to the requirements of article 2 of chapter 7 of the Political Reform Act, Sections 81000, et seq. The requirements of a conflict of interest code are in addition to other requirements of the Political Reform Act, such as the general prohibition against conflicts of interest contained in Section 87100, and to other state or local laws pertaining to conflicts of interest.

(b) The terms of a conflict of interest code amended or adopted and promulgated pursuant to this regulation are as follows:

(1) Section 1. Definitions.

The definitions contained in the Political Reform Act of 1974, regulations of the Fair Political Practices Commission (Regulations 18110, et seq.), and any amendments to the Act or regulations, are incorporated by reference into this conflict of interest code.

(2) Section 2. Designated Employees.

The persons holding positions listed in the Appendix are designated employees. It has been determined that these persons make or participate in the making of decisions which may foreseeably have a material effect on economic interests.

(3) Section 3. Disclosure Categories.

This code does not establish any disclosure obligation for those designated employees who are also specified in Section 87200 if they are designated in this code in that same capacity or if the geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction in which those persons must report their economic interests pursuant to article 2 of chapter 7 of the Political Reform Act, Sections 87200, et seq.

In addition, this code does not establish any disclosure obligation for any designated employees who are designated in a conflict of interest code for another agency, if all of the following apply:

(A) The geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction of the other agency;

(B) The disclosure assigned in the code of the other agency is the same as that required under article 2 of chapter 7 of the Political Reform Act, Section 87200; and

(C) The filing officer is the same for both agencies.¹

Such persons are covered by this code for disqualification purposes only. With respect to all other designated employees, the disclosure categories set forth in the Appendix specify which kinds of economic interests are reportable. Such a designated employee shall disclose in his or her statement of economic interests those economic interests he or she has which are of the kind described in the disclosure categories to which he or she is assigned in the Appendix. It has been determined that the economic interests set forth in a designated employee's disclosure categories

are the kinds of economic interests which he or she foreseeably can affect materially through the conduct of his or her office.

(4) Section 4. Statements of Economic Interests: Place of Filing.

The code reviewing body shall instruct all designated employees within its code to file statements of economic interests with the agency or with the code reviewing body, as provided by the code reviewing body in the agency's conflict of interest code.²

(5) Section 5. Statements of Economic Interests: Time of Filing.

(A) Initial Statements. All designated employees employed by the agency on the effective date of this code, as originally adopted, promulgated and approved by the code reviewing body, shall file statements within 30 days after the effective date of this code. Thereafter, each person already in a position when it is designated by an amendment to this code shall file an initial statement within 30 days after the effective date of the amendment.

(B) Assuming Office Statements. All persons assuming designated positions after the effective date of this code shall file statements within 30 days after assuming the designated positions, or if subject to State Senate confirmation, 30 days after being nominated or appointed.

(C) Annual Statements. All designated employees shall file statements no later than April 1. If a person reports for military service as defined in the Servicemember's Civil Relief Act, the deadline for the annual statement of economic interests is 30 days following his or her return to office, provided the person, or someone authorized to represent the person's interests, notifies the filing officer in writing prior to the applicable filing deadline that he or she is subject to that federal statute and is unable to meet the applicable deadline, and provides the filing officer verification of his or her military status.

(D) Leaving Office Statements. All persons who leave designated positions shall file statements within 30 days after leaving office.

(5.5) Section 5.5. Statements for Persons Who Resign Prior to Assuming Office.

Any person who resigns within 12 months of initial appointment, or within 30 days of the date of notice provided by the filing officer to file an assuming office statement, is not deemed to have assumed office or left office, provided he or she did not make or participate in the making of, or use his or her position to influence any decision and did not receive or become entitled to receive any form of payment as a result of his or her appointment. Such persons shall not file either an assuming or leaving office statement.

(A) Any person who resigns a position within 30 days of the date of a notice from the filing officer shall do both of the following:

(1) File a written resignation with the appointing power; and

(2) File a written statement with the filing officer declaring under penalty of perjury that during the period between appointment and resignation he or she did not make, participate in the making, or use the position to influence any decision of the agency or receive, or become entitled to receive, any form of payment by virtue of being appointed to the position.

(6) Section 6. Contents of and Period Covered by Statements of Economic Interests.

(A) Contents of Initial Statements.

Initial statements shall disclose any reportable investments, interests in real property and business positions held on the effective date of the code and income received during the 12 months prior to the effective date of the code.

(B) Contents of Assuming Office Statements.

Assuming office statements shall disclose any reportable investments, interests in real property and business positions held on the date of assuming office or, if subject to State Senate confirmation or appointment, on the date of nomination, and income received during the 12 months prior to the date of assuming office or the date of being appointed or nominated, respectively.

(C) Contents of Annual Statements. Annual statements shall disclose any reportable investments, interests in real property, income and business positions held or received during the previous calendar year provided, however, that the period covered by an employee's first annual statement shall begin on the effective date of the code or the date of assuming office whichever is later, or for a board or commission member subject to Section 87302.6, the day after the closing date of the most recent statement filed by the member pursuant to Regulation 18754.

(D) Contents of Leaving Office Statements.

Leaving office statements shall disclose reportable investments, interests in real property, income and business positions held or received during the period between the closing date of the last statement filed and the date of leaving office.

(7) Section 7. Manner of Reporting.

Statements of economic interests shall be made on forms prescribed by the Fair Political Practices Commission and supplied by the agency, and shall contain the following information:

(A) Investment and Real Property Disclosure.

When an investment or an interest in real property³ is required to be reported,⁴ the statement shall contain the following:

1. A statement of the nature of the investment or interest;

2. The name of the business entity in which each investment is held, and a general description of the business activity in which the business entity is engaged;
3. The address or other precise location of the real property;
4. A statement whether the fair market value of the investment or interest in real property equals or exceeds \$2,000, exceeds \$10,000, exceeds \$100,000, or exceeds \$1,000,000.

(B) Personal Income Disclosure. When personal income is required to be reported,⁵ the statement shall contain:

1. The name and address of each source of income aggregating \$500 or more in value, or \$50 or more in value if the income was a gift, and a general description of the business activity, if any, of each source;
2. A statement whether the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source, was \$1,000 or less, greater than \$1,000, greater than \$10,000, or greater than \$100,000;
3. A description of the consideration, if any, for which the income was received;
4. In the case of a gift, the name, address and business activity of the donor and any intermediary through which the gift was made; a description of the gift; the amount or value of the gift; and the date on which the gift was received;
5. In the case of a loan, the annual interest rate and the security, if any, given for the loan and the term of the loan.

(C) Business Entity Income Disclosure. When income of a business entity, including income of a sole proprietorship, is required to be reported,⁶ the statement shall contain:

1. The name, address, and a general description of the business activity of the business entity;

2. The name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from such person was equal to or greater than \$10,000.

(D) Business Position Disclosure. When business positions are required to be reported, a designated employee shall list the name and address of each business entity in which he or she is a director, officer, partner, trustee, employee, or in which he or she holds any position of management, a description of the business activity in which the business entity is engaged, and the designated employee's position with the business entity.

(E) Acquisition or Disposal During Reporting Period. In the case of an annual or leaving office statement, if an investment or an interest in real property was partially or wholly acquired or disposed of during the period covered by the statement, the statement shall contain the date of acquisition or disposal.

(8) Section 8. Prohibition on Receipt of Honoraria.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept any honorarium from any source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests.

(B) This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

(C) Subdivisions (a), (b), and (c) of Section 89501 shall apply to the prohibitions in this section.

(D) This section shall not limit or prohibit payments, advances, or reimbursements for travel and related lodging and subsistence authorized by Section 89506.

(8.1) Section 8.1. Prohibition on Receipt of Gifts in Excess of \$470.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept gifts with a total value of more than \$470 in a calendar year from any single source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests.

(B) This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

(C) Subdivisions (e), (f), and (g) of Section 89503 shall apply to the prohibitions in this section.

(8.2) Section 8.2. Loans to Public Officials.

(A) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the elected officer holds office or over which the elected officer's agency has direction and control.

(B) No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the public official holds office or over which the public official's agency has direction and control. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.

(C) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected

officer has been elected or over which that elected officer's agency has direction and control.

This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status.

(D) No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected officer has been elected or over which that elected officer's agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.

(E) This section shall not apply to the following:

1. Loans made to the campaign committee of an elected officer or candidate for elective office.
2. Loans made by a public official's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such persons, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.
3. Loans from a person which, in the aggregate, do not exceed \$500 at any given time.

4. Loans made, or offered in writing, before January 1, 1998.

(8.3) Section 8.3. Loan Terms.

(A) Except as set forth in subdivision (B), no elected officer of a state or local government agency shall, from the date of his or her election to office through the date he or she vacates office, receive a personal loan of \$500 or more, except when the loan is in writing and clearly states the terms of the loan, including the parties to the loan agreement, date of the loan, amount of the loan, term of the loan, date or dates when payments shall be due on the loan and the amount of the payments, and the rate of interest paid on the loan.

(B) This section shall not apply to the following types of loans:

1. Loans made to the campaign committee of the elected officer.

2. Loans made to the elected officer by his or her spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such person, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.

3. Loans made, or offered in writing, before January 1, 1998.

(C) Nothing in this section shall exempt any person from any other provision of Title 9 of the Government Code.

(8.4) Section 8.4. Personal Loans.

(A) Except as set forth in subdivision (B), a personal loan received by any designated employee shall become a gift to the designated employee for the purposes of this section in the following circumstances:

1. If the loan has a defined date or dates for repayment, when the statute of limitations for filing an action for default has expired.

2. If the loan has no defined date or dates for repayment, when one year has elapsed from the later of the following:

- a. The date the loan was made.
- b. The date the last payment of \$100 or more was made on the loan.
- c. The date upon which the debtor has made payments on the loan aggregating to less than \$250 during the previous 12 months.

(B) This section shall not apply to the following types of loans:

- 1. A loan made to the campaign committee of an elected officer or a candidate for elective office.
- 2. A loan that would otherwise not be a gift as defined in this title.
- 3. A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor has taken reasonable action to collect the balance due.
- 4. A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor, based on reasonable business considerations, has not undertaken collection action. Except in a criminal action, a creditor who claims that a loan is not a gift on the basis of this paragraph has the burden of proving that the decision for not taking collection action was based on reasonable business considerations.
- 5. A loan made to a debtor who has filed for bankruptcy and the loan is ultimately discharged in bankruptcy.

(C) Nothing in this section shall exempt any person from any other provisions of Title 9 of the Government Code.

(9) Section 9. Disqualification.

No designated employee shall make, participate in making, or in any way attempt to use his or her official position to influence the making of any governmental decision which he or she knows or has reason to know will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

(A) Any business entity in which the designated employee has a direct or indirect investment worth \$2,000 or more;

(B) Any real property in which the designated employee has a direct or indirect interest worth \$2,000 or more;

(C) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating \$500 or more in value provided to, received by or promised to the designated employee within 12 months prior to the time when the decision is made;

(D) Any business entity in which the designated employee is a director, officer, partner, trustee, employee, or holds any position of management; or

(E) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating \$470 or more provided to, received by, or promised to the designated employee within 12 months prior to the time when the decision is made.

(9.3) Section 9.3. Legally Required Participation.

No designated employee shall be prevented from making or participating in the making of any decision to the extent his or her participation is legally required for the decision to be

made. The fact that the vote of a designated employee who is on a voting body is needed to break a tie does not make his or her participation legally required for purposes of this section.

(9.5) Section 9.5. Disqualification of State Officers and Employees.

In addition to the general disqualification provisions of section 9, no state administrative official shall make, participate in making, or use his or her official position to influence any governmental decision directly relating to any contract where the state administrative official knows or has reason to know that any party to the contract is a person with whom the state administrative official, or any member of his or her immediate family has, within 12 months prior to the time when the official action is to be taken:

(A) Engaged in a business transaction or transactions on terms not available to members of the public, regarding any investment or interest in real property; or

(B) Engaged in a business transaction or transactions on terms not available to members of the public regarding the rendering of goods or services totaling in value \$1,000 or more.

(10) Section 10. Disclosure of Disqualifying Interest.

When a designated employee determines that he or she should not make a governmental decision because he or she has a disqualifying interest in it, the determination not to act may be accompanied by disclosure of the disqualifying interest.

(11) Section 11. Assistance of the Commission and Counsel.

Any designated employee who is unsure of his or her duties under this code may request assistance from the Fair Political Practices Commission pursuant to Section 83114 and Regulations 18329 and 18329.5 or from the attorney for his or her agency, provided that nothing in this section requires the attorney for the agency to issue any formal or informal opinion.

(12) Section 12. Violations.

This code has the force and effect of law. Designated employees violating any provision of this code are subject to the administrative, criminal and civil sanctions provided in the Political Reform Act, Sections 81000-91014. In addition, a decision in relation to which a violation of the disqualification provisions of this code or of Section 87100 or 87450 has occurred may be set aside as void pursuant to Section 91003.

¹ Designated employees who are required to file statements of economic interests under any other agency's conflict of interest code, or under article 2 for a different jurisdiction, may expand their statement of economic interests to cover reportable interests in both jurisdictions, and file copies of this expanded statement with both entities in lieu of filing separate and distinct statements, provided that each copy of such expanded statement filed in place of an original is signed and verified by the designated employee as if it were an original. See Section 81004.

² See Section 81010 and Regulation 18115 for the duties of filing officers and persons in agencies who make and retain copies of statements and forward the originals to the filing officer.

³ For the purpose of disclosure only (not disqualification), an interest in real property does not include the principal residence of the filer.

⁴ Investments and interests in real property which have a fair market value of less than \$2,000 are not investments and interests in real property within the meaning of the Political Reform Act. However, investments or interests in real property of an individual include those held by the individual's spouse and dependent children as well as a pro rata share of any investment or interest in real property of any business entity or trust in which the individual, spouse and dependent children own, in the aggregate, a direct, indirect or beneficial interest of 10 percent or greater.

⁵ A designated employee's income includes his or her community property interest in the income of his or her spouse but does not include salary or reimbursement for expenses received from a state, local or federal government agency.

⁶ Income of a business entity is reportable if the direct, indirect or beneficial interest of the filer and the filer's spouse in the business entity aggregates a 10 percent or greater interest. In addition, the disclosure of persons who are clients or customers of a business entity is required only if the clients or customers are within one of the disclosure categories of the filer.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 87103(e), 87300-87302, 89501, 89502 and 89503, Government Code.

HISTORY

1. New section filed 4-2-80 as an emergency; effective upon filing (Register 80, No. 14).
Certificate of Compliance included.
2. Editorial correction (Register 80, No. 29).
3. Amendment of subsection (b) filed 1-9-81; effective thirtieth day thereafter (Register 81, No. 2).
4. Amendment of subsection (b)(7)(B)1. filed 1-26-83; effective thirtieth day thereafter (Register 83, No. 5).
5. Amendment of subsection (b)(7)(A) filed 11-10-83; effective thirtieth day thereafter (Register 83, No. 46).
6. Amendment filed 4-13-87; operative 5-13-87 (Register 87, No. 16).
7. Amendment of subsection (b) filed 10-21-88; operative 11-20-88 (Register 88, No. 46).
8. Amendment of subsections (b)(8)(A) and (b)(8)(B) and numerous editorial changes filed 8-28-90; operative 9-27-90 (Reg. 90, No. 42).

9. Amendment of subsections (b)(3), (b)(8) and renumbering of following subsections and amendment of Note filed 8-7-92; operative 9-7-92 (Register 92, No. 32).
10. Amendment of subsection (b)(5.5) and new subsections (b)(5.5)(A)-(A)(2) filed 2-4-93; operative 2-4-93 (Register 93, No. 6).
11. Change without regulatory effect adopting Conflict of Interest Code for California Mental Health Planning Council filed 11-22-93 pursuant to title 1, section 100, California Code of Regulations (Register 93, No. 48). Approved by Fair Political Practices Commission 9-21-93.
12. Change without regulatory effect redesignating Conflict of Interest Code for California Mental Health Planning Council as chapter 62, section 55100 filed 1-4-94 pursuant to title 1, section 100, California Code of Regulations (Register 94, No. 1).
13. Editorial correction adding History 11 and 12 and deleting duplicate section number (Register 94, No. 17).
14. Amendment of subsection (b)(8), designation of subsection (b)(8)(A), new subsection (b)(8)(B), and amendment of subsections (b)(8.1)-(b)(8.1)(B), (b)(9)(E) and Note filed 3-14-95; operative 3-14-95 pursuant to Government Code section 11343.4(d) (Register 95, No. 11).
15. Editorial correction inserting inadvertently omitted language in footnote 4 (Register 96, No. 13).
16. Amendment of subsections (b)(8)(A)-(B) and (b)(8.1)(A), repealer of subsection (b)(8.1)(B), and amendment of subsection (b)(12) filed 10-23-96; operative 10-23-96 pursuant to Government Code section 11343.4(d) (Register 96, No. 43).
17. Amendment of subsections (b)(8.1) and (9)(E) filed 4-9-97; operative 4-9-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 15).

18. Amendment of subsections (b)(7)(B)5., new subsections (b)(8.2)-(b)(8.4)(C) and amendment of Note filed 8-24-98; operative 8-24-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 35).

19. Editorial correction of subsection (a) (Register 98, No. 47).

20. Amendment of subsections (b)(8.1), (b)(8.1)(A) and (b)(9)(E) filed 5-11-99; operative 5-11-99 pursuant to Government Code section 11343.4(d) (Register 99, No. 20).

21. Amendment of subsections (b)(8.1)-(b)(8.1)(A) and (b)(9)(E) filed 12-6-2000; operative 1-1-2001 pursuant to the 1974 version of Government Code section 11380.2 and Title 2, California Code of Regulations, section 18312(d) and (e) (Register 2000, No. 49).

22. Amendment of subsections (b)(3) and (b)(10) filed 1-10-2001; operative 2-1-2001.

Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 2).

23. Amendment of subsections (b)(7)(A)4., (b)(7)(B)1.-2., (b)(8.2)(E)3., (b)(9)(A)-(C) and footnote 4. filed 2-13-2001. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 7).

24. Amendment of subsections (b)(8.1)-(b)(8.1)(A) filed 1-16-2003; operative 1-1-2003.

Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District,

nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2003, No. 3).

25. Editorial correction of History 24 (Register 2003, No. 12).

26. Editorial correction removing extraneous phrase in subsection (b)(9.5)(B) (Register 2004, No. 33).

27. Amendment of subsections (b)(2)-(3), (b)(3)(C), (b)(6)(C), (b)(8.1)-(b)(8.1)(A), (b)(9)(E) and (b)(11)-(12) filed 1-4-2005; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2005, No. 1).

28. Amendment of subsection (b)(7)(A)4. filed 10-11-2005; operative 11-10-2005 (Register 2005, No. 41).

29. Amendment of subsections (a), (b)(1), (b)(3), (b)(8.1), (b)(8.1)(A) and (b)(9)(E) filed 12-18-2006; operative 1-1-2007. Submitted to OAL pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2006, No. 51).

30. Amendment of subsections (b)(8.1)-(b)(8.1)(A) and (b)(9)(E) filed 10-31-2008; operative 11-30-2008. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2008, No. 44).

31. Amendment of section heading and section filed 11-15-2010; operative 12-15-2010. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of*

Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2010, No. 47).

32. Amendment of section heading and subsections (a)-(b)(1), (b)(3)-(4), (b)(5)(C), (b)(8.1)-(b)(8.1)(A) and (b)(9)(E) and amendment of footnote 1 filed 1-8-2013; operative 2-7-2013.

Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2013, No. 2).

33. Amendment of subsections (b)(8.1)-(b)(8.1)(A), (b)(8.2)(E)3. and (b)(9)(E) filed 12-15-2014; operative 1-1-2015 pursuant to section 18312(e)(1)(A), title 2, California Code of Regulations.

Submitted to OAL for filing and printing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2014, No. 51).

34. Redesignation of portions of subsection (b)(8)(A) as new subsections (b)(8)(B)-(D), amendment of subsections (b)(8.1)-(b)(8.1)(A), redesignation of portions of subsection (b)(8.1)(A) as new subsections (b)(8.1)(B)-(C) and amendment of subsection (b)(9)(E) filed 12-1-2016; operative 12-31-2016 pursuant to Cal. Code Regs. tit. 2, section 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision,

April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2016, No. 49).



Orange County Fire Authority
AGENDA STAFF REPORT

Board of Directors
September 24, 2020

Agenda Item No. 2D
Consent Calendar

Organizational Service Level Assessment Results
& Approval of Next Phase of Citygate Services

Contact(s) for Further Information

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Summary

This agenda item is submitted to share the results of the Citygate Service Level Assessments (SLAs) for Field Deployment (SOC), Emergency Medical Services, Emergency Command Center, Fleet Services and Executive Management, and to seek approval for the next phase of Citygate services.

Prior Board/Committee Action(s)

At its regular November 15, 2018, meeting, the Executive Committee awarded a Master Consulting Agreement with Citygate Associates, LLC, the number one ranked firm in the OCFA's Request for Qualifications (RFQ) process for as-needed organizational service level review consulting services.

At its regular January 9, 2019, meeting, the Budget and Finance Committee reviewed and unanimously recommended approval of Citygate's scope of work, associated costs, and proposed budget.

At its regular January 24, 2019, meeting, the Board of Directors approved Citygate's initial scope of work, associated costs, and necessary budget adjustments for performance of SLAs in five areas of the OCFA during 2019.

At its regular meeting on October 24, 2019, the Executive Committee approved the reallocation of funding from the approved Purchase Orders issued for the Executive Leadership Team and Fleet Services SLAs into the Field Deployment Services SLA. The total contract amount remained unchanged (\$700,725).

On September 9, 2020, the Budget and Finance Committee approved the item as recommended by a 6-0 vote (Committee Members Farias, Rossini absent from the meeting and Director Hasselbrink not present for the vote).

RECOMMENDED ACTION(S)

1. Receive and file the Citygate Organizational Service Level Assessment (SLA) results presentation and final reports for Field Deployment, Emergency Medical Services, Emergency Command Center, Fleet Services and Executive Leadership.
2. Approve and authorize the Purchasing Manager to issue individual Purchase Orders to Citygate Associates, LLC, under the general terms and conditions of the previously authorized Master Agreement, for each of the following:

- a. Business Services Department SLA – \$68,356
- b. Community Risk Reduction Department SLA - \$70,792
3. Direct staff to increase expenditures in the FY 2020/21 General Fund (121) budget by \$139,148 to fund the SLA's outlined above.

Impact to Cities/County

Not Applicable.

Fiscal Impact

The FY 2020/21 General Fund expenditures will increase by \$139,148 to complete the next phase of Citygate services.

Background

Following a 2018 RFQ process, Citygate Associates, LLC (Citygate) was selected and ultimately awarded a 3-year term agreement, with two additional one-year renewals, to perform as-needed organizational service level review consulting services for OCFA. Citygate, is a public sector firm that provides management consulting to a full array of local government functions, with particular emphasis on fire protection, law enforcement, community development, public works, animal services, and human resources.

Five organizational SLA areas, also known as cost centers, were identified and approved for review during calendar year 2019, which include Emergency Command Center (ECC), Emergency Medical Services (EMS), Fleet Services, Field Deployment (SOC), and Executive Leadership Team/Human Resources. These assessments are intended to accomplish the same objectives as a strategic plan, but in smaller pieces, and allow for progress to be made on identified objectives, while other portions of the organization are still being assessed.

Each SLA evaluates, at a forensics data-driven level, the operational performance of the cost centers, not just compared to national and Citygate team best practices, but to the needs of the OCFA, its employees and its agency customers. Each SLA is a stand-alone assessment report, that will cover elements assessed, the operational metrics, and describe strengths and areas of opportunity.

The SLA process began with a series of kickoff meetings during February and March of 2019 in which OCFA assessment leads met with Citygate consultants, the Chief, and members of the Executive Management Team to discuss the assessment, process and timelines, leader's intent, initial data/information requests and to begin the scheduling of future information gathering meetings. All five SLAs follow the same project process flow that begins with information requests, start-up meetings, and progressively move thru data gathering, analysis, mid-project meetings, development of a draft report, final report, and briefings.

In an effort to maintain the Budget & Finance Committee and the organization informed on the progress of the assessments, staff provided five quarterly progress updates to the Committee and also provided a total of 16 monthly updates to OCFA personnel from March 2019 through July of 2020.

On August 17, 2020, OCFA hosted a four-hour Labor Group Briefing where Citygate presented the results of all five SLA's. Representatives from all four labor groups were present and provided an opportunity to comment and ask questions. In addition, an invitation was extended to the entire OCFA organization (both operations and professional staff) to view the presentation and hear firsthand the results of the assessments. As of August 31, 2020, Citygate has submitted all SLA reports and are now considered completed. These reports are included as attachments 1 through 5.

Citygate during the September 9, 2020, Budget & Finance Committee meeting, will provide a summary presentation of the findings and recommendations. This presentation will mark the completion of the first phase of Citygate's scope of work as recommended by the Budget & Finance Committee and approved by the Board of Directors.

In following with the Chief's recommendation to perform reviews of other areas of the organization, the Chief and Executive Team have identified the next phase of services to be performed by Citygate. This next phase includes service level assessments for the Business Services and the Community Risk Reduction Departments for the OCFA. The attached proposals (Attachments 6 & 7) provide the scope of work and process flow that the Business Services and Community Risk Reduction SLA's will follow.

Following is a cost breakdown for the next phase of services:

- Business Services Department SLA - \$68,356
- Community Risk Reduction SLA - \$70,792

Staff anticipates that the two additional SLA's will be completed in 2021.

The Budget & Finance Committee provides oversight for all future phases of Citygate's work. As such, staff recommends approval of the next and final phase of services to be performed by Citygate.

Attachment(s)

- 1a. Field Deployment (SOC) SLA Technical Report
- 1b. Field Deployment (SOC) SLA Map Atlas
2. Emergency Medical Services SLA
3. Emergency Command Center SLA
4. Fleet Services SLA
5. Executive Leadership SLA
6. Proposal to perform the Business Services Department SLA
7. Proposal to perform the Community Risk Reduction Department SLA
8. Budget and Finance Committee Meeting PowerPoint Presentation

Provided below are hyperlinks to the respective attachments for the Organizational Service Level Assessment Results & Approval of Next Phase of Citygate Services agenda item.

Attachment(s)

- 1a. [Field Deployment \(SOC\) SLA Technical Report](#)
- 1b. [Field Deployment \(SOC\) SLA Map Atlas](#)
2. [Emergency Medical Services SLA](#)
3. [Emergency Command Center SLA](#)
4. [Fleet Services SLA](#)
5. [Executive Leadership SLA](#)
6. [Proposal to perform the Business Services Department SLA](#)
7. [Proposal to perform the Community Risk Reduction Department SLA](#)
8. [Budget and Finance Committee Meeting PowerPoint Presentation](#)



Orange County Fire Authority **AGENDA STAFF REPORT**

Board of Directors Meeting
September 24, 2020

Agenda Item No. 3A
Discussion Calendar

Approval of Memorandum of Understanding **Orange County Fire Authority Chief Officers Association**

Contact(s) for Further Information

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Summary

This item is submitted for approval of a Memorandum of Understanding (MOU) between the Orange County Fire Authority and the Orange County Fire Authority Chief Officers Association (COA), with a term of July 1, 2020, through June 30, 2023.

Prior Board/Committee Action

Not Applicable.

RECOMMENDED ACTION(S)

Approve the proposed MOU between the Orange County Fire Authority and the Orange County Fire Authority Chief Officers Association for a term of July 1, 2020, to June 30, 2023.

Impact to Cities/County

Increases to OCFA salary costs typically result in increases to cash contract city charges. The cost of the proposed MOU represents an increase, described as the equivalent of an across the board salary increase, of 3.92% in year one, 1.47% in year two, and 2.21% in year three.

Fiscal Impact

The impact of the proposed MOU is the equivalent-cost of a 7.59% salary increase over three years. The annual impact to expenditures include an increase of \$630,636 in year one, \$236,471 in year two, and \$355,120 in year three, for a combined cumulative cost of \$1,222,227 after three years.

