

APPROVAL OF AMENDED AND RESTATED NORTH NET JOINT POWERS TRAINING
AGREEMENT BETWEEN CITIES OF ANAHEIM, GARDEN GROVE, AND ORANGE

November 13, 2012

Page 2

conducted and Anaheim would pay the same 26.67 percent of the appraised fair market value to both Garden Grove and Orange. The JPA Board was of the opinion that this carried out the original intent of the 1976 agreement.

The Agreement also alters how the fair share contribution of each member city is calculated. Currently, the calculation is based on the city's population; under the Agreement it would be based on the number of sworn firefighters in each city. All three Fire Chiefs agree this is the more appropriate method for calculating use of the training center. As a result, Anaheim and Orange will experience a slight increase in their fair share percentage while Garden Grove will experience a slight decrease.

Furthermore, the Agreement provides for the hiring of a full-time administrator for day-to-day operations of the training center. The administrator would be an at-will employee of the City of Anaheim; however, as compensation is to be paid from the JPA's budget, the administrator is subject to JPA Board approval. Anaheim would provide other training center services as needed to the extent permitted by the Board's budget.

FINANCIAL IMPACT

The initial annual cost for the administrator, inclusive of salary and all benefits, will be approximately \$170,000; Garden Grove's share of that cost will be 22 percent or \$37,400. Garden Grove's fair share contribution to the JPA during the most recent fiscal year was \$79,454. It is estimated that during the first year under the Agreement, Garden Grove's contribution to the JPA will be \$64,740, a decrease of \$14,714.

RECOMMENDATION

It is recommended that the City Council:

- Approve the Amended and Restated North Net Joint Powers Training Agreement; and
- Authorize the Mayor to sign and execute such Agreement on behalf of the City.


DAVID R. BARLAG
Fire Chief

Recommended for Approval


Matthew Fertal
City Manager

Attachment: Amended and Restated North Net Joint Powers Training Agreement

**AMENDED AND RESTATED
NORTH NET JOINT POWERS TRAINING AGREEMENT**

By and Between

CITY OF ANAHEIM, CALIFORNIA

CITY OF GARDEN GROVE, CALIFORNIA

And

CITY OF ORANGE, CALIFORNIA

TABLE OF CONTENTS

	Page
RECITALS	1
AGREEMENT.....	2
CHAPTER 1. DEFINITIONS.....	2
CHAPTER 2. PURPOSE AND POWERS.....	3
2.1. AUTHORITY CREATED.....	3
2.2. COMMON POWERS.....	3
2.3. GENERAL PURPOSE	3
2.4. POWERS	4
CHAPTER 3. ORGANIZATION.....	5
3.1. MEMBERSHIP.....	5
3.2. BOARD.....	5
3.3. PRINCIPAL OFFICE	6
3.4. MEETINGS	6
3.5. QUORUM.....	6
3.6. POWERS AND LIMITATIONS.....	6
3.7. AGENDAS-SECRETARY DUTIES.....	6
3.8. RULES.....	7
3.9. TREASURER	7
3.10. LEGAL COUNSEL	7
3.11. BOND	7
3.12. STATUS OF OFFICERS AND EMPLOYEES	8

3.13.	POLITICAL REFORM ACT	8
CHAPTER 4.	BASIC SERVICES.....	8
4.1.	TRAINING CENTER – OPERATIONS.....	8
4.2.	MAINTENANCE OF EQUIPMENT	10
4.3.	SERVICES TO AND REIMBURSEMENT FROM SUBSCRIBER AGENCIES.....	10
CHAPTER 5.	FUNDING AND ADMINISTRATION.....	10
5.1	FUNDING.....	10
5.2	ADMINISTRATIVE SERVICES	11
5.3	EMERGENCY REPAIRS	12
5.4	CAPITAL IMPROVEMENTS-FUNDING.....	12
CHAPTER 6.	BUDGETARY PROVISIONS	12
6.1	ANNUAL BUDGET	12
6.2	SPECIAL BUDGETARY CONSIDERATION	12
6.3	DISBURSEMENTS.....	13
6.4	ACCOUNTS.....	13
6.5	EXPENDITURES WITHIN APPROVED ANNUAL BUDGET	13
CHAPTER 7.	LIABILITY/INSURANCE.....	13
7.1	LIABILITY.....	13
7.2	INDEMNIFICATION/HOLD HARMLESS/INSURANCE.....	13
7.3	WAIVER.....	15
7.4	CLAIMS	15
CHAPTER 8.	ADMISSION OR WITHDRAWAL OF MEMBERS.....	16
8.1	NEW MEMBERS.....	16

8.2	WITHDRAWAL.....	16
8.3	BREACH	16
8.4	PENALTIES	17
CHAPTER 9. TERMINATION AND DISPOSITION OF ASSETS.....		17
9.1	TERMINATION.....	17
9.2	DISTRIBUTION OF PROPERTY.....	17
CHAPTER 10. MISCELLANEOUS.....		19
10.1	AMENDMENTS	19
10.2	NOTICE.....	19
10.3	PARTIAL INVALIDITY	20
10.4	GOVERNING LAW.....	20
10.5	INTEGRATION	20
10.6	RECORDATION.....	20

**AMENDED AND RESTATED
NORTH NET JOINT POWERS TRAINING
AGREEMENT**

This Amended and Restated Joint Powers Agreement (“Agreement”), dated for purpose of identification this ____ day of November 1, 2012 (the “Effective Date”) is made by and between the following public entities, (collectively, the “Parties”):

- A. City of Anaheim (“Anaheim”)
- B. City of Garden Grove (“Garden Grove”)
- C. City of Orange (“Orange”)

RECITALS

A. The Parties to this Agreement each provide fire protection, fire prevention, rescue, emergency medical and related administrative services within their respective boundaries.

