

**OCEANO COMMUNITY SERVICE DISTRICT'S ONGOING CAL PERS
LIABILITIES AND RESPONSIBILITIES FOLLOWING WITHDRAWAL FROM THE
FIVE CITIES FIRE AUTHORITY JOINT EXERCISE OF POWERS AGREEMENT**

This AGREEMENT ("Agreement") is dated this ___ day of ___, 2023, for reference purposes only, and is entered into by and between the Five Cities Fire Authority ("FCFA"), and the Oceano Community Services District ("Oceano"), which are hereinafter referred to as "Party" or collectively as "Parties." This Agreement memorializes Oceano's ongoing share of unfunded CalPERS liabilities, including but not limited pension/CalPERS, accrued fringe benefits, and other liabilities incurred from Oceano's participation in the Five Cities Fire Authority, prior to June 30, 2023 ("Liabilities").

RECITALS

A. On June 7, 2010, the cities of Arroyo Grande and Grover Beach, and Oceano, desirous of improving the quality and level of fire suppression and emergency medical service delivery within their communities through the sharing of resources and expertise, entered into a Joint Powers Authority Agreement (the "JPA") and have operated as Five Cities Fire Authority pursuant to the terms and conditions in that agreement since that time as JPA member agencies. That JPA, and its First, Second and Third Amendments, are incorporated herein and attached as Exhibit "A" (collectively, "JPA and its Amendments").

B. The obligations contained within Exhibit "A" remain binding on each of the Parties, including Oceano's Liabilities, incurred over the time period during which each Party serves or has served as a JPA member agency.

C. Under that JPA and its Amendments, the Parties have shared fire services, allowing for cost savings and operational efficiencies in providing fire services to the public.

D. Oceano has served as a member agency of the JPA since the inception of the FCFA on June 7, 2010, but is exiting the JPA on June 30, 2023 due to mutually adopted provisions by each Party under the JPA.

E. Specifically, and pursuant to Section 4 of the Third Amendment to the JPA, Oceano was required to place a special sales tax measure on the 2022 primary ballot, that would enable Oceano to be able to fund its proportionate share of costs owed to the FCFA.

F. As that 2022 Oceano ballot measure failed, and Oceano is unable to fund its proportionate share of its costs owed to the FCFA, by the terms of the Third Amendment to the JPA, incorporated herein as Exhibit "A," the JPA subsequently entered into a "Wind Down Period," with certain ongoing obligations and Liabilities owed by Oceano before an automatic withdrawal from the FCFA on June 30, 2023.

G. The Parties have now determined this Agreement is necessary to set out the continued FCFA obligations owed by Oceano under the "Wind Down Period" incorporated by Exhibit "A," and to set forth a process by which those Oceano Liabilities will be paid in full.

H. The Parties agree that all proportionate Oceano Liabilities, as well as all debts and obligations owed by Oceano to the FCFA, shall remain in effect until paid in full.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions hereinafter stated the Parties agree as follows:

1. **Recitals.** The recitals above are true and correct and are hereby incorporated into the terms of this Agreement as though fully set forth herein.

2. **Term.** The term of this Agreement shall commence as of the date the governing boards of all Parties have fully executed this Agreement and shall continue until terminated automatically upon the date Oceano has paid all proportionate Liabilities, as well as all debts and obligations owed by Oceano to the FCFA, as set herein.

3. **Oceano's Financial Obligations.**

3.1 Nothing within this Agreement modifies Oceano's obligations under the Five Cities Fire Authority Joint Powers Authority Agreement, as amended, in particular the Third Amendment included as Exhibit "A."

3.2 Oceano remains subject to all "Wind Down Period" obligations set forth within the JPA and its Amendments, incorporated as Exhibit "A." Specifically, under Section 5 of the Third Amendment to the JPA, Oceano's withdrawal from the FCFA shall not absolve Oceano from any Liabilities arising out of Oceano's participation in the JPA since the time the FCFA was created on June 7, 2010 through the date of Oceano's withdrawal from the JPA on June 30, 2023 ("Effective Date Range for Liabilities").

3.3 Oceano warrants and agrees to pay any and all Liabilities arising out of its participation in the JPA over the Effective Date Range for Liabilities. Oceano warrants and agrees to the FCFA's use of the City of Arroyo Grande's CalPERS contract for employees of the FCFA, effective since the inception of the JPA.

3.4 Oceano's share of Liabilities shall bear the same proportionate relationship to the whole as its annual contribution for the operation of the FCFA as set forth in Exhibit "A" over the Effective Date Range for Liabilities. Oceano's share of such Unfunded Accrued Pension Liability ("UAPL") expenses shall be determined according to the same formula used by the FCFA to allocate such costs during the final year of the withdrawing Oceano's membership.