Background

The Meyers-Milias-Brown Act provides for recognized employee organizations to meet with employers and represent public employees through the meet and confer process in matters relating to hours, wages and working conditions. Once agreement is reached, both parties jointly prepare a written MOU, which is presented to the governing body for approval.

Our negotiations with the COA for this successor MOU began in October 2019, with the OCFA Board-appointed professional labor negotiator, Peter Brown/Liebert Cassidy Whitmore, serving as the Chief Negotiator. We are pleased to report that a Tentative Agreement (TA) was reached with COA on September 2, 2020. Formal ratification of the MOU by COA members was completed on September 11, 2020.

A summary of the significant deal points in the proposed MOU include:

- Term: July 1, 2020 to June 30, 2023
- EMT Certification & Pay: Emergency Medical Technician (EMT) Pay is added as a new bonus pay for maintenance of current EMT certification (or Paramedic certification). The new EMT pay will be 4.5% of employee's base pay, effective July 1, 2020, increasing by 1.75% (from 4.5% to 6.25%) in July 2021, and by 0.25% (from 6.25% to 6.5%) in July 2022.
- Longevity Pay: Longevity Pay of 3% is added effective July 1, 2022, for each bargaining unit employee upon commencement of their third year in a COA-represented classification.
- Sick Leave Accrual: The accrual rate for sick leave is adjusted to match the sick leave accruals provided to members of the firefighter bargaining unit, with an increase of 7 hours per year for 40-hour workweek (staff employees) or 10 hours per year for 56-hour workweek (shift) employees.
- MOU Language Changes: Numerous language clean-up changes were made throughout the MOU including the migration of side letter agreements into the body of the MOU.

Attachment(s)

Proposed redlined version of MOU between the Orange County Fire Authority and the Orange County Fire Authority Chief Officers Association (The attachment has been posted on OCFA's website in compliance with the Board's seven day posting requirement for labor agreements)

Tentative Agreement – September 2, 2020

Amended Effective September 1, 2016

MEMORANDUM OF UNDERSTANDING
RELATING TO EMPLOYEES IN THE FIRE MANAGEMENT REPRESENTATION
UNIT

20~~2016~~–202~~30~~

ORANGE COUNTY FIRE AUTHORITY

AND

ORANGE COUNTY FIRE AUTHORITY CHIEF OFFICERS ASSOCIATION

FOR THE

FIRE MANAGEMENT UNIT

This Memorandum of Understanding sets forth the terms of agreement reached between the Orange County Fire Authority and the Orange County Fire Authority Chief Officers Association, as the Exclusively Recognized Employee Organization for the Fire Management Unit for the period beginning July 1, 20~~2016~~, through June 30, 202~~30~~. Unless otherwise indicated herein, all provisions shall become effective July 1, 20~~2016~~.

IMPLEMENTATION

This Memorandum of Understanding constitutes a mutual recommendation that was officially ratified by majority vote of the members of the Orange County Fire Authority Chief Officers Association (OCFACOA) and approved by the Orange County Fire Authority Board of Directors.

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DEFINITIONS

The following terms as used in this Memorandum of Understanding shall, unless the context clearly indicates otherwise, have the respective meanings herein set forth:

ASSOCIATION shall mean the Orange County Fire Authority Chief Officers Association (OCFACOA).

AUTHORITY shall mean the Orange County Fire Authority (OCFA). The Authority is a joint powers agency that was created to discharge the functions of the Orange County Fire Department and which—effective March 1, 1995—became a successor organization to the Orange County Fire Department.

BASE RATE OF PAY shall mean an employee's hourly rate of pay as determined by where they are in the employee's range.

BOARD shall mean Board of Directors of the Authority.

BOARD OF RETIREMENT shall mean the Board of Retirement of the Orange County Employees Retirement System (OCERS).

CONTINUOUS SERVICE shall mean employment in a regular position which has not been interrupted by resignation, discharge, or retirement. An authorized unpaid Official Leave of absence shall not constitute a break in continuous service. For those employees who transitioned from the County of Orange to Authority employment prior to September 1, 1995, continuous service shall include prior continuous service with the County of Orange.

COUNTY shall mean the County of Orange and special districts governed by the Board of Supervisors.

DEPARTMENT shall mean a Department within the Authority such as Business Services, Operations, Fire Prevention, and Support Services.

DEPARTMENT HEAD shall mean an executive manager of the Authority who is responsible for a department within the Authority (for example, Deputy Chief, Assistant Chief or Director of Operations, Assistant Chief of Business Services, Assistant Chief/Fire Marshal, and Assistant Chief of Support Services).

DESIGNATED STAFF POSITION shall mean all staff employees assigned to a forty (40) hour workweek as a Fire Battalion Chief under a staff assignment and also include the three shift (fifty-six hour average workweek) Fire Battalion Chiefs regularly assigned to the Emergency Command Center (ECC). With the exception of the three shift Fire Battalion Chiefs regularly assigned to the ECC positions, all other employees assigned to a fifty-six hour average workweek are not included in the definition of designated staff position.

DUTY WEEK shall mean a fifty-six (56) hour average duty workweek.

ELIGIBLE FORMER EMPLOYEE means an employee who meets the coverage and participation requirements set forth in the Retiree Medical Plan at the time of his/her termination of employment with the Authority.

ELIGIBLE RETIREE means a retiree who is receiving a monthly retirement allowance from the Orange County Employees Retirement System (OCERS), who meets the coverage and participation requirements set forth the Retiree Medical Plan, and whose coverage has not been terminated under the Retiree Medical Plan.

EMERGENCY means an unforeseen circumstance requiring immediate action, a sudden unexpected happening, an unforeseen occurrence or condition, or a pressing necessity.

EMPLOYEE shall mean a person employed by the Authority and covered by terms of this Memorandum of Understanding, except where the natural construction of this Memorandum of Understanding indicates otherwise.

FIRE CHIEF shall mean the person who is the principal officer or employee of the Authority.

FIRE MANAGEMENT UNIT shall mean positions designated under the Fire Management Unit as specified in Appendix A.

FISCAL YEAR shall mean a period from July 1 through June 30.

FLSA – shall mean the Fair Labor Standards Act.

FLSA Work Period – shall mean the 14 day period for staff employees (which overlaps the pay period) as described by the FLSA for fire protection employees and the 24 day period for shift employees used to determine the period used to measure hours worked by the Fire Authority in the applicable 48/96 work schedule. Although employees in this unit are overtime exempt under FLSA, the Authority still uses a work period per Section 7(k) of the FLSA in calculating their hours worked.

FULL-TIME EMPLOYEE shall mean an regular, limited-term or probationary employee ~~employed in one or more regular or limited-term positions whose normally assigned work hours equal those of a full workweek or work period as described hereinafter. who, upon hire or starting in the position, is reasonably expected to average thirty (30) or more hours of service per week [i.e. one hundred thirty (130) hours per month].~~

HUMAN RESOURCES DIRECTOR shall mean the Assistant Chief/Human Resources Director or his/her designee.

LIGHT DUTY ASSIGNMENT shall mean an assignment of duties, not normally performed by an employee's classification, but necessitated by the employee's injury or illness.

LIMITED-TERM POSITION shall mean a position, which the Authority has determined has no anticipated long-range funding or has uncertain future funding.

MOU shall mean Memorandum of Understanding.

OCFA shall mean the Orange County Fire Authority.

OCFACOA shall mean the Orange County Fire Authority Chief Officers Association.

PART-TIME EMPLOYEE shall mean a regular, limited-term, or probationary employee who, upon hire or starting in the position, is reasonably expected to average at least twenty (20) hours of service per week.

PAY PERIOD is the regularly recurring two week period over which employee's time is recorded and paid.

PERSONAL EMERGENCY shall mean an unforeseen event or circumstance of a serious nature, which is beyond an employee's control and which necessitates the employee's absence from Authority duty. This includes, but is not limited to, those events and circumstances requiring the employee's prompt attention to avoid possible financial loss to, or damage to the health of, either the employee or a member of his/her household.

PRACTICABLE means economically feasible or reasonably able to accomplish.

PROBATIONARY EMPLOYEE shall mean an employee who is serving a probation period and is employed in a regular or limited-term position.

PROMOTION shall mean the movement of a regular, limited-term, or probationary employee from one (1) class to another class where the maximum step on the new salary range is at least higher than the maximum rate of the old salary range.

RATING YEAR shall mean that time period considered in the preparation of annual performance evaluations under the Annual Merit Review Program.

REDUCTION shall mean the movement of a regular, limited-term, or probationary employee from one (1) class to another class where the maximum step of the new salary range is lower than the maximum rate of the old salary range.

REEMPLOYED EMPLOYEE shall mean an employee who is hired back by the Authority in accordance with the eligibility requirements identified in the OCFA Selection Rules and Appeals Procedure.

REGULAR EMPLOYEE shall mean an employee who is not on probation and is employed in a regular or limited-term position.

REGULAR POSITION shall mean a position established on a permanent year-round basis requiring work on a regular schedule unless otherwise authorized by minute order of the Board.

SENIORITY shall mean total continuous full-time equivalent service as a regular employee unless the context herein indicates otherwise.

SERVICE for the purpose of determining benefits under the Retiree Medical Insurance Grant shall mean service for the Authority and shall include service for the County of Orange, if the employee/retiree transitioned directly from County employment to Authority employment and has been continuously employed by the Authority from March 1, 1995, until retirement.

SHIFT EMPLOYEE shall mean an employee assigned to a fifty-six (56) hour average duty work week as a Fire Battalion Chief. For such employees, their regular shift is 24 hours.

SOP shall mean Standard Operating Procedure.

STAFF EMPLOYEE shall mean an employee normally assigned to a forty (40) hour workweek as a Fire Battalion Chief under a staff assignment.

ARTICLE I

WORK HOURS, OVERTIME, AND PREMIUM PAY

Section 1. Work Hours

- A. The Work Period and Hours Regularly Assigned Per Calendar Week and Pay Period.

1. Battalion Chiefs Assigned to Shift Duty Work

Battalion Chiefs assigned to shift duty work (the 56 hour average workweek) shall be based on a three (3) platoon schedule. The work period is a twenty-four (24) day FLSA work period in accordance with Section 7(k) of the FLSA. Notwithstanding the FLSA work period, all employees in this unit qualify as exempt from overtime as provided by the FLSA. Any overtime provided in this MOU is per this MOU, not the FLSA.

2. Employees Not Assigned to the 56 Hour Average Workweek – Staff Employees

The workweek for employees (Battalion Chiefs and Division Chiefs) who are not assigned to the average of 56 hour workweek shall be 40 hours per week. The work period for such employees shall be fourteen (14) calendar days in accordance with Section 7(k) of the FLSA. These employees shall be entitled to two (2) regularly scheduled consecutive calendar days off. The FLSA work period shall run concurrently with the pay period.

The Authority agrees to give these employees a seven (7) calendar day advance notice of a shift change whenever practicable.

- B. 48/96 Work Schedule For Employees Assigned to the Average 56 Hour Workweek

All employees assigned to the average of a 56 hour workweek are assigned to the 48/96 work schedule – two shifts on followed by four shifts off. If the shift schedule for particular calendar year shows that the same shift would be scheduled to work on December 24 and 25th, the Association will advise the Authority how it wants the shifts changed prior to printing of the shift calendar for that year which typically occurs in November. The change will be accommodated as long as shifts being changed are in the same 24-day FLSA work period, do not cause one shift to work three shifts in a row and do not go into the next calendar year.

- C. 9/80 or 4/10 Work Schedules for Employees Assigned to Staff Positions

1. Based on operational needs, the Authority shall determine which staff positions are eligible to work a 4/10 work schedule. Otherwise the work schedule shall be a 9/80 work schedule.

2. If a position is eligible to work a 4/10 work schedule, the employee occupying the position will be given the option to select the 4/10 work schedule or remain on his/her current 9/80 work schedule.
3. Both parties agree that the Authority retains the right to terminate the 4/10 work schedule at any time based on operational needs. If that occurs, the employee will begin working a 9/80 work schedule.
4. Both parties agree that the Authority retains the right to selectively terminate an employee's 4/10 work schedule, if the Authority determines employee is not performing to expected standards and a 9/80 work schedule is warranted.

D. Work Schedule While Attending Training as a Student

1. Shift employees who attend approved training within Orange County, or within reasonable travel distance of Orange County, on their normal duty day, shall receive their normal pay. They are expected to return to their duty station after class or arrange for time off, in advance, through normal procedure. The Authority will backfill for the employee for the period of training plus reasonable travel time. The Authority will make reasonable effort to release an employee who wishes to use his/her own compensated time off rather than return to duty.
2. Shift employees who attend approved training within Orange County, or within reasonable travel distance of Orange County, on their assigned off-duty day, shall be compensated for actual classroom time.
3. Staff employees attending approved training shall be considered on-duty and will be compensated at one and one-half (1.5) times the employee's base hourly rate for any time worked in excess of their normal duty hours.
4. When an employee is attending approved training that is not within Orange County, or within a reasonable travel distance of Orange County for a period of time consisting of four (4) or less consecutive calendar days, the employee's normally assigned fifty-six (56) hour shift shall remain the same. On employee's assigned off-duty day, they shall be compensated for actual class time plus reasonable travel time.
5. When an employee is attending approved training that is not within Orange County, or within reasonable travel distance of Orange County for a period of time consisting of five (5) or more consecutive calendar days, the employee will be reassigned to a forty (40) hour workweek for the duration of the training. The Authority shall ensure that there is no loss of hours or compensation from the employee's normal salary due to the change from a fifty-six (56) hour average duty week to a forty (40) hour workweek. On employee's assigned off-duty day, they shall be compensated for actual class time plus reasonable travel time.
- 5-6. Employees will be granted mileage reimbursement for either in-county or out-of-county training, as per the Authority's mileage reimbursement policy, when an Authority vehicle is not available. When applicable, the

cost of air travel to the same location will determine the amount to be reimbursed (instead of mileage) at the discretion of the Authority.

Section 2. Treatment of Salary and Benefits for Employees Assigned to Staff Positions and Fire Division Chiefs

- A. — Employees assigned to staff positions and Fire Division Chiefs shall receive compensation at a biweekly rate within the range assigned to the class in which they are employed ~~for each full pay period worked~~. Computation for salary, vacation, sick leave, specialty pay, and retirement benefits shall be based upon eighty (80) hours per 14-day FLSA work period. Compensation for work periods in which employees are not on pay status for the full schedule. Employees assigned to staff positions or Fire Division Chief for less than a full work period shall have their computation of salary and benefits prorated.

Section 3. Treatment of Salary and Benefits for Employees Assigned to a Shift Duty Week

- A. A Battalion Chief assigned to a shift duty week shall be compensated at the equivalent of an average fifty-six (56) hour duty week for all salary and benefits described within this MOU. Computations for salary, vacation, sick leave, premium pay, overtime pay, retirement benefits, and specialty pay shall be based upon the average weekly hours of fifty-six (56) hours per week.
- B. During major emergencies, all activities related to the emergency are considered to be suppression assignments for both shift employees and forty (40) hour workweek employees, except that duties performed by forty (40) hour workweek personnel during their regularly assigned hours will be compensated at the employee's regular hourly rate.

Section 4. Overtime

- A. Employees in this unit can be required to work overtime. Every effort will be made to provide advance notice when possible.
- B. Payment for Overtime
1. Overtime for all Division Chiefs and staff Battalion Chief~~employees~~ assigned to a forty (40) hour workweek (who are subject to the 14-day FLSA work period) shall be compensated at time and one half (1.5). Shift employees assigned to a fifty-six (56) hour average duty week (who are subject to the 24-day FLSA work period) shall be compensated at the fifty-six (56) hour average duty week equivalent. All the overtime is paid in accordance with this MOU, not the FLSA as these employees qualify as exempt from overtime per the FLSA. To the extent that travel time related to an overtime event is compensable, it shall be paid as overtime.
 2. For Shift Battalion Chiefs, fringe benefits, merit eligibility dates, and probation periods shall be calculated on the basis of a fifty-six (56) hour average duty week. Overtime outside the basic fifty-six (56) hour average duty week shall not be used to earn benefits or to count toward probation or merit increase periods.

3. When a shift Battalion Chief is assigned on his/her scheduled day off to work a non-shift overtime assignment, the overtime rate for that non-shift overtime assignment shall be as provided for forty (40) hour workweek employees. Such overtime shall not be used to earn benefits or to count toward probation or merit increase periods.

Section 5. On-Call Pay and Call-Back Pay

A. On-Call Pay

1. When an employee is assigned on-call duty, as directed by the Assistant Chief of Operations or his/her designee, the employee shall be informed in advance whenever practicable, of the dates and inclusive hours of such assignment; the employee shall be compensated at one-fourth (1/4) his/her base rate of pay for such assignment. When called back, employees shall not receive on-call pay during the hours called back.
2. On-call duty requires the employee so assigned to (1) be reachable by telephone or other communications device, (2) be able to report to work in a reasonable time, and (3) refrain from activities that might impair his/her ability to perform assigned duties.
3. When an employee has been placed on-call on his/her scheduled day off because he/she is required to be a witness in a matter directly related to his/her assigned duties as an Authority employee or as an employee for a fire agency that was transitioned into the Authority and such employee is not a party to the litigation, the employee shall be compensated at one-fourth (1/4) of his/her base hourly rate.

B. Call-Back Pay

1. When a shift employee returns to work because of an Authority request made after the employee has completed his/her normal work shift and left the work station, the employee shall be paid a minimum of five and six-tenths (5.6) hours plus any hours of work in excess of five and six-tenths (5.6) hours in which the employee continuously engaged in work for which he/she was called back.
2. When a staff Battalion Chief or Fire Division Chief returns to work because of an Authority request made after the employee has completed his/her normal work shift and left the work station, the employee shall be paid a minimum of four (4) hours plus any hours of work in excess of four (4) hours in which the employee is continuously engaged in work for which he/she was called back.
3. When a shift employee returns to work as provided above, and such return occurs two (2) hours or less before the established starting time of the employee's next shift, he/she shall be compensated for two and eight-tenths (2.8) hours.
4. When a staff employee returns to work as provided above, and such return occurs two (2) hours or less before the established starting time of the employee's next shift, he/she shall be compensated for two (2) hours.

5. Call-back for staff employees shall be paid at time and one half, except that call-back to perform suppression activities shall be paid at the 56 hour rate – the employee's staff rate divided by 1.4.

Section 6. Rest Period from Out-of-County Assignment

- A. An employee traveling greater than eight (8) hours on a return trip from an out-of-county assignment, and scheduled to work that same day, will not be required to work the remainder of the shift, to allow for an appropriate rest period before returning to his/her next assigned shift. The employee shall be compensated for the remainder of the shift.

Section 7. Flex Time

- A. Division Chiefs and Staff Fire Battalion Chiefs

These employees will accumulate flex time for additional hours worked in the performance of normal work assignments (attending meetings, teaching after normal business hours or attending to OCFA business on days not normal scheduled to work. These additional work hours shall be compensated in Flex Hours at 1.5 times the hours worked. There is no limit on the amount of flex hours that can be accumulated. These hours can be used at the employee's discretion for time off. Flex hours have no cash value and cannot be cashed out at any time, including at separation. This provision is not applicable to hours worked in a suppression capacity, during emergency incidents, or during the employee's lunch hour.

- B. Shift Fire Battalion Chiefs

For these employees, when working outside of their regular shift on non-suppression hours (attending meetings or for OCFA business on days not normally scheduled to work) they may elect to receive non-suppression overtime pay or flex time hours. The overtime will be paid at time and one half or the flex time hours will be calculated at two times the number of hours worked. If flex time is requested, there shall be no limit on the amount of hours accumulated. These hours can be used at the employee's discretion for time off. Flex hours have no cash value and cannot be cashed out at any time, including at separation. This provision is not applicable to hours worked in a suppression capacity or during emergency incidents.

- C. Flex time accumulation and use will be documented on each employee's time slip or in the OCFA Staffing System and subject to the approval of the employee's supervisor.

ARTICLE II

PAY PRACTICES

Section 1. Compensation for Employees

- A. Employees shall receive compensation on a salary basis at the biweekly rate for the range and step assigned to the class in which they are employed.
- B. Employees who are absent from work for less than a day shall be required to use applicable accrued leave to cover the absence.
- ~~C. The base salary of the classification of Fire Battalion Chief shall be at least seventeen and five-tenths percent (17.5%) higher than the base salary of the top step of the salary range for Fire Captain.~~

Section 2. Pay for New Employees

- A. The Human Resources Director may authorize the appointment of employees at any rate up to the mid-point of the salary range. Such appointment may be made only when, at the discretion of the Human Resources Director, there is a direct and measurable benefit to the Authority for such appointment.
- B. The Fire Chief may authorize the appointment of employees at any rate within the salary range. Such appointment may be made only when, at the discretion of the Fire Chief, there is a direct and measurable benefit to the Authority for such appointment.

Section 3. Annual Merit Review Program

- A. The Annual Merit Review Program establishes the award of performance salary increases to eligible employees until they reach the top of the range for their classification. The Annual Merit Review Program shall be administered as follows:
 - 1. Merit increase eligibility dates shall be the first of the pay period following the completion of fifty-two (52) weeks from the last merit increase eligibility date. This assumes the employee is working in the same classification. If the employee receives a promotion, a new merit eligibility date (which requires a new 52 weeks to be eligible for a merit increase) will be established. For example, if an employee received a merit increase or was promoted on Friday October 9, 2020, the employee would be eligible for a merit increase on Friday, October 8, 2021.
 - 2. Employees may be rated "Substandard," "Standard," or "Above Standard."
 - 3. Performance salary increases shall be awarded as follows:

Rating	Performance Salary Increase
Substandard	None

Standard	2.75% increase but not to exceed the top of the salary range
Above Standard	5.5% increase but not to exceed the top of the salary range

B. Eligibility for Annual Merit Review Program

An employee hired or promoted into a classification in this Unit shall be eligible to receive a performance salary increase at the completion of his/her first performance rating year period of employment or promotion and each year thereafter.

Section 4. Salary on Promotion

A. Except as modified by Section 4.B of this Article, an employee who is promoted shall receive the following:

For employees promoting into a Fire Management Unit classification, the greater of either a five and five-tenths percent (5.5%) increase over the salary received prior to the promotion or seventeen and five-tenths percent (17.5%) higher than the biweekly base-salary assigned to the top step of the salary range for a Fire Captain. Salary shall include base-salary, Staff Assignment Pay and all qualified specialty pays received prior to the promotion. Qualified specialty pays are those pays which are not offered to classifications in this bargaining unit including but not limited to the following; *Hazmat Pay, Paramedic Pay, USAR, Tech Truck Pay, and the difference between the EMT Pay received prior to promotion, compared to the EMT Pay that will be received after promotion.*

For employee's promoting from Battalion Chief to Division Chief, the employee's new rate of pay will be calculated using the employee's base rate (which includes staff assignment pay) whether currently in a staff position or having previously served in a staff position for at least one year.

B. Any other provision of this MOU notwithstanding, an employee who is promoted to Fire Division Chief may receive a salary increase of up to fifteen percent (15%) when authorized by the Fire Chief upon recommendation of the Human Resources Director.

Section 5. Salary on Reduction

A. Disciplinary Reductions— When a Division Chief is demoted the employee's salary shall be reduced to the top of the salary range assigned to the lower class as follows:

~~A reduction or the appropriate, closest corresponding Control Point of the salary range assigned to the lower class, whichever is lower.~~

B. Non-Disciplinary Reductions

1. When a regular or limited-term employee in good standing is reduced to a position in a lower class for non-disciplinary reasons, the employee shall receive top of the salary range assigned to the lower class~~the highest salary in the lower salary range that does not exceed the employee's rate of pay immediately prior to reduction.~~
 2. When a probationary employee, an employee who has been on a temporary promotion, or a regular employee who was promoted to a limited-term position at the direction of the Fire Chief is reduced to a class not previously occupied by the employee, the employee's salary shall be determined by the Human Resources Director.
- C. When a promotional probationary employee, ~~an employee who has been on a temporary promotion, or a regular employee who was promoted to a limited-term position at the direction of the Fire Chief~~ is reduced to a class the employee occupied in good standing, the employee shall have the salary status he/she would have achieved if the employee had remained in the lower class throughout the period of his/her service in the higher class.

Section 6. Salary on Reemployment

- A. A person who is reemployed in a Fire Management Unit classification in which he/she held regular status and who was separated in good standing may, upon approval of the Human Resources Director or his/her designee, be appointed at a rate higher than the recruiting rate—but no higher than the rate the person received at the time of separation unless the appointment is at an advanced rate pursuant to Section 2.B of this Article.
- B. A former Fire Management Unit employee on paid retirement of the Authority may be reemployed for not more than one hundred twenty (120) working days or nine hundred sixty (960) hours, whichever is greater, in any one (1) fiscal year in a position requiring special skills and knowledge and may be appointed to the position at any step on the salary range.

~~Section 7. Additional Compensation~~

- ~~A. Notwithstanding anything in this MOU to the contrary, when in the judgment of the Board it becomes necessary or desirable to use the services of Authority employees in capacities other than those for which they are regularly employed, the Board may authorize and, if appropriate, fix an additional rate of compensation for such employees.~~

ARTICLE III

EMPLOYEE PROVISIONS

Section 1. Employee Rights

Employees shall not be adversely impacted by the Authority for exercising any rights or benefits provided in this MOU.

Section 2. Time Off for Selection Procedures

With the approval of the Fire Chief, an employee shall be entitled to necessary time off with pay to participate in examinations, and interviews required by the Human Resources Director during working hours for the purpose of determining eligibility for movement to another class in the Authority service.

Section 3. Probation

A. New Probation

1. Full-Time Employee

A new or reemployed employee—who has been out of Authority service for more than two (2) years in a regular or limited-term position—shall be subject to a ~~one-year~~ fifty-two week probationary period. For example, if an employee was hired on Friday October 9, 2020, his/her probationary period ends at 11:59 p.m. on Thursday October 7, 2021.

B. Promotional Probation

1. An employee who is promoted shall be placed on promotional probation except as provided in Section 3.B.2 and 3.B.3 of this Article. ~~All promotional probation shall end with the first day of the pay period following completion of the promotional probationary period.~~ A full-time employee shall be subject to a ~~one-year~~ fifty-two (52) week promotional probationary period. For example, if an employee was promoted on Friday October 9, 2020, his/her probationary period ends at 11:59 p.m. on Thursday October 7, 2021.
2. When an employee who has been on a temporary promotion or a regular employee who was promoted to a limited-term position at the direction of the Fire Chief is reduced to a class the employee formerly occupied, the employee shall serve the remainder of any uncompleted probationary period in that classification.
3. Notwithstanding any other provision of this MOU, when an employee who has been on temporary promotion to a Fire Management Unit classification is promoted to that same classification without returning to his/her former class, the time served in the temporary

promotion shall be credited towards the promotional probationary period.

C. Failure of Probation

1. New Probation

- a. An employee on new probation may be released from service at any time without right of appeal or hearing.

2. Promotional Probation

- a. An employee on promotional probation may be rejected at any time without right of appeal or hearing
- b. When an employee fails his/her promotional probation, the employee shall have the right to return to his/her former class.
- c. When an employee is returned to his/her former class under the provisions of this Section, the employee shall serve the remainder of any uncompleted probationary period in the former class.
- d. An employee who fails promotional probation shall receive a performance evaluation stating the reason for failure of promotional probation.

D. General Provisions

1. When the Fire Chief or his/her representative passes an employee on probation, that determination shall be based upon a written performance evaluation and, when practicable, shall be discussed with the employee.

E. Extension of Probation Periods

1. An employee who is out for fifteen (15) calendar days or more during his/her probation period shall have the probation period extended by the length of the leave of absence beyond fifteen (15) days.
2. Upon the recommendation of the Assistant Chief/Department Head or his/her designee or at the request of the employee with the concurrence of the Assistant Chief/Department Head or his/her designee, the probationary period of an employee may be extended for a period not to exceed one hundred eighty (180) calendar days.
If probation is extended, the employee will be notified in writing and before the initial probation period ends.