B. The Parties have determined that joint use of a consolidated Training Center and record keeping system reduces the administrative costs that would otherwise be incurred by each Party in providing fire suppression, emergency medical assistance, rescue service, and related services.

C. The Parties have determined that the costs associated with maintaining the staff and equipment necessary to operate a consolidated Training Center should be funded by the Parties through a formal Joint Powers Agreement with costs apportioned as outlined by this Agreement..

D. The Parties have determined that joint use of a consolidated Training Center is also intended to foster cooperation among the Parties in the form of other separate written agreements.

E. The Parties each have the power and authority to perform and contract with one another pursuant to the Joint Exercise of Powers Act (Section 6500 et. seq. of the Government Code) for the performance of the duties and functions that form the basis of this Agreement.

F. The Parties have the power to contract with other agencies for training services, equipment and related items.

G. The Parties entered in the initial Joint Powers Agreement on October 5, 1976 (“1976 Agreement”). There is an amendment to the 1976 Agreement dated February 8, 1977, an addendum entered into in 1979, an amendment dated February 23, 1988, and an amendment dated in 1994 (the “Amendments”). The Parties intend that in entering into this Agreement that

this Agreement shall replace in their entirety the 1976 Agreement and all amendments and/or addendums to the 1976 Agreement.

AGREEMENT

In consideration of the foregoing recitals and the mutual covenants contained in this Agreement, it is agreed between and among each of the parties hereto as follows:

CHAPTER 1. DEFINITIONS

1.1. "Administrator" shall mean the Training Center Manager.

1.2. "Authority" shall mean the Joint Powers Authority known as the North Net Training Authority, created by this Agreement pursuant to the Joint Exercise of Powers Act (Government Code sections 6500 et seq.).

1.3. "Board" is the governing body of the Authority.

1.4. "Board Director" shall mean the voting representative or alternate appointed by the governing body of each Member agency to represent said agency on the Board.

1.5. "Capital Improvement Project" shall mean the acquisition of any piece of Training Equipment or the funding of any Training Center related project that requires an expenditure of \$30,000.00 or more.

1.6. "Capital Outlay" shall mean the acquisition of any piece of Training Equipment or the funding of any Training Center related project that requires an expenditure of \$500.00 or more but less than \$30,000.00.

1.7. "Fiscal Year" shall mean the twelve month period commencing July 1st and concluding June 30th.

1.8. "Member" shall mean any public entity that is a party to this Agreement upon the Effective Date or becomes a party to this Agreement pursuant to the provisions of Section 8.1, and has not withdrawn from such membership or been terminated from such membership pursuant to Sections 8.2 or 8.3.

1.9. "Property" shall mean the land described in the legal description and depicted in the map attached hereto as Exhibit "A", commonly referred to as 2400 E. Orangewood Avenue, Anaheim, CA and the Training Center, as defined herein.

1.10. "Subscriber Agency" means each of the public agencies that are not Members that wish to contract with the Authority to receive training services, and contribute to the cost of

operating and administrating this Authority by executing and administering a subscriber agreement in a form approved by the Board.

1.11. "Training Center" shall mean that structure or physical facility that houses Training Center Equipment and/or Training Center Staff and any other structures or fixtures, which are located upon the Property.

1.12. "Training Center Equipment" shall mean all equipment utilized for the fire or rescue-related emergency Training Center or other facilities acquired for use by the Authority which are not included within the definition of Training Center.

1.13. "Training Center Staff" or "Staff" shall mean all personnel of the City of Anaheim performing services related to the operations and maintenance of the Training Center, or such agency or individual as may be appointed by the Board to perform these functions.

CHAPTER 2. PURPOSE AND POWERS

2.1. AUTHORITY CREATED

The Authority is formed pursuant to the provision of Article 1, Chapter 5, Division 7 of Title I of the Government Code of the State of California (The Joint Exercise of Powers Act). The Authority shall be considered a public entity separate and apart from the Members. Within thirty (30) days after the Effective Date and after any amendment, the Authority shall cause a notice of this Agreement or amendment to be prepared and filed with the office of the California Secretary of State containing the information required by Government Code 6503.5.

2.2. COMMON POWERS

Each Party has the common power to, inter alia:

- a. Provide fire protection, fire suppression, fire prevention, emergency medical, rescue and related services;
- b. Maintain an effective training system to facilitate and support fire protection, fire suppression, rescue and emergency medical services;
- c. Employ personnel to perform emergency based training, Training Center maintenance and the purchase of training center equipment.

2.3. GENERAL PURPOSE

The general purpose of this Agreement is to provide for the operation, upgrade, maintenance and repair of the Training Center and Training Center Equipment. This Agreement

is intended to provide a formal mechanism by which the Authority can fund these activities to provide the highest possible level of emergency training services.

