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**FIFTH AMENDED JOINT EXERCISE OF POWERS
AGREEMENT OF THE ORANGE COUNTY-CITY HAZARDOUS
MATERIALS EMERGENCY RESPONSE AUTHORITY**

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This Fifth Amended Joint Exercise of Powers Agreement is made by, and is effective if fully executed by authorized representatives of all of the following public entities:

- (1) City of Huntington Beach
- (2) City of Anaheim

RECITALS

A. The County of Orange has, pursuant to the provisions of Article 3.5, Chapter 6.5 of Division 20 of the Health and Safety Code of the State of California, adopted the Orange County Hazardous Waste Management Plan ("Management Plan") and all cities within the County have approved the Management Plan, either expressly or by operation of law.

B. As one of its objectives, the Management Plan calls for continued prompt and efficient response to Hazardous Materials emergencies and proposes to achieve this objective by continuing to provide emergency response service for spills, illegal dumping and other incidents involving Hazardous Materials and waste, through the County's own forces and/or response teams maintained by other public entities within the County.

C. The Orange County Fire Chiefs Association, in conjunction with the State of California's Hazardous Materials Team Typing, has evaluated the staffing levels, training, and equipment that must be maintained, and the procedures which must be followed, to effectively and properly respond to Hazardous Materials emergencies throughout the County.

D. The signatories to this Agreement currently provide Hazardous Materials Emergency response services throughout the County and desire to continue to provide these services through a joint

powers authority which would partially offset the expenses of Provider Agencies from revenue from agencies, persons and entities receiving service, those responsible for the emergency, and grant programs.

E. The signatories to this Agreement have determined that the provisions of this Agreement are consistent with the Hazardous Waste Control Law, the Orange County Hazardous Waste Management Plan and the Orange County Hazardous Materials Area Plan.

F. The signatories to this Agreement each have the common power to create, train and equip Hazardous Materials response teams as well as the authority to contract with one another for the joint exercise of any common power pursuant to the provisions of Article 1, Chapter 5, Division 7, Title 1 of the Government Code of the State of California.

G. The County of Orange and the Cities of Anaheim, Huntington Beach, Newport Beach, and Santa Ana previously entered into the Joint Powers Agreement Creating the Orange County - City Hazardous Materials Response Authority and the First, Second, Third and Fourth Amendments thereto. Subsequently, the Orange County Fire Authority ("OCFA") was formed and became a Provider Agency in place and instead of the County of Orange, and Newport Beach elected to withdraw as a Provider Agency. The OCFA Board of Directors and the Santa Ana City Council have approved Santa Ana to become a member agency of the OCFA. Santa Ana's membership in OCFA became effective on April 20, 2012. Therefore, the parties intend for Santa Ana to no longer be a signatory to this Joint Powers Authority nor a Provider Agency effective April 20, 2012. The Orange County Fire Authority has given notice of its intention to withdraw as a Provider Agency, effective on July 1, 2013. Therefore the OCFA will no longer be a signatory to this Joint Powers Authority nor a Provider Agency effective July 1, 2013.

H. The Cities of Anaheim and Huntington Beach desire to amend this Joint Powers Agreement to reflect current membership and changes in the operation of the Authority.

1.

DEFINITIONS

For the purpose of this Agreement, the following words or terms shall have the following meanings:

1.1 "Annual Budget" means the budget approved by the Board pursuant to Section 6.1.

1.2 "Authority" means the Orange County-City Hazardous Materials Emergency Response Authority.

1.3 "Board Members" means those persons serving as members of the Board or their designated alternates.

1.4 "Board" means the governing Board of the Authority.

1.5 "County" means the geographic area within the boundaries of the County of Orange, including incorporated and unincorporated territory, but does not mean the "County of Orange" as a political subdivision of the State of California.

1.6 "County of Orange" means the public entity which is a political subdivision of the State of California and is governed by the Board of Supervisors.

1.7 "Emergency Services Contract Agency" means any public agency that contracts with the Authority to pay for Hazardous Materials Emergency response services on an hourly basis as further described in Section 5.3.

1.8 "Fair Share Contribution" means the sum of money to be paid by a Subscriber Agency for services and is calculated by taking the total of the Fair Share Percentages, as defined below, for all Subscriber Agencies, dividing that total by the individual Subscriber Agency's Fair Share

Percentage, and then multiplying the result by the Annual Budget for the prospective fiscal year. Fair Share Percentages means those percentages calculated utilizing population values (provided by the State of California) and the square miles of the respective Subscriber Agency (provided by the County of Orange).

The Fair Share Contribution for all cities excluding Provider Agencies for the Fiscal Year 2013/2014 is estimated to be:

City	Estimated Fair Share Using Sq. Mile + Population
Brea	7%
Costa Mesa	13%
Fountain Valley	7%
Fullerton	17%
Garden Grove	18%
Laguna Beach	5%
Newport Beach	15%
Orange	18%
Total	100.00%

The Fair Share Contributions set forth above are subject to change in the event that fewer cities subscribe than reflected in the calculation.