Section 4. Performance Evaluation

- A. The Authority shall maintain a system of employee performance ratings designed to give a fair and equitable evaluation of the quantity and quality of work performed by an employee. Such ratings shall be

prepared and recorded in the employee's personnel file for all employees. Performance evaluations will occur at least once each year. In addition for employees on probationary status, performance evaluations will occur at least once near the middle of the probationary period.

- B. The Authority shall discuss with the employee the specific ratings—prior to such ratings being made part of the employee's personnel file.
- C. When a performance evaluation is recorded in the personnel file of an employee, a copy of such evaluation, together with any attachment relating thereto, shall be given to the employee. The employee shall have thirty (30) days to attach a response to the evaluation.

Section 5. Shift Exchange Policy

- A. Time exchanges may be voluntarily undertaken between two (2) employees upon approval of the employees' immediate supervisors prior to such exchange of time.
- B. Responsibility for arrangement for the repayment of such time rests with the employees involved.
- C. No obligation shall be placed upon the Authority for repayment of time voluntarily traded or repaid between employees.

Section 6. Tobacco Products

All employees who were hired into OCFA's Firefighter Unit after September 1, 2016, and who are subsequently promoted into the Chief Officers Association after July 1, 2020, are not permitted to use tobacco products on duty.

ARTICLE IV

EMPLOYMENT PROVISIONS

Section 1. Temporary Promotion

A. —A Battalion Chief who is assigned on a temporary basis as a Division Chief or a Division Chief who is temporarily assigned as an Assistant Chief shall be promoted on a temporary basis provided he/she meets the qualifications of the position—when such employee has been assigned to the higher class for one hundred twenty (120) consecutive regularly scheduled hours (subject to waiver by the Fire Authority) of work. The employee may request to be not be so assigned. In such a case, the temporary promotion will end within five (5) working days.

B. A regular or probationary employee who was not at the top of their salary range upon temporary promotion or limited-term promotion at the direction of the Fire Chief shall have the same merit increase eligibility date they would have had if the employee had remained in the lower class. If the employee is granted a merit increase in the lower class, their promotional rate of pay shall be adjusted in accordance with Article II, Section 4.

Section 2. Status of Limited-Term Employees

- A. All limited-term employees shall be subject to the same hiring standards and shall earn all benefits, except those contained in the LAYOFF PROCEDURE, which accrue to employees in regular positions.
- B. A regular employee who transfers, promotes, or reduces to a limited-term position on a voluntary basis and not at the direction of the Fire Chief shall become a limited-term regular employee.
- C. Limited-term employees hired under programs that involve special employment standards shall serve a new probation period upon transfer to permanent funded positions. Upon transfer to permanent positions, such employees shall maintain their original hire date for purposes of vacation and sick leave accrual, retirement, and layoff. The requirement that such employees serve a new probation period may be waived with the approval of the Human Resources Director. Limited-term employees not hired under programs that involve special employment standards shall, upon transfer to permanent funded positions, maintain their original hire date for purposes of vacation and sick leave accrual, retirement, layoff, and new employee probation.
- D. When funding ceases for a limited-term position or when the position is no longer necessary, the limited-term position shall be abolished and the incumbent shall be removed from the payroll, except as provided in Section 2.E. of this Article.

- E. Regular employees who transfer, promote, or reduce to limited-term positions at the direction of the Fire Chief shall retain their former status and retain their layoff benefits in their former layoff unit. The Fire Chief shall make such an order in writing prior to the date of transfer or promotion or reduction.

Section 3. Reemployment of Employees on Disability Retirement

- A. The Authority shall counsel and advise employees retired for disability about reemployment opportunities with the Authority.
- B. Employees retired for physical disability who, within two (2) years from date of retirement or date their disability retirement is discontinued, request and qualify for positions in the Authority service shall be placed on the eligibility list with respect to such positions. They shall be placed on such List in chronological order of retirement, following the last person on layoff status. They shall remain on such List for a period of two (2) years from date of retirement or date their disability retirement is discontinued, except that:
 - 1. A person appointed to a regular position in the Authority service shall be removed from the List.
 - 2. A person who, on two (2) separate occasions, rejects or fails to respond within three (3) workdays to offers of employment in a class for which he/she is qualified shall be removed from the List.
 - 3. A person who, on three (3) separate occasions, declines referral for interviews in a class for which he/she is qualified shall be removed from the List.

Section 4. Reemployment of Regular Employee

- . A regular employee who leaves Authority employment and is reemployed within fifteen (15) calendar days shall be deemed to have been on Authority Leave for such period of time.

Section 5. Employees Transitioned From Other Agencies

- . Except as otherwise modified in this MOU Agreement, the Authority shall hire employees being transitioned to the Authority in accordance with the terms and conditions of the previously negotiated Agreement (Appendix B). The Authority agrees that during the term of this MOU Agreement, it shall meet and confer with the Association on the impact of any provisions deemed necessary to modify with the addition of any particular agency.

Section 6. Non-Discrimination Clause

The Authority and the Association agree that neither of them shall discriminate against any employee because of anyas—well legally recognized protected classes addressed by state and/or federal law or

for participating in or refusal to participate in protected, concerted Union activities.

Section 7. Assignment of Staff Fire Battalion Chiefs to Fire Prevention

- A. A current staff Fire Battalion Chief position assigned to Fire Prevention shall be filled by either 1) a Fire Battalion Chief who possesses the knowledge, skills, and ability to perform the functions of the position and who meets the minimum qualifications set forth in a classification specification for the position; or 2) by a civilian (non-OCFACOA) employee who possesses the knowledge, skills, and ability to perform the functions of the position or who meets the minimum qualifications set forth in a classification specification for the position. When the position is filled by a Fire Battalion Chief, that position shall be represented by the OCFACOA. When the position is filled by a civilian employee, that position shall be represented by the Orange County Fire Authority Management Association OCFAMA.

When filling a vacancy in the above position, first consideration shall be given to an existing Fire Battalion Chief, or a Fire Battalion Chief candidate who is on a current Fire Battalion Chief promotional eligible list, recognizing that final determination on filling the position in Inspection Services with a Fire Battalion Chief or civilian employee is a management right based upon the needs and position compatibility/suitability.

A classification specification shall be maintained for the position of Fire Marshal (Inspection Services) that shall specify the knowledge, skills, and abilities and minimum qualifications necessary to perform the functions of the position. When modifications are made to the classification specification, the OCFA shall provide the OCFACOA with opportunity for review and input prior to such modifications.

- B. In addition to the identified position listed above, the parties agree that the following list of staff positions shall be filled/held by a Fire Battalion Chief:

- ~~Corporate Communications~~
- ~~• Emergency Communications Center~~
- Emergency Medical Services
- ~~• Training and Safety~~
- Training and Safety/Recruitments/Promotions
- Air Operations
- Investigations
- ~~Emergency Planning and Coordination~~
- ~~• Community Volunteer Services Coordinator~~
- Wildland Pre-Fire Management
- Emergency Command Center (three positions)

ARTICLE V

LEAVE PROVISIONS

Section 1. Sick Leave

- A. Accumulation of Sick Leave—shall be in accordance with the following schedules:

Staff Battalion Chiefs (Except the BCs Assigned to a 56-hour workweek in the Emergency Command Center) and Fire Division Chiefs

<u>YEARS OF COMPLETED CONTINUOUS SERVICE</u>	<u>HOURS OF CONTINUOUS SERVICE EXCLUSIVE OF OVERTIME</u>	<u>HOURLY ACCRUAL RATE</u>	<u>ANNUAL ACCRUAL</u>
<u>From date of employment but less than 3 years</u>	<u>1 through 6,240.00 regularly scheduled hours</u>	<u>0.0347 hours for each regularly scheduled work hour paid</u>	<u>Approximately 72 hours per year</u>
<u>After 3 years</u>	<u>6,240.01 or more regularly scheduled hours</u>	<u>0.04963 hours for each regularly scheduled work hour paid</u>	<u>Approximately 103 hours per year</u>

<u>HOURS OF CONTINUOUS SERVICE EXCLUSIVE OF OVERTIME</u>	<u>HOURLY ACCRUAL RATE</u>
<u>1 through 6,240.00 regularly scheduled hours</u>	<u>0.0347 hours for each regularly scheduled work hour paid</u>
<u>6,240.01 or more regularly scheduled hours</u>	<u>0.0462 hours for each regularly scheduled work hour paid</u>

Shift Battalion Chiefs (Including the BCs Assigned to a 56-hour Workweek in the Emergency Command Center)

<u>YEARS OF COMPLETED CONTINUOUS SERVICE</u>	<u>HOURS OF CONTINUOUS SERVICE EXCLUSIVE OF OVERTIME</u>	<u>HOURLY ACCRUAL RATE</u>	<u>ANNUAL ACCRUAL</u>
<u>From date of employment but less than 3 years</u>	<u>1 through 8,736.00 regularly scheduled hours</u>	<u>0.0347 hours for each regularly scheduled work hour paid</u>	<u>Approximately 101 hours per year</u>
<u>After 3 years</u>	<u>8,736.01 or more regularly scheduled hours</u>	<u>0.04963 hours for each regularly scheduled work hour paid</u>	<u>Approximately 144 hours per year</u>

HOURS OF CONTINUOUS SERVICE EXCLUSIVE OF OVERTIME	HOURLY ACCRUAL RATE
1 through 8,736.00 regularly scheduled hours	0.0347 hours for each regularly scheduled work hour paid
8,736.01 or more regularly scheduled hours	0.0462 hours for each regularly scheduled work hour paid

For the purpose of this Section, each biweekly pay period—for which a full-time staff employee or full-time Fire Division Chief receives his/her full biweekly salary—shall be considered the equivalent of eighty (80) regularly scheduled paid hours. A full-time shift employee equivalent shall be one hundred twelve (112) regularly scheduled paid hours.

- B. Employees will earn sick leave at the end of a pay period assuming they were in paid status for the entire pay period.
- C. Permitted Uses of Sick Leave
 - 1. Sick leave may be applied to:
 - a. Absence necessitated by an employee's personal illness, injury, or disability due to pregnancy or childbirth.
 - b. Medical and dental office appointments when absence during working hours for this purpose is authorized by the employee's supervisor.
 - c. Absence due to exposure to a contagious disease when quarantine is imposed by health authorities or when it is determined by a physician designated by the Authority that the presence of the employee on duty would endanger the health of others.
 - d. Absence when the employee's presence is needed to attend to the serious illness of a member of his/her immediate family. For each occurrence, such absence shall be limited to a maximum of twenty-four (24) working hours for staff employee assigned to a forty (40) hour workweek or two (2) twenty-four (24) hour shifts for shift employees assigned to a fifty-six (56) hour average duty workweek. Additionally, once each calendar year, an employee may use up to one-half (0.5) of his/her annual Sick Leave accrual rate. For purposes of this Section, immediate family shall mean father, father-in-law, mother, mother-in-law, stepparent, brother, sister, wife, husband, registered domestic partner, child, stepchild, grandchild, grandparent, or legal ward.

2. Illness while on paid vacation shall be charged to Sick Leave rather than vacation only under the following conditions:
 - a. The employee provides information (without having to identify a diagnosis) that the illness or injury precluded the effective use of vacation and would prevent the employee from performing his/her normal duties.
 - b. The employee must notify his/her supervisor within four (4) calendar days of the beginning of the illness or prior to the end of his/her vacation, whichever is sooner, to request that his/her illness on vacation be charged to Sick Leave.
 - c. The Authority shall be under no obligation to extend the vacation beyond the original scheduled vacation ending date.
 - d. Upon the employee's return to work, the employee must furnish the Authority with a certificate signed by a licensed physician, a registered nurse, or recognized health care provider stating the period of disablement.
3. Absence from duty because of personal emergencies shall be limited to a maximum of sixteen (16) working hours for staff employees assigned to a forty (40) hour workweek or one (1) shift for shift employees assigned to a fifty-six (56) hour average duty week during the fiscal year.

D. General Provisions

1. In any use of Sick Leave, an employee's account shall be charged to the nearest quarter hour.
2. An employee may be required to furnish a certificate issued by a licensed physician or registered nurse or other Authority-approved evidence of illness, injury, or medical or dental office calls when the department has notified the employee in advance of such a requirement or when the employee has been under the care of a physician.
3. Sick Leave Cash Out:
 - a. At Retirement or an Employee's Death During Employment:

Upon paid retirement or death, an employee or the employee's estate shall be paid for a portion of the employee's unused sick leave in an amount computed as provided below:

<u>Years of Service Paid For</u>	<u>Percent of Unused Sick Leave</u>
Less than 5 years	None
5 but less than 10	25%
10 but less than 15	50%

15 but less than 20	75%
20 or more	100%

Years of service as used herein shall be the equivalent of full-time continuous service in a regular position. Employees who elect to take deferred retirement shall not be eligible for any benefits provided by this paragraph.

b. Sick Leave Cash-Out During Employment:

For calendar year 2020, nNot more than once during the each fiscal year, an employee who has accumulated unused sick leave in excess of three hundred twenty (320) hours shall, upon request, receive a payoff for up to one-third (1/3) of all his/her accumulated sick leave, provided that the remaining balance is not reduced below three hundred twenty (320) hours. The percentage of sick leave paid shall be computed based on years of continuous service in accordance with Section 1.D.3.a of this Article. The employee's sick leave balance shall be reduced by the total number of hours elected and approved for payoff by the employee prior to the application of the eligible percentage described in Section 1.D.3.a of this Article.

By December 15 of each year (starting on December 15, 2020 for cash out in 2021), an employee who has accumulated unused sick leave in excess of 320 hours may do either of the following:

- i. Request that up to one-third of the balance above 320 hours, but no more than the maximum permitted by IRS Code, be placed into the employee's deferred compensation account either with the pay day for pay period 14 or pay period 26; or
- ii. Make an irrevocable election to cash out up to ninety-six (96) hours of accrued sick leave for staff employees and one hundred and thirty-four (134) hours of accrued sick leave for shift employees, that will be earned in the following calendar year, at the employee's base rate of pay. In the following year, the employee can receive the cash for the sick leave he/she irrevocably elected to cash out in either two (2) separate increments of up to forty-eight (48) hours each for staff employees or sixty-seven (67) hours each for shift employees or one (1) increment of up to ninety-six hours (96) hours for staff employees and thirty-four (134) hours for shift employees.

The employee would be paid what they elected to cash out up to sixty-seven (67) hours for shift employees or up to forty-eight (48) hours for staff employees on both the pay day for pay periods fourteen (14) and twenty-six (26) or the employee can elect to be paid up to one hundred and thirty-four (134) hours for shift employees or up to

ninety-six (96) hours for staff employees on the pay day for pay period twenty-six (26).

The percentage of sick leave paid shall be computed based on years of continuous service in accordance with Section 1.D.3.a of this Article.

- c. Notwithstanding the provisions of Section 1.D.3.b of this Article, an employee who has given irrevocable written notice of his/her intent to retire at least thirty (30) calendar days, but no more than sixty (60) calendar days prior to the effective date of his/her retirement, may request that a payoff of his/her accumulated sick leave be made to his/her deferred compensation account with the Authority to the maximum amount permitted by law and to the extent permitted under the provisions of Section 1.D.3.a of this Article. Such payoff shall be made prior to the effective date of the employee's retirement.

4. Sick Leave Accrual Upon Re-employment:

When a former employee is reemployed in a regular or limited-term position, the Human Resources Director may apply the total period of previous continuous Authority service for the purpose of determining sick leave earning rates.

Section 2. Bereavement Leave

- A. Upon request, employees shall receive necessary time off with pay, not to exceed three (3) days in any one (1) instance, for bereavement leave related to the death of a member of their immediate family. Employees assigned to a fifty-six (56) hour average duty week shall receive up to three (3) consecutive calendar days. For purposes of this Section, immediate family shall mean father, father-in-law, mother, mother-in-law, stepparent, brother, sister, wife, husband, child, stepchild, grandparent, grandchild, or dependent adult or child for whom the employee is the legal guardian.

Section 3. Authorized Leave Without Pay

- A. Authority Leave
 1. Upon request, an employee may be granted an Authority Leave Without Pay for a period of time not to exceed fifteen (15) calendar days. The granting of such Leave shall be at the discretion of the Fire Chief, except in cases where an authorized unpaid ~~Official~~ Leave has been authorized pursuant to Sections 4.B.3 and Section 10.A of this Article. The Fire Chief may require that all previously earned accumulated compensatory time and Flex Time be used prior to granting such Leave. The use of earned vacation prior to the obtaining of Leave shall be at the option of the employee.
- B. Authorized Unpaid Leave of Absence

1. An employee may request an unpaid leave of absence for up to one year. The Authority has discretion to evaluate the request and determine whether to grant it or not. The Authority may require an employee to use accrued leaves for all or a portion of the requested leave.
2. An employee shall give notice two (2) weeks prior to the date he/she wants to return to work. If an employee does not give the required notice prior to the date he/she wants to return to work, the Authority shall not be required to return the employee to work until the employee gives such notice; however, the Authority may waive the notice or reduce the notice period at its discretion.
3. The Department Head/Assistant Chief shall indicate on the request for Leave of Absence his/her recommendations as to whether the request should be granted, modified, or denied and shall promptly transmit the request to the Human Resources Director. The Human Resources Director shall render a decision within thirty (30) days of when the request is submitted to him/her. If the Human Resources Director approves the request, a leave approval letter will be prepared and sent to the employee, Payroll/Timekeeping Staff, and he/she shall deliver a copy to the Finance Manager, the Department Head/Assistant Chief, ~~and the employee~~.
4. An authorized unpaid leave of absence~~Official Leave~~ shall not be deemed a break in Authority service.

Section 4. Jury Duty Leave

- A. An employee who is called for jury duty or for examination for jury duty shall be compensated at the employee's regular pay-rate for those hours of absence due to the jury duty, which occur during the employee's regularly scheduled working hours. An employee who calls the court while at work and finds out that he/she must report to jury duty the next day must continue to work the shift but will be relieved from duty with sufficient time to arrive at the court for jury duty in the morning. If the employee is scheduled to be on duty on the day he/she is on jury duty, whether he/she must return to his/her shift after the jury service will be determined on a case-by-case basis.

Section 5. Witness Leave

- A. An employee who is called to answer a subpoena as a witness for court appearances or administrative proceeding during the employee's work hours, except where the employee is a litigant or where the subpoena is related to the employee's employment with another employer who the Fire Authority did not assume fire protection duties from, shall be compensated at his/her regular pay rate for all hours of absence from work due to answering the subpoena, provided the employee shows proof of such subpoena and deposits witness fees received for such hours, exclusive of mileage, with the Finance Manager. Fees for answering a subpoena as a witness during hours other than regularly scheduled working hours may be retained by the employee.

Section 6. Workers' Compensation Leave

- A. When an injury is determined to be job-related, a regular, limited-term, or probationary employee shall be placed on Workers' Compensation Leave upon exhaustion of 4850 benefits.
- B. Workers' Compensation Leave shall continue until the employee does one (1) of the following:
 - 1. Is determined to be physically able to return to work by an Authority-designated physician; or
 - 2. Is determined to be physically able to return to work with medical restrictions that the Authority can accept; or
 - 3. Accepts employment outside the Authority; or
 - 4. Accepts employment in another Authority position; or
 - 5. Has been found to have maximum medical improvement and is not rehabilitated as provided by law; or
 - 6. Has retired pursuant to appropriate Government Code provisions.

An employee who does not return to work within two (2) weeks of the end of his/her Workers' Compensation Leave pursuant to this provision, shall be considered to have automatically resigned his/her employment with the Authority.

- C. An employee on Workers' Compensation Leave and/or 4850 Leave must give notice two (2) weeks prior to the date he/she wants to return to work. If an employee does not give two (2) weeks' notice prior to the date he/she wants to return to work, the Authority shall not be required to return the employee to work until such notice is given; however, the Authority may waive the notice or reduce the notice period at its discretion.
- D. For employees on Workers' Compensation Leave, merit increase eligibility dates, probation periods, and performance evaluation dates shall be treated as if the employee were on an authorized unpaid Official Leave.

Section 7. Parenthood Leave

- A. An employee shall be granted—upon request—a Parenthood Leave Without Pay of up to six (6) months in connection with the birth or placement for legal adoption of a child, provided the employee meets the following conditions:
 - 1. The requested Leave is commenced within six (6) months before or after the date of birth or placement for legal adoption of the child

2. Sufficient documentation of such birth or placement for legal adoption of a child is submitted with the request for Leave
 3. Such employee has completed new hire probation
 4. All accrued vacation and compensatory time have been applied toward the absence
- B. Unless otherwise required by law, employees shall not be eligible for more than one (1) such Leave within any twelve (12) month period.
- ~~C. Sick leave must be applied toward any portion of the absence, which qualifies under Section 1.C of this Article, provided the employee has furnished the Authority with a certificate signed by a licensed physician stating the nature of the medical condition and period of disability.~~
- ~~D. Pregnant employees may also apply for a Non-occupational Disability Leave for the term of disability.~~
- E. Parenthood Leave shall not be credited toward continuous service.
- F. For employees on Parenthood Leave, merit increase eligibility dates, probation periods and performance evaluation dates shall be treated as if the employee were on an authorized unpaid ~~Official L~~ Leave.

Section 8. Family and Medical Care Leave/ California Family Rights Act Leave and Pregnancy Disability Leave

The Authority will comply with the provisions of both the Federal Family and Medical Care Leave Act and the California Family Rights Act, and the California Pregnancy Disability Leave Law. Posters setting forth the employee's rights under the law are posted at all workplaces in the Fire Authority.

Section 9. Catastrophic Leave

- A. Eligibility for Donations – To receive Catastrophic Leave Donations, an employee or his/her immediate family member (immediate family member is defined as father, father-in-law, mother, mother-in-law, step-parent, brother, sister, wife, husband, child, step-child, grandparent, registered domestic partner or legal guardian) must:
1. Have a catastrophic medical condition that will require the employee to be on unpaid Leave.
 2. Exhaust all accrued sick leave, vacation, and compensatory time.
 3. Submit to the employee's Department Head/Assistant Chief (or his/her designee) a written request for donations accompanied by a medical statement from the employee's or family member's attending physician. The attending physician's statement must verify the employee's need for an extended Medical Leave or the need for the employee to take Leave to care for a member of his/her

immediate family. It must include an estimated time the employee will be unable to work. The employee may voluntarily include information about the nature of the illness for those who are considering donating.

B. Request for Additional Donations

1. Employees who receive donations under this procedure and who exhaust all donated Sick Leave may request an additional donation period subject to the provisions of Section 13.A.2 of this Article.

C. Donation Procedure

1. Upon receipt of a valid request for donations on a form from an eligible employee, the Department Head/Assistant Chief (or his/her designee) shall post a notice of the eligible employee's need for donations on the Authority e-mail system, bulletin boards, or other means of notification accessible to employees; confidential medical information (unless voluntarily provided by the employee) shall not be included in the posted notice.
2. Employees shall be provided a two (2) week period to submit their donations; donations received after the submission period shall not be processed.
3. All donations shall be voluntary.
4. Employees may donate vacation or compensatory time to the eligible employee's catastrophic leave bank; Sick Leave may not be donated.
5. Donations must be a minimum of two (2) hours and cannot exceed eight (8) hours per staff employee (forty [40] hour workweek) or a minimum of three (3) hours, but cannot exceed twelve (12) hours per shift employee (fifty-six [56] hour average duty week); all donations must be made in whole hour increments.
6. All donations shall be irrevocable.

Note: Donation authorizations that do not contain all the above information shall not be processed.

7. At the close of the donation period, the Finance e Division shall verify the hourly rate of the donating employee and confirm that each donating employee has accrued time balances sufficient to cover the designated donation.
8. The Finance Division shall process all donations at one (1) time; no additional donations shall be processed.
9. The Authority shall convert the donated time to dollars at the hourly rate of the donor. The dollars shall then be converted to accrued vacation and Sick Leave, as described herein, at the hourly rate of

the recipient of the donation. Donated converted hours shall first be added to the recipient's accrued vacation, to the maximum permitted under Section 10.C of this Article. The balance of the donated converted hours shall then be added to the recipient's Sick Leave account. These donated vacation and Sick Leave hours shall be available for use during the recipient's Catastrophic Leave. If any donated hours remain at the end of the recipient's Catastrophic Leave, they shall remain available for the sole use of the recipient. If the recipient dies during the Catastrophic Leave, all unused donated time shall be converted to dollars at the hourly rate of the recipient and paid to the recipient's surviving spouse or estate in the same manner as any monies due for vacation and/or compensatory time.

10. An employee who is on a Leave Without Pay at the time he/she receives a Catastrophic Leave donation shall be treated as if on an authorized unpaid Official Leave of a ~~A~~bsence for purposes of probation and merit increase eligibility.

Section 10. Vacation

A. Accumulation of Vacation

1. Accumulation of vacation shall be in accordance with the following schedules:

Staff Battalion Chiefs (Except the BCs Assigned to a 56-hour workweek in the Emergency Command Center) and Fire Division Chiefs

<u>YEARS OF COMPLETED CONTINUOUS SERVICE</u>	<u>EQUIVALENT HOURS OF COMPLETED CONTINUOUS SERVICE EXCLUSIVE OF OVERTIME</u>	<u>HOURLY ACCRUAL RATE</u>	<u>ANNUAL ACCRUAL</u>
<u>0 to 3 years</u>	<u>1 through 6,240.00 regularly scheduled hours</u>	<u>0.0577 hours for each regularly scheduled hour paid</u>	<u>Approximately 120 hours per year</u>
<u>After 3 years but less than 10 years</u>	<u>6,240.01 through 20,800.00 regularly scheduled hours</u>	<u>0.077 hours for each regularly scheduled hour paid</u>	<u>Approximately 160 hours per year</u>
<u>After 10 years</u>	<u>20,800.01 or more regularly scheduled hours</u>	<u>0.0962 hours for each regularly scheduled hour paid</u>	<u>Approximately 200 hours per year</u>

Shift Battalion Chiefs (Including the BCs Assigned to a 56-hour Workweek in the Emergency Command Center)

<u>YEARS OF COMPLETED</u>		<u>HOURLY ACCRUAL RATE</u>	<u>ANNUAL ACCRUAL</u>
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<u>CONTINUOUS SERVICE</u>	<u>EQUIVALENT HOURS OF COMPLETED CONTINUOUS SERVICE EXCLUSIVE OF OVERTIME</u>		
<u>0 to 3 years</u>	<u>1 through 8,736.00 regularly scheduled hours</u>	<u>0.0385 hours for each regularly scheduled hour paid</u>	<u>Approximately 112 hours per year</u>
<u>After 3 years but less than 10 years</u>	<u>8,736.01 through 29,120.00 regularly scheduled hours</u>	<u>0.0577 hours for each regularly scheduled hour paid</u>	<u>Approximately 168 hours per year</u>
<u>After 10 years</u>	<u>29,120.01 or more regularly scheduled hours</u>	<u>0.077 hours for each regularly scheduled hour paid</u>	<u>Approximately 224 hours per year</u>

Staff Battalion Chiefs and Fire Division Chiefs

YEARS OF COMPLETED CONTINUOUS SERVICE	EQUIVALENT HOURS OF COMPLETED CONTINUOUS SERVICE EXCLUSIVE OF OVERTIME	HOURLY ACCRUAL RATE
0 to 3 years	1 through 6,240.00 regularly scheduled hours	0.0577 hours for each regularly scheduled hour paid
After 3 years but less than 10 years	6,240.01 through 20,800.00 regularly scheduled hours	0.077 hours for each regularly scheduled hour paid
After 10 years	20,800.01 or more regularly scheduled hours	0.0962 hours for each regularly scheduled hour paid

Shift Battalion Chiefs

YEARS OF COMPLETED CONTINUOUS SERVICE	EQUIVALENT HOURS OF COMPLETED CONTINUOUS SERVICE EXCLUSIVE OF OVERTIME	HOURLY ACCRUAL RATE
0 to 3 years	1 through 8,736.00 regularly scheduled hours	0.0385 hours for each regularly scheduled hour paid
After 3 years but less than 10 years	8,736.01 through 29,120.00 regularly scheduled hours	0.0577 hours for each regularly scheduled hour paid

After 10 years	29,120.01 or more regularly scheduled hours	0.077 hours for each regularly scheduled hour paid

2. Each biweekly pay period—for which a full-time staff employee or full-time Fire Division Chief receives his/her full biweekly salary—shall be considered the equivalent of eighty (80) regularly scheduled paid hours. Each biweekly pay period—for which a full-time shift employee receives his/her full biweekly salary—shall be considered the equivalent of one hundred twelve (112) regularly scheduled paid hours.