(a) Oceano's share of Liabilities shall be reduced by (i) Oceano's proportionate share of the FCFA fund balance as of June 30, 2023, and (ii) Oceano's proportionate ownership share of FCFA physical assets as of June 30, 2023, which equals Two Hundred Seventy-Eight Thousand One Hundred Nine Dollars (\$278,109). The amount of Oceano's proportionate share of the FCFA fund balance as of June 30, 2023, will be determined by the FCFA Treasurer based on the audited financial report for Fiscal Year 2022-23.

3.5 **Actuary Report.** The Parties shall agree and rely on an Actuary Report utilized by the FCFA to determine Oceano's share of Liabilities. Specifically, the Parties agree to rely on any Actuary Report commissioned by the FCFA that methodically determines all CalPERS-

designated liabilities, commissioned in response to Arroyo Grande's CalPERS contract, to determine the Liabilities owed by Oceano to FCFA. Attached as Exhibit "B" is Foster & Foster's Five Cities Fire Authority CalPERS Miscellaneous and Safety Plans Unfunded Liability Analysis ("Preliminary Actuary Report") reflecting the Parties share of Liabilities for FCFA through June 30, 2021. That Preliminary Actuary Report is presented as an example. At that time FCFA completes an Actuary Report that reflects Oceano's proportionate share of Liabilities over the Effective Date Range for Liabilities, through June 30, 2023 ("Final Actuary Report"), that Final Actuary Report will be attached, replacing the Preliminary Actuary Report, and incorporated herein as a revised Exhibit "B." Any Final Actuary Report shall be used to determine Oceano's owed amount over the Effective Date Range for Liabilities and shall be binding on the Parties for purposes of Oceano's required payment of Liabilities under Section 3.6. The Final Actuary Report may be revised from time to time based on any updated transmittal of FCFA's CalPERS liabilities over the Effective Date Range for Liabilities. At the time a Final Actuary Report is revised as commissioned by FCFA, those revisions shall automatically be incorporated by reference as Exhibit "B."

(a) The Parties consent and agree with the formula, calculations used and Oceano's agreed upon shares attributed to services rendered over the Effective Date Range for Liabilities, as set forth in the Actuary Report that shall be attached and incorporated herein as Exhibit "B," and will be similar in analysis to the Preliminary Actuary Report.

(b) The Parties consent and agree that Oceano's Liabilities shall be calculated using the same assumptions used by CalPERS to calculate UAPL for contracting agencies with active contracts unless Oceano elects to pay its share of liabilities on a lump sum basis, in which case, the assumption used shall be the assumptions used by CalPERS to calculate UAPL for contracting agencies on a terminated basis.

3.6 Payment Options. Oceano's Liabilities are due and payable to the FCFA based on one of the following two payment options, which ensures full recovery for any and all proportionate Oceano Liabilities incurred prior to June 30, 2023. Failure to meet the obligations set forth in this Section 3.5 herein constitutes a default by Oceano.

(a) **Lump Sum.** Upon execution by the Parties of this Agreement, Oceano may issue a lump sum invoice payment for the Total Cost of Liabilities owed to the FCFA, as set forth under Section 3.3 above and subject to any Final Actuary Report incorporated as Exhibit "B," within 180 days of Parties' receipt of the Actuary Report that will be accepted by the Parties by the terms described herein.

(b) **Annual Payment.** Upon execution by the Parties of this Agreement, Oceano may initiate an annual payment for the Total Cost of Liabilities, due and payable via invoice within sixty (60) days of receipt of a FCFA invoice evidencing applicable CalPERS liabilities for any portion of the Effective Date Range of Liabilities, based on the applicable Final Actuary Report incorporated as Exhibit "B." Should Oceano initiate annual payments, Oceano reserves the right to make a future lump sum payment for the remaining Total Cost of Liabilities owed to the FCFA based on an Actuary Report agreeable to all Parties, due and payable via invoice within sixty (60) days of receipt of a FCFA invoice.

3.7 **Default and Delinquency.** If Oceano defaults in its obligation to pay or advance any amounts due pursuant to this Agreement after such amounts have become delinquent, Oceano shall be liable to the FCFA for interest on any unpaid amount at the rate of 10% per annum, or the maximum rate allowed by law if it is less than 10% per annum, until the overdue invoice amount is paid in full.

4. **Indemnification.** The Parties shall indemnify, defend and hold harmless the other Parties' members, officers, directors, employees and agents from and against any and all liability, loss, damages, expenses, costs (including, without limitations, costs and fees of litigation or arbitration) of every nature, arising out of any act or omission related to this Agreement.