For succeeding fiscal years, the Administrator Coordinator of the Authority will notify existing and prospective subscribers of their estimated Fair Share Contribution assuming full participation at least ninety (90) days prior to the date that the Board is scheduled to adopt the budget for the Authority for the next fiscal year. The actual Fair Share Contributions will then be established by the Board based upon the number of subscribers who either enter into or continue an existing Subscription Agreement for that fiscal

year. The Fair Share Contribution may be changed as appropriate by action of the Board in the event that, after the commencement of the fiscal year, additional agencies become subscribers.

1.9 "Fiscal Year" means the period dating from July 1 in any given year to and including the 30th of June of the following year.

- 1.10 "Hazardous Material" means any of the following substance(s) or material(s):
- A. Any material listed in California Labor Code Section 6382(b);
 - B. Any material or substance defined in California Health and Safety Code Division 20, Chapter 6.95;
 - C. Any material/waste that is regulated by California Code of Regulations Title 22, Division 4.5;
 - D. Any material listed in Code of Federal Regulations Title 40, Part 261;
 - E. Material specified in California Penal Code Section 11417; and
 - F. Any other material or substance released which is reasonably believed to pose a significant present or potential hazard to human health, safety, property, or the environment, or which is declared a hazardous waste pursuant to local, state or federal law.

1.11 "Hazardous Materials Emergency" means the release or threatened release of any Hazardous Material.

1.12 "Hazardous Materials Emergency Response Plan" means the Orange County Hazardous Materials Area Plan.

1.13 "Hazardous Materials Emergency Response Services" means the response to, assessment of, and stabilization of, any Hazardous Materials Emergency.

1.14 "Jurisdiction" means, in the case of the Orange County-City Hazardous Materials Emergency Response Authority, the territory served by its Participating Agencies.

1.15 "Orange County Fire Authority" means that Joint Powers Agency created by the County of Orange and various Orange County cities by means of that certain Joint Powers Agreement bearing the effective date of February 3, 1995, as amended from time to time.

1.16 "Participating Agencies" means, collectively, all Provider Agencies, Subscriber Agencies and Emergency Services Contract Agencies.

1.17 "Provider Agency" means each of the public entities that are members of this Joint Powers Authority and contribute a Response Team to the Authority in accordance with the provisions of this Amendment.

1.18 "Public Agency" means a city located in the County.

1.19 "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment.

1.20 "Response Team" means personnel employed by a Provider Agency and who are trained and equipped to respond to Hazardous Materials Emergencies.

1.21 "Responsible party" means a person or entity who releases or threatens to release Hazardous Materials, or who owns property upon which Hazardous Materials are released.

1.22 "Revenue" means all funds received by the Authority, including but not limited to, fair share contributions received from Subscriber Agencies, funds received from Emergency Services Contract Agencies, funds received from any person or entity responsible for a Hazardous Materials Emergency, fees for services, or funds received from any state or federal grant or program.

1.23 "Subscriber Agency" means each of the public entities which has agreed to contribute to the costs of administering this Joint Powers Authority to provide Hazardous Materials

Emergency response services by executing the Subscription Agreement in a form approved by the Board, as further described in Section 5.2.

1.24 "Treasurer" means the Finance Director, or his or her designee, of the City of Anaheim and shall hold the office of Treasurer and Auditor of the Authority, as authorized by Section 6505.6 of the Government Code and shall perform the duties as authorized in Section 6505 et seq. of the Government Code .

2.

GENERAL PURPOSE AND POWERS

2.1 Authority Created

This Agreement creates a Joint Powers Authority to be known as the Orange County-City Hazardous Materials Emergency Response Authority. The Authority is formed pursuant to the provisions of Article 1, Chapter 5, Division 7, of Title 1 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 Participating Agencies.

2.2 Common Powers

Each Participating Agency has the common power to:

A. Respond to, assess the nature of, and stabilize any emergency created by, the release, or threatened release, of Hazardous Materials;

B. Hire, train, and equip persons such that they are qualified to respond to, assess the nature and dangers of, and stabilize any emergency associated with, any release or potential release of Hazardous Materials;

C. Direct the activities of persons qualified to assess the nature or danger of, stabilize any emergency associated with, control, and clean up any release, or threatened release, of Hazardous Materials;

D. Finance the activities of persons qualified to respond to Hazardous Materials emergencies, accept monies to defray the costs of maintaining Response Teams and responding to emergencies, and to recover the costs of response from grant programs and persons or entities responsible, in whole or in part, for the emergency.

2.3 General Purpose

The primary purpose of this Agreement is to provide for continuation of the Hazardous Materials Emergency response system within the County and to partially offset the costs to Provider Agencies incurred in maintaining Response Teams, and responding to Hazardous Materials emergencies, with revenue derived from the public entities that use, or have access to, the services of the Provider Agencies and funds recovered from those responsible for the emergency. This Agreement also enables public entities to receive Hazardous Materials Emergency responses and related services without incurring the direct costs required to establish and maintain Response Teams. The Authority will coordinate responses to Hazardous Materials emergencies and ensure efficient use of resources. This Agreement will enable an equitable sharing of risks associated with Hazardous Materials emergencies and promote the recovery of costs from persons or entities responsible, in whole or in part, for any such emergency.