B. Vacation Credit

1. Employees will earn vacation at the end of a pay period assuming they were in paid status for the entire pay period.

C. Maximum Allowable Vacation Credit

1. For full-time staff Battalion Chiefs working forty (40) hour workweek, maximum accruals at any one (1) time with less than ten (10) years of full-time continuous service shall be three hundred twenty (320) hours. The maximum allowable vacation credit at any one (1) time for a staff Battalion Chief or Fire Division Chief with ten (10) or more years of full-time continuous service shall be four hundred (400) hours. All vacation hours earned in excess of the maximum allowable vacation credit shall be paid in the pay period earned.
2. For full-time shift Battalion Chief working a fifty-six (56) hour average duty week, maximum accruals at any one (1) time with less than ten (10) years of full-time continuous service shall be four hundred forty-eight (448) hours. The maximum allowable vacation credit at any one (1) time for a full-time shift employee with ten (10) or more years of full-time continuous service shall be five hundred sixty (560) hours. All vacation hours earned in excess of the maximum allowable vacation credit shall be paid in the pay period earned.

D. General Provisions

1. Additional vacation earned during the period of vacation may be taken consecutively with the approval of the Fire Chief.
2. In any use of vacation, an employee's account shall be charged to the nearest quarter hour.
3. Vacations shall be scheduled for employees insofar as practicable while meeting staffing levels on the basis of employee requests. In cases of conflict among requests, vacation assignments will be made on the basis of seniority.

4. No employee shall be required to return to work for the Authority in any capacity during the time of his/her paid vacation from Authority service, except in cases of emergency.
5. An employee separating from Authority service for reasons other than retirement shall be paid for all accrued vacation in a lump sum payment.
6. ~~For calendar year 2020~~~~During each fiscal year~~, an employee may request to be paid for accrued vacation in either two (2) separate increments of up to fifty-six (56) hours each for shift employees or forty (40) hours for staff employees and Fire Division Chiefs each or one (1) increment of up to one hundred twelve (112) hours for shift employees or eighty (80) hours for staff employees and Fire Division Chiefs. An employee who is within fifteen (15) hours for staff Battalion Chiefs and Fire Division Chiefs twenty-one (21) hours for shift employees of the applicable maximum allowable vacation credit may request to be paid for one (1) additional increment of up to one hundred (112) hours for shift employees or eighty (80) hours for staff employees and Fire Division Chiefs in each fiscal year. For purposes of this payout, it must occur in a full pay period starting on or after July 1st of the current fiscal year requested and paid out prior to the full pay period ending June 30th.

Effective for calendar year 2021 and every year thereafter: By December 15 of each year (the first year being 2020), an employee may make an irrevocable election to cash out up to one hundred and twelve (112) hours for shift employees or eighty (80) hours for staff employees of accrued vacation leave which will be earned in the following calendar year at the employee's base rate of pay. In the following year, the employee can receive the cash for the vacation leave he/she irrevocably elected to cash out in either two (2) separate increments of up to fifty-six (56) hours for shift employees or forty (40) hours for staff employees each or one (1) increment of up to one hundred and twelve (112) hours for shift employees or eighty (80) hours for staff employees. The employee would be paid fifty-six (56) hours for shift employees or forty (40) hours for staff employees on both the pay day for pay periods fourteen (14) and twenty-six (26) or the employee can elect to be paid one hundred and twelve (112) hours for shift employees or eighty (80) hours for staff employees on the pay day for pay period twenty-six (26). However, if the employee's vacation balance is less than the amount the employee elected to cash out (in the prior calendar year) the employee will receive cash for the amount of leave the employee has accrued at the time of the cash out.

The employee may alternatively choose to have the value of up to one hundred and twelve (112) hours for shift employees or eighty (80) hours for staff employees of vacation which the employee can otherwise cash out placed into the employee's deferred compensation account. If the employee chooses that option (as opposed to taking cash) the maximum hours (in dollars) the employee can defer to his/her deferred compensation account

cannot exceed the maximum permitted by the IRS Code.

In addition to the above, starting in calendar year 2021, an employee who has an “unforeseen emergency” (defined as an unanticipated emergency that is caused by an event beyond the control of the employee and that would result in severe financial hardship to the employee if early withdrawal were not permitted) shall be entitled to make a request to the Director of Human Resources for a payoff of accrued vacation leave. The amount of vacation leave which may be paid off is limited to the amount necessary to meet the emergency. The maximum payoff the employee can receive for an emergency is limited up to one hundred and twelve (112) hours for shift employees or eighty (80) hours for staff employees of all his/her accrued vacation leave.

If an employee makes an irrevocable election to cash out vacation leave in the following calendar year and uses vacation leave in that subsequent year, the vacation leave used will come from vacation leave the employee had earned prior to January 1 of the year the employee has elected to cash out vacation leave. This is to ensure that assuming an employee had a vacation leave balance prior to January 1, the vacation leave used will not result in a reduction in the amount of vacation leave the employee will be eligible to cash out.

If, during the year when an employee has made an irrevocable election to cash out vacation leave, he/she was on leave without pay and did not earn the vacation leave expected, the employee will still be able to cash out the vacation leave the employee did earn even if reduced by the leave without pay.

7. No scheduled vacation shall be canceled, except in cases of emergency.

E. Vacation Time for Transitioning Employees

When presenting another agency a proposal for fire protection services, the Authority may offer the agency the opportunity to purchase up to forty (40) hours for staff or fifty-six (56) hours for shift employees of vacation for each employee transitioning to the Authority.

ARTICLE VI

HOLIDAYS

Section 1. Holidays Observed

A. Employees shall observe the following holidays:

- New Year's Day
- Martin Luther King Jr.'s Birthday
- Lincoln's Birthday
- President's Day
- Memorial Day
- Independence Day
- Labor Day
- Columbus Day
- Veteran's Day
- Thanksgiving Day
- Day after Thanksgiving
- Christmas Eve
- Christmas Day

Section 2. Shift Fire Battalion Chiefs (Including the BCs Assigned to a 56-hour Workweek in the Emergency Command Center)

A. Holiday Compensation

1. For each holiday listed in Section 1.A of this Article, a shift Battalion Chief shall receive twelve and six-tenths (12.6) hours of holiday pay in addition to their regular compensation. 2.
2. These employees shall be paid their holiday pay on the pay day following the pay period that the holiday occurs.
3. Employees who are in pay status during Pay Period #4 of each fiscal year, during the term of this MOU, shall be provided seven and one half (7.5) hours of paid leave time at the end of the pay period.
4. An employee must be paid for all or a portion of both the regularly scheduled working assignment immediately prior to a holiday and the regularly scheduled working assignment immediately after that holiday in order to receive holiday pay.
5. An employee who elects paid Authority retirement on a holiday shall be paid for the holiday.

Section 3. Staff Fire Battalion Chiefs (Except the BCs Assigned to a 56-hour workweek in the Emergency Command Center) and Fire Division Chiefs

A. Holiday Compensation

1. For each holiday listed in Section 1.A of this Article, employees scheduled to work, but permitted to take the day off, shall be paid for the number of hours the employee is regularly scheduled to work that workday computed at the employee's base hourly rate
2. When a holiday listed in Section 1.A of this Article falls on the employee's regularly scheduled day off, the employee shall receive eight (8) hours of holiday pay computed at the employee's base hourly rate.
3. When a holiday falls on a Sunday, the next day, Monday, shall be observed as the holiday.
4. When either Christmas Day or New Year's Day falls on a Saturday, the Friday immediately preceding each day shall be observed as the holiday.
5. Employees shall be paid their holiday pay on the pay day following the pay period that the holiday occurs.
6. Employees who are on a pay status during Pay Period #4 of each fiscal year, during the term of this MOU, shall be provided for five (5) hours of paid leave time at the end of the pay period.
7. An employee must be paid for all or a portion of both the regularly scheduled working assignment immediately prior to a holiday and the regularly scheduled working assignment immediately after that holiday to receive holiday pay.
8. An employee who elects paid Authority retirement on a holiday shall be paid for the holiday.

B. Compensation for Work on Holidays

1. An employee who is required to work on a holiday shall, in addition to his/her regular pay, receive holiday pay for each hour worked on a holiday at a rate of one and five-tenths (1.5) times the employee's base hourly rate.

C. Holidays that fall during an employee's vacation period shall not be charged against the employee's vacation balance.

ARTICLE VII

REIMBURSEMENT PROGRAMS

Section 1. Mileage Reimbursement

- A. Subject to the current vehicle rules and regulations established by the Board, an employee who is authorized by the Fire Chief to use a private automobile in the performance of his/her duties shall be reimbursed for each mile at the Internal Revenue Service Standard Mileage Rate for the Business Use of a Car.
- B. An employee who is required by the Authority to furnish a privately-owned vehicle for the performance of his/her duties on Authority time shall receive a minimum of ten dollars (10) in any month in which the actual mileage reimbursement would otherwise be less than ten dollars (10). The minimum shall not apply in any month:
 - 1. In which the employee has not actually worked eighty (80) hours for staff employees and Fire Division Chiefs or one hundred twelve (112) hours for shift employees.
 - 2. Unless the employee claims the ten dollar (10) minimum and the Authority certifies that the employee was required to use a privately owned vehicle on Authority business.

Section 2. Tuition Reimbursement

- A. Employees performing their jobs satisfactorily shall be eligible for tuition reimbursement at a maximum of one thousand two hundred fifty dollars (1250) each fiscal year. Eligibility shall be in accordance with Authority policy.

ARTICLE VIII

DISCIPLINARY AND PREDISCIPLINARY ACTIONS

Section 1. Reprimand or Denial of Performance Salary Increase

- A. No employee shall receive a written reprimand, except for just reasonable cause.
- B. A written reprimand may be appealed as follows: through this appeal procedure. Such appeal shall be initiated at Step 1 of this procedure.

Upon receipt of a written reprimand an employee may, within fourteen (14) calendar days of receipt of such reprimand, file submit a request with to the Human Resources Director, Fire Division Chief, or Assistant Chief, or Deputy Chief/Department Head (if the action is against a Fire Division Chief) for a meeting. The Human Resources Director shall schedule a meeting with the appropriate Fire Division Chief or Assistant Chief/Department Head (if the action is against a Fire Division Chief) Fire Chief and/or his/her designee to hear the employee's presentation. After hearing the employee's presentation, the Fire Division Chief or Assistant Chief/Department Head Fire Chief and/or his/her designee shall issue a written determination within fourteen (14) calendar days. The written determination shall be the final administrative decision subject to review per Code of Civil Procedure section 1094.5.

Section 2. Proposed Disciplinary Action Disciplinary Hearing for Dismissal, Suspension, Demotion or Reduction in Pay, or Discharge

- A. Notice of Intent for Dismissal, Suspension, Demotion or Reduction in Pay In suspending an employee for more than forty (40) regularly scheduled hours (if assigned to a staff position or as Fire Division Chief) or more than two (2) twenty four (24) hour shifts (if assigned to a shift position), in reducing an employee for reasons of unsatisfactory performance or in discharging an employee, a A written notice of intent to discipline proposed disciplinary action shall be served on the employee at least fourteen (14) calendar days prior to the effective date of the proposed action. Such written notice shall contain:
1. A description of the proposed action and its effective date(s)
 2. A statement of the reasons for such proposed action, including the acts or omissions on which the proposed action is based
 3. Copies of material on which the proposed action is based
 4. A statement of the employee's right to respond—either orally or in writing—prior to the effective date of such proposed action
 5. A statement of the employee's right to representation

6. A statement of the employee's right to appeal should such proposed action become final.

7. A statement that the employee shall have at least fourteen (14) calendar days in which to request an oral response (i.e., a Skelly meeting) or to provide a written response.

If the employee chooses to provide a written response, the Fire Chief and/or his designee shall issue a written determination within fourteen (14) calendar days of receipt of that response. If the employee timely requests to provide an oral response (i.e., a Skelly meeting) they may make the request to the Human Resources Director, Assistant Chief or Deputy Chief. The Human Resources Director shall schedule a meeting with the Fire Chief and/or his/her designee to hear the employee's presentation.

~~B. In suspending an employee for forty (40) hours or less (if assigned to a staff position or as Fire Division Chief) or two (2) twenty-four (24) hour shifts or less (if assigned to a shift position), the above notice requirements shall be complied with if practicable prior to the effective date of the suspension, and in any event, not more than fourteen (14) calendar days after the effective date of the suspension.~~

~~C.B. Pre-Disciplinary (i.e., Skelly) Meeting: An employee who requests to provide an oral response (i.e., a Skelly meeting) of more than forty (40) hours (if assigned to a staff position or as Fire Division Chief) or more than two (2) twenty-four (24) hour shifts (if assigned to a shift position) or reduction or discharge, an employee shall be given an opportunity to respond either orally or in writing at the employee's option to a designated Authority representative with the authority to make an effective recommendation on the proposed disciplinary action.~~ has the following rights:

1. An employee shall be given reasonable time off without loss of pay to attend ~~thea pre-disciplinary meeting~~ hearing.
2. An employee may represent himself/herself, ~~or~~ may be represented by the Association or by a representative of his/her choice in the ~~pre-disciplinary meeting~~ process.
3. An employee and his/her representative shall receive written notice sustaining, modifying, or canceling a proposed ~~dismissal, charge, suspension, demotion or reduction in pay on or prior to the effective date of such action.~~ Chief shall issue a written determination relative to the intended action within fourteen (14) calendar days of the pre-disciplinary meeting.
4. Should a proposed dismissal, suspension, demotion or reduction in pay or suspension become final, an employee shall have the right to appeal such action pursuant to Section 3 of this Article.

~~An employee and his/her representative shall receive written notice either sustaining, modifying, or canceling a proposed suspension or reduction prior to the effective date of such action.~~

Section 3. Right of Appeal for Dismissal, Suspension, Demotion or Reduction in Pay

- A. ~~Following the receipt of a Notice of Discipline for a dismissal, suspension, demotion or reduction in pay, E~~employees have the right to appeal ~~suspensions, reductions as set forth below, and discharges in accordance with Section 5 of this Article.~~ Failure of the employee to ~~timely appeal~~ comply with the time limits set forth in this Article shall signify that the employee has waived his/her right to further process the appeal, and the disciplinary action shall stand as issued. Failure by the Authority representative to timely respond under this Article shall permit the employee to ~~appeal using this procedure~~progress the appeal to the next step.
- B. ~~Employees shall have fourteen (14) calendar days from the date of service of the Notice of Discipline in which to file the appeal.~~ The time limits ~~for to appeal s, set forth in this Article,~~ may be extended by mutual agreement between the Authority representative and employee or his/her representative.

~~Section 4. Polygraph Examination~~

- A. ~~No employee shall be compelled to submit to a polygraph examination. No disciplinary action shall be taken against an employee for refusing to submit to a polygraph examination; nor shall any comment be anywhere recorded indicating that an employee offered to take, took, or refused to take a polygraph examination, unless otherwise agreed to in writing by the parties; nor shall any testimony or evidence of any kind regarding an employee's offer to take or refusal to take or the results of a polygraph examination be admissible in any proceeding pursuant to this MOU, unless otherwise agreed to in writing by the parties.~~

~~Section 5. Appeal Procedure~~

- C. ~~All Step 1 and Step 2~~ appeals (as described below) must be filed with submitted to the Human Resources Director or the employee's Fire Division Chief or Assistant Chief, Deputy Chief, or /Fire Chief ~~within the time limits outlined in this Article.~~ If the appeal is submitted to the employee's Fire Division Chief or Assistant Chief/Fire Chief, a copy shall be forwarded to the Human Resources Director. Submission of the appeal may be via mail, hand delivery, fax or email; postmarks shall be accepted. All appeals must be received in writing, including by email, no later than 11:59:00 p.m. on the last day to appeal. ~~allowable under the provisions of this Article. Any suspension, reduction, or discharge imposed by the Fire Chief may be submitted directly to arbitration in accordance with Section 6 of this Article.~~

~~STEP 1~~

~~a. Reprimand—Fire Division Chief or Assistant Chief.~~

~~—Upon receipt of a reprimand an employee may, within fourteen (14) calendar days of receipt of such reprimand, submit a request to the Human Resources Director, Fire Division Chief, or Assistant Chief/Department Head (if the action is against a Fire Division Chief) for a meeting. The Human Resources Director shall schedule a meeting with the appropriate Fire Division Chief or Assistant Chief/Department Head (if the action is against a Fire Division Chief) to hear the employee's presentation. After hearing the employee's presentation, the Fire Division Chief or Assistant Chief/Department Head shall issue a written determination within fourteen (14) calendar days.~~

~~b. Suspension, or Reduction in Salary,—Assistant Chief~~

~~—Upon receipt of a notice of intent involving suspension or reduction in salary an employee may, within fourteen (14) calendar days of receipt of such notice, submit a request to the Human Resources Director or Assistant Chief for a meeting to address the charges in the notice. The Human Resources Director shall schedule a meeting with the appropriate Assistant Chief/Department Head to hear the employee's presentation. After hearing the employee's presentation, the Assistant Chief shall issue a written determination relative to the intended action within fourteen (14) calendar days.~~

~~2. STEP 2~~

~~a. Reprimand—Assistant Chief~~

~~—If the employee does not agree with the outcome in Step 1, the employee may, within fourteen (14) calendar days of receipt of the Step 1 written determination, submit a written appeal to the Human Resources Director, Assistant Chief, . Within fourteen (14) calendar days of receipt of the appeal at Step 2, the appropriate Assistant Chief shall meet with the appellant and his/her representative. Within fourteen (14) calendar days thereafter, a written decision shall be provided to the appellant and his/her representative. The determination shall be final and binding and will not be referable to arbitration.~~

~~b. Suspension/Reduction or Reduction in Salary—Fire Chief or his/her designee~~

~~—If the employee does not agree with the outcome in Step 1, the employee may within fourteen (14) calendar days of the receipt of the Step 1 written determination submit a written appeal to the Human Resources Director. Within fourteen (14) calendar days of receipt of the appeal, the Fire Chief or designee shall meet with the appellant and his/her representative. Within fourteen (14) calendar days thereafter, a written decision shall be provided to the appellant and his/her representative.~~

~~A. If the suspension, reduction, or discharge is imposed by the Fire Chief, the employee may submit the matter directly to arbitration.~~

~~B. If the employee does not agree with the outcome at Step 2 (from Section 5 above) regarding a suspension, reduction, or discharge, the employee may appeal the matter to arbitration by submitting the appeal to the Human Resources Director within fourteen (14) calendar days from the date of receipt of such Step 2 decision.~~

~~C. All disciplinary appeals shall be signed by the appellant or his/her representative of the Association and shall be submitted in writing.~~

A. An employee who appeals a dismissal, suspension, demotion or reduction in pay is appealing to have an arbitrator conduct a hearing to hear the appeal.

D.B. Finding of Facts and Remedies

1. An arbitrator may sustain, modify, or rescind an appealed disciplinary action as follows and subject to the following restrictions:

a. All Disciplinary Actions

~~i. If the arbitrator finds that the disciplinary action was taken for justreasonable cause, he/she shall then determine if the disciplinary action imposed on the employee was appropriate based on his/her assessment of the charges that were proven by a preponderance of the evidence. The arbitrator shall have the right, and the responsibility, to modify the discipline if, in his/her opinion, it is not appropriate.~~

b. Suspension, Demotion or Reduction in Pay

~~i. If the action is modified or rescinded, the appellant shall be entitled to restoration of pay and/or fringe benefits in a manner consistent with the arbitrator's decision and consistent with Section C below6.E. of this Article.~~

c. Dismissals~~Discharges~~

i. If the arbitrator finds that the order of dismissal~~discharge~~ should be modified or rescinded, the appellant shall be restored to a position in his/her former class subject to back pay and benefits in a manner consistent with the arbitrator's decision ~~forfeiture of pay and fringe benefits for all or a portion of the period of time the appellant was removed from duty, as determined by the arbitrator~~ and consistent with Section C below6.E. of this Article.

~~ii. If the arbitrator finds that the order of discharge should be rescinded, the appellant shall be reinstated in a position in his/her former class and shall receive pay and fringe benefits for all of the period of time he/she was removed from duty and consistent with Section 6.E. of this Article.~~

- C. Restriction on Remedies - Restoration of pay and benefits shall be subject to deduction of all unemployment insurance, applicable taxes and withholdings, and outside earnings the appellant received since the date of discharge.

Section ~~57~~. General Provisions

~~A. If the appeal is decided by an arbitrator, the appellant and his/her representative relinquish any current or future claim to seek or obtain remedy through any other Authority appeal procedures.~~

~~B.A. The cost of an arbitrator shall be shared equally in all cases by the Authority and the appealing party. If the Association is representing or financially supporting the employee in their appeal, the cost of the arbitrator shall be shared equally between the Authority and the Association. If the Association is neither representing the employee nor financially supporting their appeal, the cost of the arbitrator shall be paid for by the Authority.~~

~~C.B.~~ Appeal hearings by an arbitrator shall be private.

~~D.C.~~ Arbitration appeal hearings for suspensions of less than forty (40) hours (if assigned to a staff position or as Fire Division Chief) or less than two (2) twenty-four (24) hour shifts (if assigned to a shift position) shall be limited to one (1) day, unless both parties agree that a longer hearing is necessary. Both parties shall be allotted equal time during arbitration hearings involving such suspensions. ~~The one (1) day limitation for arbitration appeal hearings shall not apply to suspensions imposed by the Fire Chief.~~

~~E.D.~~ The arbitrator shall be selected by the mutual agreement of the parties. If the parties cannot agree upon an arbitrator, a list of seven (7) arbitrators shall be obtained from the California State Mediation and Conciliation Service, or some other agreed upon source. Then, each party shall alternately strike one (1) name from the list until only one (1) name remains. The Association shall strike the first name.

~~F. Both parties agree to provide any documents (except for rebuttal documents) they plan to offer into evidence at least fourteen (14) days in advance of the disciplinary appeal hearing.~~

~~G.E.~~ Except for hearing appealing a termination, an employee shall not suffer loss of pay for time spent as a witness at an arbitration hearing held pursuant to this procedure. The number of witnesses requested to attend and their scheduling shall be reasonable and scheduled in advance.

~~H.F.~~ At the hearing, both the Association and the Authority shall have the right to be heard and to present evidence. The following rules shall apply:

1. Testimony shall be provided under oath.
2. Each party shall have these rights: (1) to call and examine witnesses, (2) to introduce exhibits, (3) to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct

examination, (4) to impeach any witness regardless of which party first called the witness to testify, and (5) to rebut the evidence against the witness. If the employee does not testify in his/her own behalf, the employee may be called and examined as if under cross-examination.

- I. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might have made improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding, unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the same extent that they are not-or hereafter may be-recognized in civil actions. Irrelevant and unduly repetitious evidence shall be excluded.
- J. The Authority shall be allowed to have at least one (1) employee who may be called upon to testify as a witness present at the arbitration hearing at all times.

K. The decision of the arbitrator shall be final and binding on all parties.

L. No employee shall be compelled to submit to a polygraph examination. No disciplinary action shall be taken against an employee for refusing to submit to a polygraph examination; nor shall any comment be anywhere recorded indicating that an employee offered to take, took, or refused to take a polygraph examination, unless otherwise agreed to in writing by the parties; nor shall any testimony or evidence of any kind regarding an employee's offer to take or refusal to take or the results of a polygraph examination be admissible in any proceeding pursuant to this MOU, unless otherwise agreed to in writing by the parties.

ARTICLE IX

GRIEVANCE PROCEDURE

Section 1. Scope of Grievances

- A. A grievance may be filed if the Association or one of its members believes the Authority has violated, misapplied, or misinterpreted any provision of this MOU or any Authority procedures that implement specific provisions of this MOU in the areas of overtime, intradepartmental transfers, vacations, and shift exchanges.

Section 2. Basic Rules

- A. If an employee does not present a grievance or does not appeal the decision rendered regarding his/her grievance within the time limits, the grievance shall be considered resolved.
- B. If an Authority representative does not render a decision to the employee within the time limits, the employee may, within fourteen (14) calendar days thereafter appeal to the next step in the procedure.
- C. If it is the judgment of any management representative that he/she does not have the authority to resolve the grievance, he/she may refer it to the next step in the procedure. By mutual agreement of the Authority and the Association, Step 1 of the grievance procedure may be waived.
- D. Upon prior written consent of the parties (i.e., the representatives of the Authority and the employee or his/her representative), the time limits at any step in the procedure may be extended.
- E. Every reasonable effort shall be made by the employee and the Authority to resolve a grievance at the lowest possible step in the grievance procedure.
- F. The Association shall have the right to a representative present throughout the grievance process.
- G. To encourage candid discussion and compromise in attempting to resolve grievances, the Authority and the Association agree the grievance files of the respective parties shall be confidential.

Section 3. Submission of Grievances

- A. Any employee or group of employees shall have the right to present a grievance. The Association shall have the right to file grievances on behalf of the general membership; however, when the Association files a grievance on behalf of the general membership, it shall provide the Authority with the names of individuals who have been adversely affected. The Association has the right to grieve issues that solely affect the rights of the Association.

- B. If any two (2) or more employees have essentially the same grievance, they may, and if requested by the Authority must, collectively present and pursue their grievance if they report to the same immediate supervisor.
- C. If the grievant is a group of more than three (3) employees, the group shall, at the request of the Authority, appoint one (1) or two (2) employees to speak for the collective group.

Section 4. Employee Representation

- A. An employee may represent himself/herself or may be represented by the Association in the formal grievance procedure.
- B. Authorized grievance representatives shall be designated by the Association to represent employees for purposes of grievance procedures. The Association shall notify the Human Resources Director of the names and titles of such representatives. This notice shall be updated each time a change in designated representative(s) occurs.

Section 5. Time Off for Processing Grievances

- A. Reasonable time off without loss of pay shall be given to:
 - 1. An employee who has a grievance, in order to attend a meeting with his/her supervisor or other person with authority to resolve the matter.
 - 2. An authorized grievance representative, in order to attend a meeting with the represented grievant's supervisor or other person with authority to resolve the grievance, or to obtain facts concerning the action grieved through discussion with the grievant or other employees.
- B. A grievant must get permission from the person to whom he/she she reports before leaving his/her job to perform any work related to the grievance. Permission will be granted if the demands of the job do not prevent it at that time. If that is the case, the employee's supervisor will grant such permission at a reasonable time in the near future.

Section 6. Formal Grievance Steps

- A. The grievance procedure shall consist of the following steps, each of which must be completed prior to any request for further consideration of the matter, unless waived by mutual consent or as otherwise provided herein.
- B. All Step 1 and Step 2 grievances must be submitted to the Human Resources Director, Submission may be via email, mail, hand delivery or fax; no later than 5:00 p.m. on the last day allowable under the provisions of this Article.
 - 1. STEP 1: Fire Division Chief or Assistant Chief
 - a. A grievance must be filed within fourteen (14) calendar days from the occurrence that gives rise to the grievance. A Step 1 grievance shall be heard by a Fire Division Chief or Assistant Chief (if the grievant is a Fire Division Chief). In those cases where the Fire Division Chief is the

immediate supervisor and is the subject of the grievance, the Fire Division Chief and the Assistant Chief meet with the grievant within fourteen (14) calendar days.

- b. Such submission shall be in writing and shall state the nature of the grievance and the suggested solution.
- c. Within fourteen (14) calendar days thereafter, a written decision shall be given to the grievant.

2. STEP 2: Assistant Chief

- a. If the grievance is not settled under Step 1, it may be appealed in writing to the Human Resources Director within fourteen (14) calendar days after receipt of the written decision from Step 1. Within fourteen (14) calendar days after receipt of the written grievance appeal the appropriate Assistant Chief shall meet with the grievant and his/her representative. Within fourteen (14) calendar days thereafter, a written decision shall be given to the grievant and his/her representative.