2.4. POWERS

The Authority, through its Board, shall have the power, in its own name, to do any of the following:

- A. To jointly exercise the common powers of the Members;
- B. To make and enter into contracts, including but not limited to, contracting with other public agencies for services, equipment and related items to those agencies;
- C. To retain the services of fire suppression specialists, emergency consultants, and such other persons with specialized knowledge or ability capable of assisting the Members in achieving the purposes of this Agreement;
- D. To acquire, hold or dispose of property by any lawful means, including, without limitation, by gift, purchase or sale;
- E. To incur debts, liabilities or obligations, subject to the limitations specified in this Agreement and, to the extent permitted by law, borrow funds on temporary basis to meet operational expenses until expected revenue are available;
- F. To the extent permitted by law, to enter into equipment lease agreements or lease-purchase agreements or other financial arrangements extending beyond the current budgetary cycle, necessary or convenient to the operation of the Authority (hereinafter collectively "lease") so long as the Agreement contains substantially the following provisions:

The Authority receives its funds on an annual budgetary cycle from its individual Members. The Authority agrees to use its best efforts to obtain authorization and appropriation of funds from its individual Members to pay lease payments due under this Agreement, including, without limitation, the inclusion in its budget request for each fiscal year during the term of this Agreement a request for adequate funds to meet in full its obligation hereunder. The Board may terminate this Agreement in the event funds are not appropriated or appropriations are withdrawn or withheld upon thirty (30) days written notice. Termination under this provision shall not constitute a default or breach. The Authority shall not be obligated to pay any additional lease payments but shall, after written notice from Lessor, deliver the Training Center Equipment to Lessor or its

assignee. Lessor acknowledges that the individual Members shall not be liable for the debts of the Authority.

- G. To enter into leases, agreements and similar transactions that require the Authority to indemnify the person with whom the Board is contracting, so long as the exposure to liability under such indemnification is approved by the Risk Manager of Anaheim and by Legal Counsel of the Authority and so long as the maximum exposure to liability under such transaction does not exceed One Million Dollars (\$1,000,000);
- H. To receive gifts, contributions, grants, and donations of property, funds, services and other forms of assistance from any person, firm, entity, corporation or public agency;
- I. To sue and be sued in its own name;
- J. To apply for any grant or grants offered in conjunction with any Federal, State or local program that is in any way related to the purpose of this Agreement;
- K. To adopt rules, regulations, policies, by-laws and procedures governing the operation of the Authority; and
- L. To exercise any other power in the manner and according to the methods provided by applicable laws, rules or regulations, subject only to the restrictions on the manner of exercising such powers that may be applicable to the Members.

CHAPTER 3. ORGANIZATION

3.1. MEMBERSHIP

The Members of this Authority shall be the public entities which executed this Agreement or a subsequent amendment and have not withdrawn from, or had membership in the Authority terminated, as provided in Sections 8.2 and 8.3 hereof.

3.2. BOARD

- A. The Board shall consist of one (1) voting director and one (1) alternate appointed by the governing body of each Member, which director and alternate shall be selected from the legislative body of each Member.
- B. Each Board Director, which is defined to include the alternate, shall hold office from the first meeting of the Board after appointment and shall serve at the pleasure of the appointing legislative body.

- C. A Board Director shall not receive compensation, but may be reimbursed by the Authority for expenses reasonably incurred while performing duties required by this Agreement and as further specified and limited by resolution of the Board.
- D. Annually, at its first meeting of each new fiscal year, the Board shall select a chairperson and vice chairperson from its members and shall appoint a secretary who may, but need not, be a member of the Board. The chairperson, vice chairperson and secretary shall hold office for one year or until such time as a successor is appointed.

3.3. PRINCIPAL OFFICE

The principal office of the Authority shall be 2400 E. Orangewood Avenue, Anaheim, CA. The Board has the full power and authority to change the principal office from one location to another as long as same is within the Authority's jurisdiction.

3.4. MEETINGS

The Board shall meet at the principal office of the Authority, or at such other place as may be designated by the Board. The time and place of regular meetings of the Board shall be determined by resolution. Regular, adjourned and special meetings of the Board shall be called, noticed and conducted in accordance with the Ralph M. Brown Act or other relevant open meeting law. Each Member shall only be entitled to have one Board Director in attendance to establish a quorum or to vote upon matters coming before the Board.

3.5. QUORUM

Attendance by a majority of the Board Directors at a meeting shall constitute a quorum for the purpose of transacting business relating to the Authority.

3.6. POWERS AND LIMITATIONS

All of the powers of the Authority are reserved to it and may be exercised by the Board, unless otherwise limited by law. Each Board Director shall be entitled to one vote and, except as expressly provided in this Agreement, including Sections 9.2 and 10.1, the affirmative vote of the majority of those present and qualified shall effect adoption of any motion, resolution, order or action the Board deems appropriate.

3.7. AGENDAS-SECRETARY DUTIES

The secretary of the Authority shall provide notice of, prepare and post agendas for, and keep minutes of, each regular, adjourned and special meeting of the Board and other records, as necessary, of the Board. The secretary shall send a copy of the minutes to each Board member

and otherwise perform the duties necessary to ensure compliance with provisions of law including, without limitations, any applicable "open meeting law" such as the Ralph M Brown Act.

3.8. RULES

The Board may adopt rules and regulations for the conduct of its affairs that are not in conflict with this Agreement.