2.4 Powers

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

- A. To jointly exercise the common powers of the Participating Agencies;
- B. To make and enter into contracts;

C. To retain the services of engineers, attorneys, Hazardous Materials consultants, and such other persons or entities as may be necessary or appropriate to achieve the purposes of this Agreement.

D. To acquire, hold or dispose of property by any lawful means, including, without limitation, gift, purchase or sale;

E. To incur debts, liabilities or obligations subject to the limitations specified in this Agreement.

F. To receive gifts, contributions, grants, and donations of property, funds, services and other forms of assistance from any person, firm, corporation or government agency;

G. To sue and be sued in its own name;

H. 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;

I. To adopt, rules, regulations, policies, bylaws and procedures governing the operation of the Authority;

J. To take all steps necessary to recover from the person or entity responsible, the costs incurred, or the value of the services performed, in responding to a Hazardous Materials Emergency or release;

K. 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 as may be applicable to the City of Anaheim;

L. To adopt user fees.

3.

ORGANIZATION

3.1 Membership

The Members of the Authority shall be the public entities which have executed this Fifth Amended Agreement, a subsequent amendment, or a Subscription Agreement, and which have not withdrawn from the Authority or altered their status.

3.2 Board

A. The Board shall consist of the following:

(i) One (1) voting Board member and an alternate appointed by the governing body of each of the following:

City of Anaheim

City of Huntington Beach

(ii) Three (3) voting Subscriber Agency Board members and an alternate appointed to one year terms as described below. The three (3) Subscriber Agencies that are each entitled to be a voting Board Member shall be selected on an annual basis at the first Board meeting of the calendar year by the then sitting Board Members. These voting Subscriber Agency Board Members shall rotate and be selected on an annual basis to give all Subscriber Agencies equal opportunity for representation on the Board.

B. Each Board member shall hold office from the first meeting of the Board after appointment until a successor is named. Board members and alternates shall be appointed by, and serve at the pleasure of, their appointing body, and may be removed at any time, with or without cause, at the sole discretion of that appointing body.

C. A Board member or alternate shall not receive compensation, but may be reimbursed by the Authority for expenses reasonably incurred while performing duties required by this Agreement, as further specified and limited by resolution of the Board.

3.3 Principal Office

The principal office of the Authority shall be established by the Board and is presently located in the City of Anaheim. The Board has full power and authority to change the principal office from one location or another within the County of Orange.

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 a resolution adopted by the Board. Regular, adjourned, and special meetings shall be called, noticed and conducted, in accordance with the Ralph M. Brown Act (Section 54950, et. seq. of the Government Code).

3.5 Quorum

A majority of the Board members (or the alternate for any absent voting member) shall constitute a quorum for the purposes of transacting business relating to the Authority.

3.6 Powers and Limitations

All of the powers of the Participating Agencies are reserved to them except to the extent powers are conferred on the Authority and the Board pursuant to this Agreement. Each Board member, or alternate in the absence of any voting member, shall be entitled to one (1) vote and, except as expressly provided in this Agreement, 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 Minutes

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 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 limitation the Ralph M. Brown Act (Govt. Code Sec. 54950 et seq.).

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 Officers

A. 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 a period of one (1) year, or until a successor is appointed. The Board shall reorganize annually at its first meeting of the new fiscal year.

B. The Finance Director, or his or her designee, of the City of Anaheim shall hold the office of Treasurer and Auditor of the Authority, as authorized by Section 6505.6 of the Government Code and shall perform the duties as authorized in Section 6505 et seq. of the Government Code (hereinafter "Treasurer"). 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 Section 6505 et seq. of the 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 such sections may be amended.

3.10 Administration

The City of Anaheim shall be responsible for administrative services. Administrative services include general accounting of funds received and disbursed, preparation of invoices to public entities receiving services and to those who have received services or are responsible in some manner for any Hazardous Materials Emergency to which a Provider Agency responds, preparation of documents relative to any grant program, 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. As part of the administrative services, the City of Anaheim, as Administrator of the Authority, may elect, with the approval of the Board, to commence or prosecute litigation to collect fees or costs from any person or entity responsible, in whole or in part, for a Hazardous Materials Emergency. The Authority, consistent with its power to sue and be sued as set forth in Section 2.4G, may elect to commence or prosecute such litigation.

3.11 Bonds

The Treasurer 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

All of the privileges and immunities from liability, exemption 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 Participating Agencies when performing their respective functions for that agency, shall apply to them to the same degree and extent while engaged in the performance of any activity, function or duty pursuant to this Agreement, subject to the provisions of Sections 5.1 and Chapter 7 of this Agreement.

4.

HAZARDOUS MATERIALS RESPONSE SERVICES

4.1 Basic Services

The Authority, through the Provider Agencies, shall furnish all Participating Agencies with Hazardous Materials Emergency response services subject to the following:

A. Services will be performed by Provider Agency personnel. The Board, in cooperation with the Provider Agencies, shall determine the number, location and size of the Response Teams available to provide services pursuant to this Agreement.