5. **Conflict Resolution.** The Parties agree that any and all disputes, claims or controversies between the Parties arising out of or relating to performance of this Agreement, shall be resolved pursuant to the conflict resolution provisions as follows:

5.1 The Parties shall first meet and attempt in good faith to negotiate and resolve any dispute arising out of or relating to this Agreement, subject to subsequent approval of any such resolution by the respective governing boards of the Parties.

5.2 If the matter cannot be resolved, then the Parties agree that the matter shall be submitted to mediation within a reasonable period of time after receipt of a written request from one Party requesting such mediation. The Parties shall cooperate with one another in selecting a mediator and in scheduling the mediation proceedings. Should the Parties be unable to agree upon a mediator, they shall agree upon a mediation service and shall have that service select a mediator for them. The Parties agree that they shall participate in the mediation in good faith and that they will share equally in the costs of mediation. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the Parties, their agents, employees, experts and attorneys, and by the mediator or any employees of the mediator, are confidential, privileged and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

5.3 If the matter is not resolved by negotiation, then the Parties may submit the matter to binding or non-binding arbitration, but only if the Parties agree to submit the particular controversy to arbitration. No Party shall have a right to submit any controversy to arbitration without the other Parties' consent.

6. **General Provisions.**

6.1 **Construction and Interpretation.** It is agreed and acknowledged by the Parties that this Agreement has been arrived at through negotiation, and that each Party has had a full and fair opportunity to revise the terms of this Agreement. Consequently, the normal rule of construction that any ambiguities are to be resolved against the drafting Party shall not apply in construing or interpreting this Agreement.

6.2 **Waiver.** The waiver at any time by any Party of its rights with respect to a default or other matter arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent default or matter.

6.3 **Remedies Not Exclusive.** The remedies provided in this Agreement are cumulative and not exclusive, and are in addition to any other remedies that may be provided by law or equity. The exercise by any Party of any remedy under this Agreement shall be without prejudice to the enforcement of any other remedy.

6.4 **Severability.** The invalidity, illegality or unenforceability of any provision of this Agreement shall not render the other provisions unenforceable, invalid or illegal.

6.5 **Successors and Assigns.** Except as otherwise provided by law, the rights and duties of the Parties under this Agreement shall not be assigned or delegated without the prior written consent of the other Parties. Any attempt to assign or delegate such rights or duties in contravention of this Agreement shall be null and void.

6.6 **No Third Member Agency Beneficiaries.** This Agreement shall not be construed to create any third party beneficiaries. This Agreement is for the sole benefit of the Parties, and their permitted successors, transferees and assignees, and no other person or entity shall be entitled to rely upon or receive any benefit from this Agreement or any of its terms.

6.7 **Amendment.** This Agreement may be modified or amended only by a subsequent written agreement approved by the governing board of each Party, and executed by each Party pursuant to the terms and conditions of this Agreement.

6.8 **Governing Law and Venue.** Except as otherwise required by law, this Agreement shall be interpreted, governed by, and construed under the laws of the State of California. The County of San Luis Obispo shall be the venue for any litigation concerning the enforcement or construction of this Agreement.

6.9 **Attorney Fees.** In the event any legal action is brought to enforce or construe this Agreement, the prevailing party shall be entitled to an award of reasonable attorney fees, expert witness and consulting fees, litigation costs and costs of suit.

6.10 **Notice.** Any notice, demand, invoice or other communication required or permitted to be given under this Agreement shall be in writing and either served personally or sent by prepaid, first class U.S. mail to the Agency Clerk and Agency Attorney of each Party.

Any notice or other communication served by personal delivery shall be deemed received when actually delivered. Any notice or other communication shall be deemed as received three days after deposit in United States mail, postage prepaid, return receipt requested.

6.11 **Counterparts.** This Agreement may be executed by the Member Agencies in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

Exhibits:

- 1. Exhibit “A” – Five Cities Fire Authorities Joint Powers Authority Agreement and Amendments**
- 2. Exhibit “B” – Actuary Report of Five Cities Fire Authority Unfunded Accrued Pension Liability**

[signature page follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date last executed as set forth below.

FIRE CITIES FIRE AUTHORITY

By _____
Authority Chair

Dated _____

ATTEST:

By _____
Authority Clerk

APPROVED AS TO FORM:

Authority Attorney
City Attorney

OCEANO COMMUNITY SERVICES DISTRICT

By _____
President

Dated _____

ATTEST:

By _____
District Clerk

APPROVED AS TO FORM:

District Counsel

**Exhibit “A” – Five Cities Fire Authorities Joint Powers Authority Agreement and
Amendments**

Exhibit “B” – Actuary Report of Five Cities Fire Authority Unfunded Accrued Pension Liability

