

**DISCUSSION CALENDAR – AGENDA ITEM NO. 5**  
**BUDGET AND FINANCE COMMITTEE MEETING**  
**April 10, 2013**

TO: Budget and Finance Committee, Orange County Fire Authority

FROM: Dave Thomas, Assistant Chief  
Operations Department

SUBJECT: **Hazardous Materials Emergency Response Subscription Service**

Summary:

This report is submitted to provide a recommendation to implement a Hazardous Materials Incidents Emergency Response Subscription Service to be made available to non-OCFA cities within the County of Orange.

Recommended Action:

Review the proposed agenda item and direct staff to place this item on the agenda for the Board of Directors' meeting of May 23, 2013, with the Budget and Finance Committee's recommendation that the Board of Directors take the following actions:

1. Approve and authorize the implementation of a Hazardous Materials Emergency Response subscription service for non-OCFA cities within the Orange County Operational Area, using the "fair-share" subscription cost methodology based on population and assessed value.
2. Approve the submitted Subscriber Contract as to form, and authorize the Fire Chief to execute these contracts with any non-OCFA cities that choose to subscribe for Hazardous Materials Emergency Response Services from OCFA.

Background:

The Orange County Fire Department (OCFD) established its Hazardous Materials Response Team (HMRT) in 1984 to address the growing number of hazardous materials incidents occurring within the OCFD response area. In 1993, it was determined that a regional approach to hazardous materials incidents response would best serve the needs of the Orange County Operational Area, and the OCFD joined the Orange County-Cities Hazardous Materials Emergency Response Authority-Joint Powers Authority (OCCHMERA).

***Previous Board Action***

In November 2012, due to changes to OCCHMERA Provider Agency staffing levels, the ability of Provider Agencies to respond in a timely manner, and the significant administrative costs charged, the OCFA Board of Directors approved staff's recommendations to:

- Withdraw from the OCCHMERA JPA, effective July 1, 2013
- Implement Hazardous Materials Response Unit 79, using former Santa Ana HMRT assets and explore a Hazardous Materials Emergency Response subscription service for non-OCFA cities within the Orange County Operational Area to offset some of the cost of the Hazardous Materials Response Team Program.

***Current Staffing Levels:***

Based on the November Board action, Haz Mat 79 (located in Santa Ana) is now configured with the required inventory and personnel to provide the OCFA with the capability of staffing two Type I Hazardous Materials Response Teams. The OCFA HMRT staffing level is ten (10) personnel per shift (24-hour period); seven (7) assigned at FS4 and three (3) assigned at FS79. A Type I HMRT, recognized by Firefighting Resources of California Organized for Potential Emergencies (FIRESCOPE) and the California Emergency Management Agency (CalEMA), requires seven trained personnel along with the specified equipment and supplies. The additional staffing required to fully staff two Type I HMRTs is achieved through utilizing HM qualified on-duty personnel assigned to other OCFA stations. The two seven person teams would be made from the ten (10) on duty personnel assigned at fire stations 4 and 79 and four (4) HM qualified on-duty personnel from other OCFA stations. The second HMRT adds greater depth, flexibility, and response capability to the OCFA HMRT program.

***Issue:***

The overall viability and stability of the OCCHMERA after July 1, 2013 is unknown. Should OCCHMERA be unable to provide the services as described in the JPA agreement or to a current OCCHMERA subscriber agency (the Cities of Brea, Costa Mesa, Fountain Valley, Fullerton, Garden Grove, Laguna Beach, Newport Beach, and Orange), the cities may wish to explore other options for hazardous materials incident response within their jurisdiction. The OCFA will be positioned to provide this service. Hazardous materials incidents emergency response to these cities would typically not be considered under an “Automatic Aid Agreement” since these cities do not have a HMRT and would not be able to reciprocate with a like resource.