B. The Provider Agencies and their Response Teams will generally provide services in accordance with the provisions of the current Hazardous Materials Emergency Response Plan. The Board shall adopt criteria and standards relating to the provision of Hazardous Materials Emergency response services by Provider Agencies and Response Teams. Such standards may include specific levels of training required of personnel, manpower needs and the type of equipment and supplies necessary for particular Hazardous Materials emergencies. The Board shall also adopt response zones and response procedures to control which Provider Agency should respond to any specific Hazardous Materials Emergency. The Authority, Provider Agencies and Response Teams retain sole and exclusive discretion as to the specific type, nature and timing of the services performed pursuant to this Agreement, provided, however, each Provider Agency shall be subject to the provisions of Subsection 5.4 (D). Neither the Authority, Provider Agencies nor Response Teams are responsible for the physical containment or clean

up of any Hazardous Materials, the control of pedestrian or vehicular traffic or the removal of persons or property from the area around the emergency.

C. Neither the Authority, nor the Provider Agencies, guarantee that a Response Team will be available at all times to respond to a Hazardous Materials Emergency. Circumstances may arise when the timing, number, size or location of a Hazardous Materials Emergency, or other emergencies, make it difficult or impossible for the Authority or the Provider Agencies to respond to any or all incident(s). The Board shall adopt standard operating procedures to govern the nature and timing of responses when multiple Hazardous Materials emergencies (or other emergencies) exist within the County at any one time.

4.2 Preventative Measures

Each Participating Agency shall use its best efforts to do the following:

A. Require that all persons, business entities and public agencies within its jurisdiction comply with applicable state and federal laws regarding the storage and use of Hazardous Materials by establishing and implementing an inspection and citation program;

B. Maintain, and make accessible to the Authority, Provider Agencies, and Response Teams copies of all plans and documents required to be submitted pursuant to law, including, without limitation, business inventories and emergency response plans;

C. If appropriate, declare a local emergency pursuant to the provisions of Sections 8630, et seq. of the Government Code of the State of California and/or any applicable charter provisions or ordinance. To the extent permitted by law, the Authority or the responding Provider Agency shall have the right to declare a local emergency in the event the public entity with jurisdiction over the scene of the Hazardous Materials Emergency fails or refuses to do so; and

D. Immediately comply with any request of the Response Team, Provider Agency or Authority to provide police, fire or other personnel or services to assist the Response Team, control vehicular traffic and pedestrian access to the scene of the Hazardous Materials Emergency, or contain or clean-up any Hazardous Materials within the Participating Agency's jurisdiction. These services shall be provided at no cost to the Authority or the Provider Agencies. Neither the Authority nor the responding Provider Agency shall be responsible to provide these services or for any costs or expenses related thereto. In the event these services are not provided, the responding Provider Agency shall have the right, but not the obligation, to contract for such services as may be necessary, or in the alternative, the Response Team shall have the right to withdraw from the scene of the Hazardous Materials Emergency. In the event the responding Provider Agency finds it necessary to contract for services to be provided pursuant to this subsection, the Participating Agency otherwise responsible for providing the service shall fully reimburse the Provider Agency within thirty (30) days from the date costs are billed.

5.

FEE PROVISIONS

The following special provisions shall control the Authority, the Board, the Treasurer and the Auditor relative to the collection and disbursement of funds received or recovered from Participating Agencies, federal or state grant programs, and persons or entities who receive services and those responsible for a Hazardous Materials Emergency.

5.1 Provider Agencies

A. The Provider Agencies, in consideration of their right to receive funds as hereinafter provided, and, without charge, Hazardous Materials Emergency response services from other Provider Agencies, agree to make in-kind contributions to the Authority in the form of a Response Team.

Anaheim and Huntington Beach will have appropriate staffing for a Type I (Immediate) Hazardous Materials Response Team with related supplies, materials and equipment.

B. In addition, each Provider Agency hereby assigns to Authority all of its respective right, title, and interest in and to any claim or cause of action against the person or entity responsible, in whole or in part, for any Hazardous Materials Emergency to which the Provider Agency responds or any Hazardous Materials Emergency within the jurisdiction of such Provider Agency and to which another Provider Agency responds. This assignment includes, without limitation, the right to recover the value of any in-kind contributions made to the Authority, the right to collect the reasonable value of all services performed by the Authority/Provider Agency, and the right to recover punitive damages, penalties or statutory enhancement to the extent such remedies are provided by law. However, this assignment does not include the right to recover, from the person or entity responsible, all costs and expenses in any way related to injuries suffered by Response Team Members by providing services pursuant to this Agreement. Each Provider Agency agrees to cooperate with the Authority in its efforts to recover money from any person or entity responsible for a Hazardous Materials Emergency to which the Provider Agency has responded, as well as any claim or litigation instituted by or against the Authority. This shall include providing all information and invoices necessary to initiate collection actions to the administering agency within the time period established by the Board. Each Provider Agency waives and gives up any right it may have to receive or hold any funds collected by the Authority that relate to any Hazardous Materials Emergency within its jurisdiction or to which the provider Agency has responded.