3.9. TREASURER

The Treasurer of the City of Anaheim shall hold the office of treasurer and auditor, in accordance with Government Code Section 6505.6, and shall perform the duties as authorized in Section 6505 et seq. of the Government Code. The treasurer shall cause an independent audit to be made by a Certified Public Accountant in compliance with Section 6505 of the Government Code. The Certified Public Accountant shall be annually appointed by the Board. The treasurer shall keep all revenues of the Authority in a separate account, and, if available, an interest bearing account, and otherwise perform the duties and responsibilities of that office as specified in Sections 6505 et seq. of Government Code. Any surplus funds not immediately needed may be invested in accordance with the investment policy annually adopted by the Board, as required by Government Code Section 53646, and consistent with Government Code Sections 53601, 53635, 16429.1 and 53684, as may be amended.

3.10. LEGAL COUNSEL

The Board shall contract with independent legal counsel to serve as general counsel to the Authority to provide routine legal counsel services as may be required from time to time, including, attendance of Board meetings when deemed necessary. In the absence of a contract for independent counsel, the Anaheim City Attorney's Office shall serve as general counsel. Extraordinary legal services (for example prosecuting or defending the Authority, its officers, and agents in a legal action) shall be considered additional expenses and not covered by the administrative fee set forth in Section 5.2 of this Agreement.

3.11. BOND

The treasurer, auditor and such other persons who may have access to, or handle, any revenue of the Authority shall be required to file an official bond in an amount determined by the Board and consistent with the provisions of Section 6505.1 of the Government Code. This bonding requirement shall be satisfied if an existing bond is extended to cover the duties required by this Agreement. The costs of complying with the requirements of this Section shall be considered an administrative expense of the Authority.

3.12. STATUS OF OFFICERS AND EMPLOYEES

In accordance with the Joint Exercise of Powers Act, all of the privileges and immunities from liability, exemptions from laws, ordinances and rules, and all pension, relief, disability, workers compensation and other benefits which apply to the activities of officers, agents, or employees of any of the Member's agency when performing their respective duties or functions for that agency, shall apply to each of them to the same degree and extent while engaged in the performance of any activity, function or duty pursuant to the Agreement.

3.13. POLITICAL REFORM ACT

The Board Directors, and their alternates, shall be considered public officials within the meaning of the Political Reform Act of 1974, as amended, and its regulations, for the purposes of financial disclosure, conflict of interest and other requirements of such Act and regulations and shall file annual statements of economic interest as required, along with any other officers of the Authority who may be required to do so. Other persons working for or on behalf of the Authority may be required to file such statements in accordance with the Authority's conflict of interest code.

CHAPTER 4. BASIC SERVICES

4.1. TRAINING CENTER – OPERATIONS

- A. The Training Center shall be maintained and operated by the Authority, pursuant to this Agreement, for the use and benefit of all Members. The Administrator of the Training Center shall be an at-will employee of Anaheim so long as Anaheim operates and administers the Training Center; provided that any appointment of the Administrator and any compensation to be paid to the Administrator from the Authority's budget are subject to final approval of the Board. General Counsel shall be responsible for placing the annual performance evaluation of the Administrator on the Board's agenda for closed session at the Board's first meeting in each calendar year, although the Board may at any other time place the Administrator's performance evaluation on the agenda.

- B. Unless otherwise provided for by the Board, Anaheim shall, through use of Anaheim employees, fill all positions and provide all services required to operate, maintain and administer the Training Center and shall be responsible for the day-to-day administration and operation of the Training Center. The Authority shall pay the actual costs of such operation and administration, plus an administrative overhead fee as provided herein. The costs of such operation and administration, including administrative overhead, shall be borne by each Member according to its Fair Share Percentage as determined pursuant to Chapter 5 of this Agreement.

- C. The Board is empowered to develop and establish the budget, staffing and service levels for the Training Center operation and maintenance. No Member may create any staff position or be entitled to receive any reimbursement for any staff time or costs related to the operation and maintenance of the Training Center unless the position and/or reimbursement falls within the budget approved by the Board or otherwise has received the prior approval of the Board.
- D. Each Member shall provide training officers from each Member's Fire Department, whose compensation and cost reimbursements, if any, shall be the sole obligation of the employing Member. Except as is specifically provided herein, employees working in or otherwise utilizing the Training Center shall be governed by the same personnel rules, regulations, bargaining agreements, terms and conditions of employment, administrative regulations and other related matters as apply to them with respect to their employment with a Member or a Subscriber.
- E. In performing the day-to-day administration and operation of the Training Center, Anaheim will determine the procedures and standards of selection for employment and promotion, direct its employees, take disciplinary action, relieve its employees from duty, and determine the methods, means and personnel by which it will meet the service levels established by the Authority; provided that Anaheim shall solicit and consider input from the Members with respect to these decisions, although final authority rests with Anaheim, except to the extent specifically provided in this Agreement.
- F. Anaheim may elect to discontinue providing services for the operations and administration of the Training Center by giving notice of such election in writing to the Board a minimum of six (6) months prior to such discontinuance. In the event of such discontinuance by Anaheim, the Board may appoint another Member to perform such duties or contract with another provider of such services. Anaheim's election to discontinue providing the services set forth herein does not constitute withdrawal from the Authority.
- G. The Board may elect to terminate Anaheim's services as operator and administrator of the Training Center by giving notice of such election in writing to Anaheim a minimum of six (6) months prior to the date of such termination. In the event of such termination, the Board may appoint another Member as the administrator or contract with another provider of such services. Such termination of Anaheim's services does not in and of itself constitute either withdrawal or termination of Anaheim from the Authority or any other Member of the Authority.