After July 1, 2013, OCFA is under no obligation to provide hazardous materials emergency response services to or within the jurisdiction of any public entity that is not a member agency with OCFA. However, OCFA is proposing to offer two types of programs to non-OCFA cities interested in having OCFA provide Hazmat responses within the city:

- The city may become a “subscriber agency” whereas the annual cost is based on OCFA’s estimated marginal cost of providing HMRT services. This would be a fixed amount per year, adjusted annually. The city would not be required to pay for any OCFA costs associated with responding to the incident. If applicable, the OCFA would seek and retain restitution from the responsible party.
- The city may request OCFA services on an “as needed basis.” The jurisdiction receiving services shall compensate the Agency providing the services for all specialized services and equipment. Such compensation shall be at the approved Assistance-by-Hire (ABH) rate that has been established and approved by the OCFA. The “Operating Plan” (Exhibit “A” of the OCFA Automatic Aid Agreement); specifically paragraph four (4) of the *Dispatch Procedure* section will be updated in each signed agreement to include Hazardous Materials Response Team. The jurisdiction receiving services would be required to seek restitution from the responsible party. This could become very expensive depending on the complexity of the incident. A contract for subscription service to provide hazardous materials incidents emergency response could provide non-OCFA cities with an alternative and cost-effective means to meet this need.

***Subscribing Agency Cost Calculation:***

OCFA will not actively solicit cities to leave OCCHMERA, but rather be prepared to provide an alternative by offering a subscription service for hazardous materials incidents emergency response. Subscription fees for hazardous materials emergency response would offset the cost of the OCFA HMRT. As proposed, subscription costs are determined by a “Fair Share Percentage” of the OCFA HMRT Program expenses. “Fair Share Percentage” is determined by averaging the percentage of County population and County assessed value (real property) of each city within the County as well as the unincorporated area of Orange County. Attachment 1 reflects the initial cost estimate and calculation methodology that would be charged to each jurisdiction upon joining the subscription program.

Any subscribing agency shall pay in advance for the service payment due in full by July 30. Subscribers joining within the fiscal year will have the fee prorated based on the number of months the agency will be participating. Partial months count as a full month for calculation purposes. Unless approved in advance by the OCFA Fire Chief or designee, agencies joining during the course of a fiscal year must pay for services within 30 days of the effective date.

Subscription service cannot be applied retroactively. The annual cost will be adjusted by the amount of annual adjustment to OCFA’s HMRT budget, not to exceed ten percent annually. Attachment 2 is a proposed draft subscriber contract that cities would need to sign and approve.

**Fiscal Impact:**

The fiscal impact would be based on the revenue generated by the subscription program participants and incident cost restitution. Expenses associated with the HMRT Program are already funded in OCFA’s budget.

**Staff Contacts for Further Information:**

Michael Moore, Division Chief/Division 2  
[mikemoore@ocfa.org](mailto:mikemoore@ocfa.org)  
(949) 341-0294