C. Nothing in this section shall prevent a Provider Agency from pursuing efforts to collect, from the person or entity responsible for the Hazardous Materials Emergency, all costs and expenses incurred by the Provider Agency in providing services other than those performed by a Response Team.

D. The personnel of each Provider Agency shall be considered to be employees of the Provider Agencies, not those of the Authority or any other Participating Agency, and they shall not be entitled to any personnel benefits or compensation from the Authority. Equipment, materials and supplies owned or maintained by Provider Agencies to assist in providing services pursuant to this Agreement shall remain the property of the Provider Agency. Except as otherwise provided in this Chapter and the provisions of Section 7.2, Provider Agencies shall be under no obligation to directly pay any fee or contribute any money or equipment to the Authority.

5.2 Services To and Reimbursement From Subscriber Agencies

A. Public entities in Orange County may receive Hazardous Materials Emergency response services from Authority by executing a Subscription Agreement in the form approved by the Board and paying the annual fair share contribution as determined by the Board pursuant to Section 1.8 of this Agreement. Agencies which desire to participate as Subscriber Agencies must sign the Subscription Agreement prior to receiving Hazardous Materials Emergency response services, and must pay their fair share contribution 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 Agreement. Agencies which subscribe for an entire fiscal year may, at their option, elect to pay their fair share contribution in four equal installments due and owing on or before July 30th, October 1st, January 1st, and April 1st. If an agency chooses to become a Subscriber Agency after the commencement of a fiscal year, the fair share contributions for existing Subscriber Agencies will be adjusted pro rata to reflect the additional contribution, and those Agencies will receive a reimbursement for any excess contribution made. Agencies which choose to become Subscriber Agencies after the commencement of the fiscal year must sign the Subscription Agreement and pay the full amount of the fair share contribution prior to seeking services. Fair share contributions for subsequent fiscal years, shall be revised to reflect any changes in population or assessed value as more fully specified in Sections 1.8 and 1.9. Fair share contributions, once established by the Board for any specific fiscal year, shall be increased or decreased

only as necessary to reflect the participation of additional or fewer Subscriber Agencies during that fiscal year.

B. Authority will attempt to collect, from the person or entity responsible for any Hazardous Materials Emergency to which a Provider Agency has responded within the jurisdiction of a Subscriber Agency, the reasonable value of all services performed by the Authority/Provider Agency. Each Subscriber Agency agrees to cooperate with the Authority in its collection efforts. Authority will continue its collection efforts for the period of its regular billing cycle as established by the Board. If the person or entity responsible for the Hazardous Materials Emergency does not pay to the Authority the amount billed within the regular billing cycle, the Subscriber Agency within whose jurisdiction the emergency occurred shall reimburse the Authority for the costs of repairing or replacing all materials and supplies damaged or destroyed in the course of providing services or which must be disposed of following the emergency.

C. If the Subscriber Agency is potentially responsible for, but did not cause, the Hazardous Materials Emergency, as in the case of Hazardous Materials abandoned on property belonging to the Subscriber Agency, and an otherwise responsible party cannot be located, the Subscriber Agency shall reimburse the Authority for the costs of repairing or replacing all materials and supplies damaged or destroyed in the course of providing services. If the Subscriber Agency caused the Hazardous Materials Emergency, the Subscriber Agency shall pay the Authority the hourly rate for the applicable level of service established by the Board pursuant to Section 6.2 and the costs of repairing or replacing any equipment damaged or destroyed in the course of providing services. All fees and costs owing from Subscriber Agencies pursuant to this section C. shall be due within thirty (30) days of billing.

5.3 Services To and Reimbursement from Emergency Services Contract Agencies

A. Neither the Authority nor the Provider Agencies are under any obligation to provide Hazardous Materials Emergency response services to, or within the jurisdiction of, any public

entity that is not a Provider Agency or a Subscriber Agency. However, the Authority and Provider Agencies will respond to a Hazardous Materials Emergency within the jurisdiction of a public entity that is not a Provider Agency or a Subscriber Agency provided:

(i) The public entity requests Hazardous Materials Emergency response services; and

(ii) The public entity has either:

(a) executed an Emergency Services Contract with the Authority in the form approved by the Board ; or

(b) adopted a resolution authorizing personnel at the scene of a Hazardous Materials Emergency to execute an Emergency Services Contract and committing to defend, indemnify and hold harmless, the Authority, Provider Agencies as well as their respective officers, employees, representatives, agents and officers as required by the contract; a person authorized by resolution executes the Emergency Services Contract in the form approved by the Board; and the Emergency Services Contract Agency complies with the duties imposed pursuant to the provisions of that Agreement.

B. The Emergency Services Contract Agency shall pay the Authority the hourly rate for level of service established by the Board pursuant to Section 6.2 and the costs of repairing or replacing any equipment damaged or destroyed in the course of providing services. All fees and costs owing from Emergency Services Contract Agencies pursuant to this section B. shall be due within thirty (30) days of billing

5.4 Distribution of Revenue

A. Within sixty (60) days after the close of each quarter of the fiscal year, or earlier with Board approval, the Treasurer shall disburse Revenue, as defined herein, to Provider Agencies as follows:

(i) All administrative expenses actually incurred by the City of Anaheim shall be reimbursed prior to distribution to any Provider Agencies.