4.2. MAINTENANCE OF EQUIPMENT

- A. The Authority through the Board shall maintain and repair the Training Center.
- B. The Authority through the Board shall purchase new or used Training Equipment as necessary to replace existing equipment or upon a determination by the Board that additional Training Equipment will facilitate emergency training.

4.3. SERVICES TO AND REIMBURSEMENT FROM SUBSCRIBER AGENCIES

- A. Public agencies in Orange County may receive training services, (hereinafter "Training Services") from the Authority by executing a "Subscription Agreement" in the form approved by the Board and by paying the annual fee and/or other costs, as determined by the Board. Such Subscriber Agencies must sign the Subscription Agreement prior to receiving services or sharing equipment or other items. Thereafter, a Subscriber Agency must pay its annual fee by July 30 of the fiscal year for which subscription is desired. Subscription Agreements shall renew automatically from year to year unless otherwise specified in the Subscription Agreement. Subscriber Agencies which subscribe for an entire fiscal year may, at their option, elect to pay their fee in four equal installments due and owing on or before July 30, October 1, January 1 and April 1. Subscriber Agencies which choose to become Subscriber Agencies after the commencement of the fiscal year must sign the Subscription Agreement and the full amount of the annual fee prior to seeking services. Fees for subsequent fiscal years may be revised by the Board.
- B. The Board may, without cause or reason, terminate any or all Subscription Agreements by giving the affected Subscriber Agency ninety (90) days prior written notice. If the termination occurs prior to the end of fiscal year, the terminated Subscriber Agency's annual fee shall be prorated and refunded if such a refund is owed.
- C. Revenue from Subscription Agencies shall be allocated as directed by the Board.

CHAPTER 5. FUNDING AND ADMINISTRATION

5.1 FUNDING

- A. Each Member shall pay a portion of the costs incurred by the Authority in administering this Agreement in relationship to that Member's "Fair Share Percentage", which shall be determined every calendar year beginning on January

1, 2014. Each Member's Fair Share Percentage shall be calculated by dividing the total number of sworn firefighter positions of all Members divided by the number of sworn firefighter positions of each Member as same existed on January 1 of each calendar year.

- B. Each Member's Fair Share Contribution shall be multiplied by the adopted budget amount for the upcoming Fiscal Year to determine the Fair Share Contribution amount. Anaheim shall bill each Member on a quarterly basis beginning July 1 of each fiscal year and payment shall be due within 30 days after receipt of each invoice.
- C. The Administrator, or his or her designee, shall invoice each Member that Member's Fair Share Percentage of the budget in accordance with the payment schedule set in Section 5.1B above or as otherwise adopted by Resolution of the Board. For the fiscal year 2013-2014, each Member's Fair Share Percentage shall be as follows:

Anaheim	49.6%
Garden Grove	22.0%
Orange	28.4%

- D. Final year-end adjustments of a Member's costs representing the difference between estimated annual expenditures and actual annual expenditures shall be calculated no later than the last day of the first quarter following the fiscal year in which such costs were incurred.

5.2 ADMINISTRATIVE SERVICES

As compensation for providing services under this Agreement, Members shall pay Anaheim an administrative fee of twelve percent (12%) of their Fair Share Percentage. Anaheim shall perform administrative services which include, but are not limited to general accounting of funds received and disbursed, preparation of invoices to Members, preparation of documents relative to any grant program, routine services from various departments within Anaheim as may be necessary from time to time, including but not limited to Human Resources and Labor Management Departments, Finance Department, Purchasing, Legal (if the Board has not contracted for General Counsel services), and such other functions as may be required by this Agreement or the provisions of any law including, without limitation, the Joint Exercise of Powers Act.

///

5.3 EMERGENCY REPAIRS

In the event the Training Center suffers damage which requires emergency repairs, the Administrator is authorized without prior Board approval to expend funds to have the necessary emergency repairs made so that services are resumed as soon as possible, but in no event shall such expenditures exceed \$20,000 without prior Board approval. The Board shall convene as soon as reasonably practical to ratify any such expenditure and to approve any expenditure above that amount. The cost of such repairs shall be borne by each Member in accordance with its Fair Share Percentage.

5.4 CAPITAL IMPROVEMENTS-FUNDING

In the event the Training Center and/or Training Center Equipment is in need of repair or improvement, the Administrator shall solicit bids for such work from at least three (3) responsible firms, whenever practicable, in accordance with applicable state law. The Administrator shall then present said bids to the Board to award the contract to the lowest responsible bidder and to direct the accepted responsible bidder to make the repairs or improvements.

CHAPTER 6. BUDGETARY PROVISIONS

6.1 ANNUAL BUDGET

The Board shall adopt an annual budget pursuant to this Agreement and procedures adopted by the Board. A preliminary draft of the budget shall be presented to the Members by the last business day in March of each year for their review. Said budget shall be submitted to the Board for consideration and adoption.

6.2 SPECIAL BUDGETARY CONSIDERATION

- A. The budget adopted by the Board shall include but not be limited to:
1. A Training Center operations and Capital Outlay component, which shall provide for the personnel, maintenance and operations support, and capital acquisitions necessary for the joint operation of the Training Center as described in Sections 4.1 and 4.2.
 2. A Capital Improvement Project component, which shall provide for the acquisition or replacement of major Training Equipment items or fund major Training Center related projects.
 3. A Training Equipment capital reserve component, which shall be deposited into a common designated reserve account designed to defray

future replacement costs of major components of Training Center Equipment.