Section 7. Referrals to Mediation

- A. As an alternative to proceeding directly to arbitration after completion of Step 2, the parties may mutually agree to submit a grievance to mediation. A request for mediation may be presented in writing to the Human Resources Director within fourteen (14) calendar days from the date a decision was rendered at Step 2. A request for mediation shall automatically suspend the normal processing of a grievance until the mediation process is completed. The Authority shall respond to a request for mediation within fourteen (14) calendar days. The mediation process shall be optional, and any opinion expressed by the mediator shall be informal and shall be considered advisory. Should the mediation process not be successful, within fourteen (14) calendar days after completion of the mediation process, an arbitration request may be filed pursuant to Section 8 of this Article.

Section 8. Referrals to Arbitration

- A. If a grievance is not resolved under Step 2 or mediation, an arbitration request may be submitted in writing by the Association to the Human Resources Director within fourteen (14) calendar days from the date a decision was rendered at Step 2 or the completion of the mediation process. As soon as practicable thereafter—or as otherwise agreed to by the parties—an arbitrator shall hear the grievance.

Section 9. General Provisions

- A. The cost of an arbitrator shall be shared equally in all cases by the Authority and the appealing party.
- B. Grievance hearings by an arbitrator shall be private.
- C. The arbitrator shall be selected by the mutual agreement of the parties. If the parties cannot agree upon an arbitrator, a list of seven (7) arbitrators shall be

obtained from the California State Conciliation Service or some other agreed upon source and, each party shall alternately strike one (1) name from the list until only one (1) name remains.

- D. Both parties agree to provide any documents (except for rebuttal documents) they plan to offer into evidence at least 14 days in advance of the grievance appeal hearing.
- E. An employee shall not suffer loss of pay for time spent as a witness at an arbitration hearing held pursuant to this procedure. The number of witnesses requested to attend and their scheduling shall be reasonable and scheduled in advance.
- F. At the hearing, both the Association and the Authority shall have the right to be heard and to present evidence. The following rules shall apply:
 - 1. Testimony shall be provided under oath.
 - 2. Each party shall have these rights: (1) to call and examine witnesses, (2) to introduce exhibits, (3) to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination, (4) to impeach any witness regardless of which party first called the witness to testify, and (5) to rebut the evidence against the witness. If the employee does not testify in his/her own behalf, the employee may be called and examined as if under cross-examination.
- G. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might have made improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding, unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now, or hereafter may be, recognized in civil actions and irrelevant and unduly repetitious evidence shall be excluded.
- H. The Authority shall be allowed to have at least one (1) employee who may be called upon to testify as a witness present at the arbitration hearing at all times.
- I. The decision of the arbitrator shall be final and binding on all parties.

ARTICLE X

LAYOFF PROCEDURE

Section 1. Order of Layoff

- A. The Authority may abolish a position because of change in duties or organization or shortage of work or funds, which may require the layoff of one (1) or more employees. When a layoff is implemented, employees shall be laid off in an order based on consideration of:
1. Employment status
 - a. All new probationary employees and employees on temporary promotion shall be removed from the class.
 2. Past performance
 - a. Any employee whose last regularly scheduled performance evaluation was rated "Substandard" and who has received a subsequent interim performance evaluation rated "Substandard" shall be subject to layoff before employees subject to Section 1.A.3 of this Article.
 3. Length of continuous service
 - a. After all new probationary employees, employees on temporary promotion, and employees subject to layoff under Section 1.A.2 of this Article have been removed from a classification within a layoff unit, the employee with the lowest number of service hours within the classification shall be subject to layoff first. When two (2) or more employees have the same number of service hours in the classification, the employee with the lowest number of total service hours shall be subject to layoff first.
 - b. Employees transitioned to the Authority from another public fire service agency in Orange County, pursuant to a contractual agreement for the Authority to provide fire services previously provided by the other public fire service agency, may be provided service hours for their employment with the other public fire service agency, for layoff purposes, to the extent permitted by the Agreement set forth in Appendix B.
- B. Layoffs shall be made by class within the Authority.
- C. If a layoff is going to be made in a class from which an employee has left through a temporary promotion, the employee on temporary promotion shall be returned to his/her former class and shall be subject to layoff in accordance with this procedure.

Section 2. Notification of Employees

- A. Written notice of layoff shall be given to an employee or sent by mail to the last known mailing address at least fourteen (14) calendar days prior to the effective

date of the layoff. Notices of layoff shall be served on employees personally at work, whenever practicable.

- B. It is the intent of the parties that the number of layoff notices initially issued shall be limited to the number of positions by which the workforce is intended to be reduced. Additional notices shall be issued as other employees become subject to layoff as a result of employees exercising reduction rights under Section 3 of this Article.
- C. The notice of layoff shall include (1) the proposed effective date of the layoff, (2) the employee's hire date, (3) the employee's service hours, (4) the employee's rights under Section 3 of this Article, and (5) the right of the employee to advise the Authority of any objection to the content of the layoff notice prior to the proposed effective date of the layoff.

Section 3. Voluntary Reduction in Lieu of Layoff

- A. An employee who is subject to layoff may request a reduction to a lower class provided the employee possesses the minimum qualifications for the class, has served in and passed probation in that class with the Authority or a predecessor employer, and passes any required performance tests. The reduction shall be made if there is a vacant position in the layoff unit or an incumbent in the lower class in the layoff unit has fewer service hours than the employee requesting the reduction. In the latter case, the incumbent in the lower class with the fewest number of service hours shall be subject to layoff.
- B. Employees who receive notice of layoff shall have five (5) calendar days to notify the Authority in writing of their intent to exercise rights under this Section.
- C. Failure by an employee to respond to the Authority pursuant to this Section shall result in a rebuttable presumption that the employee does not intend to exercise any right of reduction to a lower class and that the employee's hire date stated in the layoff notice was correct.
- D. No employee action or inaction referred to in this Section shall be considered a waiver of an employee's right to file grievances concerning any matter within the scope of the grievance procedure.

Section 4. Status on Reinstatement

- A. An employee who has been laid off under the provisions of this Article and subsequently reinstated within a two (2) year period from the date of his/her layoff shall receive the following considerations and benefits:
 - 1. All sick leave credited to the employee's account when laid off shall be restored.
 - 2. All service hours held upon layoff shall be restored.
 - 3. All prior service shall be credited for the purpose of determining Sick Leave and vacation earning rates and service awards.

4. The employee shall be placed in the salary range as if the employee had been on a Leave of Absence Without Pay.
 5. The probationary status of the employee shall be as if the employee had been on a Leave of Absence Without Pay, except that a probation period shall be established as determined by Article III, Section 3 if reinstatement is in a higher class or an occupational series different from that employed in at the time of layoff.
- B. When an employee is reduced under the provisions of this Article and is subsequently reemployed in a class higher than the one from which the employee was reduced, the employee shall be deemed returned to the class from which the employee had been reduced as provided above and the employee's salary, probation period, and merit increase eligibility date shall be determined by treating the employee as though he/she is being promoted from such class.

ARTICLE XI

ON-THE-JOB-INJURIES, WORKERS' COMPENSATION

Section 1. Disability Payments and Leave

A. Exhaustion of 4850 Benefits

1. When an employee has exhausted all rights and benefits provided by California Labor Code Section 4850 and he/she continues to be unable to return to work due to an injury or disease arising out of and in the course of Authority employment, such employee shall be treated in the following manner:
 - a. He/she shall be entitled to all benefits provided by California Workers' Compensation Law; and
 - b. He/she shall be placed on Workers' Compensation Leave; and
 - c. All sick leave, compensatory time, and vacation shall be added—at the employee's option—to the workers' compensation temporary disability benefit, if eligible for such benefit, which shall equal one hundred (100) percent of the employee's base salary until such accruals are exhausted; or
 - d. If the employee is not eligible for temporary disability or exhausts his/her temporary disability benefit—at the employee's option—such accruals shall be continued until they are exhausted. An election to continue accruals shall be irrevocable
 - e. Upon exhaustion of all sick leave, compensatory time, and vacation, the employee shall not accrue sick leave or vacation for the remainder of Workers' Compensation Leave
 - f. The probation period of any employee who receives workers' compensation benefits shall be extended by the length of time he/she receives such benefits, except that the first fifteen (15) consecutive calendar days of benefits shall be considered Authority service for completion of the probation period.
 - g. Time during which an employee receives workers' compensation temporary disability benefits shall be counted toward the computation of Authority seniority and determination of sick leave and vacation earning rates.

Section 2. Exposure to Contagious Diseases

- ##### **A.**
- Whenever an employee is compelled by direction of an Authority-designated physician to be absent from duty due to on-the-job exposure to a contagious disease, the employee shall receive regular compensation for the period absent from duty.

ARTICLE XII

SAFETY

Section 1. General Provisions

- A. The Authority shall make reasonable efforts to provide and maintain a safe place of employment. Employees shall be alert to unsafe practices, equipment, and conditions and shall report any such unsafe practices, equipment, or conditions to their immediate supervisors.
- B. Any employee who either does not receive an answer to a safety-related question from his/her supervisor within three (3) calendar days or receives an answer the employee deems unsatisfactory, may directly contact the designated Authority Safety Officer.
- C. Any employee who is directed to perform a task that the employee, in good faith, feels is unsafe may request an immediate investigation from the designated Authority Safety Officer. During the period the designated Authority Safety Officer is conducting an investigation, the employee shall be assigned to other work at no loss of earnings. If the task is ruled to be safe by the designated Authority Safety Officer, the employee shall be required to perform the duties assigned.
- D. In accordance with OCFA Standard Operating Procedures ~~s-AM-115.02~~, the Authority shall establish guidelines to notify the investigative team, which shall include a designated Association representative, of the existence of a serious injury or fatality involving an employee and to secure the scene until such time as the investigative team can conduct an investigation of the serious injury or fatality. This would involve securing the equipment directly involved, the immediate area to the incident, and the apparatus directly involved.
- E. The Authority shall furnish all equipment that is necessary for employees to perform their jobs in a safe manner.
- F. Wherever practicable, the Authority shall provide the necessary first aid kits in Authority facilities.
- G. Wherever practicable, the Authority shall provide first aid training for one (1) employee at each new work location.

Section 2. Safety Inspection

- A. During an inspection of Authority facilities conducted by the appropriate State agency for the purpose of determining compliance with the California OSHA requirements, an Association designated employee shall be allowed to accompany the inspector while the inspector is on site. The employee so designated shall suffer no loss of pay when this function is performed during the employee's regularly scheduled work hours.

Section 3. Safety Representative

- A. The representative of the Association who serves as the co-chairperson of the Authority's Safety & Occupational Health Committee, may be selected by the Association to meet at least once a month, upon request, with the designated Authority Safety Officer and/or the Authority's Operations Training and Safety Officer to discuss matters affecting employee health and safety.
- B. A safety representative who has received a complaint involving a possible health and safety violation shall be given reasonable time off without loss of pay to gather appropriate information on such complaint, provided that:
 - 1. The safety representative obtains permission from the immediate supervisor prior to performing such duty.
 - 2. The safety representative shall not be allowed to leave the worksite if in the opinion of the immediate supervisor it will unduly interfere with the work of the unit. However, the Authority shall make every attempt to grant such time off as soon as it is feasible to do so.
- C. When an authorized safety representative must go into another section or unit to gather said information, the safety representative shall be permitted to do so provided that:
 - 1. The safety representative checks in and checks out with the supervisor of the unit; and
 - 2. The safety representative does not unduly interfere with the work of the unit.

Section 4. Resolution of Safety or Health Complaints

If a safety or health complaint is not satisfactorily resolved, the safety representative may request to meet with the designated Authority Safety Officer to resolve the complaint. If the complaint is not resolved, a grievance may be filed.

Section 5. Abatement of Violations

In any instance in which the Authority is cited for a violation of California OSHA, the Authority shall abate the cited hazard to health or safety within the abatement period required.

ARTICLE XIII

INSURANCE

Section 1. CalPERS Health Care

- A. The Authority shall continue to maintain its contract with the California Public Employees Retirement System (CalPERS) for employees' health care coverage.
- B. ~~Except as provided in Section 1.C.1 of this Article, t~~The Authority shall contribute towards the payment of health care premiums, under the CalPERS Health Benefits Plan, on behalf of each eligible active employee and each eligible retiree, an equal contribution as set forth in California Government Code 22892 (GC §22892) and the Public Employees' Medical and Hospital Care Act (PEMHCA). Eligible active employees include the following:
- i. Full-time regular, limited-term or probationary employees who, upon hire or starting in the position, are reasonably expected to average thirty (30) or more hours of service per week [i.e. one hundred thirty (130) hours per month]; and
 - ii. Part-time regular, limited-term or probationary employees who, upon hire or starting in the position, are reasonably expected to average at least twenty (20) hours of service per week.
- C. The Authority shall provide to each eligible employee, as defined in Section 1.B of this Article, a health flex contribution to purchase health benefits under its Section 125 of the Internal Revenue Code ("Cafeteria Plan~~has a Section 125 Cafeteria Plan for employees and pays the following amounts for employees' health care coverage and other benefits:~~
1. Except as modified in Section 1.D. of this Article, each employee shall receive (as a contribution to the cafeteria plan) the dollar value of one hundred (100) percent of the employee's health plan premium or seventy-five (75) percent of the total health plan premium selected by the employee, whichever is greater. That amount shall include the CalPERS statutory minimum amount set forth in the California Government Code Section 22892. The employee may elect to contribute the entire value to his/her health care premium (i.e., the Authority's cafeteria plan contribution on behalf of the employee) or allocate a portion of the value to other benefits offered under the cafeteria plan. If the employee elects to allocate part of the value to other benefits, any unpaid balance of the employee's health care premium shall be deducted from the employee's paycheck. The Authority shall provide to each full-time (regular, limited-term, or probationary) employee, as defined in Section 1.B.1 of this Article, a health flex contribution of the greater of:
- Employee Only Coverage: 100% of the health plan premium selected by the employee.
- Employee + Dependent Coverage: 75% of the health plan premium selected by the employee.

If 100% of the cost of the employee only plan exceeds the cost of 75% of the two party or family plans actually selected by the employee, then an employee may elect dependent coverage and receive a contribution from the Authority of the cost of the employee plan (i.e., the greater amount).

This amount shall include the contribution towards the employee's Cafeteria Plan as set forth in GC §22892 and PEMHCA. Any balance of the employee's health care premium selection not covered by the health flex contribution shall be deducted from the employee's paycheck. The health flex contribution shall not be cashed out or applied to non-health benefits (for example, dependent care).

2. The Authority shall provide to each part-time (regular, limited-term, or probationary) employee, as defined in Section 1.B.2 of this Article, a health flex contribution as follows:

Employee Only Coverage: 50% of the health plan premium selected by the employee.

Employee + Dependent Coverage: 37.5% of the health plan premium selected by the employee.

This amount shall include the contribution towards the employee's Cafeteria Plan as set forth in GC §22892 and PEMHCA. Any balance of the employee's health care premium selection not covered by the health flex contribution shall be deducted from the employee's paycheck. The health flex contribution shall not be cashed out or applied to non-health benefits (for example, dependent care). Health care coverage and other benefits provided as part of the Cafeteria Plan shall be terminated for any employee whose normal workweek is reduced to less than twenty (20) hours.

- D. Eligible Opt-Out Arrangement: Upon showing sufficient proof of alternate group health care coverage, providing reasonable evidence of alternative coverage as required by the ACA's Eligible Opt Out Arrangement rules (below), other than an Authority funded or administered plan, such as a certificate of coverage, an full-time or part-time employee as defined in Section 1.B. of this Article, shall be entitled to a fifty-five (55) dollars biweekly credit to his/her cafeteria plan in taxable cash, in lieu of the amount provided in Section 1.C.1 or 1.C.2., as applicable, of this Article. This credit may be applied towards benefits under the cafeteria plan, including accidental death and dismemberment insurance or miscellaneous pay.

Pursuant to the Affordable Care Act (ACA) Employer Mandate "affordability" determination, an Eligible Opt-Out Arrangement requires the following for employees who opt-out of employer-provided health coverage and receive cash in lieu:

1. Employee must provide reasonable evidence that the employee and each member of the employee's expected tax family (individuals the employee expects to claim personal exemption deduction) have or will have minimum essential coverage (other than coverage in the individual market, whether or not obtained through Covered California)

during the period of coverage to which the opt-out arrangement applies;

2. The opt-out payment may not be made if the employer knows or has reason to know that the employee or any other member of the employee's expected tax family does not have or will not have the alternative coverage;

3. The evidence of alternative coverage must be provided every plan year to which the eligible opt-out arrangement applies; and

4. The reasonable evidence, which can be a simple attestation by the employee, must be provided no earlier than a reasonable period of time before the plan year begins.

- E. ~~At any time during the term of the MOU, the parties agree that t~~The Authority may reopen negotiations if there are changes that occur in connection with related to the impact of the Affordable Care Act.

Section 2. Health Plan Enrollment

- A. Newly hired eligible employees must enroll for coverage in health plans within the first sixty (60) days of employment. If the employee fails to enroll within the first sixty (60) days of employment, he/she must either wait until the next open enrollment period or ninety (90) days after submission of a late enrollment form. Health plan coverage shall become effective the first day of the month following submission of the Health Benefits Enrollment form to the Authority.
- B. Employees, who are terminated due to disciplinary action or reduction in force or who voluntarily resign from employment, may continue their health care coverage until the end of the month following the month in which the employee is terminated.
- C. Two (2) full-time employees married to each other who elect coverage in the same health plan shall be enrolled as employee and dependent. Such employees shall have the full cost of coverage for employee and dependents paid by the Authority. Employees shall not, however, be enrolled simultaneously in an Authority health care plan and a health plan administered by the Orange County Professional Firefighters Association, Local 3631, as either an employee or dependent.

Section 3. Other Insurance Coverage

- A. The Authority shall provide to all employees the following:
1. Short-term disability insurance coverage, at no cost to the employee, to provide, after sick leave is exhausted, sixty (60) percent of salary per month for up to one (1) year for a certified non-occupational injury or illness. Coverage shall also provide for continuation of the Authority's share of premiums for health, dental, and life insurance benefits while the employee is on leave for Non-Occupational Disability for up to one (1) year from the effective date of disability.
 2. Long-term disability insurance coverage, at no cost to the employee, to provide up to sixty (60) percent of salary per month.

3. Life insurance and accidental death and dismemberment insurance, at no cost to the employee, shall be provided at amounts based upon the employee's annual base salary, rounded to the next closest ten thousand dollars (\$10,000) and adjusted annually on each January 1, if required.
 - a. Employees shall have the option to purchase additional life and accidental death and dismemberment coverage, including dependent coverage.
4. Dental and orthodontia insurance coverage, at no cost to the employee, for the employee and dependents.
5. Vision care insurance coverage, at no cost to the employee, for the employee and dependents.
6. The Authority shall administer a Dependent Care Assistance Program that allows employees to take advantage of a salary reduction program to pay for dependent care as permitted in the Internal Revenue Code.

~~Section 4. Premium Only Plan~~

- ~~A. The Authority shall administer a Premium Only Plan (POP) that will allow an employee to pay for health insurance premiums on a pre-tax basis as permitted in the Internal Revenue Code.~~

Section 45. Retiree Medical Insurance Grant ("*Defined Benefit Plan*")

A. Retiree Medical Insurance Grant

1. The Authority shall administer a Retiree Medical Insurance Grant plan, which will also be referred to herein as a "defined benefit plan," for employees who have retired or terminated from Authority employment and who meet the eligibility requirements as set forth in Section 5.B of this Article.
2. Upon paid Authority retirement, an eligible retiree who has enrolled in a "qualified health plan" (as defined in the Authority Retiree Medical Plan effective January 1, 1997) or in Medicare as stated in the Retiree Medical Plan and required by the "qualified health plan" shall receive a Retiree Medical Insurance Grant.
3. An eligible former employee who terminated from Authority service prior to retirement, who is fifty-five (55) years of age or older, and who is enrolled in a recognized health plan or Medicare as stated in the Retiree Medical Plan and required by the "recognized health plan" shall receive a Retiree Medical Insurance Grant.
4. The Retiree Medical Insurance Grant may be applied only towards the cost of retiree and dependent coverage in a "qualified health plan," as reimbursement for a portion of the cost of eligible former employee and dependent coverage in a recognized health plan and/or Medicare premiums as provided in Sections 5.A.4.a, 5.A.4.b, and 5.A.4.c, of this Article.

- a. Effective January 1, 20~~20~~16, the Retiree Medical Insurance Grant shall be an amount based on twenty seven dollars and seventy four cents (\$27.74) ~~twenty-five dollars and fifty cents (\$25.50)~~ per month for each full year of service to a maximum of ~~six hundred and thirty-seven dollars and fifty cents (\$637.50)~~ six hundred and ninety-three dollars and fifty cents (\$693.50) per month. On January 1 of each calendar year, the amount of such Retiree Medical Insurance Grant shall be adjusted by the average percentage increase in Authority health plan premiums no later than the effective dates of such increase, not to exceed five (5) percent per year. In no case shall the Retiree Medical Insurance Grant exceed the actual cost of the health insurance and/or Medicare premiums.
- b. All Authority employees who retire from the Authority and become eligible for a Retiree Medical Insurance Grant shall be provided a one (1) time opportunity of at least thirty (30) days to enroll in an Authority “qualified health plan” and shall have ninety (90) days after attaining age sixty-five (65) to enroll in Medicare. Should a retiree fail to enroll in either a “qualified health plan” or Medicare during the aforementioned periods or should he/she terminate coverage or fail to make necessary payments, the retiree and dependents shall forfeit any right to a Retiree Medical Insurance Grant.
- c. All former employees who did not retire from the Authority and who are eligible for a Retiree Medical Insurance Grant shall not receive the Grant until such employees reach age fifty-five (55) and request the Authority to commence distribution of the Grant no later than ninety (90) days from the former employee’s 55th birthday. Upon such request, the eligible former employees must show proof of enrollment in a recognized health plan. A reimbursement for a portion of the cost of premiums will be provided to the eligible former employees in accordance with the Retiree Medical Plan provisions. The eligible former employees will be required to provide the Authority with a copy of the premium bill and cancelled check or other recognized proof of payment for reimbursement.

B. Eligibility Requirements for Retiree Medical Insurance Grant

- 1. Retiree must be actively retired from the Authority and receiving a monthly retirement allowance from the Orange County Employees Retirement System (OCERS). An eligible former employee must be at least age fifty-five (55) and enrolled in a recognized health plan.
- 2. Only employees hired before January 1, 2007, shall be eligible to participate in the Retiree Medical Insurance Grant Plan.
- 3. Retiree or eligible former employee must have retired or terminated employment with the Authority with at least one (1) year~~s~~ of service (2,080 hours), except as provided in Section 5.B.3.a, b, and c of this Article.
 - a. A retiree of the Authority who receives a service-connected disability retirement from OCERS shall be eligible for a Retiree Medical Insurance

Grant equal to either ten (10) years of service or actual years of service, whichever is greater.

- b. A retiree who receives a non-service connected disability retirement shall be eligible for a Retiree Medical Insurance Grant based on actual years of service.
 - c. A separated employee who is less than fifty-five (55) years of age or is under normal retirement age who has requested a service or non-service connected disability retirement shall not be eligible to receive the Retiree Medical Insurance Grant until a determination of disability status is made by the Board of Retirement.
4. All eligible retirees, eligible former employees, and enrolled dependents who are age sixty-five (65) or older must be enrolled in Medicare Part B in order to be eligible for the Retiree Medical Insurance Grant. All eligible retirees, eligible former employees, and dependents who are entitled to Medicare Part A coverage without a premium must be enrolled in Medicare Part A to be eligible to receive the Retiree Medical Insurance Grant.

5. Deferred Retirement

- a. An employee who, upon separation from Authority employment, is eligible for paid retirement and elects deferred retirement must defer participation in the Retiree Medical Insurance Grant until such time as he/she becomes an active retiree. However, in order to be eligible for health care coverage provided by CalPERS, retirement must not be deferred for more than one hundred twenty (120) days after the employee separates from Authority employment. ~~(09/28/06)~~
 - b. An employee with one (1) year of employment (2,080 hours), who is not eligible for paid retirement at the time he/she separates from Authority service and elects deferred retirement status, shall not become eligible for participation in the Retiree Medical Insurance Grant until he/she becomes fifty-five (55) years of age. ~~(09/28/06)~~
6. For purposes of this Section, a full year of employment shall mean those regular hours of employment the employee worked as a regular, limited-term, and/or probationary employee. Two thousand eighty (2,080) regular hours, exclusive of overtime, shall equal one (1) full year of employment for a staff employee or Fire Division Chief. Two thousand nine hundred twelve (2,912) hours, exclusive of overtime, shall equal one (1) full year of service for a shift employee.

C. Employee Contribution

- 1. All employees-hired before January 1, 2007, shall contribute four percent (4%) of their base rate of pay, through a payroll deduction to be applied to the Plan.

D. Survivor Benefits

1. A surviving dependent who qualifies for a monthly retirement allowance shall be eligible for fifty percent (50%) of the Retiree Medical Insurance Grant authorized for the retiree.
2. A surviving eligible retiree or eligible former employee who qualifies for a monthly retirement allowance and who was married to a retiree or eligible former employee who was also eligible for a Retiree Medical Insurance Grant shall receive the survivor benefit described in Section 5.E.1 of this Article or his/her own Retiree Medical Insurance Grant, whichever is greater. Such retiree shall not be eligible for both Retiree Medical Insurance Grants.

Section 6. Defined Contribution Plan for Retiree Medical Benefits

- A. The Authority will provide only to regular, limited-term, and probationary employees hired on or after January 1, 2007, a "defined contribution plan."
- B. All employees hired on or after January 1, 2007, will be required to contribute four percent (4%) of base rate of pay to the Plan. Employees will not be permitted to contribute more than four percent (4%) of base salary towards the Plan.
- C. Employees hired before January 1, 2007, shall not be eligible to participate in the Plan. Eligibility for plan participation is based on the employees most recent date of hire with the Authority.

Section 7. Physical Examination

- A. The Authority shall provide for a full-time employee a voluntary annual physical examination by an Authority-designated physician at no cost to the employee.

Section 8. Optional Benefit Plan (OBP)

- A. The Optional Benefit Plan is a cash allotment which allows employees the option to take the benefit as taxable cash and/or apply the allotment to the cost of non-taxable benefits as described in the Authority's Section 125 Cafeteria Plan, based on personal preferences.
- B. Each eligible employee shall be entitled to select benefits ~~from those listed below~~ at a cost to the Authority not to exceed the amounts shown in Sections 8.A.1 and 8.A.2 of this Article.
 1. For employees in the Fire Division Chief classification, the OBP amount shall be two thousand one hundred dollars (\$2,100) each calendar year period.
 2. For employees in the Fire Battalion Chief classification, the OBP amount shall be one thousand nine hundred dollars (\$1,900) each calendar year period.
- CB. The purpose of the OBP is to provide options to individual employees to best meet the needs of themselves and dependents while relieving the employee of

external influences that might impair his/her performance. ~~OBP options include the following two (2) benefits categories:~~

~~Cash (taxable)~~

~~Health/accident~~

~~a. Health programs (employee and/or dependents) such as smoking cessation; stress reduction; and physical, mental, and/or emotional health-related counseling for individual and/or family not covered or partially covered through existing plans.~~

~~b. Employee's share of Authority insurance premiums (employee and/or dependents). Also includes payment of accidental death and dismemberment coverage for employee and dependents available through the Authority.~~

~~c. Health care, vision, and/or dental (employee and/or dependents) excluded or partially excluded under the Authority's insurance plans. Examples of items covered under this provision include deductibles, eye care, lenses, and frames.~~

DC. OBP shall be administered in accordance with the stated purpose. To be eligible, each employee must file an Intent to Participate form in accordance with provided instructions. If an employee does not file an Intent to Participate form prior to the commencement of the OBP, the employee's eligibility date shall be the first of the month following the date the employee files the Intent to Participate form. The amount available to the employee shall be prorated based on month(s) of eligibility. An employee's designations are irrevocable, unless he/she has a change in family status. Eligible expenses must be incurred during an OBP period in which an employee is eligible and has sufficient fund balance to cover the expense. Claims may be filed at anytime during the plan period, and all claims must be filed no later than two (2) months following the close of the OBP period. Upon approval and required written authorization, payment shall be made.