(ii) Any Revenue collected from reimbursement of a Hazardous Materials incident will be distributed based upon the direct costs incurred by the Provider Agencies, the Administrative Office, and/or other jurisdictions that assisted in the incident, for that respective incident.

(iii) Any Revenue not previously outlined, will be distributed in accordance with Resolutions set by the Board.

B. Subscriber Agencies and Emergency Services Contract Agencies, and shall not be entitled to receive funds pursuant to this section.

C. During any fiscal year, one or more Provider Agencies may incur expenses disproportionate to their level of participation and reimbursement if, for example, a Response Team member suffers serious injuries while responding to a Hazardous Materials Emergency. In such event, the Board may adjust the percentage of reimbursement to reflect an equitable distribution of costs.

D. The Board may adopt standards, criteria and policies regarding a Provider Agency's eligibility for reimbursement under this Section in the event a Response Team fails to respond when requested to do so or a Provider Agency fails to provide an adequately trained team.

GENERAL BUDGETARY PROVISIONS

6.1 Annual Budget

The Board shall adopt an annual budget and determine the costs of services provided pursuant to this Agreement and procedures adopted by the Board. The annual budget shall be adopted, and fees for providing services established, at the first regular meeting of the Board following the commencement of the fourth quarter of the fiscal year. The budget shall include the administrative service costs estimated by the City of Anaheim, including an appropriate percentage of the salary and benefits paid by Anaheim to its personnel engaged in performing these services, as well as any advance out of the prior year's revenue which was necessary to reimburse administrative expenses which exceeded Fair Share Contributions received in that year.

6.2 Hourly Rate

At the time that the annual budget is adopted, the Board shall also establish fees for services provided pursuant to this Agreement. Notice of the costs of services shall be issued to all Participating Agencies within thirty (30) days of adoption of the annual budget. The hourly rate shall be adjusted annually by the Board, with adjustments to reflect estimates of the operating expenses of Provider Agencies, the administrative expenses to be incurred by the Authority associated with providing services in the upcoming fiscal year, estimates of the amount of time Provider Agencies are likely to devote to providing services pursuant to this and related agreements, the cost of supplies expended in responding to an emergency, and such other factors as the Board considers relevant. The hourly charge shall also include a surcharge for administrative costs in an amount established by the Board.

6.3 Disbursements

The Treasurer shall draw checks in accordance with policies and/or procedures established by Resolution of the Board. A summation of such payments shall be presented to the Board as part of the Treasurer's quarterly report.

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 governmental entities. There shall be strict accountability for all funds. All revenues and expenditures shall be reported quarterly to the Board.

6.5 Expenditures Within Approved Annual Budget

All expenditures shall be within the designations and limitations of the approved annual budget.

7.

LIABILITIES

7.1 Liabilities

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

7.2 Indemnification/Hold Harmless

A. Introduction

The provisions of this section control the extent to which public entities receiving services pursuant to this or related agreements are obligated to defend, indemnify and hold harmless the Authority, Provider Agencies, and their respective employees, officers, agents and

representatives with respect to any claim, litigation, liability, damage, injury, cost or expense that is in any way related to the performance of Hazardous Materials Emergency response services pursuant to this Agreement or the existence of a Hazardous Materials Emergency. Hazardous Materials emergencies, by their nature, create a risk of serious injury to persons or property damage over a wide area. The risk of liability and/or litigation exists irrespective of the skill and competence displayed by those attempting to resolve the emergency. Persons who have suffered injury or property damage as the result of a release of Hazardous Materials are prone to sue all persons and entities present at the scene of the emergency and even non-negligent parties are likely to incur substantial liability given the toxic nature of the materials involved, the large number of people likely to be affected, and the perceived "deep pockets" of public entity defendants. Accordingly, the Authority, Provider Agencies and their respective officers and employees deserve substantial protection from liability and litigation that is in any way related to the services provided pursuant to this Agreement or related agreements. Moreover, since Provider Agencies provide, in advance, the personnel, equipment and funds necessary to provide services pursuant to this Agreement, it is appropriate to minimize their risks and obligations while increasing the protection required from other public entities which do not make the same financial commitment.

B. General Provisions

1. Each Participating Agency waives and gives up any claim against, or right to sue, the Authority, any Provider Agency, any other Participating Agency, or any of their officers, employees or representatives, for any loss, damage or injury that arises out of, or is in any way related, to the performance of services rendered pursuant to this Agreement. This waiver extends to liability for bodily injury, or property damage, that may be sustained by the Participating Agency, 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, any Provider Agency, any other Participating Agency, and/or their respective officers, employees, agents, contractors, representatives, or any third party. However, this waiver does not extend to liability for bodily injury or property damage caused by

the fraudulent or willful conduct or any willful or negligent act which constitutes a violation of a penal statute.

