

JOINT EXERCISE of POWERS AGREEMENT

THIS AGREEMENT, made and entered into on the 15th day of October, 2009 by and among the CITY OF EL CAJON, a general law city and municipal corporation, CITY OF LA MESA, a general law city and municipal corporation, and CITY OF LEMON GROVE, a general law city and municipal corporation, and any other agency that agrees to become a party to this Agreement as provided for herein, (collectively the "Members" and individually "Member "), all of which are organized and existing under and by virtue of the Constitution and the laws of the State of California.

WITNESSETH:

WHEREAS, the Members are each empowered by law to acquire sites, construct, equip, staff, maintain, operate and lease public buildings and related facilities for the purpose of its municipal purposes, including for providing fire and emergency medical services; and

WHEREAS, the Members desire to maximize use of the existing resources, create cost containment opportunities, maintain local control and continue to deliver fire and emergency medical services at a high level of service; and

WHEREAS, the Members desire to accomplish the aforesaid purpose by jointly exercising their common powers in the manner set forth in this Agreement; and

WHEREAS, the Members are authorized to jointly exercise their powers pursuant to the provisions of Article 2, Chapter 4, Part 2, Division 2, Title 5, Sections 55631 through 55634, and Article 1, Chapter 5, Division 7, Title 1, Sections 6500 through 6530, of the Government Code of the State of California.

NOW, THEREFORE, the Members, for and in consideration of the mutual benefits, promises, and agreements set forth herein, AGREE as follows:

Section 1. Purpose.

This Agreement is made pursuant to California Government Code Section 6500, et seq., hereinafter referred to as the "Act," to permit the joint exercise of certain powers common to the Members. The purpose of this Agreement is to exercise these powers jointly by managing, equipping, maintaining, and operating fire protection and emergency medical services to said Members. Such purpose will be accomplished and common powers exercised in the manner set forth in this Agreement. All pre-existing obligations, rights, and privileges of the Members shall continue hereunder, subject to the terms and conditions of this Agreement.

Section 2. Term.

This Agreement shall become effective as of the date hereof and shall be binding upon all parties hereto, and shall thereafter continue in full force and effect as long as the number of Members is not reduced below two (2), or until such time as the Members agree to terminate the Agreement, in the manner set forth in Section 8.

Section 3. Management of Agreement.

A. City Manager Executive Committee

An administrative entity, to be known as the "City Manager Executive Committee" (hereinafter "Executive Committee," whose members are hereinafter referred to as "Managers") is hereby established, and which shall exercise the powers set forth in Section 4(A) of this Agreement. Each Member shall have not more than one seat on the Executive Committee, to be represented by the respective Member's City Manager or an employee of the Member designated by the Member's City Manager. Each Member's City Manager shall name an alternate to the Member's representative on the Executive Committee. The designee and alternate for each Member must be identified, initially upon execution of this Agreement and thereafter on an annual basis on or before the anniversary date of this Agreement. No representative or alternate designated by the Member's City Manager may be in a position supervised by the Fire Chief.

B. Meetings of the Executive Committee

1. Regular Meetings of the Executive Committee.

The Executive Committee shall provide for its regular meetings; however, it shall hold at least one regular meeting each quarter. The Executive Committee may provide for further meetings, as may be needed from time to time.

2. Quorum.

The entire Executive Committee shall constitute a quorum for the transaction of business. A majority vote of the Members of the Executive Committee is required to take action, although a lesser number of the Executive Committee may adjourn for lack of a quorum.

Section 4. Powers and Duties.

A. Common Powers.

The Executive Committee shall have the powers common to the Member Agencies set forth in the recitals of this Agreement, to wit: the power to equip, staff, maintain, operate and lease public buildings, and related facilities for the purpose of fire protection and emergency medical services.