**Attachments:**

1. Proposed HazMat Team Fair Share Contribution
2. Draft Contract

**ORANGE COUNTY FIRE AUTHORITY**  
**Calculation of Proposed HazMat Team Fair Share Contribution**

County/City	Population (1/1/2012)	% of County Population	FY 12/13 Total Assessed Valuation	% of County AV	Fair Share % (average of population and A/V)	Proposed OCFA Fair Share Contribution	
						OCFA Cities*	Subscriber Cities
Aliso Viejo	48,988	1.60%	7,605,524,301	1.78%	1.69%	\$8,064.68	
Anaheim	343,793	11.25%	35,896,658,193	8.39%	9.82%		\$46,851.95
Brea	40,932	1.34%	7,179,774,942	1.68%	1.51%		\$7,198.42
Buena Park	81,460	2.67%	7,602,927,022	1.78%	2.22%	\$10,598.07	
Costa Mesa	110,757	3.62%	14,379,537,747	3.36%	3.49%		\$16,663.45
Cypress	48,273	1.58%	5,666,354,152	1.32%	1.45%	\$6,927.65	
Dana Point	33,667	1.10%	8,844,363,956	2.07%	1.58%	\$7,559.41	
Fountain Valley	55,810	1.83%	7,164,372,762	1.67%	1.75%		\$8,351.25
Fullerton	137,481	4.50%	14,946,853,107	3.49%	4.00%		\$19,065.91
Garden Grove	172,648	5.65%	12,404,554,406	2.90%	4.27%		\$20,393.64
Huntington Beach	192,524	6.30%	30,066,432,421	7.03%	6.66%		\$31,792.80
Irvine	223,729	7.32%	48,646,093,255	11.37%	9.35%	\$44,588.05	
Laguna Beach	22,966	0.75%	4,857,042,662	1.14%	0.94%		\$4,500.89
Laguna Hills	30,618	1.00%	1,718,006,977	0.40%	0.70%	\$3,348.01	
Laguna Niguel	63,691	2.08%	10,680,400,282	2.50%	2.29%	\$10,926.86	
Laguna Woods	16,334	0.53%	5,513,065,887	1.29%	0.91%	\$4,348.95	
La Habra	60,871	1.99%	12,116,601,329	2.83%	2.41%		\$11,507.50
Lake Forest	78,036	2.55%	2,193,624,367	0.51%	1.53%	\$7,314.77	
La Palma	15,700	0.51%	10,885,724,192	2.54%	1.53%	\$7,295.05	
Los Alamitos	11,557	0.38%	1,638,192,752	0.38%	0.38%	\$1,815.56	
Mission Viejo	94,196	3.08%	13,320,574,029	3.11%	3.10%	\$14,780.22	
Newport Beach	85,990	2.81%	40,232,177,864	9.40%	6.11%		\$29,144.53
Orange	138,010	4.52%	16,538,150,330	3.87%	4.19%		\$19,994.45
Placentia	51,084	1.67%	5,080,848,867	1.19%	1.43%	\$6,820.63	
Rancho Santa Margarita	48,278	1.58%	6,679,191,088	1.56%	1.57%	\$7,492.76	
San Clemente	64,208	2.10%	12,506,117,671	2.92%	2.51%	\$11,985.17	
San Juan Capistrano	35,022	1.15%	5,833,268,798	1.36%	1.25%	\$5,986.31	
Santa Ana	327,731	10.72%	20,339,779,135	4.75%	7.74%	\$36,924.18	
Seal Beach	24,354	0.80%	4,480,556,641	1.05%	0.92%	\$4,399.32	
Stanton	38,498	1.26%	2,073,751,661	0.48%	0.87%	\$4,161.49	
Tustin	76,567	2.51%	9,502,172,504	2.22%	2.36%	\$11,275.06	
Villa Park	5,867	0.19%	1,398,666,415	0.33%	0.26%	\$1,237.84	
Westminster	90,677	2.97%	7,023,383,445	1.64%	2.30%	\$10,994.44	
Yorba Linda	65,777	2.15%	11,484,958,133	2.68%	2.42%	\$11,538.29	
County Unincorporated	119,698	3.92%	21,332,071,633	4.99%	4.45%	\$21,237.88	
County Total	3,055,792	100.00%	427,831,772,926	100.00%	100.00%	\$477,085.45	
						\$261,620.68	\$215,464.78
						54.84%	45.16%

\* - Already paid through their Structural Fire Fund property tax or Cash Contract City payments.

## Hazardous Materials Team Budget

### Salaries & Employee Benefits (Org 1170)

Unit	Post Positions	HazMat Bonus	Total
FC T4	3	10,212	30,636
FC E4	3	10,212	30,636
FC E79	3	10,212	30,636
FAE T4	3	10,212	30,636
FAE E4	3	10,212	30,636
FAE E79	3	10,212	30,636
FF T4	6	10,212	61,272
FF E4	3	10,212	30,636
FF E79*	3	3,404	10,212
Sub-total			285,936

\*This FF position requires dual qualification, both HM & PM; in this case the HM bonus is reduced.

### Services & Supplies (Org 1170)

Clothing & Personal Supplies	24,552
Medical Supplies	9,900
Small Tools	5,104
Trans/travel	34,540
Maintenance of Equip	20,218
Office Supplies	3,080
Special Dept Exp	18,480
Sub-total	115,874

### Annual Costs Budgeted in Fleet Services

Fuel		3,932
Vehicle Maintenance	HM4	2,599
	HM79	1,248
	HM204	2,495
Vehicle Depreciation	HM4	26,823
	HM79	28,763
	HM204	9,416
SubTotal		75,275

**Grand Total** 477,085

HAZARDOUS MATERIALS EMERGENCY RESPONSE

SUBSCRIPTION SERVICE CONTRACT

ORANGE COUNTY FIRE AUTHORITY

This Hazardous Materials Emergency Response Subscription Service Contract (“Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the Orange County Fire Authority (“Authority”) and the City of \_\_\_\_\_ (“Subscriber Agency”). Authority and Subscriber Agency 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.