ED. An employee is eligible to receive the OBP, provided he/she is continuously employed in a full-time capacity. Employees hired or promoted after the commencement of an OBP shall be eligible for the OBP on a prorated basis the first day of the month following the twenty-eighth day in the unit.

EE. Any portion of the optional benefit not incurred within the OBP period shall remain Authority funds.

~~F. Claims shall be made on forms authorized by the Human Resources Director on which claimant declares the category of service received as defined in the OBP, the dates the expenses were incurred by the claimant or eligible dependents, by whom service was provided, and the amount being claimed. Claims shall be paid when submitted with a declaration under penalty of perjury signed by the claimant and approved. Only those claims that are accompanied by documentation that an eligible expense has been incurred during the OBP period shall be approved.~~

Section 9. OCFACOA Supplemental Retiree Medical Plan

The Authority will deduct from all employees an amount from their base salary to be deposited into a Supplemental Retiree Medical Plan Trust administered by the Orange County Professional Firefighters Association. This action shall be taken in accordance with the OCFACOA Supplemental Retiree Medical Plan Agreement found in Appendix B of this Memorandum of Understanding.

ARTICLE XIV

UNIFORMS, PROPERTY, SERVICES, AND EQUIPMENT

Section 1. Uniforms

- A. Except as provided in Section 1.B of this Article, the Authority shall provide and replace as required—but shall not launder or dry clean—the following:
 - 1. Required uniforms, including protective clothing and station work shoes; and
 - 2. Wildland boots.
- B. When an employee requests a station work shoe and/or a required wildland boot, other than those provided by the Authority pursuant to Section 1.A of this Article, the Authority may—at its sole discretion—authorize such employee to purchase an alternative Authority-approved station work shoe and/or wildland boot. In such cases, the employee shall be reimbursed for his/her cost of purchasing the Authority-approved station work shoes to a maximum of seventy dollars (\$70) per pair of station work shoes and/or one hundred twenty-five dollars (\$125) per pair of wildland boots.

Section 2. Turnout Clothing and Equipment

- A. The Authority shall provide, replace as required, and maintain the following:
 - 1. Turnout clothing and equipment;
 - 2. Necessary cooking, food refrigeration, and housekeeping equipment, including cooking and eating utensils; and
 - 3. Necessary community linen supplies and blankets, including laundry.
 - 4. A cold weather uniform jacket approved by the Authority.

ARTICLE XV

RETIREMENT

Section 1. Eligibility

Employees in the Unit are included in the Orange County Employees Retirement System as determined by their date of entry into eligible service.

Section 2. Employer's Contribution

~~For Employees hired Before January 1, 2013 and for Employees hired on or After January 1, 2013 who are considered "Legacy Members" of OCERS within the meaning of the Public Employees' Pension Reform Act of 2013 (PEPRA): The Authority will pay the amount of the employee's share of retirement contribution that is not paid by the employee per Section 5 of this Article.~~

Section ~~23~~. Final Compensation

"Final Compensation" For Legacy Members of OCERS, in accordance with Government Code Section 31462(a) "Final compensation" means the average annual compensation earnable by a member during any three years elected by a member at or before the time he or she files an application for retirement, or, if he or she fails to elect, during the three years immediately preceding his or her retirement. If a member has less than three years of service, his or her final compensation shall be determined by dividing his or her total compensation by the number of months of service credited to him or her and multiplying by 12.

Section ~~34~~. Cost-of-Living Adjustments

Members' normal cost-of-living contributions shall be adjusted subsequent to and in accordance with actuarial recommendations adopted by the Board of Retirement and the Board of Supervisors.

Section ~~45~~. Retirement Formulas And Employee Contributions

A. Retirement Formula:

1. Employees Hired Prior to June 30, 2012: These Employees shall receive the three percent at fifty (3% at 50) retirement formula as per California Government Code Section 31664.1.
2. Employees Hired On or After July 1, 2012 Who Are Not Defined As "New Members" Under the Public Employees' Pension Reform Act of 2013: These Employees shall receive the three percent at fifty-five (3% at 55) retirement formula as per California Government Code Section 31664.2.

B. Employee Contributions To the Retirement System

1. ~~Effective in the pay period which includes July 1, 2016, the deduction from the employee's compensation earnable is twelve and one half percent (12.5%) but no higher than their maximum employee contribution (based~~

~~on age of entry into OCERS) if their maximum employee contribution is lower than twelve and one half percent (12.5%).~~

~~2. Effective in the pay period which includes July 1, 2017, employees shall pay up to fifteen and ninety-nine one hundredths percent (15.99%) but no higher than their maximum employee contribution (based on age of entry into OCERS) if their maximum employee contribution is lower than fifteen and ninety-nine one hundredths percent (15.99%).~~

~~3. Effective in the pay period which includes July 1, 2018, employees shall pay up to nineteen and twenty-nine one hundredths percent (19.29%) but no higher than their maximum employee contribution (based on age of entry into OCERS) if their maximum employee contribution is lower than nineteen and twenty-nine one hundredths percent (19.29%).~~

~~4. Effective in the pay period which includes July 1, 2019, employees shall pay up to twenty and twenty-two one hundredths percent (20.22%) but no higher than their maximum employee contribution (based on age of entry into OCERS) if their maximum employee contribution is lower than twenty and twenty-two one hundredths percent (20.22%).~~

1. Employees shall pay the maximum required member contribution based on age of entry to OCERS, as required by OCERS.

~~5. At any time beyond June 30, 2020, if there are increases to the maximum employee contribution to OCERS, employees in the unit will pay their maximum employee contribution based on age of entry into OCERS~~

6.2. The contributions provided above shall continue during the employee's employment with the Authority, or until such time that the employee qualifies under GC 31664.1(c).

C. For Employees Hired on or After January 1, 2013 who are considered "New Members" Within the Meaning of PEPR.

1. The retirement formula will be the "2.7% at 57" retirement formula per Government Code Section 7522.25(d), utilizing the average three highest years of compensation per Government Code Section 7522.32. Pensionable compensation, including employee contributions and other pension related conditions are governed by the provisions of the law.

ARTICLE XVI

DEFERRED COMPENSATION

An employee in a regular or limited-term position may, at his/her request, participate in the Authority's Deferred Compensation Plan.

Advisory Deferred Compensation Committee

The parties shall maintain a standing joint labor/management advisory committee to oversee the deferred compensation program (which includes retiree health savings). The committee shall include two representatives from the Association. The committee chairperson shall be the current fiduciary of the OCFA deferred compensation plan. Meetings will be scheduled for January and July or on an as needed basis. The general purpose will be to review and make recommendations on the following matters:

1. Review and provide input on selection of independent deferred compensation consultants.
2. Review and provide input on the consultant's fund lineup recommendations.
3. Review and provide input on new plan features being offered.
4. Review and provide input on customer service and internal educational workshops for plan participants.
5. Review and provide input on service delivery of the current service contract.
6. Review and provide input on the future competitive bidding process for deferred compensation.

ARTICLE XVII

ASSOCIATION RIGHTS

Section 1. Payroll Deductions

- A. Membership dues of Association members in the Fire Management Unit shall be deducted by the Authority from the pay warrants of such members. The Authority shall promptly transmit the dues so deducted to the Association on a monthly basis.
- B. The Association shall notify the Authority, in writing, as to the amount of dues uniformly required of all members of the Association.

Section 2. Employee Information Listing

- A. ~~A. — Upon request, up to a maximum of two (2) times per calendar year, I~~the Authority shall provide the Association once every 120 days with a complete and current listing of all employees in the Fire Management Unit. Such listings shall include employee name, job classification, section, base hourly rate, ~~and~~ hire date, personal email and phone number contacts. However, employees can opt-out of providing their personal email and phone numbers to the Association.

Section 3. Use of Authority Facilities

- A. The Association may, with the approval of the Human Resources Director, hold meetings of its members on Authority property during non-working hours, provided request is made to the Human Resources Director as to the specific location and dates of the meeting prior to such meeting.

ARTICLE XVIII

SEPARABILITY

In the event that any provision of this MOU is declared invalid by any court of competent jurisdiction, such decision shall not invalidate the entire MOU it being the express understanding of the parties and the Association that all other provisions not declared invalid shall remain in full force and effect.

ARTICLE XIX

MANAGEMENT RIGHTS

Any of the rights, powers, or authority the Authority had prior to the signing of this MOU are retained by the Authority, except those specifically abridged, delegated, or modified by this MOU, provided that such management rights do not restrict employees from filing grievances as provided in the grievance procedure.

ARTICLE XX

RECOGNITION

Pursuant to the Employee Relations Resolution of the Orange County Fire Authority and applicable State law, the Orange County Fire Authority Chief Officers Association is the exclusively recognized employee organization for the Fire Management Unit as identified in Appendix A.

ARTICLE XXI

TRANSFER OF FUNCTIONS

In the event the Authority plans to enter into any agreement with another public employer, which involves the transfer of functions now being performed by employees in the Fire Management Unit, the Authority will advise such public employer of the existence and terms of this MOU. The Authority shall consult with the Association in a timely manner to discuss the impact on employees in the Fire Management Unit of such transfer functions.

ARTICLE XXII

COMPENSATION

Section 1. Base Salary Adjustments

- ~~A. Effective on the first day of the pay period following Board approval of this MOU, employees in the Unit shall receive a four and one half percent (4.5%) base salary increase.~~
- ~~B. Effective in the pay period including July 1, 2017 employees in the Unit shall receive a three and ninety-nine one hundredths percent (3.99%) base salary increase.~~
- ~~C. Effective in the pay period including July 1, 2018, employees in the Unit shall receive a three and three-tenths percent (3.30%) base salary increase.~~
- ~~D. Effective in the pay period including July 1, 2019, employees in the Unit shall receive a two and sixteen one hundredths percent (2.16%) base salary increase.~~

~~There shall be no base salary increase during the term of this 2020-2023 MOU.~~

Section 2. Range Adjustment

A. Fire Battalion Chief

- ~~1. The base salary of the classification of Fire Battalion Chief shall be at least seventeen and five-tenths percent (17.5%) higher than the base salary of the top step of the salary range for Fire Captain.~~
- ~~2. The top of the salary range of Fire Battalion Chief shall be at least twenty-seven and five-tenths (27.5%) percent above the top step of the salary range of Fire Captain. Adjustments to the range, when required, shall be made within the pay period that the range drops below the percentage stated in this provision.~~

B. Fire Division Chief

- ~~1. The bottom of the salary range for Fire Division Chief shall be equal to and be maintained at the top of the salary range for Fire Battalion Chief.~~
- ~~2. The top of the salary range of Fire Division Chief shall be equal to and be maintained at approximately thirteen and seventy-five-hundredths (13.75) percent above the bottom of the salary range. Adjustments to the range, when required, shall be made within the pay period that the range drops below the percentage stated in this provision.~~

~~3. The base salary of the classification of Fire Battalion Chief shall be at least seventeen and five-tenths percent (17.5%) higher than the base salary of the top step of the salary range for Fire Captain. The top of the salary range of Fire Battalion Chief shall be at least twenty-seven and five-tenths (27.5%) percent above the top step of the salary range of Fire Captain. Adjustments to the range,~~

~~when required, shall be made within the pay period that the range drops below the percentage stated in this provision.~~

Section 3. Specialty Pay

A. Bilingual Pay

1. Qualified employees who meet the following criteria, shall receive an additional twenty-five (25) cents per hour (approximately forty-three [43] dollars per month) for all hours actually paid:
 - a. An employee must be conversant in one (1) of the pre-designated languages to qualify to receive bilingual pay:
 - Spanish
 - Vietnamese
 - Korean
 - American Sign Language
 - b. Other languages may qualify on a case-by-case basis.
 - c. The employee must be approved by the Human Resources Director as per Standard Operating Procedures ~~HR-01.01~~.
2. Bilingual pay shall apply to workers' compensation and be considered as part of the employee's base pay for the earning of other benefits as provided by law.
3. A bilingual employee may be called upon to speak or translate a second language at any time, as Authority needs dictate.
4. An employee shall not be eligible to receive bilingual pay for more than one language.

B. Educational Incentive Pay

1. An employee who has satisfactorily completed the equivalent of sixty (60) college-level semester units or has obtained a California State Fire Marshal Chief Officer Certification (or Chief Fire Officer after January 1, 2017) shall receive educational incentive pay of two and one half percent (2.5%) of the employee's base salary per month, prorated on an hourly basis for all regular hours paid.
2. An employee who has satisfactorily completed the equivalent of sixty (60) college-level semester units and has also obtained a California State Fire Marshal Chief Officer Certification (or Chief Fire Officer after January 1, 2017) shall receive educational incentive pay of five percent (5%) of the employee's base salary per month, prorated on an hourly basis for all regular hours paid.
3. An employee who has obtained a Bachelor's degree or higher, or has obtained a National Fire Academy Executive Fire Officer Certification (or Executive Chief Fire Officer after January 1, 2017), shall receive

educational incentive pay of seven and one-half percent (7.5%) of the employee's base salary per month, prorated on an hourly basis for all regular hours paid.

4. The maximum attainable educational incentive pay is seven and one-half percent (7.5%) of base salary per month.
5. Educational incentive pay is not applied to overtime/backfill hours.
6. To receive educational incentive pay, the employee must:
 - a. Submit a written request to receive the educational incentive pay, and;
 - b. Submit proof of qualification satisfactory to the Human Resources Director (grade cards, transcripts, and/or other verification from an accredited college-level educational institution shall constitute satisfactory proof of qualification).
7. Payment of the educational incentive pay shall begin with the pay period following verification of the employee's eligibility.
8. The educational incentive pay shall apply to workers' compensation and be considered as part of the employee's base pay for the earning of other benefits as provided by law.

C. Staff Assignment Pay

1. A Fire Battalion Chief assigned as a staff employee or into a designated staff position shall receive staff assignment pay of ten percent (10%) of the employee's base salary per month during such assignment, prorated on an hourly basis for all regular staff hours paid. A shift employee assigned to a light duty assignment shall not be eligible for staff assignment pay.
2. Staff assignment pay shall apply to workers' compensation and be considered as part of the employee's base pay for the earning of other benefits as provided by law.

D. Duty Officer Compensation

1. The classification of Fire Division Chief shall be assigned as Duty Officer and shall receive duty officer compensation of seven and one half percent (7.5%) percent of the employee's base salary per month, prorated on an hourly basis for all regular hours paid. When a Fire Division Chief is substantially unable to respond to call back and perform the required duties of Duty Officer, he/she shall not receive the duty officer compensation. Temporary assignment and approved leaves shall not be considered as restricting receipt of duty officer compensation.
2. Duty officer compensation shall apply to workers' compensation and be considered as part of the employee's base pay for the earning of other benefits as provided by law.

E. EMT Certification or Paramedic License Requirement and Pay

Any employee newly promoted or hired into the bargaining unit after July 1, 2020, must maintain a California Emergency Medical Technician (EMT) Certification or paramedic license. If a newly hired employee does not have the certification or license, that employee shall have six (6) months in which to obtain it.

Any employee newly promoted or hired into the bargaining unit after July 1, 2020, who loses their certification or license shall be provided six (6) months in which to re-obtain it, provided however, the employee shall not receive the pay set forth in this section during the period when their certification or license was not valid.

Any employee who was in the bargaining unit on July 1, 2020, who maintains a California EMT Certificate or paramedic license, shall receive the pay described below. These employees shall not be required to maintain the certification or license, and shall not receive the pay unless and until they are certified or licensed.

The Authority will provide recertification opportunities for all members of the unit.

Effective with the pay period including July 1, 2020, employees will receive, in addition to their regular salary, four and one half percent (4.5%) of each employee's base salary for their regularly scheduled hours (i.e., not for overtime hours) once they have received (and provide proof of receipt) of their EMT Certification and/or paramedic license.

Effective with the pay period including July 1, 2021, employees, will receive, in addition to their regular salary, an additional one and three quarters' percent (1.75%) for a total of six and one quarter percent (6.25%) percent of each employee's base salary for their regularly scheduled hours (i.e., not for overtime hours) once they have received (and provide proof of receipt) of their EMT Certification and/or paramedic license.

Effective with the pay period including July 1, 2022, employees, will receive, in addition to their regular salary, an additional one quarter of one percent (.25%) for a total of six and one half percent (6.5%) percent of each employee's base salary for their regularly scheduled hours (i.e., not for overtime hours) once they have received (and provide proof of receipt) of their EMT Certification and/or paramedic license.

EMT Certification or Paramedic License pay shall apply to workers' compensation and be considered as part of the employee's base pay for the earning of other benefits as provided by law.

F. Longevity Pay

Effective July 1, 2022, employees shall receive three percent (3%) of their base pay for their regularly scheduled hours (i.e., not for overtime hours) as longevity pay at the commencement of their third year in a bargaining unit position.

Longevity Pay shall apply to workers' compensation and be considered as part of the employee's base pay for the earning of other benefits as provided by law.

CONTRACT SIGNATURES

Orange County Fire Authority
Chief Officers Association

Orange County Fire Authority

~~Cliff Bramlette~~ Tim Perkins
Chief Officers Association President

Lori Zeller
~~Deputy Assistant~~ Chief,
Administration and Support
Business Services

~~Mike Petro~~ Mike Summers

~~Secretary~~ Director

~~David Thomas~~ Mark (Pokey)
Sanchez
~~Deputy Assistant~~ Chief, Operations

~~Dave Steffen~~ Robert Capobianco
Director

~~Brian Young~~ Tamaryn Boston
Assistant Chief, Organizational
Planning Human Resources
Manager

~~Steve Edwards~~ Shane Sherwood
Director

~~Michael Schroeder~~
Assistant Chief, Support Services

Dave Phillips
Business Agent

~~Jim Ruane~~
Finance Manager/Auditor

Robert Wexler
Labor Negotiator

Peter J. Brown
Labor Negotiator

APPENDIX A

BARGAINING UNIT CLASSIFICATIONS

Classes included in the Fire Management Unit as of July 1, 20~~16~~¹⁷:

5805	Fire Battalion Chief Suppression
5806	Fire Battalion Chief Staff
5807	Fire Division Chief

APPENDIX B

SIDE AGREEMENTS

- OCFACOA Supplemental Retiree Medical Plan Agreement
- Transition of Employment Agreement

**OCFACOA SUPPLEMENTAL RETIREE MEDICAL PLAN AGREEMENT
BETWEEN
ORANGE COUNTY FIRE AUTHORITY CHIEF OFFICERS ASSOCIATION,
ORANGE COUNTY PROFESSIONAL FIREFIGHTERS ASSOCIATION, IAFF LOCAL 3631
AND
ORANGE COUNTY FIRE AUTHORITY**

TERM OF THE AGREEMENT: SEPTEMBER 28, 2006 THROUGH June 30, 2023~~0~~

IN CONSIDERATION OF the mutual covenants, promises, and conditions set forth herein below and pursuant to Article XXV of the 2001-2013 Memorandum of Understanding (MOU) between the Orange County Fire Authority Chief Officers Association (OCFACOA), and the Orange County Fire Authority (Authority) the parties agree as follows:

1. The Authority will deduct from the biweekly pay of all regular, limited term, part-time (at least 20 hours per week) and probationary employees, who have elected to enroll in this program, an amount equal to the sum of one percent (1%) of top of the salary range for Fire Battalion Chief plus twelve (12) dollars biweekly to be deposited into a Supplemental Retiree Medical Plan trust fund, administered by the Orange County Professional Firefighters Association - Local 3631 (OCPFA), which will serve as a supplement for the Authority's Retiree Medical Benefit Program. The program will be identified as the OCFACOA Supplemental Retiree Medical Plan and will be separate and apart from the current OCFA Retiree Medical Program(s) and will be for the sole purpose set forth in Paragraphs 2 and 3.
2. Beginning April 2, 2004 (Pay Period 9), the OCPFA will administer a Supplemental Retiree Medical Plan benefit for (a) all enrolled members of the Fire Management Bargaining Unit and (b) all enrolled members leaving the bargaining unit who remain employed elsewhere by the Authority and who sign deduction authorization cards permitting an amount equal to the sum of one percent (1%) of the top of the salary range for Fire Battalion Chief plus twelve (12) dollars biweekly to be used for that purpose. "Enrolled members" means employees in those positions set forth in Appendix A of the Fire Management Unit MOU and any position subsequently added to the unit by action of the Authority Board of Directors, who sign deduction authorization cards pursuant to this agreement.
3. The Supplemental Retiree Medical Plan shall be used to provide cash payments to eligible employees who retire from the Authority on or after April 2, 2004 to be used solely for the purpose of reducing the retiree's cost of OCFA provided health insurance.
4. All costs of providing and administering this Plan shall be the sole responsibility of OCPFA and OCFACOA. Except for the obligation to transmit funds to the Supplemental Retiree Medical Plan Trust, the Authority shall not be responsible for any cost of providing or administering said Plan.
5. OCPFA shall provide the Authority with a copy of an annual audit of administering the Supplemental Retiree Medical Plan. The annual audit report shall include actual cost of the Supplemental Retiree Medical Plan, expenditures and details of how all funds are administered. All books and records related to the administration and provision of such Plan shall be available to audit and/or inspection by the Authority or its agents upon request and a 30-day notice.
6. OCPFA represents that it is or has created an Internal Revenue Code Section 501(c)(5) and/or (9) entity and that it has created a Voluntary Employees Beneficiary Association (VEBA) within the meaning of the Internal Revenue Code such that the one percent (1%) herein may be treated as non-taxable compensation. In entering this Agreement, the Authority is relying on said representation and on OCFACOA's and OCPFA's compliance with all laws and regulations relating to the provision of the benefits provided herein on a pre-tax basis.
7. OCPFA and OCFACOA shall defend, indemnify and hold the Authority, its Directors, Officers, Agents and employees harmless from any claims, costs or legal action arising out of, or in any way related to the Supplemental Retiree Medical Plan administered and/or provided pursuant to this Agreement. The Authority shall have the right to select counsel for any defense hereunder. "Claims, costs or legal action" shall include, but not be limited to fees, penalties and damages claimed by employees, retirees or government agencies.

8. Any dividends paid, premiums refunded or other rebates or refunds made under any plan or policy shall be the property of the Authority; provided, however, that said funds will be transmitted to the OCPFA for the Retiree Medical Supplemental Plan trust fund purposes.
9. The provisions of this Agreement shall not be subject to the grievance and arbitration provisions of the Parties' separate MOU.
10. This Agreement shall terminate upon the occurrence of any of the following events: (a) written request by OCPFA or OCFA COA, (b) dissolution of the trust fund or (c) cessation of trust fund benefits.
11. This Agreement is the entire, integrated agreement with respect to the subject matter hereof, and supersedes all prior and contemporaneous oral and written agreements and discussions. The Parties also agree that no modification of this Agreement shall be valid unless it is in writing and signed by all of the Parties to this Agreement.
12. This Agreement shall not be construed in favor or against any party, regardless of which party drafted or participated in the drafting of its terms.
13. OCPFA represents that it is legally authorized to provide and administer the benefits as set forth in this agreement.

**TRANSITION OF EMPLOYMENT AGREEMENT
BETWEEN
ORANGE COUNTY FIRE AUTHORITY CHIEF OFFICERS ASSOCIATION
AND
ORANGE COUNTY FIRE AUTHORITY
TERM OR AGREEMENT: SEPTEMBER 28, 2006 THROUGH JUNE 30, 2023~~30~~**

In consideration of the Orange County Fire Authority's ("OCFA") intent to, by contractual agreement, provide fire services for public agencies within Orange County who had previously provided fire services through their own Fire Department, the Orange County Fire Authority and the Orange County Fire Authority Chief Officers Association ("OCFACOA") agree to the following provisions involving the transition of employees from other public fire service agencies within Orange County to employment with the OCFA:

1. Except as specifically modified in 2, 3, 4, and 5 below, seniority for transitioning public fire service agency employees shall be based on the dated of transition from the public fire service agency to the OCFA.
2. Transitioning public fire service agency employees' continuous employment with the public fire service agency from which they are transitioning shall be considered the same as continuous employment with the OCFA for the purpose of:
 - A. Sick leave and vacation accruals, and
 - B. Meeting minimum requirements for promotional opportunities.
3. Transitioning public fire service agency employees' continuous employment with the public fire service agency from which they are transitioning shall be considered the same as continuous employment with the OCFA for the purpose of layoff seniority within the limitations described below:
 - A. Credit for public fire service agency time for layoff seniority shall be limited to the number of safety (suppression) employees required for the service level agreed to by the contracting public fire service agency. Transitioning employees in excess of this number shall not receive credit for these purposes, except as specified in 3.B. below.
 - B. When an employee, who has received seniority credit pursuant to 3.A above, leaves employment with the OCFA, the provisions of 3.A. above shall be applied to the transitioned employee who has the longest continuous service in the same public fire service agency, but who has not previously received credit for seniority under the provisions of 3.A. above.
4. To the extent not provided with their transition to employment with the OCFA, the parties agree to apply the provisions of 3.A and 3.B above to employees who previously transitioned to the OCFA from the cities of Stanton and Seal Beach
5. To the extent not provided with their transition to employment with the OCFA, the parties also agree to apply the provisions of 3.A. and 3.B. above to employees who on or before July 1, 1980 transitioned to the OCFA from the California Department of Forestry.
6. Nothing in this Agreement shall be construed in a manner that would provide credit for service with a public fire service agency other that the OCFA for any purpose not specifically provided herein.

7. The parties agree that this Agreement resolves all issues regarding seniority for employees transitioning from the California Department of Forestry and cities of Stanton and Seal Beach and all issues regarding seniority for employees transitioning in the future from other public fire service agencies within Orange County pursuant to service contracts with the OCFA.
8. The parties agree that this Agreement shall not serve as a precedent for any grievance, dispute, lawsuit or appeal between the parties, excepting those issues specifically resolved by this Agreement.
9. Disputes regarding the application of the provisions of this Agreement shall not be subject to appeal through the Grievance Procedure set forth in Article IX of the Fire Management Unit Memorandum of Understanding.



Orange County Fire Authority **AGENDA STAFF REPORT**

**Board of Directors Meeting
September 24, 2020**

**Agenda Item No. 3B
Discussion Calendar**

Very Large Helitanker (VLHT) Services

Contact(s) for Further Information

Brian Fennessy, Fire Chief

brianfennessy@ocfa.org

714.573.6010

Summary

This item is submitted for approval of the 83-day Very Large Helitanker (VLHT) services in collaboration with Southern California Edison (SCE), Coulson Aviation (USA), Inc. (CAI), and the Orange County Fire Authority to enhance regional aerial wildland fire response. The VLHT services will be available for daytime and nighttime firefighting. It is anticipated that the program will commence on October 1, 2020.

Prior Board/Committee Action

Not applicable.

RECOMMENDED ACTIONS

1. Approve Funding Agreement with Southern California Edison in a form substantially consistent with the attachment and approved by legal counsel to accept funding in the amount of \$2,158,000 to fund the fixed daily standby lease cost of one CH-47 Helitanker to enhance the effectiveness of aerial responses to wildland fires.
2. Approve and authorize the Purchasing Manager to execute the Public Aircraft Lease and Service Agreement with Coulson Aviation (USA), Inc. in a form substantially consistent with the attachment and approved by legal counsel utilizing the special procurement provision in the Purchasing Ordinance for the provision of aircraft and other operational related services in an amount not to exceed \$3,283,000.
3. Approve and authorize a FY 2020/21 General Fund (121) budget adjustment to recognize funding from SCE for a revenue increase of \$2,158,000 and to increase appropriations by the same amount.
4. Review the proposed agenda item and approve the updated Cost Reimbursement Rate schedule to include the CH-47 Helitanker hourly flight rate to be effective October 1, 2020.
5. Adopt statutory and categorical exemptions from the California Environmental Quality Act (CEQA) pursuant to: (1) Title 14 of the California Code of Regulations, section 15262 for feasibility and planning studies; and (2) CEQA Guidelines section 15301 for existing facilities.

Impact to Cities/County

The VLHT services will enhance regional aerial wildland fire response.