B. Duties.

The Executive Committee is hereby charged with performing all acts necessary for the exercise of common powers, including, but not limited to, any or all of the following:

1. Recommend a budget to their respective legislative bodies;
2. Develop an annual operating plan for the cooperative efforts contemplated by this Agreement;
3. Jointly recommend an annual cost allocation plan for each of the Members to participate in the cooperative efforts contemplated by this Agreement;

4. Appoint the Fire Chief, who must be a full-time employee of one of the Members, who shall be responsible for coordinating and overseeing the cooperative efforts of the Members in providing fire and emergency medical services in each of their jurisdictions, in a manner consistent with this Agreement;

5. Jointly approve appointments for positions within the shared formula portion of the annual cost allocation plan, attached hereto as Exhibit "B," which shall include the Fire Chief;

6. Jointly approve compensation and benefits plans for positions within the shared formula portion of the annual cost allocation plan, including the Fire Chief;

7. Jointly recommend personnel actions to each Member with the appointing authority in furtherance of each Member's participation in the cooperative efforts contemplated by this Agreement; and

8. Jointly approve the job description for Member employing the Fire Chief.

Section 5. Cost Allocation.

A. Fiscal Year.

The fiscal year shall be the twelve-month period commencing each July 1.

B. Cost Allocation Formula.

The formula for the shared costs shall be based on the following factors:

1. The population of the Member as of January 1st of each year. Each member shall use the State of California Department of Finance reported data. The weight of this portion is 50%.

2. The total number of incidents for the Member for the previous calendar year as reported by Heartland Communications Facility Authority. The weight of this portion is 50%.

The formula shall be updated annually to be effective the following fiscal year.

C. Cost Allocation Plan.

The Members, in adopting their annual budgets, will determine the specific costs to be shared among the Members (the "Cost Allocation Plan"). The Cost Allocation Plan, as determined by the Executive Committee, may include, but is not limited to, the following commonly shared costs and expenses:

1. The costs of personnel salaries and benefits.

2. The costs of materials, supplies and services.

3. Capital expenditures based on the cost of the original purchase of equipment, hardware, and other fixed asset type items, typically having a useful life of more than two years, including equipment, improvements, and additions, as opposed to replacement parts for ordinary maintenance during the useful life of the capital items. All costs associated with such purchases, such as installation, shall be capitalized. Replacement of equipment at the useful life shall be a capital item. Assessment of

Members for capital expenditures shall be in accordance with the formula for operating expenses set forth in paragraph B of section 5 of this Agreement.

D. Payments and Credits.

1. Payments and credits under the Cost Allocation Plan shall be based on actual expenditures. Members shall submit an accounting of actual expenditures for each fiscal quarter not later than thirty days after the end of the quarter. Expenditures will then be allocated in accordance to the Cost Allocation Plan. Any necessary payments shall be made not later than sixty days after the end of the quarter.

2. A five percent (5%) late charge shall be imposed upon payments not made by a Member by the date the payment is due and payable. If a payment, including the late charge, is not made within thirty days of the date the late charge is imposed an additional five percent (5%) late charge shall be imposed. If a payment, including all late charges, is not made within ninety days following the date the original payment was due and payable, the Member shall be in default of this Agreement and subject to termination as a Member as provided in section 8 of this Agreement. Upon termination of a Member in default all outstanding obligations under this section shall become immediately due and payable.

E. Budget Administration.

The Executive Committee has the authority to fully implement the approved budget. The Fire Chief, with the approval of the Executive Committee, may recommend expenditures and budgetary transfers or adjustments. However, neither the Fire Chief nor the Executive Committee may exceed the personnel staffing authorized in the budget, either in number, position classification, or salary. In addition, neither the Fire Chief nor the Executive Committee may alter the capital budget, or increase the total amount of the approved expenditure budget without the approval of the legislative bodies of the Members.

Section 6. Personnel.

A. Employees.

1. All Fire Personnel shall remain employees of their respective jurisdiction and no express or implied employment contract exists as a result of this Agreement.

2. As of the date of this Agreement, appointment authorizations for the positions in the shared formula portion of the annual personnel cost allocation plan shall be jointly authorized by the Executive Committee.

3. The individual Member will retain absolute authority for any appointment authorizations not within the shared portion of the annual personnel cost allocation plan.

B. Personnel Exchange.

1. The Members agree to schedule and exchange work-shifts crossing over from Department to Department, Fire Personnel for Fire Personnel, for a period of time to be agreed to by each Member's designated Fire Department Chief Officer.

