

**THIRD AMENDMENT TO FIVE CITIES FIRE AUTHORITY
JOINT EXERCISE OF POWERS AGREEMENT**

This Third Amendment to the Five Cities Fire Authority (“FCFA”) Joint Exercise of Powers Agreement, dated June 7, 2010 (“JPA”) (“Third Amendment”), is made and entered into as of July 1, 2020, by and between the cities of Arroyo Grande and Grover Beach, and the Oceano Community Services District (“Oceano”), which are hereinafter referred to as “Party” and “Parties.”

WHEREAS, on June 7, 2010, the Parties entered into a JPA pursuant to Section 6500 et seq. of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, for the purpose of allowing the Parties to share a combined fire department in order to provide efficient and economical fire protection services; and

WHEREAS, in or about May of 2018, the Parties executed a Memorandum of Agreement Amending the FCFA JPA (“First Amendment”) in order to provide an opportunity for the Parties to meet and confer for the purpose of considering amendments to the JPA including, but not limited to, modifications to the funding formula contained in Exhibit B of the JPA (“Funding Formula”), the provisions regarding member withdrawal, and future staffing levels beyond Fiscal Year 2018/19; and

WHEREAS, the First Amendment required the Parties to agree upon amendments to the JPA by April 1, 2019 or the JPA would terminate as of December 31, 2019; and

WHEREAS, in March of 2019, the Parties executed an extension of the First Amendment, which extended the time for the Parties to mutually agree upon JPA Amendments to October 1, 2019; and

WHEREAS, the Parties executed the Second Amendment to the JPA as of July 1, 2019 which required Oceano to undertake the legally required procedures to place a special tax on the March 2020 ballot in accordance with Government Code Section 61121; and

WHEREAS, Oceano did undertake the legally required procedures to place a special tax on the March 2020 ballot which resulted in ballot Measure A-20 falling short of passage by 10 votes (66.1% compared to the required 66.67%); and

WHEREAS, the possibility of a citizen’s initiative to place a special tax measure on the November 2020 ballot was prevented by the COVID-19 pandemic and related statewide shelter at home order; and

WHEREAS, the economic situation of all Parties has drastically changed due to the COVID-19 pandemic and related statewide shelter at home order; and

WHEREAS, the Parties recognize it is in the economic best interests of all Parties to allow additional time for the community of Oceano to place another special tax measure on the ballot; and

WHEREAS, the parties have met in good faith and now desire to amend the JPA.

NOW THEREFORE, in consideration of the mutual covenants and conditions set forth herein, the Parties agree as follows:

1. **Recitals**. The above recitals are true and correct and incorporated herein.
2. **Fiscal Year 2020/21 and 2021/22**. Each Parties' contributions for funding the Fiscal Year 2020/21 and 2021/22 FCFA Budget shall be:

A. City of Arroyo Grande	\$2,580,955
45.01% _____	
B. City of Grover Beach	\$2,015,115
35.14% _____	
C. Oceano Community Services District	\$1,138,148
19.85% _____	

- D. The Fire Chief will make every effort to maintain a flat budget through the fiscal years that the funding contributions set forth in this Section 2 apply. The Parties acknowledge that use of Fund Balance may be necessary to offset unanticipated or increased costs. In the event of significant emergency costs or purchases necessary during the fiscal years during which this Section 2 applies, the Parties will consider contributing additional funding, subject to FCFA Board budgetary approval. It is acknowledged that any such additional contributions may require the approval of the governing body of one or more Party.

3. **Funding Formula**.

- A. The Funding Formula contained in Attachment 1 to the Second Amendment to the JPA is hereby amended and replaced in its entirety as set forth in Attachment 1 to this Amendment. All references in the JPA to Attachment 1 shall refer to Attachment 1 of the Third Amendment.
- B. The funding contributions specified in Section 2 were determined using a transitional formula that modified component 3 of the Funding Formula related to fire stations to reflect current staffing levels. The funding contributions specified in Section 2 will be used for Fiscal Years 2020/21 and 2021/22 and possibly Fiscal Year 2022/23 as provided in Section 4B.

C. The Funding Formula will be reviewed by the Jurisdiction every three years in the month of January, commencing 2024.

4. **Ballot Measure.**

- A. Oceano agrees to undertake the legally required procedures to place a special tax on the 2022 primary ballot in accordance with Government Code Section 61121 or Elections Code 9300-9323. Oceano will seek a special tax amount sufficient to enable Oceano to be able to fund its share of the Funding Formula taking into account the priorities of the Strategic Plan as determined by the Five Cities Fire Authority Board of Directors.
- B. If the Oceano ballot measure does not pass and Oceano is unable to fund its share of the Funding Formula, by operation of this Third Amendment and subject to the Wind Down Period (identified below), Oceano will automatically and without further action cease to be a member of the JPA on June 30, 2023. The time between when the County Clerk Recorder concludes that the Oceano ballot measure has failed and June 30, 2023 will be known as the “Wind Down Period.” Oceano agrees that should it no longer be a member agency of the FCFA, the cities of Arroyo Grande and Grover Beach may continue to operate under the trademark name of Five Cities Fire Authority with no further rights of Oceano to that name. Should the ballot measure fail, the funding obligations set forth in Section 2 above for the Fiscal Year 2021/2022 FCFA Budget, shall be the same in Fiscal Year 2022/2023.
- C. If the Oceano ballot measure passes, the Funding Formula set forth in Attachment 1 of the Third Amendment shall apply beginning in Fiscal Year 2022/23.