6.3 DISBURSEMENTS

The treasurer shall draw checks in accordance with policies and/or procedures established by the Member which employs the treasurer and as otherwise established by Resolution of the Board. A summation of such payments shall be presented to the Board as part of the treasurer's quarterly reports.

6.4 ACCOUNTS

All funds shall be placed in accounts and the receipt, transfer or disbursement of funds during the term of this Agreement shall be accounted for in accordance with generally accepted accounting principles applicable to government entities. There shall be strict accountability for all funds. All interest earnings, revenues and expenditures shall be reported quarterly to the Board.

6.5 EXPENDITURES WITHIN APPROVED ANNUAL BUDGET

All expenditures shall be within the limitations of the approved annual budget or as such budget is amended by the Board.

CHAPTER 7. LIABILITY/INSURANCE

7.1 LIABILITY

The debts, liabilities and obligations of the Authority shall not be considered the debts, liabilities or obligations of any Member, except as otherwise provided in this Chapter.

7.2 INDEMNIFICATION/HOLD HARMLESS/INSURANCE

- A. Except as specifically provided in this Subsection, the Authority shall defend, indemnify and hold harmless each Member, its officers, agents, employees, representatives and volunteers from and against any loss, injury, damage, claim, lawsuit, liability, expense, or damages of any kind or nature arising out of or in connection with the performance of services pursuant to this Agreement. The Authority shall finance its obligation pursuant to this Subsection by establishing a liability reserve fund, by purchasing commercial insurance, and/or by joining a joint powers insurance authority (JPIA). In the event that the Authority's financial obligations to indemnify, defend and hold harmless, pursuant to this Subsection, exceed the liability reserve fund and the proceeds from any applicable insurance or JPIA coverage maintained by the Authority (hereinafter "Unfunded

Liability”), the Members may agree to indemnify and hold harmless the Authority for such deficiency in accordance with the following: In the event an Unfunded Liability arises, the contribution of each Member shall be in an amount equal to the total Unfunded Liability multiplied by that Member’s Fair Share Percentage for the year in which the Unfunded Liability is to be paid. A Member shall not be liable for such deficiency unless it agrees to be bound by this provision. Other Members may, at their sole and complete discretion, agree to pick up the Fair Share Percentage of a Member who determines not to be liable for such deficiency, but absent such an agreement no Member shall be liable for such deficiency unless all Members unanimously agree to make a contribution as set forth herein.

- B. The Authority, its officers, agents, contractors, employees, representatives, Staff and volunteers, shall not be liable, in any manner, to any Member, or to an officer, official, or employee of any Member, for any loss, injury, damage, claim, lawsuit, liability, expense, or damages which may be incurred by, or brought against a Member which is providing any type of emergency response training undertaken by any Member pursuant to this Agreement, regardless of whether or not such liability may have arisen, in whole or in part, by the negligent acts, conduct, or omissions of one or more of the staff at the Training Center.
- C. Each Member shall assign to the Authority its rights, title, and interest to recover damages from any third party, to the extent that the Authority has met its obligations to such Member pursuant to this Section.
- D. Should any Member utilize the Training Center for its own individual purposes, outside the scope of the Authority, such Member shall indemnify, defend, and hold harmless the Authority and other Members from all claims, demands, actions, liability, or damages of any kind or nature, arising out of such use.
- E. Each Member shall defend, indemnify and hold harmless the Authority, its officers, agents, and representatives from and against any loss, injury, damage, claim, lawsuit, liability, expense, or damages of any kind or nature arising out of or in connection with any conduct of its employees while utilizing the Training Center to the extent that any such loss, injury, damage, claim, lawsuit, liability, expense or damages is caused by the negligence or willful misconduct of the Member's employees.
- F. Subject to the limitation set forth in Section 7.2.B, the Authority shall purchase insurance and/or Anaheim may provide coverage through its existing JPIA, for the Property and Training Center which covers any damages or loss to the

Property and Training Center as well as any loss, injury, damage, claim, lawsuit, liability, expense, or damages alleging a dangerous condition of the Property and Training Center. The cost of such insurance shall be an expense of the Authority. A certificate of insurance evidencing such coverage or such other proof as may be reasonable acceptable to the Authority's General Counsel, shall be provided to the Clerk of the Board by June 30 of each year.

- G. No provisions of this Agreement shall be construed as to require any party to obtain or maintain liability or other insurance coverage not otherwise required by law.

7.3 WAIVER

Except as provided in Section 7.2 each Member waives any claim against, or right to sue, the Authority, or its respective officers, employees, staff, agents, contractors, representatives or volunteers for any loss, damage or injury that arises out of, or is any way related to, such Member providing any type of emergency training service. This waiver extends to liability for bodily injury or property damage that may be sustained by any Member or its officers, employees, contractors, or agents, and which was proximately caused, in whole or in part, by the negligent act, conduct, or omission of the Authority, its respective officers, employees, staff, agents, contractors, representatives or volunteers. However, this waiver does not extend to bodily injury or property damage caused by an unlawful, fraudulent or willful act or omission of the Authority or its officers or employees.

