

JOINT EXERCISE OF POWERS AGREEMENT
Between the
North County Dispatch Joint Powers Authority
and the
City of Escondido

THIS AGREEMENT is made and entered this ___ day of ___, 2023, and is effective beginning the Effective Date (as defined in Section 3), is by and between the City of Escondido, a California municipal corporation (hereinafter referred to as the "City") and the North County Dispatch Joint Powers Authority (the "Authority"), a joint exercise of powers authority organized and existing under the laws of the State of California.

WHEREAS, the Authority was created in July 1984 and currently has eight members, including the Rancho Santa Fe Fire Protection District, North County Fire Protection District, and the cities of Encinitas, San Marcos, Solana Beach, Carlsbad, Vista, and Oceanside (the "Member Agencies"); and

WHEREAS, the Authority is authorized to solicit and add additional members; and

WHEREAS, on October 11, 2023, the Escondido City Council adopted its Resolution No. 2023-95, approving the City's addition to the Authority as a member agency; and

WHEREAS, the Authority desires to add the City as a member agency; and

WHEREAS, the Authority and the City desire to provide fire communications and related services and equip, staff, operate a regional public safety services communications facility, and to provide a vehicle for the accomplishment thereof; and

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

WHEREAS, the Authority and the City 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 Authority and the City for and in consideration of mutual benefits promise and agree as follows:

SECTION 1. *Purpose.* The purpose of this Agreement is to add the City to the Authority as a "Member Agency" as defined in Section 2(J) of the Second Amended and Restated Joint Exercise of Powers Agreement for "North County Dispatch Joint Powers Authority", dated May 28, 2009. This Agreement is made pursuant to Section 15 of the Second Amended and Restated Joint Exercise of Powers Agreement for "North County Dispatch Joint Powers Authority", dated

May 28, 2009, and the First Amendment to the Second Amended and Restated Joint Exercise of Powers Agreement for “North County Dispatch Joint Powers Authority”, dated March 4, 2015 The Authority Agreement is attached to this Agreement as Exhibit A and is incorporated by reference.

SECTION 2. *Adoption of JPA.* On October 11, 2023, the City Council of the City of Escondido approved this Agreement, together with its attachments or other documents described or incorporated herein. To the extent that they are not in conflict with this Agreement, all of the rights and obligations conferred on Member Agencies pursuant to the Authority Agreement shall apply to the City as of the Effective Date of this Agreement.

SECTION 3. *Term.* This Agreement shall be effective upon approval of the Escondido City Council and the Board of Directors of the Authority but shall have an effective date of **December 31, 2023** (the “Effective Date”). However, and subject to Section 5 (Start-Up Costs) and Section 6 (Additional Costs), the City’s annual assessments under Section 7 (Annual Assessments, Budget) of this Agreement and Section 6(C) of the Second Amended and Restated Joint Exercise of Powers Agreement for “North County Dispatch Joint Powers Authority”, dated May 28, 2009, will not commence until December 31, 2024, or one (1) year after the Effective Date of this Agreement, whichever is later.

This Agreement is binding on the Parties and will remain in effect until the total number of Member Agencies falls below two (2) or the City withdraws from the Authority under Section 12 (Withdrawal) of the Authority Agreement, or the Member Agencies agree to terminate the Authority under Section 13 (Dissolution and Disposition of Assets) of the Authority Agreement.

SECTION 4. *Buy-In Fee/Disposition of Assets.* As incentive for joining the Authority, the City shall not pay a buy-in fee for the first year of this Agreement as could be required under Section 15(C) of the Authority Agreement if, and only if, the City becomes a Member Agency on or before December 31, 2023. If the City becomes a Member Agency after December 31, 2023, the Parties agree to enter into good faith negotiations to determine what, if any, buy-in fee shall be imposed, which shall take into consideration the financial impact that the delay in joining the Authority has on the Authority that are not included in the Start-Up Costs (as hereinafter defined).

Notwithstanding its immediate status as a “voting member” of the Authority as of the Effective Date of this Agreement, the City shall not be eligible to share in the distribution of funds or property as may be authorized under the Authority Agreement for a period of 10 years following the Effective Date of this Agreement or prior to January 1, 2034 (the “10-Year Distribution Waiver”), whichever is earlier, on the basis that City is paying no buy-in fee as a share of the Authority’s assets. Therefore, the City will not receive, and hereby expressly waives any rights to proceeds in accordance with Sections 13(G) and 13(H) of the Authority Agreement for the 10-Year Distribution Waiver period. Following the expiration of the 10-Year Distribution Waiver period, the City shall share in any distribution of the Authority’s funds, property, and/or assets in the same manner as any other Member Agency in accordance with

the terms of the Authority Agreement, including any amendment or restatement thereto.