Fiscal Impact

Authorization of the Budget Adjustment will increase revenues and expenditures by \$2,158,000 in the FY 2020/21 budget. Funding for VLHT services will come in the form of SCE funds, OCFA

Air Operations budget, State Augmentation funds, and reimbursements from other fire agencies requesting VLHT services from the OCFA.

Background

Wildland fire remains the most significant threat to life and property in California. Lives, property, and natural resources are threatened on a 24-hour basis. A recent risk assessment conducted by the California Department of Forestry and Fire Protection (CAL FIRE) concluded that an estimated 11 million residents, or the equivalent of 1 in 4 Californians, live in areas considered to be at high risk of a wildfire. Given the devastating and destructive wildfires of 2018, and the current and historic 2020 wildland fire season, Governor Gavin Newsom, as well as fire agencies and utility companies throughout the state, have emphasized that wildfire mitigation and suppression are a top priority. As a regional fire agency, the OCFA plays a key role in wildfire mitigation and suppression in Southern California.

Given this designation, the OCFA has been presented with the opportunity to partner with Southern California Edison and Coulson Aviation (USA) Inc. (CAI) to provide Very Large Helitanker services that will benefit Orange County and the residents and businesses within the SCE service territory.

About Coulson Aviation Inc.

CAI is a privately-owned provider of primary and secondary aerial firefighting services to national and international firefighting agencies in the northern and southern hemispheres. CAI undertook a highly successful Night Fire Suppression Trial Program in partnership with the Emergency Management Victoria (EMV), Government of Victoria, Australia. The initial and extended attack suppression program was utilized during the 2018/19 South Eastern Australia fire season. A key component of the successful trial program was the development and implementation of a helicopter with the capability to hover-fill from remote open water sources. As demonstrated with the Victorian trial, the ability to increase water delivery and effective fire suppression was greatly enhanced by the ability to hover-fill from the nearest available open natural or man-made water source rather than return to a fixed ground filling facility to refill.

Coulson is an industry leader in aerial firefighting and the only operator of both heavy fixed and rotary wing aircraft. Coulson continues to push the boundaries of innovation with the design, engineering, manufacturing, and installation of the Boeing 737 multipurpose 4,000 USG air tanker. Coulson also is the first commercial operator of large Type 1 helicopters to conduct operations using full night vision goggles including hover filling.

CAI operates Type CH-47 Very Large Helitankers. They are capable of dropping up to 3,000 gallons of water or fire retardant in a single pass. By way of comparison, the OCFA Bell 412EP medium-lift helicopters are capable of dropping up to 375-gallons and the next largest helitanker, the Sikorsky S-64 Skycrane, is capable of up to 1,600 gallons. The VLHT is equipped with Coulson's proprietary Retardant Aerial Delivery System (RADS) tank. The SMART Delivery System Controller technology in these systems will allow for automated target drops for night vision goggle firefighting operations and the pilots will have the capability to adjust water/retardant flow rates based on speed and altitude, providing ground crews the same options as fixed wing air tankers. The VLHT has other unique capabilities such as night-vision, IFR navigation and hover filling making it the largest and most capable helitanker in the world.

The following video link provides more detail on CAI and the CH-47 Very Large Helitanker full capabilities: <https://vimeo.com/445643442>

In 2019, CAI partnered with the OCFA in the NextGen Pilot Program which proved to be a successful partnership. The 2019 Pilot Program was designed to enhance the regional wildland aerial firefighting capabilities through the use of various innovative technology. As the fire season and the Pilot Program progressed, the region realized the benefits of having these additional resources available. The NextGen platform was utilized on 19 incidents throughout Los Angeles City, Los Angeles County, Ventura County, Riverside County, and Orange County. Some of the larger incidents that benefitted from the Pilot Program included the Saddleridge Fire, Getty Fire, Tick Fire, and the Maria Fire.

SCE has agreed to provide \$2,158,000 in an effort to increase the effectiveness of aerial response to wildland fires and will cover the fixed costs of the CH-47 Helitanker lease. VLHT services will be based at the Joint Forces Training Base (JFTB) in Los Alamitos and operate within the defined fire threat areas of the SCE service territory as illustrated in the map (Attachment 4). Pending Board approval, the OCFA VLHT services will operate 24/7 for 83-days and begin on October 1, 2020.

The table below details the estimated budget for the VLHT services:

Equipment/Personnel	Detail	Total
Estimated Costs:		
CH-47 Helitanker Lease	\$26,000 a day x 83-days (fixed-cost)	\$2.158M
Helitanker Flight Time	150 Estimated No. of Hours	\$1.125M
Project Management Costs	Staffing, housing and other	\$245,126
	Total Costs	\$3,528,126
Estimated Funding Sources:		
Southern California Edison	Fixed cost contribution	\$2.158M
Fire Protection Augmentation Funds	2020/21 Allocation remaining balance*	\$354,000
Air Ops Budget	Existing budget available for use*	\$1,016,126
	Total Funding Sources	\$3,528,126

**Cost Offset*

Resources Available to Other Fire Agencies Upon Request

The CH-47 hourly flight rate is being added to the equipment cost reimbursement rate schedule (Attachment 5). This will serve as the basis for OCFA to seek cost reimbursement for services requested by other fire service agencies. OCFA would be responsible for the flight-time charges for OCFA's own use of the CH-47 resource.

California Environment Quality Act (CEQA) Exemptions

The proposed VLHT services would result in OCFA's temporary storage and operation of one new helitanker at the Los Alamitos Joint Forces Training Base for an 83-day period. The new helitanker is the CH-47 Very Large Helitanker. The helitanker will be operated and maintained by crew supplied by Coulson Aviation (USA) Inc. The CH-47 Very Large Helitanker will be used for day and night operations. Notably, the helitanker will be made available to over 15 other counties in the southern California region; therefore, the helitanker could also be fighting fires in those other counties during the 83-days.

The proposed VLHT services are exempt from CEQA for at least two reasons. First, the proposed VLHT service is exempt pursuant to CEQA's statutory exemption for feasibility and planning studies (14 Cal Code Regs. §15262). Pursuant to this exemption, CEQA does not apply to feasibility or planning studies that will not have a legally binding effect on later activities. The proposed agreements involve a pilot project involving the VLHT to assess its feasibility and utility in fighting fires in this region over a limited 83-day period.

Second, CEQA's Class 1 Exemption applies to the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing or private facilities, structures or topographical features involving negligible or no expansion of an existing or former use (14 Cal Code Regs. §15301). The Joint Forces Training Base (JFTB) in Los Alamitos is home to existing aerial facilities and operations, and its existing facilities, structures and topographic features will not be altered.

Staff recommends approval of the stated recommended actions in order to begin the 83-day program on October 1, 2020.

Attachment(s)

1. Funding Agreement with Southern California Edison
2. Public Aircraft Lease and Service Agreement with Coulson Aviation (USA), Inc.
3. Special Procurement Form
4. Southern California Edison Service Territory Map
5. Proposed Cost Reimbursement Rates – Equipment
6. CEQA Exemptions

**FUNDING AGREEMENT BY AND BETWEEN THE ORANGE COUNTY FIRE
AUTHORITY AND SOUTHERN CALIFORNIA EDISON COMPANY**

This Funding Agreement (“Agreement”) is by and between THE ORANGE COUNTY FIRE AUTHORITY, a California Joint Powers Authority (“OCFA”) and SOUTHERN CALIFORNIA EDISON COMPANY, a California corporation (“SCE”), and is effective on the last date when both Parties sign this Agreement (the “Effective Date”). OCFA and SCE may be referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, due to extreme weather associated with climate change, Southern California has experienced longer and more severe wildfire seasons;

WHEREAS, to increase the effectiveness of aerial response to wildfires, OCFA intends to enter into an 83 day lease agreement with Coulson Aviation (“Coulson”) for a CH47 helitanker that, when the fixed-tank is fully loaded, is capable of dropping more water or retardant than any other helicopter operating today;

WHEREAS, OCFA has requested that SCE provide funding of that part of the fixed lease costs relating to stand-by time only for the CH-47 helitanker (with OCFA funding that part of the fixed lease cost relating to flight time) and SCE has determined that the use of the helitanker offers significant benefits for wildfire suppression, protecting lives and property, including mitigating against damage to SCE’s transmission and distribution system, and increasing firefighter safety;

WHEREAS, the Parties intend that in operating the helitanker, OCFA will prioritize fire suppression activities in and throughout SCE’s service territory, unless in the professional judgment of OCFA management to do so in any specific instance would not maximize the benefits described above or as otherwise directed by the appropriate governmental authorities; and

WHEREAS, the Parties desire to enter into an Agreement that sets forth the terms and conditions pursuant to which SCE will contribute funds to OCFA for the fixed lease costs relating to stand-by time only while OCFA agrees to fund any and all flight time and operational costs in the Coulson lease agreement.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Funding.

Within seven business days of the Effective Date, SCE will electronically transfer a payment in the amount of two million one hundred fifty-eight thousand dollars (\$2,158,000) (the “Funding Amount”) to OCFA. OCFA will use this payment exclusively to fund, in part, the stand-by time portion of the lease agreement with Coulson for operation of a CH-47 Helitanker, which lease must begin no later than October 1, 2020 and last for 83 days, unless a different lease period is agreed to by the Parties in writing. Under this agreement, OCFA shall fund the “flight time” portion of the Coulson lease agreement, which includes any and all costs required to operate the

aircraft. The Parties acknowledge that time is of the essence in performing their obligations under this Agreement. If, for any reason, OCFA does not enter into the lease by October 1, 2020, or such other date agreed to by the Parties in writing, then OCFA shall return the entire payment to SCE. SCE shall not be entitled to any refund of the payment for the fixed stand-by costs in the event OCFA receives reimbursement from the State, Federal Government, or any other entity for use of the CH47 helitanker.

2. Roles and Responsibilities.

SCE shall have no role in directing the operation or use of the helicopters and shall not be a party to the lease. SCE's sole responsibility under this Agreement is to provide the Funding Amount to defray, in part, amounts payable by OCFA to Coulson under the lease. As between SCE and OCFA, OCFA is solely responsible for the safe and lawful operation and use of the helicopters, including all decisions regarding deployment, maintenance, basing and positioning, pilot readiness, and ground support, and OCFA shall be solely responsible for compliance with the terms and conditions of the lease and all payments thereunder.

The Parties acknowledge that as of the date of this Agreement, Coulson may not have obtained the Federal Aviation Administration ("FAA") permit(s) necessary for the CH47 helitanker to fly in the U.S. with an onboard 3,000 USG tank. If Coulson is unable to obtain the required FAA permit(s) to use such capacity tank, then OCFA shall cause Coulson to use an external bucket with a capacity of no less than 2,000 USG with the CH47 helitanker during the lease period.

3. Data Collection.

OCFA will provide the data and information that SCE reasonably requires to allow SCE to (1) evaluate the effectiveness of the Program in suppressing wildfires, protecting lives and property, and increasing firefighter safety, and (2) respond to information requests from, or make regulatory filings and reports to, the California Public Utilities Commission ("CPUC") and other regulators or governmental departments or agencies. Such data shall include, but not be limited to, the following: (a) aircraft utilization rate (flight time conducting suppression missions vs. standby hours), (b) gallons of water or retardant dropped and number of drops per fire, (c) number and location of wildfires attacked, and (d) ratio of fires attacked in SCE's service territory to non-SCE service territory. OCFA shall submit the foregoing data in a GIS shapefile to SCE on a monthly basis on the tenth (10th) day of each calendar month beginning on November 10, 2020 through January 10, 2020 and within five (5) days of SCE's written request therefore at any other time during the lease of the helitanker by OCFA from Coulson.

4. Indemnification.

To the maximum extent permitted by law, OCFA shall indemnify, defend, and hold harmless SCE, and its respective successors, assigns, affiliates, subsidiaries, parent companies, officers, directors, agents, and employees, from and against any and all expenses, claims, losses, damages, liabilities or actions in respect thereof (including reasonable attorneys' fees and reasonably allocated cost of in-house counsel) to the extent arising from or related to the lease, operation or use of the heavy lift helitanker.

5. Authority to Contract.

Each Party represents and warrants that it has the authority to contract or otherwise commit to perform the obligations herein.

6. Relationship of the Parties.

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute any Party to be the agent of another Party, nor authorize any Party to make or enter into any commitments for or on behalf of another Party.

7. Public Announcements.

Neither Party may issue any press release regarding the Agreement unless (1) the press release is issued jointly by the Parties, or (2) prior to the release, the Party proposing to make the announcement furnishes the other Parties with a copy of the press release and obtains the other Parties' written approval; provided, however, that if such press release is required to comply with applicable laws, including the California Public Records Act and the Ralph M. Brown Act, legal proceedings, or the rules and regulations of any court or stock exchange having jurisdiction over a Party, then the Parties shall work in good faith to develop a mutually acceptable announcement.

8. Term and Survival.

This Agreement shall be effective as of the Effective Date through the date that all obligations of the Parties hereto with respect to this Agreement have been satisfied (the "Term"), except that the Parties shall continue to be bound by the provisions of this Agreement which by their nature survive such completion or termination, including Section 4 ("Indemnification").

9. Written Notices.

Any written notice or correspondence under this Agreement shall be in writing and shall be effective upon actual receipt whether delivered by personal delivery, email, facsimile, national overnight courier, or United States mail, demand or request required or authorized in connection with this Agreement shall be deemed properly given if delivered in person or sent by electronic mail, nationally recognized overnight courier, or first class mail, postage prepaid, to the address specified below:

if to OCFA, addressed to:

Brian Fennessy
Fire Chief
1 Fire Authority Road
Irvine, CA 92602

Fax: (714) 368-8800
Email: brianfennessy@ocfa.org

If to SCE, address to:

With a Copy to:

David Kendig
c/o Woodruff, Spradlin & Smart
555 Anton Boulevard, Suite 1200
Costa Mesa, CA 92626

Fax: (____)_____-_____

Email: _____

Fax: (714) 415-1183
Email: dkendig@wss-law.com

10. Assignment.

No Party shall assign this Agreement or any part or interest thereof, without the prior written consent of the other Parties, and any assignment without such consent shall be void and of no effect.

11. Governing Law.

This Agreement shall be interpreted, governed, and construed under the laws of the State of California as if executed and to be performed wholly within the State of California.

12. Entire Agreement.

This Agreement contains the entire agreement and understanding between and among the Parties and merges and supersedes all prior agreements, representations and discussions pertaining to the subject matter of this Agreement. This Agreement is intended to be a final expression of the agreement of the Parties and except to the extent expressly referenced herein, is an integrated agreement within the meaning of Section 1856 of the California Code of Civil Procedure (the Parole Evidence Rule). There are no contemporaneous separate written or oral agreements between the Parties in any way related to the subject matter of this Agreement. No subsequent agreement, waiver, modification, representation or promise with respect to the subject matter of the Agreement made by the Parties hereto, or by or to any employee, officer, agent or representative of any Party shall be of any effect unless it is in writing and executed by the Parties hereto.

13. Counterparts and Electronic Signatures.

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall be deemed to be one and the same instrument. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of the Agreement and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives.

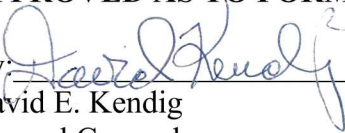
“OCFA”

ORANGE COUNTY FIRE AUTHORITY

Date: _____

By: _____
Brian Fennessy
Fire Chief

APPROVED AS TO FORM.

By:  _____
David E. Kendig
General Counsel

ATTEST:

Maria D. Huizar
Clerk of the Authority

Date: _____

“SCE”

**SOUTHERN CALIFORNIA EDISON
COMPANY**

Date: _____

By: _____
Name _____
Title _____

Date: _____

By: _____
Name _____
Title _____

PUBLIC AIRCRAFT LEASE AND SERVICE AGREEMENT

THIS PUBLIC AIRCRAFT LEASE AND SERVICE AGREEMENT (“Public Aircraft Agreement”) is made this 24th day of September 2020

BETWEEN:

COULSON AVIATION (USA) INC., a limited liability company organized under the laws of the State of Oregon (“CAI”); and

ORANGE COUNTY FIRE AUTHORITY, a joint powers agency created pursuant to the California Joint Exercise of Powers Act (Gov’t Code §§ 6500 *et seq.*) (“OCFA”).

WHEREAS:

- (A) OCFA wishes to lease the Aircraft and obtain services for operation of OCFA’s Governmental Functions, all as described in detail herein;
- (B) CAI wishes to lease and supply such Aircraft and services to OCFA and operate the Aircraft for OCFA in OCFA’s Governmental Functions, all as described in detail herein; and
- (C) The Aircraft shall be considered Public Aircraft when performing any of the operations contemplated by this Public Aircraft Agreement;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, together with other good and valuable consideration, and intending to be legally bound hereby, the parties agree as follows:

1. DEFINITIONS.

1.1 In this Lease the following words and expressions have, except where the context otherwise requires, the meanings set forth below:

“The Aircraft” means one (1) Type One CH-47 Helitanker night vision goggles certified to be designated with FAA Registration mark N42CU and manufacturer’s serial number 91-0270;

“Aircraft Flight Hour Payment” means Seven Thousand Five Hundred Dollars (\$7,500) per flight hour including fuel.

“Crew” means a night vision goggles certified flight crew, and a full maintenance crew, to operate and maintain Aircraft, and a night vision goggles certified flight crew and a full maintenance crew;

“Commencement Date” means the earlier of the 1st October 2020 and the date upon which the FAA Public Aircraft Declaration is received by CAI and submitted to the FAA;

“Daily Rental Payment” means the amount of Twenty Six Thousand (\$26,000), which shall include in addition to leases of the Aircraft, an 10,000 USG fuel truck, 53 foot spares trailer and driver, and a mobile support base (Prevost Bus);

“Day Operations” means the provision of services from 6am to 6pm on a daily basis;

“Event of Default” shall have the meaning prescribed in clause 11.2;

“FAA” means the United States Federal Aviation Administration;

“FAA Public Aircraft Policy” means the policy of the FAA with regard to defining Public Aircraft contained in the FAA Notice of Policy Regarding Civil Aircraft Operators Providing Contract Support to Government Entities (Public Aircraft Operations) published on March 23, 2011 in the Federal Register, FAA Advisory Circular No. 00-1B, and such additional or successor documents regarding FAA’s policy regarding Public Aircraft;

“Flight Hour Payment” means Aircraft Flight Hour Payments due.

“Governmental Functions” means as such term is defined in Section 40125 of Title 49 of the United States Code, an activity undertaken by a government, such as intelligence missions, firefighting, or biological or geological resource management;

“Insurance Schedule” means those insurance terms and amounts described in Appendix 1 attached hereto.

“Night Operations” means the provision of services from 6pm to 6am on a daily basis;

“Owner(s)” means the registered and beneficial owner of each Aircraft.

“Public Aircraft” shall have the meaning as such term is defined in Section 40102(a)(41) of Title 49 of the United States Code as aircraft exclusively leased for at least 90 continuous days by the government of a State, the District of Columbia, or a territory or possession of the United States or a political subdivision of one of these governments, except as provided in Section 40125(b) of Title 49 of the United States Code, which excludes aircraft used for commercial purposes or to carry an individual other than a crewmember or a qualified non-crewmember.

“Public Aircraft Declaration” means a written declaration (from the contracting officer of OCFA or higher-level official) of public aircraft status for all flights of the Aircraft under this Public Aircraft Agreement substantially in the form of Appendix 2 attached hereto;

“Qualified Non-Crewmember” means an individual, other than a member of the crew, aboard an aircraft whose presence is required to perform, or is associated with the performance of, a governmental function as described in Section 40125 of Title 49 of the United States Code.

“Taxes” means any taxes, levies, imposts, duties, charges, fees, deductions, withholdings, restrictions or conditions now or hereafter imposed by any governmental or taxing authority;

“Term” means a period of ninety (90) calendar days from the Commencement Date.

2. AGREEMENT TO LEASE

Subject to, and in accordance with, the terms and conditions of this Public Aircraft Agreement, CAI agrees to lease the Aircraft to OCFA and OCFA agrees to take the Aircraft on lease from CAI for the Term.

3. LEASE AND DELIVERY

3.1 Delivery and Acceptance

OCFA has determined that the Aircraft is suitable for OCFA’s intended use, and OCFA has inspected the same and accepts the same for purposes of this Public Aircraft Agreement.

3.2 OCFA SELECTION OF AIRCRAFT

OCFA REPRESENTS AND WARRANTS TO CAI THAT OCFA HAS USED ITS OWN JUDGMENT IN SELECTING THE AIRCRAFT AND HAS DONE SO BASED ON THEIR SIZE, DESIGN, TYPE AND PERFORMANCE AND THAT OCFA HAS NOT RELIED ON ANY ADVICE OF CAI IN MAKING SUCH SELECTION.

3.3 Title

Title to the Aircraft will be and will at all times remain vested and registered in Owners. OCFA will have no right, title or interest in the Aircraft except as provided in this Public Aircraft Agreement. OCFA will not assert any lien or encumbrance against the Aircraft, nor permit any other party, claiming by through, on behalf of, or because of any action of OCFA to do so.

3.3 Term

The Aircraft shall be exclusively leased to OCFA from the execution of this Public Aircraft Agreement to the end of the Term, unless earlier terminated as provided herein.

4. PUBLIC AIRCRAFT

4.1 Status of Operations as Public Aircraft Operations

The Aircraft shall be operated under this Public Aircraft Agreement as Public Aircraft. The Aircraft shall only be used during the Term for Governmental Functions and all persons carried on board the Aircraft shall be either a crewmember or a Qualified Non-Crewmember.

4.2 Public Aircraft Determination

OCFA shall provide CAI with the Public Aircraft Declaration and otherwise cooperate with CAI in providing any additional documentation or declarations as may be requested by the FAA or such other government agency whether Federal or State with jurisdiction over the operations contemplated in this Public Aircraft Agreement. Upon receipt of the Public Aircraft Declaration signed by OCFA, CAI shall, in advance of any operation of any flight under this Public Aircraft Agreement, notify the FAA Flight Standards District Office having oversight of the operations under this Public Aircraft Agreement that it has contracted with OCFA to conduct eligible public aircraft operations, and submit the Public Aircraft Declaration. Notwithstanding any other provision herein, CAI shall not and shall not be required to perform any operations under this Public Aircraft Agreement prior to receipt by CAI of the Public Aircraft Declaration and submission of the same to the FAA.

5. CREW AND PILOT REQUIREMENTS

5.1 Crew Operation

The Aircraft will be exclusively operated and maintained by the Crew arranged and supplied by CAI. OCFA shall provide ground crews for remote operations of the Aircraft.

5.2 Pilot Requirements

CAI shall provide two (2) pilots and one (1) Flight Engineer for operation by the Aircraft during Day Operations, and two (2) pilots and one (1) Flight Engineer for the Aircraft during Night Operations. All pilots for Day Operations shall be United States Forest Service or CAL FIRE carded pilots.

All pilots for Night Operations shall be FAA certified for Night Vision Goggles flying and United States Forest Service or CAL FIRE carded pilots.

5.3 Mechanic Requirements

CAI shall provide four (4) mechanics for operation by the Aircraft during Day Operations and four (4) mechanics for operations of the Aircraft during Night Operations.

5.4 Ground Crew Requirements

CAI shall provide sufficient ground crew to drive and deploy the mobile support base (Prevost Bus). CAI shall provide ground crew to operate the fuel truck and spares trailer for the aircraft during both Day and Night Operations.

6. SCOPE OF WORK AND FLIGHTS

6.1 Flight Missions

Operations of the Aircraft shall be available for both Day and Night Operations. All operations shall be conducted in support of and as part of OCFA's Governmental Functions related to firefighting, and shall be in accordance with operating rules applicable to all aircraft in the National Airspace System. Notwithstanding any other provision herein, CAI provided pilots shall exercise fully authority as pilot-in-command over each flight and shall have no obligation to perform any mission on behalf of OCFA, which, in the sole discretion of the CAI provided pilots, is beyond the scope of such pilots' abilities, certification, or

authorization; or would unreasonably endanger such pilot or the Aircraft; or would be in contravention of any applicable law or any flight operation protocol. No such action of any pilot provided by CAI shall create or support any liability of CAI for loss, injury, damage or delay to OCFA.

6.2 Aircraft Maintenance and Airworthiness

The Aircraft shall be maintained exclusively by the mechanics provided by CAI and shall be maintained in conformance with each Aircraft's FAA approved maintenance manual. OCFA will not make or authorize any improvement, change, addition or alteration to either Aircraft without the express consent and agreement of CAI. All repairs, parts, replacements, mechanisms and devices added to the Aircraft during the Term shall immediately, without further act, become part of the Aircraft and subject to the ownership of Owners free and clear of any lien, encumbrance, or interest of OCFA or any party, claiming by through, on behalf of, or because of any action of OCFA.

6.3 Base of Operations

OCFA will provide storage and other facilities as the base of operation at Los Alamitos Joint Forces Training Base in Orange County, sufficient for purposes of the scope of work contemplated by this Public Aircraft Agreement and shall provide CAI with access and permissions at such base of operation for the performance of the contemplated scope of work.

7. RENTAL PAYMENTS AND EXPENSES

7.1 Rental Payments

CAI shall invoice OCFA for Daily Rental Payment on a weekly basis, which shall begin accruing on the Commencement Date and continue through the end of the Term.

OCFA shall pay the invoice (in full and without any deduction or withholding in respect of set-off, counterclaim, duties, taxes or other charges) within fourteen (14) days of receipt of invoice via ACH as follows:

Coulson Aviation (USA) Inc
Wells Fargo Bank, 1900 Southwest 5th Avenue, Portland, Oregon 97201
Routing Number: 123006800
Account Number: 0503999583

7.2 Operating Expenses

CAI shall invoice OCFA for Flight Hour Payments on a weekly basis.

OCFA shall pay the invoice (in full and without any deduction or withholding in respect of set-off, counterclaim, duties, taxes or other charges) within fourteen (14) of receipt of invoice via ACH as follows:

Coulson Aviation (USA) Inc
Wells Fargo Bank, 1900 Southwest 5th Avenue, Portland, Oregon 97201
Routing Number: 123006800
Account Number: 0503999583

7.3 Late Payments

Any late payment shall bear per diem interest from the due date, until the date paid at an annual rate of 10%. Payment of interest shall not excuse or cure any default.

7.4 Taxes

All payments, including specifically the Rental Payments made by OCFA hereunder, shall be made free and clear of, and without deduction for Taxes. OCFA shall be solely responsible for the payment of any Taxes imposed on the lease and services provided under this Public Aircraft Agreement. OCFA shall indemnify and hold harmless CAI from and against all taxes payable by them at any time in respect of this Public Aircraft Agreement in respect of any transaction contemplated by this Public Aircraft Agreement; provided that in no event shall OCFA be responsible for Taxes that are imposed on the net income, profit, gains, capital or net worth of CAI, or Taxes arising out of or solely attributable to the fraud, willful misconduct, or reckless disregard (with knowledge of the probable consequences) of CAI.

8. INSURANCE, INDEMNIFICATION, AND WAIVER

8.1 Insurance

(a) CAI shall maintain at all times, naming OCFA and the Owner(s) as additional insureds, during the Term (i) public liability insurance (including, but not limited to, aviation liability) against liability to third parties, including passengers and crew on the Aircraft, for personal injury and death and damage to property for a minimum amount and terms set out in the Insurance Schedule for each and every occurrence, and (ii) appropriate insurance against loss of, or damage to, the Aircraft hull for an amount reflecting reasonable replacement value of the Aircraft as provided in the Insurance Schedule.

