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DATE: March 4, 2015

TO: Honorable Mayor and City Councilmembers

FROM: Fire Department

SUBJECT: **ADOPTION OF A RESOLUTION APPROVING THE FIRST AMENDMENT TO THE SECOND AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT FOR NORTH COUNTY DISPATCH JOINT POWERS AUTHORITY**

### **SYNOPSIS**

Staff recommends that the City Council adopt a resolution approving the First Amendment to the Second Amended and Restated Joint Exercise of Powers Agreement ("Amendment") for North County Dispatch Joint Powers Authority ("JPA") establishing financial liability for a withdrawing Member Agency.

### **BACKGROUND**

The North County Dispatch JPA is comprised of eight Member Agencies: the Cities of Carlsbad, Encinitas, Oceanside, San Marcos, Solana Beach, Vista, the North County Fire Protection District, and the Rancho Santa Fe Fire Protection District.

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 the Agency is terminated or withdraws from the JPA. The First Amendment addresses this deficiency.

The amendment also establishes a uniform process for the elections of officers for the Board of Directors and for the Board of Chiefs.

On December 4, 2014, the Board of Directors of the North County Dispatch JPA approved the First Amendment to the Second Amended and Restated Joint Exercise of Powers Agreement. All Member Agency councils and boards must approve the JPA Amendment in order for it to become effective.

### **ANALYSIS**

The intent of the Amendment is for each member agency to agree that upon termination or withdrawal that it must pay a pro-rata share of any long-term debt of the JPA. Currently, the JPA's only long-term debt is its unfunded CalPERS pension liability. The

amendment states the factors to be used for determining an agency's pro-rata share: time with the JPA and the call volume.

The JPA Board is not required to recommend a specific scenario or option to incorporate into the JPA Agreement. However, the JPA developed three scenarios for the withdrawing Member Agency to use when negotiating with the JPA as to its pro-rata share of any long-term financial obligations, including financing for capital assets and unfunded pension benefits. (See Exhibit 2, Attachments B and C)

**FISCAL IMPACT**

No fiscal impact.

**INSURANCE REQUIREMENTS**

Does not apply

**COMMISSION OR COMMITTEE REPORT**

Does not apply

**CITY ATTORNEY'S ANALYSIS**

The City Attorney has approved the First Amendment as to form.

**RECOMMENDATION**

Staff recommends that the City Council adopt a resolution approving the First Amendment to the Second Amended and Restated Joint Exercise of Powers Agreement ("Amendment") for North County Dispatch Joint Powers Authority ("JPA") establishing financial liability for a withdrawing Member Agency.

PREPARED BY:

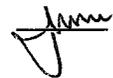
  
\_\_\_\_\_  
Darryl Hebert  
Fire Chief

SUBMITTED BY:

  
\_\_\_\_\_  
Michelle Skaggs Lawrence  
Interim City Manager

REVIEWED BY:

Jane M. McPherson, Interim Financial Services Director



**EXHIBITS**

- Exhibit 1      Resolution
- Exhibit 2      NCD JPA Board of Directors Agenda Report and Amendment

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE APPROVING THE FIRST AMENDMENT TO THE SECOND AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT FOR NORTH COUNTY DISPATCH JOINT POWERS AUTHORITY

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, the 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 City Council of the City of Oceanside does resolve as follows:

SECTION 1. That the above recitations are true and correct.

SECTION 2. That the City Council approves the First Amendment to the Second Amended and Restated Joint Exercise of Powers Agreement for North County Dispatch Joint Powers Authority.

1 PASSED AND ADOPTED by the City Council of the City of Oceanside, California,  
2 this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by the following vote:

3  
4 AYES:

5 NAYS:

6 ABSENT:

7 ABSTAIN:

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MAYOR OF THE CITY OF OCEANSIDE

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11 ATTEST:

APPROVED AS TO FORM:

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14 \_\_\_\_\_  
City Clerk

  
\_\_\_\_\_  
City Attorney

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**NORTH COUNTY DISPATCH  
JOINT POWERS AUTHORITY  
BOARD OF DIRECTORS AGENDA REPORT  
Staff Report #14/14**

**Board of Directors Meeting of December 4, 2014**

**Subject: JPA Withdrawal/Liability Cost Sharing**

**RECOMMENDATION:**

The JPA Chiefs, based on discussions at the JPA Chiefs meeting in September with legal counsel present, recommend that the JPA Board of Directors consider the proposed withdrawal liability language, which would establish withdrawal liability based upon the withdrawing agency's length of time with the JPA and the amount of contributions. The final liability of the withdrawing agency would be determined with agency-specific negotiations. In addition, the JPA Chiefs and Staff recommend the proposed Amendment changes the position of Board Chair from a two-year term to one-year term to be consistent with the term of office for the Chair of the Board of Fire Chiefs.

The JPA Chiefs and Staff request the JPA Board of Directors approve the First Amendment to the Second Amended and Restated JPA Agreement incorporating the proposed changes and take the proposed First Amendment to the Second Amended and Restated JPA Agreement (see Attachment A) back to their respective governing bodies for final approval prior to the next regularly scheduled Board of Directors meeting in February or May.