SECTION 5. *Start-Up Costs.* "Start-Up Costs" are defined as costs incurred by the Authority that are directly related to the City becoming a Member Agency of the Authority. The City will pay such Start-Up Costs incurred by the Authority to hire three (3) additional dispatchers, including, but not limited to, actual salaries and benefits paid during the first year of this Agreement. As of the Effective Date of this Agreement, the Parties estimate Start-Up Costs to be in an amount of \$130,000 for each new dispatcher, for a total estimated cost of \$390,000. The Parties understand and agree that such amount is an estimate and that the actual amount may be more or less than the total estimated cost. However, the total amount of Start-Up Costs resulting from the first year of the City's membership to the Authority shall not exceed \$400,000. The City agrees to reimburse the Authority of the actual and reasonable Start-Up Costs, which shall not exceed \$400,000, without additional approval from its City Council. Any amounts in excess of \$400,000 shall require the approval of the Escondido City Council. At the conclusion of the first year of this Agreement, the Authority will perform an analysis of the specific actual costs incurred and will provide the City with a summary. The Authority will invoice 25% of the Start-Up Costs to the City as part of regular Q1 billing in years two (2) through five (5) of this Agreement.

SECTION 6. *Additional Costs.* The City may incur additional costs in the process of obtaining dispatch services from the Authority. Costs such as any purchase or modification of software licenses, station alerting, computer workstations, printers, power supplies, wiring and any other appurtenance which may reside at a facility owned or operated by either the Authority or the City will not be covered as a Start-Up Cost as outlined in Section 5 (Start-Up Costs). The City is responsible for such additional costs described in this Section 6 (Additional Costs).

SECTION 7. *Annual Assessments, Budget.* The City's assessment for the period of January 1, 2025 through June 30, 2025 shall be determined pursuant to Section 6(C) of the Authority Agreement, and based upon anticipated operating expenses of the Authority with the City as a Member Agency.

SECTION 8. *Severability.* Should any provision of this Agreement be unenforceable for any reason, the remaining provisions are deemed severable and will remain valid and enforceable.

SECTION 9. *Amendments.* This Agreement represents the entire understanding between the Parties regarding the City's acceptance as a member in the Authority and supersedes all previous understandings and agreements. Following the full and complete 10-Year Distribution Waiver period, the terms of the Authority Agreement will survive this Agreement and control the relationship between the Authority and the City. This Agreement may be amended only through a written document that is executed by both Parties.

SECTION 10. *Successors.* This Agreement is binding upon and inures to the benefit of the successors of the Parties.

CITY OF ESCONDIDO

By: _____

Dane White, Mayor

ATTEST:

By: _____

John V. Tenger, Fire Chief

NORTH COUNTY DISPATCH JOINT POWERS AUTHORITY

By: _____

Ken Munson, Chair of the Board

ATTEST:

By: _____

Christopher D Herren, Secretary of the Board

**FIRST AMENDMENT TO THE SECOND AMENDED AND
RESTATED JOINT EXERCISE of POWERS AGREEMENT for
“NORTH COUNTY DISPATCH JOINT POWERS AUTHORITY”**

THIS FIRST AMENDMENT TO THE SECOND AMENDED AND RESTATED JOINT EXERCISE of POWERS AGREEMENT (“Agreement”) for the NORTH COUNTY DISPATCH JOINT POWERS AUTHORITY (“JPA”) made and entered into this 4th day of March, 2015, by and between the CITY OF CARLSBAD, CITY OF ENCINITAS, CITY OF OCEANSIDE, CITY OF SAN MARCOS, CITY OF SOLANA BEACH, CITY OF VISTA, NORTH COUNTY FIRE PROTECTION DISTRICT, and RANCHO SANTA FE FIRE PROTECTION DISTRICT, collectively the “Member Agencies” and individually “Member” or “Member Agency”), all of which are public agencies organized and existing under and by virtue of the laws of the State of California, for the purpose of amending the Agreement with respect to the following facts:.

RECITALS

WHEREAS, the Member Agencies entered into the initial Joint Powers Agreement on June 11, 1984, and subsequently executed an Amended and Restated Joint Powers Agreement dated October 30, 2002;

WHEREAS, the Member Agencies further amended said Agreement in its entirety through the Second Amended and Restated Joint Exercise of Powers Agreement on May 28, 2009, which superseded all previous Agreements;

WHEREAS, the JPA will benefit from having a uniform process for the elections of officers for the Board and for the Chiefs; and

WHEREAS, JPA staff have identified substantial debt financing and unfunded or underfunded employee benefit related expenses that Member Agencies should be responsible for on a pro-rata basis if terminated or withdrawing from the JPA.