**1. DEFINITIONS**

- 1.1 “Authority” means the Orange County Fire Authority.
- 1.2 “Board Members” mean those persons serving as members of the OCFA Board or their designated alternates.
- 1.3 “Board” means the governing Board of the Authority.
- 1.4 “County” means the geographic area within the boundaries of the County of Orange, including incorporated and unincorporated territory, but exclusive of the “County of Orange” as a political subdivision of the State of California.
- 1.5 “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.
- 1.6 “Fiscal Year” means the period dating from July 1 in any given year to and including the 30<sup>th</sup> of June of the following year.

1.7 “Hazardous Materials” means any of the following substance(s) or material(s):

- A. Any material listed in Subdivision B of Section 6382 of the Labor Code;
- B. Any material or substance defined in Section 25501 (k), 25115, 25117 or 25316 of the Health and Safety Code;
- C. Any material listed in Articles 9 (commencing with Section 66680) or 11 (commencing with Section 66693) of Chapter 30 of Title 22 of the California Code of Regulations;
- D. Any material listed in Part 261 of Title 40 of the Code of Federal Regulations; or
- E. Any other material or substance the release of which is reasonable 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.

1.8 "Hazardous Materials Emergency" means the release or threatened release of any hazardous material.

1.9 “Hazardous Materials Emergency Response Plan” means the Orange County Hazardous Materials Area Plan.

1.10 "Hazardous Materials Emergency Response Services" means the response to, assessment of, and stabilization of, any hazardous materials emergency.

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

1.12 "Response Team" means personnel employed by the Authority and who are trained and equipped to respond to hazardous materials emergencies.

1.13 "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.

1.14 "Revenue" means all funds received by the Authority for responding to Hazardous Materials Emergencies, including but not limited to, fair share contributions received from Subscriber 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 program for Hazardous Materials Emergency Response Services.

1.15 "Subscriber Agency" means the City executing this Agreement. "Subscriber Agencies" means the Subscriber Agency and each of the other public entities which has agreed to contribute toward the costs of providing Hazardous Materials Emergency Response Services by executing a Subscriber Agreement, as further described in Section 4.2.

## **2. GENERAL PURPOSE**

2.1 Hazardous Materials Emergency Response Services. Subject to the terms and conditions set forth herein, the Authority will provide the following services to each Subscriber Agency:

- 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; and
- 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.

### **2.2 General Purpose**

- A. 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 Authority 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 Authority and funds recovered from those responsible for emergencies. 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.

B. 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; and

C. 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.

### **3. HAZARDOUS MATERIALS RESPONSE SERVICES**

#### **3.1 Basic Services**

The Authority shall furnish all Subscribing Agencies with Hazardous Emergency Response services subject to the following:

A. Services will be performed by Authority personnel. The Authority shall determine the number, location and size of the Response Teams available to provide services pursuant to this Agreement.

B. The Authority 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 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 Authority and Response Teams retain sole and exclusive discretion as to the specific type, nature and timing of the services performed pursuant to this Agreement. Neither the Authority nor the Response Teams are responsible for the physical containment or cleanup 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. The Authority does not 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 a Response Team to respond to any or all incident(s).

### 3.2 Preventative Measures

Each Subscribing 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 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 ordinances. To the extent permitted by law, the Authority 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 or the 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 cleanup any Hazardous Materials within the Subscribing Agency's jurisdiction. These services shall be provided at no cost to the Authority. The Authority shall not be responsible to provide these services or for any costs or expenses related thereto. In the event these services are not provided, the Authority or the Response Team 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. If the

Authority of Response Team contracts for such services, the Subscribing Agency with jurisdiction over the area within which the request for such services was made shall reimburse Authority for the reasonable costs thereof.

#### **4. FEE PROVISIONS**

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

##### **4.1 Orange County Fire Authority**

A. The OCFA, in consideration of their right to receive funds as hereinafter provided, shall have available on a daily basis two or more seven (7) person Response Teams as well as related supplies, materials and equipment.

B. Each Subscriber Agency agrees to cooperate with the Authority in its efforts to recover money from any person or entity responsible for a Hazardous Materials Emergency, 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 Authority.