2. The respective exchanged Fire Personnel will be subordinate to and answerable to the Fire Chief and those persons designated by the Manager of the Member, for day-to-day operation of the Department to which the exchanged Fire Personnel are assigned, and the exchanged Fire Personnel will adhere to and abide by the rules, regulations, and working conditions as stipulated in the operational regulations of the Department to which they are assigned.

3. Each party to this Agreement agrees to comply with all applicable federal, state and county statutes, ordinances, regulations and employee Memoranda of Understanding to which they are subject.

4. Each party to this Agreement agrees that it shall treat any of its exchanged Fire Personnel as its own employee with respect to workers' compensation liability, without regard to which Department is providing supervision at the time of any injury, and without cost to the other party for those Fire Personnel assigned to the other party's Department, and each party shall pay the salary and the fringe benefits to its own personnel assigned to the other party's department without cost to the other party.

5. All Fire Personnel participating in the exchange program must meet the minimum professional qualifications required for their specialty under applicable state and county laws and regulations, and under the Department to which they are assigned.

6. All exchanged Fire Personnel remain employees of their respective Member and no express or implied employment contract exists with the host Member.

7. It is understood and agreed that each party to this Agreement shall act as an insurer for its Fire Personnel while performing services, including coverage of liability and malpractice claims made against those Fire Personnel arising out of the performance of their duties.

C. Personnel Resource Pool.

4. By entering into this Agreement each Member agrees that it shall allow all qualifying employees, assigned to its Fire Department, to participate in the "personnel resource pool" of employees to ensure that there are trained fire and emergency medical services professionals available to each Member should the need for additional personnel arise. Nothing herein shall preclude a Member from denying participation in the personnel resource pool for any of its individual employees due to public health and safety issues, including denying participation to an employee who lacks the necessary physical skills, lacks valid professional certifications, or denying participation as a matter of discipline imposed on the employee.

5. Each Member shall meet and confer with its collective bargaining unit representing the personnel of that Member prior to executing this Agreement. Said meet and confer shall be for the purposes of those personnel staffing shifts of other Members to this Agreement.

6. Each employee that is designated by a Member under this Agreement as participating in the personnel resource pool is and shall remain a full time employee of that Member ("Employer Member") and shall have been a full time employee for a minimum of one year prior to eligibility for participation.

7. Employer Member shall have the sole responsibility for paying the salaries and taxes to include, but not limited to, federal social security taxes, federal, state and local employment taxes and other employee related expenses, including, but not limited to workers' compensation insurance, health coverage and retirement benefits regarding such personnel. The Member utilizing an Employer Member's employee shall reimburse the Employer Member for all costs incurred for work performed by the employee when selected from the personnel resource pool. Nothing contained in this Agreement shall be deemed to create an employee/employer relationship between the employee and any Member utilizing said employee pursuant to this Agreement.

8. In performing the duties under this Agreement, said employee shall be under the direction of the Captain or Senior Officer of the Member requesting the employee from the personnel resource pool.

9. Each participating employee will utilize the safety gear, breathing apparatus mask and spare breathing apparatus bottles from their Employer Member when assigned to any other Member. It shall be the responsibility of the individual personnel to transport and return all personal safety equipment to the appropriate work site.

10. All participating employees will be compensated at an over-time rate of 1½ times their hourly rate as currently earned from the Employer Member.

Section 7. Fire Services to Other Agencies.

The Executive Committee, through this Agreement may provide fire protection and emergency medical services to public agencies and non-public agencies not a party to this Agreement, but only upon the unanimous vote of the entire Executive Committee. Such service shall be by annual contract, executed by each of the Members. The Executive Committee shall establish by contract, the amount of charge for the service.

Section 8. Withdrawal; Termination.

Each Member shall remain a party to this Agreement, and share in the costs of start-up and operation of the services being shared under this Agreement. If, in the interim, any Member defaults on payment of any assessment as defined in Section 5(C), or otherwise breaches this Agreement, such Member shall be automatically terminated as a party to this Agreement. The terminated Member remains liable for the defaulted payment and late charges for the balance of the year's assessment, and for assessments for years remaining in the minimum three-year term of agreed participation. Such subsequent assessments will be determined as if the terminated Member were still a party to the Agreement; the assessment will be due and payable in full on July 1 of the fiscal year for which levied.