NOW THEREFORE, the Member Agencies, for and in consideration of the mutual promises and agreements herein contained, do agree as follows:

Section 1. Section 5(H)(1) of the Agreement is amended to read as follows:

H. Officers and Respective Duties.

1. Chair and Vice Chair of the Board.

The Board shall elect a Chair and Vice Chair at its first meeting, and thereafter, at the first meeting held in each succeeding calendar year, the Board shall elect or re-elect its Chair and Vice Chair. In the event the Chair or Vice

Exhibit "A"

Chair so elected ceases to be a Board member, the resulting vacancy shall be filled at the meeting of the Board held after such vacancy occurs. In the absence or inability of the Chair to act, the Vice Chair shall act as Chair. The Chair, or, in his/her absence, the Vice Chair, shall preside and conduct all meetings of the Board.

Section 2. Section 7 of the Agreement is amended to read as follows:

SECTION 7. Non-payment or Other Default of a Member Agency

The Board shall have the authority to terminate a Member Agency that materially breaches its duties pursuant to this Agreement. The term "material breach" shall include, without limitation, a failure to make any contribution or pay any assessment when due, and the failure to indemnify or defend other Member Agencies as required by Section 17. The Board shall give the Member notice of the breach and the right to cure the breach, in accordance with the Board's Policies and Procedures. In the event that the Member Agency fails to cure the breach within the time period stated in the notice, the Board shall have the authority to immediately terminate the Member. Termination of the membership of the Member Agency shall not relieve the terminated Member of its pro-rata share of any and all debts, liabilities, or other financial obligations incurred by the Authority prior to the effective date of the termination. These financial obligations include, but are not limited to, any outstanding debt financing and any unfunded or underfunded employee benefit related expenses ("Terminating Obligations"). The pro-rata share of the Member Agency's Terminating Obligations shall be determined based upon the length of time the Member Agency has been with the Authority, any factor used for calculating the Member Agency's contribution pursuant to Section 6(C)(1), and any other factor as determined by the Authority as reasonably related to the Member Agency's participation in the Authority that has caused the Authority to incur these debts, liabilities, or other financial obligations.

The Member Agency in default also remains responsible for all contributions or assessments through the effective date of termination. However, termination shall result in forfeiture of all rights and claims of the terminated Member to any repayment of contributions or advances or other distribution of funds or property after termination, including distributions made as a result of the termination of the Authority.

Section 3. Section 12 of the Agreement is amended to read as follows:

SECTION 12. Withdrawal

A Member Agency may withdraw as a party to this Agreement, effective at the end of any fiscal year (June 30) by giving written notice of its intention to withdraw to the Secretary of the Board no later than December 31 of the fiscal

Exhibit "A"

year preceding the fiscal year in which the withdrawal will be effective (a minimum of eighteen months' notice). The written notice shall be accompanied by a resolution or minute order of the legislative body of the member Agency ("Notice of Withdrawal").

If a Member Agency does not submit its written notice of withdrawal to the Board Secretary by December 31 of the fiscal year prior to the fiscal year in which the Member Agency wishes to withdraw, the effective date of the withdrawal will be on June 30, eighteen months from the end of the calendar year in which the notice of withdrawal was submitted [by way of example only if a Notice of Withdrawal is delivered to the Secretary of the Board on February 1, 2010 then the effective date of the withdrawal shall be June 30, 2012]. The Board, in its sole and absolute discretion, may by majority vote of the total membership of the Board make an exception allowing a member agency who does not meet the December 31 deadline an earlier withdrawal date.

Such withdrawing party shall perform all obligations under this Agreement until the effective date of withdrawal. Modification to the timing requirements for withdrawal set forth above shall require a majority vote of the total membership of the Board.

Notification of the intent to withdraw by a Member Agency shall not relieve the withdrawing Member Agency from the requirement to pay its pro-rata contribution for any and all debts, liabilities, or other financial obligations incurred by the Authority prior to the effective date of the withdrawal, including Termination Obligations. The pro-rata share of the Member Agency's Terminating Obligations shall be determined based upon the length of time the Member Agency has been with the Authority, any factor used for calculating the Member Agency's contribution pursuant to Section 6(C)(1), and any other factor as determined by the Authority as reasonably related to the Member Agency's participation in the Authority that has caused the Authority to incur these debts, liabilities, or other financial obligations. All amounts owing by the withdrawing Member Agency shall be due and payable in full no later than 30 days following the effective date of termination.

The Authority reserves the right to seek any and all legal redress to obtain the payment of amounts due for withdrawal under this Section or for default under Section 7 above. In an action to collect the amounts due and owing by a Member Agency, the prevailing party is entitled to attorney fees and costs.

Withdrawal of a Member Agency shall result in the forfeiture of all rights and claims of the withdrawing Member to any repayment of contributions or advances or other distribution of funds or property after withdrawal, including distribution made in the event of the termination of the Authority.

Exhibit "A"

Section 4. Except as specifically amended by this Amendment, each and every provision of the Agreement shall continue in full force and effect as originally entered into.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment 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. The Member Agencies agree that this Amendment may be executed in parts where the sum of the parts equals a whole and that a photocopy or facsimile signature shall be deemed an original.