7.4 CLAIMS

- A. To the extent authorized by Government Code section 935 and any other laws, any and all claims against the Authority for money or damages, including any claims otherwise excepted from the claims filing requirement by Government Code Section 905, shall be subject to and presented within the time and manner prescribed in Part 3 of Division 3.6 of Title 1 of the Government Code. A signed written claim shall be presented to the Administrator by mail or personal delivery by the claimant or a person authorized by claimant to act on his or her behalf. The claim shall conform to the requirements of Government Code section 910.
- B. Unless otherwise designated by the Board, the Fire Chief of Each Member, or their designees shall comprise a Claims Committee. The Claims Committee shall, in consultation with legal counsel for the Authority, review all claims and make recommendations to the Board concerning their disposition.

CHAPTER 8. ADMISSION OR WITHDRAWAL OF MEMBERS

8.1 NEW MEMBERS

Public entities may become Members in the Authority upon such terms and conditions as may be specified by the Board. New Members shall pay a surcharge to be determined by the Board at the time of application.

8.2 WITHDRAWAL

A Member may withdraw from the Authority at the end of any fiscal year and terminate its rights and obligations pursuant to this Agreement by giving written notice of its intention to terminate to the secretary of the Board no later than December 31 prior to the fiscal year in which the Member intends to withdraw. The written notice shall be accompanied by a resolution or minute order of the legislative body of the Member specifying its intent to withdraw from the Authority. Withdrawal of a Member shall not relieve the withdrawing Member of its proportionate share of any debts or other liabilities incurred by the Authority prior to the effective date of such withdrawal, or any liabilities imposed upon or incurred by the Member pursuant to this Agreement prior to the effective date of such withdrawal. Any such withdrawal shall result in the forfeiture of all rights and claims of the withdrawing Member to any repayment of contributions or advances or other distribution of funds or property after withdrawal, including distribution in the event of termination of the Authority. Notwithstanding the foregoing, the forfeiture provision set forth in this Section shall not apply to the distribution of proceeds from the sale of the Property pursuant to Section 9.2C.

8.3 BREACH

The Board shall have the authority to terminate the membership of any Member in the event the Member materially breaches its duties pursuant to this Agreement. For the purposes of this Section, the term "material breach" shall include, without limitation, a failure to fund the budget in accordance with Chapter 6, the failure to make any contributions or pay any assessment when due, and the failure to defend or indemnify other Members as required in Chapter 7. The Board shall give the Member notice of the breach and the right to cure the breach within thirty (30) days of the notice. In the event the Member fails to cure breach within thirty (30) days when it is reasonably practical to do so, the Board shall have the right to immediately terminate the Membership. Termination of a Member for breach shall not relieve the terminated Member of its proportionate share of any debts or other liabilities incurred by the Authority or any liabilities imposed upon or incurred by the Member pursuant to this Agreement prior to the effective date of such termination. However, such termination shall result in the forfeiture of all rights and claims of the terminated Member to any repayment of contributions or advances or other distribution of funds or property after termination, including distributions in the event of termination of the Authority. Notwithstanding the foregoing, the forfeiture provision set forth in

this Section shall not apply to the distribution of proceeds from the sale of the Property pursuant to Section 9.2C.

8.4 PENALTIES

Notwithstanding Section 8.3, and without waiving any other remedies available by law or through this Agreement, the Board shall adopt policies and procedures imposing penalties and/or interest for the failure of any Member to pay any amounts due under this Agreement.

CHAPTER 9. TERMINATION AND DISPOSITION OF ASSETS

9.1 TERMINATION

The Authority shall continue to exercise the joint power specified in this Agreement until termination of this Agreement. This Agreement shall terminate if the majority of Members give the Authority written notice of their intention to withdraw as specified in Section 8.2 or if the Members mutually agree to terminate this Agreement. No termination of the Authority shall occur until all of its debts, liabilities, and obligations and other payment is made in accordance with the resolution of the Authority. No termination of the Authority shall occur which is contrary to the language, spirit or intent of any contract or agreement entered into by the Authority with the United States., the State of California, or any department, administration or agency of either.

9.2 DISTRIBUTION OF PROPERTY

- A. Upon termination of this Agreement, all Training Center Equipment shall be assigned an "operating life" by the Board. The Board shall also designate equipment which is critical or non-critical to the operation of the facilities. All Training Center Equipment either functioning within its operating life or beyond, shall be appraised by an independent appraiser retained by the Board and equipment designated as critical may be purchased first by Anaheim and then by any Member who is interested and who, having submitted a sealed bid, is the highest bidder. Such sealed bid shall not be lower than the appraised value. Non-critical equipment may be purchased by any Member based on procedures adopted by the Board. Training Center Equipment not purchased by a Member shall be sold to the public at appraised value or at public auction. The proceeds of all sales shall be paid to each Member pursuant to their Fair Share Percentage in the year the Training Center Equipment was purchased. Only those Members who paid a Fair Share Percentage when the Training Center Equipment was purchased or upon becoming a Member, shall be entitled to share in the proceeds of the sale.