After expiration of the three full years of membership, any Member defaulting on payment shall be automatically terminated and shall be liable for any defaulted payments and late charges.

A Member may withdraw as a party to this Agreement without penalty commencing on the June 30 of the third full fiscal year following the date of its membership, or on any June 30 thereafter, with one hundred eighty (180) days prior

notice to the Executive Committee. Such withdrawing Member shall perform all obligations under this Agreement until the noticed June 30 date of withdrawal.

The Members retain the right to seek legal redress, if necessary, to obtain payment of amounts due. The Members are entitled to costs and attorney fees related to such legal redress. A withdrawing Member forfeits any claim to any assets of the Members.

Notwithstanding the above, any Member which withdraws shall be obligated to pay to the Members a sum equal to the percentage of said Member's assessment for the fiscal year ending on the date of withdrawal, applied to the total amount of existing long-term debt of the Members existing on the date of withdrawal. Said payment can be a cash payment of the full amount or periodic payments as long-term debt becomes due and payable. Should the withdrawing Member choose to pay such amount as the debt becomes due and payable, said Member shall be responsible for, in addition to the principal payments due, all interest and finance costs.

Section 9. Dissolution.

The Agreement shall terminate and the Authority is thereby dissolved if the number of parties to this Agreement becomes less than two, or if the parties unanimously agree to terminate the Agreement. In either instance, dissolution shall only be effective upon a June 30, but shall in no event be effective until the requirements of Section 10 are satisfied.

Section 10. Disposition of Assets.

A. This Agreement may not be terminated and disposition of assets made to parties to the Agreement until the Executive Committee reasonably exhausts all means of collecting any monies due to the Agreement.

B. If the cause for termination was reduction of the number of parties to the Agreement to less than two, all net assets jointly owned by two or more Members shall be disposed of in accordance with the separate agreement for those assets. If there is no separate agreement for otherwise disposing of the jointly owned assets, said assets become the property of the sole remaining party to this Agreement.

C. If the cause for termination is mutual agreement, the total dollar amount of the net assets shall be apportioned among such parties according to the relative assessments paid by those parties during the entire term of the Agreement.

D. In no event shall assets be transferred to Member Agencies until all debts are retired.

Section 11. Amendment to Agreement.

The Executive Committee may recommend an amendment to this Agreement. This Agreement may only be amended by approval of all the Members to this Agreement. The Executive Committee shall forward the proposed amendment with its recommendation to the legislative body of each party to the Agreement. The proposal shall be accompanied by a copy of the proposed amendment to the Agreement, which

shall be adopted, properly executed, and returned to the Executive Committee if the party concurs with the amendment.

Section 12. Additional Parties to the Agreement.

Agencies, as defined in the Act, which are not parties hereto, may become parties hereto only (upon approval by the legislative body of the agency requesting membership) by amendment to this Agreement as defined in Section 11 hereof, in the form of the attached Exhibit A, and subject to the following terms and conditions.

A new Member may be permitted to join this Agreement upon approval of all the Members to this Agreement. The Executive Committee and the new Member may enter into a separate agreement with respect to the terms and conditions for membership not inconsistent with this Agreement. No new members will be added to this Agreement in the first 24 months following the effective date of this Agreement, but in no event any earlier than January 1, 2012.

A. The Executive Committee shall set the annual fee for the new Member and the number of years that this fee will apply.

B. The new Member shall pay a buy-in fee as determined by majority vote of the Executive Committee after consideration has been given to the following factors:

1. The book value of the new Member's long-term fixed assets (capital expenditures).

2. The book value of the new Member's current assets.

3. The new Member's unappropriated reserves for contingencies.

4. Benefits received by Members by adding the additional party.

5. Such other facts that the Executive Committee believes are germane to a determination.

C. The effective date of the amendment to this Agreement and inclusion as an additional party shall only occur on a July 1.