C. Each Subscriber Agency waives and gives up any right it may have to receive or hold any funds collected by the Authority for Hazardous Materials Emergency Response Services within its jurisdiction.

D. Authority shall have the exclusive right to pursue efforts to collect and to retain funds recovered from the person or entity responsible for a Hazardous Materials Emergency, for all direct and indirect costs and expenses incurred by the Authority in providing services performed by a Response Team. Nothing in this section shall prevent a Subscriber Agency from pursuing efforts to collect, from the person or entity responsible for the Hazardous Materials Emergency, costs and expenses incurred by the Subscriber Agency in providing services other than those performed by a Response Team.

E. Equipment, materials and supplies owned or maintained by Authority to assist in providing services pursuant to this Agreement shall remain the property of the

Authority.

#### 4.2 Services to and Reimbursement from Subscriber Agencies

A. Cities in Orange County may, upon approval by Authority, receive Hazardous Materials Emergency Response Services from Authority by executing this Agreement and paying the annual fair share contribution as determined by the Board pursuant to this Agreement. Agencies must sign this Agreement prior to receiving Hazardous Materials Emergency Response Services, and must pay their fair share contribution by July 30 of the fiscal year (July 1 – June 30) for which subscription is desired. (Subscriptions will not cover services provided prior to acceptance of the executed Agreement by OCFA.) This Subscription Agreement shall renew automatically from year to year unless terminated in accordance with the Agreement or otherwise specified in this 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 this 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 Section 5.1 Fair share contributions, once established by the Board for any specific fiscal year, shall be increased or decreased during that fiscal year only as necessary to reflect the participation of additional or fewer Subscriber Agencies during that fiscal year.

B. Authority may, at Authority's sole discretion, attempt to collect from the person or entity responsible for any Hazardous Materials Emergency within the jurisdiction of a Subscriber Agency, the costs and reasonable value of all services performed by a Response Team. Each Subscriber Agency agrees to cooperate with the Authority in its collection efforts. 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, and the Subscriber Agency may then pursue claims for such expenses from the person or entity responsible.

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/ABH rates for the applicable level of service established by the Board pursuant to Section 5.2 and the cost 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. FEES**

### **5.1 Calculation of Annual Fair Share Contribution.**

Each Subscriber Agency's annual fair share contribution shall be calculated by the Board concurrently with the adoption of the Authority's annual budget, as follows:

A. Step 1: Calculate the "Fair Share Percentage" for each Subscriber Agency by adding that agency's Population Percentage to its Assessed Value Percentage and then dividing by two (2). ("Population Percentage" means the percentage determined by dividing the population within the jurisdiction of the Subscriber Agency by the total population of the County (including unincorporated areas). "Assessed Value Percentage" is the percentage determined by dividing the total assessed value of real property in the Subscriber Agency's jurisdiction by the total assessed value of all real property in the County (including unincorporated areas).)

B. Step 2: Multiply the Subscriber Agency's Fair Share Percentage calculated in Step 1 by the total annual Hazardous Materials Emergency Response Services program costs.

C. Attachment 1 reflects the estimated initial cost estimate and calculation

methodology that would be charged to each jurisdiction upon joining the subscription program. Except as otherwise provided in this Agreement, each Subscriber Agency shall pay its Fair Share Contribution on or before July 31.

## **5.2 Hourly Rate**

The Board shall establish, and from time to time update, its schedule of fees for services provided on an Assistance-by-Hire (ABH) basis (the “ABH Rates”). Notice of the costs of services shall be issued to all Subscriber Agencies within ten (10) days of adoption or amendment, and shall take effect thirty (30) days after adoption or amendment. Adjustments in the ABH Rates shall reflect estimates of the operating expenses of Authority, the administrative expenses to be incurred by the Authority associated with providing services in the upcoming fiscal year, estimates of the amount of time Authority is 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 ABH Rates shall also include a surcharge for administrative costs in an amount established by the Board.