- B. Upon termination of this Agreement, all Training Center Equipment solely purchased and maintained at the Training Center by a Member(s) shall be returned to the Member or Members holding title to the equipment.
- C. Anaheim is shown as the owner of record of the Property. Pursuant to Section 7 of the 1976 Agreement, the cities of Garden Grove and Orange paid Anaheim a pro rata share of the value of the Property based upon a appraisal of the Property performed in 1976, which valued the property at \$52,250 per acre. In the sole event of termination of this Agreement pursuant to Section 9.1, the Property shall be sold by Anaheim in accordance with Anaheim's then existing policies for the sale of its real property; provided that the Property shall be sold in a manner to achieve a sales price of at least fair market value which shall determined by a MAI appraiser selected by the Board. The net proceeds of the sale shall, within 35 days of receipt thereof, be distributed in relationship to the pro rata payments made by the cities of Garden Grove and Orange to Anaheim in or about 1976 for site acquisition costs, which distributions of proceeds shall be as follows: Anaheim – 46.66%; Garden Grove – 26.67%; and Orange—26.67%. In the event there is an escrow associated with the sale, the escrow shall include instructions directing that the net proceeds of the sale be distributed in accordance with this Section 9.2C. Notwithstanding the foregoing, Anaheim shall have the right to purchase Garden Grove's and Orange's interest in the Property in lieu of any sale thereof. If Anaheim exercises its right of first refusal and retains the Property, the Board shall direct an appraisal to be done by an MAI appraiser selected by the Board. Anaheim shall pay 26.67% of the appraised value to Garden Grove and 26.67% of the appraised value to Orange. This Section 9.2C shall apply irrespective of whether or not Anaheim, Garden Grove or Orange is a Member at the time this Agreement is terminated and this Section 9.2C is implemented.
- D. Upon termination of the Authority, any remaining funds, property or other assets of the Authority, following discharge of all debts, liabilities and obligations of the Authority, shall be distributed to the Members for any un-reimbursed advances, contributions, or in-lieu contributions made or given to the Authority by such Members, and distributed to all Members on the same basis as the annual distributions to Members under this Agreement.

///

///

///

CHAPTER 10. MISCELLANEOUS

10.1 AMENDMENTS

Except for sections 9.2 and 10.1 herein, this Agreement may be amended with the approval of a majority of the Members. Amendments to Sections 9.2 and 10.1 shall require the unanimous approval of Members Anaheim, Garden Grove and Orange.

10.2 NOTICE

Any notice or instrument required to be given or delivered pursuant to this Agreement shall be deemed given when personally delivered to the Member of the Authority, or deposited in the United States mail, first class postage pre-paid, and properly addressed to the principal office of the Member or the Authority, which may be changed upon written notice as provided herein to all other Members. The principal office for each Member, which may be changed upon 30 days written notice to all Members, are as follows:

City of Anaheim:

Anaheim West Tower
201 South Anaheim Boulevard, Suite 300
Anaheim, CA 92805
Attn: Randy Bruegman, Fire Chief

With a copy to:

City of Anaheim
200 South Anaheim Boulevard
Anaheim, CA 92805
Attn: City Attorney

City of Garden Grove:

11301 Acacia Parkway
Garden Gove, CA 92840
Attn: David Barlag, Fire Chief

With a copy to:

City of Garden Grove
11222 Acacia Parkway
Garden Grove, CA 92840
Attn: City Attorney

City of Orange:

Orange Fire Department Headquarters
176 South Grand Street
Orange, CA 92866
Attn: Pat Dibb, Fire Chief

With a copy to:
City of Orange
300 East Chapman Avenue
Orange, CA 92866
Attn: City Attorney

10.3 PARTIAL INVALIDITY

If one or more of the Chapters, Sections, paragraphs or provisions of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, each and all of the remaining Chapters, Sections, paragraphs or provisions shall not be affected and shall continue to be valid and enforceable to the fullest extent permitted by law, provided, the remaining Chapters, Sections, paragraphs or provisions can be construed in substance to constitute the Agreement the Parties intended in the first instance.

10.4 GOVERNING LAW

This Agreement shall be construed in accordance with and governed by the laws of the State of California and the Members agree to submit to the jurisdiction of California courts.

10.5 INTEGRATION

This Agreement constitutes the entire agreement of the Members. No other agreement, oral or written, pertaining to the work to be performed under this Agreement shall be of any force or effect unless it is in writing and signed by the all Members. This Agreement supersedes, in their entirety the original 1976 Agreement establishing the Authority and any amendments entered into up to the effective date of this Agreement.

10.6 RECORDATION

Upon this Agreement being approved and fully executed, the Clerk of the Board shall cause this Agreement to be recorded and provide the Board with evidence of such recordation.

[Signatures on next page]

IN WITNESS WHEREOF, the Members have caused this Agreement to be executed by their duly authorized officers, and to have their official seals affixed hereto as of the date first stated above.

Dated: _____, 2012

CITY OF ANAHEIM

By _____
Tom Tait, Mayor

ATTEST:

APPROVED AS TO FORM:

By: _____
Linda N. Andal, CMC
City Clerk

By: _____
Cristina Talley
City Attorney

Dated: _____, 2012

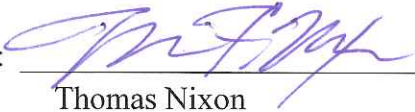
CITY OF GARDEN GROVE

By _____
William J. Dalton, Mayor

ATTEST:

APPROVED AS TO FORM:

By: _____
Kathleen Bailor
City Clerk

By:  _____
Thomas Nixon
City Attorney

Dated: _____, 2012

CITY OF ORANGE

By _____
Carolyn V. Cavecche, Mayor

ATTEST:

APPROVED AS TO FORM:

By: _____
Mary E. Murphy
City Clerk

By: _____
Wayne Winthers
City Attorney