Such new Members that become parties hereto shall be entitled to all the rights and obligations, including three-year minimum participation, and shall become a Member as defined in this Agreement.

Section 13. Notices.

All notices and other communications permitted or required hereunder shall be in writing and shall be served by personal delivery or by deposit in the United States mail, postage paid, addressed to the respective parties as follows:

To El Cajon: City of El Cajon
 200 Civic Center Way
 El Cajon, CA 92020
 Attention: Kathi Henry, City Manager

To La Mesa: City of La Mesa
8130 Allison Avenue
La Mesa, CA 91941
Attention: Sandra L. Kerl, City Manager

To Lemon Grove: City of Lemon Grove
3232 Main Street
Lemon Grove, CA 91945
Attention: Graham Mitchell, City Manager

Any notice or other communication served by personal delivery shall be deemed served when delivered. Any notice or other communication deposited in the United States Mail as provided above shall be deemed to have been served two days after the day of deposit.

Section 14. Severability.

Should any part, term, portion, or provision of this Agreement or the application thereof of any person or circumstances, be in conflict with any State or Federal law, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, portions or provisions, or the application thereof to other persons or circumstances, shall be deemed severable and shall not be affected thereby, provided such remaining portions or provisions can be construed in substance to continue to constitute the Agreement that the parties intended to enter into in the first instance.

Section 15. Hold Harmless.

Each Member shall defend, indemnify, and save all other individual Members harmless from any and all claims arising out of that individual Member's negligent performance of this Agreement. Any loss or liability resulting from the negligent acts, errors, or omissions of the Executive Committee, Fire Chief, and/or any staff hired jointly by the Members, while acting within the scope of their authority under this Agreement, shall be borne by the Members' collectively and proportionately in accordance with the contributions agreed to for all other obligations of the Members under this Agreement. The provisions of this Section 15 shall survive the termination or expiration of this Agreement.

Section 16. Legal Representation and Advice.

In the course of providing fire and emergency services in accordance with this Agreement, each Member and its respective Fire Personnel shall seek legal counsel regarding legal matters or issues from their respective City Attorney. In the event that a legal matter or issue relates to two or more Members where the Members involved will benefit from joint representation, the Executive Committee may meet and agree on appropriate legal representation and apportionment of costs, if applicable, as allowed by law.

Section 17. Claims Arising from Concurrent Acts or Omissions.

The Members hereby agree to defend themselves from any claim, action or proceeding arising out of the concurrent acts or omissions of the Members. In such cases, Members agree to retain their own legal counsel, bear their own defense costs, and waive their right to seek reimbursement of such costs, except as provided in Section 18, below.

Section 18. Joint Defense.

Notwithstanding Section 17 above, in cases where one or more of the Members agree in writing to a joint defense, the Members may appoint joint defense counsel to defend the claim, action or proceeding arising out of the concurrent acts or omissions of the Members participating in the joint defense. Joint defense counsel shall be selected by mutual agreement of the Members. The Members agree to share the costs of such joint defense and any agreed settlement in equal amounts, except as provided in Section 19, below. The Members further agree that no Member may bind the others to a settlement agreement without the written consent of the other Members participating in the joint defense.

Section 19. Reimbursement and/or Reallocation.

Where a trial verdict or arbitration award allocates or determines the comparative fault of the Members, the Members may seek reimbursement and/or reallocation of defense costs, settlement payments, judgments and awards, consistent with such comparative fault.

Section 20. Successors.

This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties hereto.

Section 21. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

Section 22. Entire Agreement.

This Agreement, and any exhibits and attachments, constitutes the entire agreement of the parties.

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be executed and attested by their proper officers thereunto duly authorized, and their official seals to be hereto affixed as of the day and year first above written.

CITY OF EL CAJON, a municipal corporation

By: W E McCallon

Attest:

Belinda Hawley, Acting City Clerk
City Clerk

Its: Mayor

CITY OF LA MESA, a municipal corporation

By: Arv Madrid

Attest:

Mary S. Kennedy
City Clerk

Its: Mayor

CITY OF LEMON GROVE, a municipal corporation

By: Mary J. Sussem

Attest:

Dw Carey
City Clerk

Its: Mayor