5. **Wind Down Period.**

- A. During the Wind Down Period, the Parties shall establish the distribution of assets currently owned and/or in the possession of the JPA, including but not limited to major pieces of apparatus and capital equipment.
- B. During the Wind Down Period, the Parties will establish the obligations of the Parties to pay future obligations that were incurred by the FCFA prior to June 30, 2022, including, but not limited to the following:
 - a. Lease payments on Engine 2 and 3; however, the Parties mutually agree and understand that as a result of the dissociation and/or withdrawal of Oceano or any other Party, no Party will be obligated for future payment lease obligations for any Engine that does not remain in the custody, control, and possession of that Jurisdiction.
 - b. Withdrawal and/or dissociation of Oceano or any other Party shall not absolve such Party of liabilities arising out of the participation in the JPA incurred in the ordinary course of business. The Parties mutually agree and understand that as a result of the dissociation and/or withdrawal of Oceano or any other Party, all Parties will remain obligated to pay future FCFA employment related obligations incurred prior to June 30, 2023, including but not limited to pension/PERS, accrued fringe benefits etc.
 - c. During the Wind Down period, the FCFA will perform an unfunded actuarial accrued liability analysis to calculate Oceano or any other dissociating and/or withdrawing Parties' share of unfunded PERS liability, which will be due to the remaining JPA Parties or the City of Arroyo Grande should the JPA be dissolved.
 - d. During the Wind Down Period, the Parties will meet and confer in good faith in regard to the distribution of assets and liabilities as follows:
 - a. A determination as to the distribution of equipment and physical assets by October 1, 2022 (effective June 30, 2023).
 - b. An estimate as to the distribution of debt, employment liability, pension/PERS and other post-employment obligations by February 1, 2023 (effective June 30, 2023).
 - c. An estimate as to the distribution of all other assets by March 1, 2023 (effective June 30, 2023).
 - e. The parties mutually agree and understand that any liability related to unresolved claims or litigation existing prior to June 30, 2023 will remain the obligation of all Parties whether remaining members of the FCFA or not.
 - f. Prior to October 1, 2023, the Parties shall complete a post-dissociation reconciliation of all assets and liabilities incurred prior to June 30, 2023. Any party owing funds shall pay such funds to the other immediately upon determination. The parties agree to cooperate in completing this post closing reconciliation.

6. **Effect of Amendment.** All other provisions of the JPA shall remain unchanged and in full force and affect. To the extent there is inconsistency between this Amendment and the JPA, the terms of this Amendment shall control, including but not limited to JPA Sections 6.B, 8.B(3), and 17.
7. **Counterparts.** This Amendment may be executed in any number of counterparts and by the Parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.
8. **Severability.** If any part of this Amendment is found to be in conflict with applicable laws, that part will be inoperative, null and void insofar as it is in conflict with any applicable laws, but the remainder of the Amendment will remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their proper officers hereunto duly authorized.

CITY OF ARROYO GRANDE


Caren Ray Russom, Mayor


ATTEST:


Kelly Wedmore, City Clerk

APPROVED AS TO FORM:


Tim Carmel, City Attorney

CITY OF GROVER BEACH


Jeff Lee, Mayor

ATTEST:


Wendi Sims, City Clerk

APPROVED AS TO FORM:


David Hale, City Attorney

OCEANO COMMUNITY SERVICES DISTRICT


Linda Austin, President

ATTEST:

By:

APPROVED AS TO FORM:


Jeff Minnery, District Counsel

ATTACHMENT 1 FUNDING FORMULA

Should the ballot measure pass, effective July 1, 2022, the Parties shall bear the costs of the Five Cities Fire Authority according to the following formula, to be calculated every three years when the budget is prepared. If the ballot measure fails, the funding will be in accordance with Section 4.B of this Third Amendment.

1. 33.33% of costs shall be assessed among the Parties in proportion to the population of each Jurisdiction as most recently determined by the U.S. Census and any intervening estimates prepared by the California Department of Finance when the Fire Chief prepares each annual budget.
2. 33.33% of costs shall be assessed among the Parties in proportion to the number of annual service calls, calculated on a three-year rolling average in each Jurisdiction as most recently determined when the Fire Chief prepares each annual budget.
3. 33.33% of costs shall be assessed among the Parties in proportion to the number of fire stations and personnel located in each Jurisdiction.