# **6. LIABILITIES**

## **6.1 Liabilities**

### **A. Introduction**

The provisions of this section control the extent to which Subscribing Agencies receiving services pursuant to this or related agreements are obligated to defend, indemnify and hold harmless the Authority and its Board members, 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 may 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 and its 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 Authority provides, 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 Subscribing Agency (the "Releasing Subscriber Agency") shall defend, indemnify, hold harmless and waive (collectively "Indemnification") all claims against the Authority and any other Subscribing Agency, and their respective Board members, Council members, officers, employees and representatives, for any claim, litigation, loss, damage, death, personal injury, bodily injury, illness, cost, expense, court order, administrative directive, or claim of any other variety (collectively "Claims") to person or property that arises out of, or is in any way related, to the performance of services rendered, or the failure to perform services, pursuant to this Agreement within the jurisdictional territory of the Releasing Subscribing Agency. This Indemnification extends to Claims brought by any source, including but not limited to Claims sustained by the Subscribing Agency, or its officers, employees, contractors or agents, or by third parties. This Indemnification extends to, and includes, Claims proximately caused, in whole or in part, by the negligent act, conduct or omission of the Authority, any other Subscribing agency, and/or their respective Board members, officers, employees, agents, contractors, representatives, or any third party. However, this Indemnification does not extend to liability for bodily injury or property damage caused by the fraudulent or willful conduct of a party seeking the protection of this Section, nor to any willful or negligent act of an individual which constitutes a violation of a penal statute.

2. The Indemnification shall not require a Subscribing Agency to defend, indemnify or hold harmless Authority with respect to any Workers' Compensation claim filed against the Authority that arises out of, or is in any way related to, the performance of services pursuant to this Agreement.

3. This Section 6.1 shall survive termination of the Agreement with regard to occurrences during the effective period of the Agreement which occurrences relate to a Claim asserted prior to or after termination.

4. The Subscriber Agency within whose jurisdiction a Hazardous Materials Emergency occurs shall Indemnify the Authority and its Board members, officers, employees, and representatives with respect to any Claim that arises out of, or is in any way related to, the acts or omissions of the Subscriber Agency or their respective officers, employees, agents or representatives, in the course of providing police and fire services, containment or cleanup services, or any other support service or activity related to the Hazardous Materials Emergency.

## **7. ADMISSION AND WITHDRAWAL OF SUBSCRIBING AGENCY**

### **7.1 New Subscribing Agencies**

Subject to all terms and conditions set forth in this Agreement, any city located within Orange County may become a Subscribing Agency upon: (1) execution of this Agreement, (2) acceptance of the executed Agreement by the Authority, and (3) timely payment of the Subscriber Agency's Fair Share Contribution.

### **7.2 Termination of Agreement**

A. Subscriber Agencies may terminate services with or without cause, effective on the last day of any fiscal year by giving written notice of termination to Authority not less than 180 days prior to the end of that fiscal year.

B. Authority may terminate this Agreement on ten (10) days written notice to any Subscriber Agency that has breached this Agreement. Authority may terminate this Agreement with any or all Subscriber Agencies, with or without cause, effective on the last day of any fiscal year by giving written notice of termination to the Subscriber Agency or Subscriber Agencies not less than 180 days prior to the end of that fiscal year.

C. Subsequent to termination, the Authority and Subscribing 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 termination.

## **8. GENERAL PROVISIONS**

### **8.1 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.

### **8.2 Non-Assignment; Collection of Restitution**

The rights and obligations set forth in this Agreement may not be assigned by any party. However, subject to the terms and conditions set forth herein, this Agreement shall not preclude a party from retaining on a contingent fee or percentage-of-recovery basis one or more agencies or law firms for collection of restitution or other recovery from those responsible for a Release.

### **8.3 Venue.**

This Agreement shall be construed pursuant to the laws of the State of California. All disputes arising under or related to this Agreement shall be determined by a court of competent jurisdiction located within the County of Orange, California.

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

“Subscriber Agency”

CITY OF \_\_\_\_\_

By: \_\_\_\_\_  
(Name)

(Title)

ATTEST:

By: \_\_\_\_\_  
(Name)  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
(Name)  
City Attorney

“Authority”

ORANGE COUNTY FIRE AUTHORITY

By: \_\_\_\_\_  
Keith Richter  
Fire Chief

ATTEST:

By: \_\_\_\_\_  
Sherry A.F. Wentz, CMC  
Clerk of the Board

APPROVED AS TO FORM:

By: \_\_\_\_\_  
David Kendig  
General Counsel