2. The indemnification provisions of this section shall not require a Participating Agency to defend, indemnify or hold harmless a Provider Agency with respect to any workers' compensation claim filed against the Provider Agency that arises out of, or is in any way related, to the performance of services pursuant to this Agreement.

C. Provider Agencies and Subscriber.

With respect to Hazardous Materials emergencies within the boundaries of any Provider Agency or anySubscriber Agency, the Authority shall defend, indemnify, and hold harmless the responding Provider Agency, the Subscriber Agency, and their respective officers, employees, agents and representatives with respect to any loss, damage, injury, claim, litigation, or liability that arises out of, or is in any way related to, the performance of Hazardous Materials Emergency Response Services pursuant to this Agreement or to a Subscriber Agency Agreement. The costs incurred by Authority in defending any Provider Agency or Subscriber Agency or shall be advanced by all Provider Agencies and all Subscriber Agencies,, in accordance with their Fair Share Percentage as set forth in Exhibit B. The amount of any judgment or award resulting from such claim or litigation shall be reimbursed by all Provider Agencies and all Subscriber Agencies, in accordance with their Fair Share Percentage as set forth in Exhibit B. If the combined Fair Share Percentages of the Provider Agencies and Subscriber Agencies is less than 100% of the total of all Fair Share Percentages, the Fair Share Percentages of Provider Agencies and Subscriber Agencies shall be increased, pro rata, so that the total of the fair share percentages of the Provider Agencies and Subscriber Agencies equal 100%.

The Provider Agency or Subscriber Agency within whose jurisdiction the Hazardous Materials Emergency occurs shall defend, indemnify and hold harmless the Authority with respect to any claim, litigation, loss, liability, damage, cost or expense that arises out of, or is in any way

related to, the acts or omissions of the Provider Agency or Subscriber Agency or their respective officers, employees, agents or representatives, in the course of providing police and fire services, containment or clean-up services, or any other support service or activity related to the Hazardous Materials Emergency.

D. Emergency Services Contract Agencies

Emergency Services Contract Agencies shall indemnify and hold harmless the Authority, the responding Provider Agency, and their respective officers, employees, agents and representatives from and against any loss, litigation, liability, injury, damage, claim, lawsuit, cost or expense arising out of, or in any way related to, the performance of services pursuant to this agreement, the Emergency Services Contract between the Authority and the Emergency Services Contract Agency, or the existence of a Hazardous Materials Emergency to which the Authority and/or a Provider Agency has responded within the jurisdiction of the Emergency Services Contract Agency. The obligations of an Emergency Services Contract Agency pursuant to this section shall extend to any loss, injury, liability, damage, claim, lawsuit, cost or expense alleged to have been proximately caused by the sole and exclusive negligence of Authority, the responding Provider Agency, or their respective officers, employees, agents and representatives. In the event that a judgment or award is imposed on the Authority, any Provider Agency, or any of their employees, officers, agents or representatives, in any litigation or proceeding for which an Emergency Services Contract Agency has defense and indemnification obligations pursuant to the subsection, the Emergency Services Contract Agency shall fully satisfy any judgment or award and shall fully indemnify the Authority and Provider Agencies, as well as their respective officers, employees, agents and representatives, with respect to any such judgment, liability or award.

8.

ADMISSION AND WITHDRAWAL OF PARTICIPATING AGENCY

8.1 New Participating Agencies

Public entities may become Participating Agencies in the Authority upon such terms and conditions as are specified in this Agreement and/or related Agreements.

8.2 Withdrawal

A. A Provider Agency may withdraw from the Authority and terminate its obligations under this Agreement upon the giving of written notice to the authority no later than December 31, prior to the fiscal year in which the Provider Agency is to withdraw from the Authority. Written notice shall be accompanied by a Resolution or minute order which authorizes the withdrawal by the governing body of the Provider Agency.

B. A Provider Agency which has given notice of its intention to withdraw may become a Subscriber or Emergency Services Contract Agency upon written notice to the Authority, given no later than December 31, of its intent to alter its status accompanied by a Resolution or minute order which authorizes execution of the appropriate contract.

C. If the City of Anaheim has given notice of its intention to withdraw as a Provider Agency, a new administering agency shall be selected by the Board at its first regular meeting following the date of the City of Anaheim's notice. The agency selected by the Board shall be responsible for all administrative responsibilities outlined in this Amended Agreement and any policies adopted by the Board.

D. Subscriber or Emergency Services Contract Agencies may withdraw from the Authority, terminate services, or alter their status as Subscriber or Emergency Services Contract Agencies in any fiscal year pursuant to the provisions of their Subscription Agreements or Emergency Services Contract, respectively.

E. Subscribers or Emergency Services Contract Agencies shall be considered to have withdrawn from the Authority if they have breached their Subscription Agreement or Emergency Services Contract and Authority has exercised its option to terminate same.

F. Subsequent to withdrawal or termination, Participating Agencies shall have a continuing responsibility to perform the duties and obligations required by this Agreement and which are based on facts, events, or occurrences that predate withdrawal or termination.

G. Any Participating Agency which has withdrawn from the Authority or which has altered its status shall automatically forfeit its representation, if any, on the Board.