(b) Each party shall be responsible for providing workers' compensation insurance and unemployment insurance for its employees and crew members provided by it for performance of this Public Aircraft Agreement as required by applicable laws

8.2 Indemnification

(a) OCFA agrees to indemnify, protect, save, defend and keep harmless CAI and CAI's directors, shareholders, members, beneficiaries, officers, employees, agents, attorneys-in-fact, lawyers, affiliates, successors and any permitted assigns (collectively, the "Indemnified Parties") on, a net after-tax basis, from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, demands, costs, expenses and disbursements (including, without limitation, reasonable legal fees and expenses) of any kind and nature whatsoever (collectively, the "Claims"), which may be imposed on, incurred by, or asserted against, any of CAI's Indemnified Parties, whether or not any of CAI's Indemnified Parties shall also be indemnified as to any such matters by any other person, party or entity of any kind whatsoever, in any way relating to or arising out of any breach, action, inaction, misrepresentation, or direction by OCFA related to the performance or support of the operations contemplated herein that results in any Claim(s) against one of CAI's indemnified Parties; provided that OCFA shall have no obligation to indemnify any of CAI's Indemnified Party in respect of any Claims to the extent that such

Claim is suffered or incurred as a direct consequence of the fraud, willful misconduct or reckless disregard of such Indemnified Party. Notwithstanding anything to the contrary contained in the foregoing, any other section of this Public Aircraft Agreement or otherwise, the indemnification agreements, obligations and liabilities of any kind whatsoever of such party set forth or provided in this Section 8.2 shall survive the expiration or termination of this Public Aircraft Agreement for any reason whatsoever.

(b) CAI agrees to indemnify, protect, save, defend and keep harmless OCFA and OCFA's Indemnified Parties on, a net after-tax basis, from and against any and all Claims, which may be imposed on, incurred by, or asserted against, any of OCFA's Indemnified Parties, whether or not any of OCFA's indemnified Parties shall also be indemnified as to any such matters by any other person, party or entity of any kind whatsoever, in any way relating to or arising out of any breach, action, inaction, misrepresentation, or direction by CAI related to the performance or support of the operations contemplated herein that results in any Claim(s) against one of OCFA's Indemnified Party; provided that CAI shall have no obligation to indemnify any of OCFA's Indemnified Party in respect of any Claims to the extent that such Claim is suffered or incurred as a direct consequence of the fraud, willful misconduct or reckless disregard of such Indemnified Party. Notwithstanding anything to the contrary contained in the foregoing, any other section of this Public Aircraft Agreement or otherwise, the indemnification agreements, obligations and liabilities of any kind whatsoever of such party set forth or provided in this Section 8.2 shall survive the expiration or termination of this Public Aircraft Agreement for any reason whatsoever.

9. MUTUAL REPRESENTATIONS

CAI and OCFA represent to each other:

- (i) The execution, delivery and performance of this Public Aircraft Agreement has been duly authorized by all necessary corporate or government action of such party and do not require the approval or consent of or notice to any trustee or holders of any indebtedness or obligations of such party (except as has already been obtained);
- (ii) This Public Aircraft Agreement has been duly executed and delivered by an officer of such party authorized to execute and deliver such documents on behalf of such party; and
- (iii) This Public Aircraft Agreement and covenants of such party contained herein and therein constitute or will, upon execution, constitute legal, valid and binding obligations of such party, enforceable against such party in accordance with its terms subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights generally and by the application of equitable principles by courts of competent jurisdiction, sitting at law or in equity.

10. NOTIFICATION

Any notice given by one party to the other in connection with this Agreement shall be in writing and shall be sent by email, telefax, courier, overnight delivery, certified mail, to the addresses

listed below or to such other addresses as either party may specify to the other in writing from time to time:

<p>If to OCFA, addressed to:</p> <p>Brian Fennessy Fire Chief 1 Fire Authority Road Irvine, CA 92602</p> <p>Fax: (714) 368-8800 Email: brianfennessy@ocfa.org</p> <p>With a Copy to:</p> <p>David Kendig c/o Woodruff, Spradlin & Smart 555 Anton Boulevard, Suite 1200 Costa Mesa, CA 92626</p> <p>Fax: (714) 415-1183 Email: dkendig@wss-law.com</p>	<p>If to CAI, address to:</p> <p>Wayne Coulson President & CEO 4890 Cherry Creek Road Port Alberni, BC Canada V9Y 8E9</p> <p>Fax: (250) 723-7766 Email: wayne.coulson@coulsongroup.com</p>
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Notices shall be deemed effective when delivered or when proof of delivery is obtained (in the case of email, when the sender receives a read receipt from the addressee), or if earlier and whether or not received, three (3) days after such notice is deposited in the United States mail postage pre-paid as certified mail to the party as set forth above.

11. TERMINATION AND DEFAULT

11.1 Default

The following shall constitute an Event of Default:

- (i) a failure to make any payment when due hereunder within three (3) calendar days of when such payment is due;
- (ii) party's admission in writing of inability to pay its debts generally as they come due or a general assignment for the benefit of its creditors, or admission of insolvency;
- (iii) any declaration, representation, warranty or statement made or deemed to be made by a party in connection with this Public Aircraft Agreement is or proves to have been incorrect when made or becomes incorrect during the Term; or
- (iv) any material breach by a party of its obligations or performance under this Public Aircraft Agreement.

11.2 Remedies

In an Event of Default, the non-defaulting party may immediately terminate this Public Aircraft Agreement upon sending notification to the other party, and/or seek any and all such remedies and rights as may be available to such party at law or equity.

12. MISCELLANEOUS

12.1 Binding Effect

This Public Aircraft Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, executors, administrators, successors, legal representatives and assigns provided that this provision shall not be construed as permitting assignment or substitution except as otherwise provided herein.

12.2 Execution

Delivery of an executed counterpart of a signature page of this Agreement by email or any other digital or electronic means shall be effective as delivery of a manually executed counterpart of this Public Aircraft Agreement.

12.3 Severability

In the event that any condition, covenant or other provision herein contained is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Lease and shall in no way affect any other covenant or condition herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

12.4 Clauses, Appendices And Schedules

References in this Public Aircraft Agreement to clauses, appendices, or schedules are, unless otherwise specified, references to clauses of and appendices and schedules to this Public Aircraft Agreement and together the clauses, appendices and schedules shall together constitute this Public Aircraft Agreement.

12.5 Assignment

No assignment, transfer or charge may be made by any party of all or any of its rights in respect of this Public Aircraft Agreement without the prior written consent of the other.

12.6 GOVERNING LAW

THIS PUBLIC AIRCRAFT AGREEMENT SHALL, IN ALL RESPECTS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA APPLICABLE TO CONTRACTS ENTERED INTO IN THE STATE OF CALIFORNIA BY RESIDENTS OF SUCH STATE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE. LEGAL ACTIONS CONCERNING ANY DISPUTE, CLAIM OR MATTER ARISING OUT OF OR IN RELATION TO THIS PUBLIC AIRCRAFT AGREEMENT SHALL BE INSTITUTED IN THE SUPERIOR COURT OF THE COUNTY OF ORANGE, STATE OF CALIFORNIA, OR ANY OTHER APPROPRIATE COURT IN SUCH COUNTY, AND

CAI COVENANTS AND AGREES TO SUBMIT TO THE PERSONAL JURISDICTION
OF SUCH COURT IN THE EVENT OF SUCH ACTION.

IN WITNESS WHEREOF, CAI and OCFA have each caused this Public Aircraft Agreement to be duly executed and delivered by each of CAI and OCFA on the date first above written.

COULSON AVIATION (USA) INC.	ORANGE COUNTY FIRE AUTHORITY
Name: Title:	Name: Title:

Insurance Schedule

Appendix 1

[on OCFA letterhead]

[insert date]

COULSON AVIATION (USA) INC.

Attn:

Re: Public Aircraft Declaration

Dear Mr. _____:

As you know, the **ORANGE COUNTY FIRE AUTHORITY (OCFA)**, a joint powers agency created pursuant to the California Joint Exercise of Powers Act (Gov't Code §§ 6500 et seq.) and comprised of 24 member agencies, each of which are a political subdivision of the State of California, entered into a contract (Public Aircraft Agreement) dated September 24, 2020 with **COULSON AVIATION (USA) INC. (CAI)** under which CAI will exclusively lease the [*describe aircraft*] to OCFA and provide the exclusive services of such aircraft for a governmental function such as intelligence missions, firefighting, or biological or geological resource management of OCFA during the term of such Public Aircraft Agreement, which is ninety (90) calendar days. We hereby declare that under Title 49 of the United States Code and in accordance with FAA Notice of Policy Regarding Civil Aircraft Operators Providing Contract Support to Government Entities (Public Aircraft Operations) published on March 23, 2011 in the Federal Register, and FAA Advisory Circular No. 00-1B, the governmental functions and the operations contemplated by the Public Aircraft Agreement qualify as Public Aircraft Operations (PAO). As such, we acknowledge that we have to provide this declaration to that effect, which CAI in turn shall provide to the FAA, prior to commencement of operations under the Public Aircraft Agreement. Below is information in support of this declaration, which is intended to apply to all flights operated by CAI pursuant to the Public Aircraft Agreement.

Name of civil operator (the contracted operator): Coulson Aviation (USA) Inc.**Aircraft type(s) to be used for the PAO:** [*describe aircraft*]**Name of aircraft owner(s):** [*reference registered owner of Aircraft*]**Aircraft registration number(s):** [*registration marks*]**Date of contract:****Date of proposed first flight as a PAO:****Date contract terminates:****Name of the government entity declaring public aircraft status (the government entity contracting for aircraft services):** ORANGE COUNTY FIRE AUTHORITY**Name, title, and contact information for the government official making the declaration of PAO status:**

Nature of operations (include enough detail to demonstrate that the flights are for a governmental function under the statute): The Aircraft will be dedicated exclusively during the 90-day term of the Public Aircraft Agreement to providing intelligence missions, firefighting, biological or geological resource management within the boundaries of the Orange County Fire Authority and Southern California Edison service territory.

Should there be any questions or if additional information is needed, please feel free to contact me.

Sincerely,

[insert signatory and title]

OCFA Special Procurement Justification Form

The Purchasing Ordinance of the Orange County Fire Authority requires competitive bids and proposals for service and commodity contracts. A special procurement is defined as a purchase, where due to unusual or special circumstances, it would be in the best interest of the OCFA to accomplish the procurement without compliance with the competitive bidding requirements. Special Procurements are not applicable to construction services. The using department requesting a special procurement shall provide written evidence to support a special procurement determination. This form is to be submitted with the purchase requisition to Purchasing with any special procurement requests.

SECTION I - INSTRUCTIONS

1. Written justification on this form will be completed by the requesting department and submitted with the purchase requisition.
2. The request must be approved by the section manager and assistant chief prior to submitting the request to the purchasing manager.
3. All special procurement forms must be submitted to the Purchasing Manager and then reviewed and approved by the Assistance Chief, Business Services.
4. All special procurements exceeding \$50,000 annually require Executive Committee approval. In this case, the special procurement form must be submitted to the Executive Committee as an attachment to the staff report.
5. The approved special procurement justification form will be included in the contract file.

SECTION II – REQUEST INFORMATION

Department/Section: Operations	Requested By: Chief Fennessy	Date: 9/16/2020
Recommended Vendor: Coulson Aviation, Inc.	Vendor Contact: Wayne Coulson	Vendor's E-mail Address: wayne.coulson@coulsongroup.com
Vendor Address: 610 SW Alder Street, Suite 910, Portland, Oregon 97205		Vendor's Telephone #: (250) 720-6723
Type of Contract: <input checked="" type="checkbox"/> One-time <input type="checkbox"/> Multi-Year <input type="checkbox"/> Renewal <input type="checkbox"/> Amendment <input type="checkbox"/> Increase	Contract Term (Dates): 9/24/2020 - 12/24/2020	Contract Amount: \$2,158,000
<i>If the contract type is a Renewal, Amendment or Increase, please provide previous contract information with this request (PO, BO, previous approval date, Chief approval or EC approval, and dollar amount).</i>		Attachments: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

SECTION III – JUSTIFICATION

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

Coulson Aviation Inc. (CAI) provides Night Aerial Firefighting Performance-Based services which utilize performance-based and state of the art technology in firefighting aircraft using a night-vision equipped firefighting Type I helicopter for the aerial attack of wildland fires.

2. Please state the reasoning for the special procurement and the special circumstances of why it would be in the best interest of OCFA to accomplish the procurement without a competitive bidding process. Provide a summary of findings (research and analysis) including any supporting documentation which validates your recommendation and demonstrates the nature of this request. Attach additional sheet if necessary.

CAI is an industry leader in aerial firefighting and the only operator of both heavy fixed and rotary wing aircraft. CAI's night suppression operations include hover filling, open water sources and night vision goggles. CAI operates CH-47 Very Large Helitankers (VLHT) that are capable of dropping up to 3,000 gallons of water or fire retardant

SECTION III – JUSTIFICATION (continued)

in a single pass. CAI is the best equipped company to handle aerial firefighting needs. While there may be other firms that offer firefighting helitanker services, CAI is experienced and best positioned to begin these services on October 1, 2020.

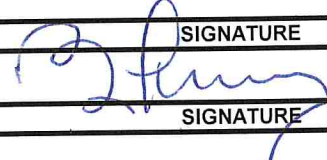

- 3. Pricing - What efforts were made to get the best pricing (e.g., did you simply request a quote, negotiate a better price with the vendor, did the vendor provide a discount)? Please provide the quote with your special procurement request.**

The pricing includes 24/7 availability for 83 days. This contract is a result of agreements with SCE, OCFA, and Coulson Aviation (USA) Inc. in an effort to bring the services and the funding together for a benefit for residents of Orange County and the state of California to protect in the event of wildland fires during fire season. SCE is providing the funding for the daily standby fixed costs.

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

The VLHT services are intended to be for 83-days. OCFA may determine a need for these services during future fire season. The special procurement will be re—examined at the conclusion of the 83-days should the services continue beyond the initial contract term.

Special Procurement Request Submitted by:

REQUESTORS NAME	SIGNATURE	DATE
Chief Fennessy		9/16/20
DIVISION CHIEF/SECTION MANAGER NAME	SIGNATURE	DATE
ASSISTANT CHIEF NAME	SIGNATURE	DATE
Kenny Dossey		9/17/20

Purchasing Manager's Comments:

PURCHASING MANAGER'S APPROVAL	DATE
	9/16/2020
ASSISTANT CHIEF BUSINESS SERVICES APPROVAL	DATE
	9/16/20

Executive Committee Approval Required ☒ Yes ☐ No Special Procurement over \$50,000

Executive Committee Approved: ☐ Yes ☐ No Date approved _____

Southern California Edison Service Territory Map



ORANGE COUNTY FIRE AUTHORITY
COST REIMBURSEMENT RATES
EQUIPMENT
EFFECTIVE October 1, 2020

DESCRIPTION	2019/20 RATE	2020/21 RATE	\$ CHANGE	% CHANGE	SOURCE	Hourly / Daily
TYPE 1 ENGINE	\$78.90	\$140.00	\$61.10	77.44%	Cal OES	Hourly
TYPE 2 ENGINE	\$68.00	\$132.00	\$64.00	94.12%	Cal OES	Hourly
TYPE 3 ENGINE	\$68.00	\$126.50	\$58.50	86.03%	Cal OES	Hourly
TRUCK/QUINT	\$78.90	\$81.10	\$2.20	2.79%	FEMA	Hourly
AIR/LIGHT UTILITY	\$23.84	\$35.42	\$11.58	48.57%	FEMA	Hourly
AIRPORT CRASH UNIT	\$78.90	\$81.10	\$2.20	2.79%	FEMA	Hourly
CHIPPER	\$24.31	\$24.89	\$0.58	2.39%	FEMA	Hourly
COMPACT TRACK LOADER	\$36.05	\$38.72	\$2.67	7.41%	FEMA	Hourly
CREW CARRYING VEHICLE	\$20.95	\$21.60	\$0.65	3.10%	FEMA	Hourly
DOZER	\$93.74	\$98.77	\$5.03	5.37%	FEMA	Hourly
DOZER MODULE (DOZER+TRANSPORT)	\$160.64	\$168.46	\$7.82	4.87%	FEMA	Hourly
DOZER TENDER	\$17.65	\$17.91	\$0.26	1.47%	FEMA	Hourly
DOZER TRAILER	\$15.50	\$18.49	\$2.99	19.29%	FEMA	Hourly
DOZER TRANSPORT	\$66.90	\$69.69	\$2.79	4.17%	FEMA	Hourly
DUMP TRUCK	\$75.50	\$77.50	\$2.00	2.65%	FEMA	Hourly
FIRE COMMAND UNIT	\$20.95	\$21.60	\$0.65	3.10%	FEMA	Hourly
FUEL TENDER	\$28.70	\$31.05	\$2.35	8.19%	FEMA	Hourly
GRADER	\$46.50	\$63.63	\$17.13	36.84%	FEMA	Hourly
LOADER	\$43.85	\$46.17	\$2.32	5.29%	FEMA	Hourly
MECHANIC SERVICE TRUCK	\$96.00	\$230.00	\$134.00	139.58%	Cal OES	Daily
MEDIC UNIT	\$96.00	\$230.00	\$134.00	139.58%	Cal OES	Daily
PATROL UNIT (Type 6/ Swift Water Rescue)	\$68.00	\$120.00	\$52.00	76.47%	Cal OES	Hourly
PICKUP (less than 3/4 ton)	\$86.00	\$140.00	\$54.00	62.79%	Cal OES	Daily
SEDAN	\$47.00	\$119.00	\$72.00	153.19%	Cal OES	Daily
SPORT UTILITY VEHICLE	\$96.00	\$205.00	\$109.00	113.54%	Cal OES	Daily
VAN	\$109.00	\$194.00	\$85.00	77.98%	Cal OES	Daily
WATER TENDER	\$28.70	\$102.67	\$73.97	257.74%	Cal OES	Hourly
OTHER (3/4 ton and above)	\$96.00	\$230.00	\$134.00	139.58%	Cal OES	Daily
HAZMAT (Unit 4)	\$78.90	\$81.10	\$2.20	2.79%	FEMA	Hourly
HAZMAT (Unit 79)	\$78.90	\$81.10	\$2.20	2.79%	FEMA	Hourly
HAZMAT (Unit 204)	\$20.60	\$25.46	\$4.86	23.59%	FEMA	Hourly
HELICOPTER - BELL SUPER HUEY (1)	\$1,482.23	\$1,562.37	\$80.14	5.41%	OCFA	Hourly
HELICOPTER - BELL 412 (1)	\$3,954.61	\$4,769.66	\$815.05	20.61%	OCFA	Hourly
HELITANKER CH-47	N/A	\$7,500.00	N/A	N/A	OCFA CONTRACTOR	Hourly

Notes:

1. Helicopter rates are based on 20 years useful life without the pilot and crew chief (Captain). The new rate reflects average usage for the past four years.

14 CCR § 15262**§ 15262. Feasibility and Planning Studies.**

A project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded does not require the preparation of an EIR or negative declaration but does require consideration of environmental factors. This section does not apply to the adoption of a plan that will have a legally binding effect on later activities.

14 CCR § 15301**§ 15301. Existing Facilities.**

Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The types of "existing facilities" itemized below are not intended to be all-inclusive of the types of projects which might fall within Class 1. The key consideration is whether the project involves negligible or no expansion of an existing use.

Examples include but are not limited to:

- (a) Interior or exterior alterations involving such things as interior partitions, plumbing, and electrical conveyances;
- (b) Existing facilities of both investor and publicly-owned utilities used to provide electric power, natural gas, sewerage, or other public utility services;
- (c) Existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities (this includes road grading for the purpose of public safety).
- (d) Restoration or rehabilitation of deteriorated or damaged structures, facilities, or mechanical equipment to meet current standards of public health and safety, unless it is determined that the damage was substantial and resulted from an environmental hazard such as earthquake, landslide, or flood;
- (e) Additions to existing structures provided that the addition will not result in an increase of more than:
 - (1) 50 percent of the floor area of the structures before the addition, or 2,500 square feet, whichever is less; or
 - (2) 10,000 square feet if:
 - (A) The project is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan and
 - (B) The area in which the project is located is not environmentally sensitive.
- (f) Addition of safety or health protection devices for use during construction of or in conjunction with existing structures, facilities, or mechanical equipment, or topographical features including navigational devices;
- (g) New copy on existing on and off-premise signs;

- (h) Maintenance of existing landscaping, native growth, and water supply reservoirs (excluding the use of pesticides, as defined in Section 12753, Division 7, Chapter 2, Food and Agricultural Code);
- (i) Maintenance of fish screens, fish ladders, wildlife habitat areas, artificial wildlife waterway devices, streamflows, springs and waterholes, and stream channels (clearing of debris) to protect fish and wildlife resources;
- (j) Fish stocking by the California Department of Fish and Game;
- (k) Division of existing multiple family or single-family residences into common-interest ownership and subdivision of existing commercial or industrial buildings, where no physical changes occur which are not otherwise exempt;
- (l) Demolition and removal of individual small structures listed in this subdivision;
 - (1) One single-family residence. In urbanized areas, up to three single-family residences may be demolished under this exemption.
 - (2) A duplex or similar multifamily residential structure. In urbanized areas, this exemption applies to duplexes and similar structures where not more than six dwelling units will be demolished.
 - (3) A store, motel, office, restaurant, and similar small commercial structure if designed for an occupant load of 30 persons or less. In urbanized areas, the exemption also applies to the demolition of up to three such commercial buildings on sites zoned for such use.
 - (4) Accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences.
- (m) Minor repairs and alterations to existing dams and appurtenant structures under the supervision of the Department of Water Resources.
- (n) Conversion of a single-family residence to office use.
- (o) Installation, in an existing facility occupied by a medical waste generator, of a steam sterilization unit for the treatment of medical waste generated by that facility provided that the unit is installed and operated in accordance with the Medical Waste Management Act (Section 117600, et seq., of the Health and Safety Code) and accepts no offsite waste.
- (p) Use of a single-family residence as a small family day care home, as defined in Section 1596.78 of the Health and Safety Code.

VLHT Services FAQ

9/24/20

1. What is the Very Large Helitanker (VLHT) Services?

The Very Large Helitanker (VLHT) Services is an 83-day partnership with Southern California Edison (SCE), Coulson Aviation (USA), Inc. (CAI), and the Orange County Fire Authority that will enhance aerial wildland fire response in Orange County and the residents and businesses within the SCE service territory. The VLHT Services will be available for daytime and nighttime firefighting and the service is anticipated to commence on October 1, 2020.

This VLHT Services will utilize a Type 1 CH-47 Very Large Helitanker which is capable of dropping up to 3,000 gallons of water or fire retardant in a single pass. By way of comparison, the OCFA Bell 412EP medium-lift helicopters are capable of dropping up to 375-gallons and the next largest helitanker, the Sikorsky S-64 Skycrane, is capable of up to 1,600 gallons. The CH-47 is equipped with Coulson's proprietary Retardant Aerial Delivery System (RADS) tank. The SMART Delivery System Controller technology in these systems will allow for automated target drops for night vision goggle firefighting operations and the pilots will have the capability to adjust water/retardant flow rates based on speed and altitude, providing ground crews the same options as fixed wing air tankers. The VLHT has other unique capabilities such as night-vision, IFR navigation and hover filling making it the largest and most capable helitanker in the world.

The following video link provides more detail on the CH-47 Very Large Helitanker full capabilities: <https://vimeo.com/445643442>

2. How are the VLHT Services different from last years' NextGen Pilot Program?

In 2019, SCE and Coulson Aviation partnered with the OCFA in the NextGen Pilot Program which proved to be a successful partnership. The 2019 Pilot Program was designed to enhance the regional wildland aerial firefighting capabilities through the use of various innovative technology. As the fire season and the Pilot Program progressed, the region realized the benefits of having these additional resources available. The NextGen platform was utilized on 19 incidents throughout Los Angeles City, Los Angeles County, Ventura County, Riverside County, and Orange County. Some of the larger incidents that benefitted from the programs included the Saddleridge Fire, Getty Fire, Tick Fire, and the Maria Fire.

By way of comparison, the NextGen Pilot program operated a Type 1 helitanker with a water dropping capacity of 1,000+ gallons and a Type 3 intelligence-gathering helicopter for precision water dropping. The VLHT Services will operate one Type 1 helitanker capable of dropping up to 3,000 gallons.

3. Why the urgency in bringing the VLHT Services item before the Board for consideration?

OCFA met recently with and interest was expressed by Southern California Edison (SCE) in funding and partnering to provide for the Very Large Helitanker (VLHT) Services. SCE is agreeable to October 1, 2020, as the desired start date given the current wildland fire activity in California.

4. Why did the VLHT item not go before the Budget & Finance Committee (B&FC) for review?

The September B&FC meeting was held on September 9th, and took place prior to staff meeting with SCE and the partnerships opportunity discussed. Based on VLHT services October 1st start date, staff was able to prepare the staff report, draft agreements and other necessary documents within a relatively short period of time. Given that historically the most destructive point of the year round fire season is Oct.-Dec, and the current fire activity and weather conditions in California, there is an urgent need for VLHT Services to commence on October 1. Due to the urgency and timing mentioned above, staff did not have an opportunity to present this item to the B&FC in advance of the item being considered by the Board at its September 24th meeting.

5. What are the benefits to OCFA by implementing the VLHT Services?

Data and history have demonstrated time and time again that the best way to keep fires small and before they can become large destructive and life-threatening fires is thru aggressive ground and aerial initial attack. Attacking fires during the early stages with the largest helitanker available is considered a force multiplier and is a capability that very few agencies possess. With firefighter and aerial fire support in high demand and stretched thin, this VLHT provides Orange County with a necessary layer of protection.

6. How are the VLHT Services funded?

OCFA will provide the VLHT Services no different than how we provide strike teams and other services throughout the State. This includes seeking reimbursements in arrears. The VLHT Services will be covered through a number of funding sources and current budget allocation. This includes SCE's funding contribution to lease the helitanker, current Air Ops budget savings, and the new State Augmentation Funds received this fiscal year. In addition, staff is proposing to create an assistance-by-hire rate in order to recover flight time costs when an outside agency requests VLHT services from the OCFA. Following is a brief summary of each of the funding components:

SCE Funding: As part of the VLHT Services partnership, SCE will provide \$2,158,000 to cover the fixed costs of leasing the CH-47. The fixed costs include the daily standby rate of \$26,000 for the CH-47 which is by far the largest cost segment.

Current AirOps Budget: Given the recent announcement regarding the grounding of OCFA's Bell Super Huey's (helicopter's 3 and 4), and analysis of the AirOps budget, staff identified just over \$1M in budget cost savings that may be applied to the VLHT Services. These AirOps budget savings include helicopter routine and non-routine maintenance, as well as fuel consumption costs. Staff anticipates applying the AirOps budget cost savings to cover the VLHT variable costs, such as flight time and project management.

2020-21 State Augmentation Funds: This fiscal year, CALFIRE awarded a new allocation of \$689,329 in State Augmentation Funds titled Fire Protection Augmentation 2020-21. This new allocation of funding is above and beyond our annual allocation of State Augmentation Funds. Staff anticipates that approximately \$354,000 will be applied for the VLHT Services. Staff anticipates applying these new State Augmentation Funds to cover the VLHT variable costs, such as flight time and project management.

Assistance-by-Hire (ABH) Cost Recovery: Given that the VLHT Services will be made available to other non-OCFA agencies, staff is proposing to create an ABH rate. The ABH rate will serve as the basis for OCFA to seek

cost recovery for services requested by other fire service agencies. The use of the ABH cost recovery will provide an opportunity to offset and/or replenish the use of the OCFA AirOps budget.

Staff anticipates that reimbursements will cover the flight time with the exception of OCFA fires that are not State Responsibility Area fires. For OCFA related fires, staff anticipates utilizing State Augmentation Funds first to cover our costs followed by AirOps cost savings if funding is needed. To the extent possible, staff will manage and monitor the VLHT Services expenses to achieve near cost neutrality.

7. How will the OCFA be reimbursed for responding to non-OCFA related incidents?

As mentioned above, and similar to when OCFA seeks cost recovery when responding to non-OCFA related incidents, staff is proposing to create an ABH rate to bill for the CH-47 flight time when responding to requests made by agencies outside of OCFA's jurisdiction. The ABH rate will be set at \$7,500 per flight hour as provided in attachment 5 of the September 24, 2020, VLHT Services staff report. By way of comparison, our current agency owned Bell 412 helicopters have an ABH flight hourly rate of \$4,769.66.

At this time we are estimating 150-hours of CH-47 flight time and is too early to tell if the CH-47 will fly the full 150-hours given where we are in the wildland fire season.