9.

TERMINATION AND DISPOSITION OF ASSETS

9.1 Termination

The Authority shall continue to exercise the Joint Powers specified in this Agreement until termination. This Agreement shall terminate if a majority of the Provider Agencies give the Authority notice of their intent to withdraw from the Authority in accordance with Section 8.2 of this Agreement, or if the Provider Agencies mutually agree to terminate this Agreement.

9.2 Distribution of Property

In the event of the termination of this Agreement, any Revenue remaining in the authority shall be disbursed in accordance with Section 5.4.

10.

MISCELLANEOUS

10.1 Amendments

This Agreement may be amended with the approval of all of the Provider Agencies.

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 Authority or deposited in the United States Mail, first class postage pre-paid, and properly addressed to the principal office of the Agency or Authority.

10.3 Partial Invalidity

If one or more of the 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 provisions, sections and paragraphs shall not be affected and shall continue to be valid and enforceable to the fullest extent permitted by law, unless the invalidity affects the substantial rights or duties of the parties, and provided that such remaining portions or provisions can be construed in substance to constitute the Agreement that the parties intended in the first instance.

10.4 Successors

This Agreement shall inure to the benefit of and be binding upon any successors or assigns of the Participating Agencies, including any Fire Protection District which may be formed to succeed a Participating Agency.

10.5 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

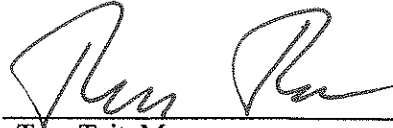
IN WITNESS WHEREOF, the Parties have caused this Fifth Amended Agreement to be executed and attested by their duly authorized officers, and to have their official seals affixed hereto,.

CITY OF ANAHEIM

DATE OF EXECUTION:

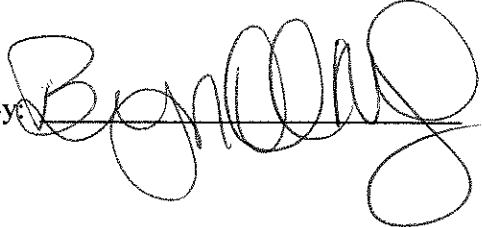
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By:

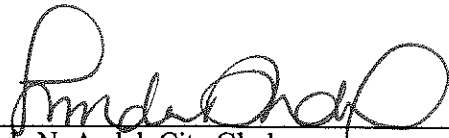


Tom Tait, Mayor

APPROVED AS TO FORM:
MICHAEL R.W. HOUSTON
CITY ATTORNEY

By: 

ATTEST:



Linda N. Andal, City Clerk

CITY OF HUNTINGTON BEACH

DATE OF EXECUTION:

By:

Don Hansen, Mayor

ATTEST:

Joan L. Flynn, City Clerk

APPROVED AS TO FORM:

By: _____
Jennifer McGrath
City Attorney

Date _____

IN WITNESS WHEREOF, the Parties have caused this Fifth Amended Agreement to be executed and attested by their duly authorized officers, and to have their official seals affixed hereto,.

CITY OF ANAHEIM

DATE OF EXECUTION:

By:

Tom Tait, Mayor

APPROVED AS TO FORM:
MICHAEL R. W. HOUSTON
INTERIM CITY ATTORNEY

ATTEST:

Linda N. Andal, City Clerk

By: _____

CITY OF HUNTINGTON BEACH

DATE OF EXECUTION:

SEPTEMBER 5, 2013

By:

Connie Boardman
Connie Boardman, Mayor

APPROVED AS TO FORM:

ATTEST:

Joan D. Flynn, City Clerk

By:

Jennifer McGrath
Jennifer McGrath
City Attorney

Date _____

CONSENT OF THE CITY OF SANTA ANA

The City of Santa Ana hereby consents to the Fifth Amended Joint Exercise of Powers Agreement of the Orange County-City Hazardous Materials Emergency Response Authority and to Santa Ana's removal as a Provider Agency effective April 20, 2012.

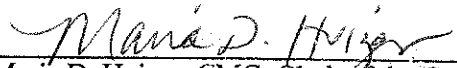
CITY OF SANTA ANA

DATE OF EXECUTION:

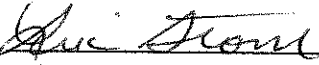
By:


City Manager

ATTEST:


Maria D. Huizar, CMC, Clerk of the Council

APPROVED AS TO FORM:

By: 
ASST. CITY ATTORNEY

Date 3-6-14

CONSENT OF THE ORANGE COUNTY FIRE AUTHORITY

The Orange County Fire Authority hereby consents to the Fifth Amended Joint Exercise of Powers Agreement of the Orange County-City Hazardous Materials Emergency Response Authority and to Orange County Fire Authority's removal as a Provider Agency effective July 1, 2013.

ORANGE COUNTY FIRE AUTHORITY

By: Keith Richter
Keith Richter, Fire Chief

ATTEST: Sherry a.F. Wentz
Sherry a.F. Wentz, Clerk of the Authority

APPROVED AS TO FORM:

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

Date 1/15/14