**BACKGROUND/DISCUSSION:**

At the regularly scheduled Board of Directors meeting on May 22, 2014, shortly after San Miguel Fire District withdrew from Heartland Communications, the JPA Board of Directors asked JPA legal counsel and staff to review the JPA Agreement specifically for what liabilities a withdrawing member agency would be responsible. Upon review of current JPA Agreement, JPA legal counsel prepared a draft amendment to the JPA Agreement to clarify what financial obligations a member agency is responsible to compensate the JPA upon withdrawal or termination. The JPA Agreement does not clearly require a withdrawing member to make any financial contribution to the JPA except to fully fund that fiscal year's assessment. Long-term debts are not taken into consideration. The proposed JPA amendment addresses this deficiency.

JPA legal counsel submitted the proposed JPA amendment to each of the member agencies and received comments from the member agencies of Vista, Oceanside and Solana Beach, (San Marcos and Rancho Santa Fe stated they had no comments to add.) The following comments from the member agencies are included in the updated proposed JPA amendment:

- **Defining the "terminating obligations" for consistency between Section 7 (termination) and Section 12 (withdrawal);**
- **Set forth the factors to be used in calculating the "pro-rata share" of a terminated or withdrawing member agency; and**
- **Clarify that a prevailing party can obtain attorney's fees and costs in the event a legal action must be pursued to resolve any outstanding amounts by a terminated or withdrawing member.**

Following the Board of Directors meeting on May 22, 2014, and upon receipt of comments from North County Fire Protection District, the JPA Chiefs requested JPA legal counsel and staff to look at various

formula options and come up with a potential cost to each member agency, if the member agency were to withdraw from the JPA and present these options to the JPA Board of Directors for further direction.

Staff prepared the attached hypotheticals to demonstrate how a withdrawing member's pro-rata share of outstanding long-term debt could be calculated. Currently, the JPA does not have any long-term debt except for its unfunded CalPERS pension liability. The first set of scenarios shows payment of the CalPERS liability as of 2012, the last year that the JPA has received information from CalPERS on the amounts owed, \$9.7 million, (see Attachment B). Based on current employees and information obtained from CalPERS, staff has also prepared a second set of scenarios based upon the estimated CalPERS unfunded liability at the end of this fiscal year on June 30, 2015, \$11.9 million, (see Attachment C).

The pro-rata share for a withdrawing member is based primarily upon length of time with the agency and the call volume, which is used in determining the member agencies' annual contribution. The attached scenarios provide examples of how those two factors can be weighted in determining the pro-rata share. How these factors are weighted would certainly be the subject of negotiation with the withdrawing member. These scenarios are provided to the Board of Directors as an example, and the Board is not required to recommend a specific scenario to incorporate into the JPA Agreement.

**OPTION #1 – Simple Average Approach (41/59)**

Using a *weighted average of membership years with JPA and average yearly call count* for each member agency to pay upon withdrawal or termination a pro-rata share of the total amount of JPA long-term liabilities, which currently only includes the CalPERS Unfunded Termination Liability.

**OPTION #2 – Average of the Average Approach (50/50)**

Using a *weighted average of the average membership years with JPA and average yearly call count* for each member agency to pay upon withdrawal or termination a pro-rata share at 50/50 of the total amount of JPA long-term liabilities, which currently only includes the CalPERS Unfunded Termination Liability.

**OPTION #3 – Average of the Average Approach (60/40)**

Using a *weighted average of the average membership years with JPA and average yearly call count* for each member agency to pay upon withdrawal or termination a pro-rata share at 60/40 of the total amount of JPA long-term liabilities, which currently only includes the CalPERS Unfunded Termination Liability.

Staff and JPA legal counsel will be available to answer any questions concerning the proposed JPA Amendment language and the scenarios that have been prepared.

**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 \_\_\_ day of \_\_\_\_\_, 2014, 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

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

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.

**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.

CITY OF OCEANSIDE

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: John P. Muller  
City Attorney

Date: 2/10/15

ATTACHMENT C

JPA WITHDRAWAL LANGUAGE  
 HYPOTHETICAL CALPERS TERMINATION LIABILITY  
 As of end June 2015

Member	Date Joined the JPA	Hypothetical Termination Date	Years in the JPA	Ave Call Count/ Year	OPTION 1 Simple Average Membership Years (41%) and Call Count (59%)		OPTION 2 Average of the Average Membership Years (50%) and Call Count (50%)		OPTION 3 Average of the Average Membership Years (60%) and Call Count (40%)	
					Weighted Average In %	Weighted Average In \$	Weighted Average In %	Weighted Average In \$	Weighted Average In %	Weighted Average In \$
Rancho Santa Fe Fire Protection District	Jun-84	Jun-15	31	1,589	9.4%	\$ 1,119,099	10.4%	\$ 1,240,914	11.7%	\$ 1,395,179
Solana Beach Fire Protection District	Jun-84	Jun-15	31	1,040	8.6%	\$ 1,029,431	9.8%	\$ 1,163,207	11.2%	\$ 1,337,014
San Marcos Fire Protection District	Jun-84	Jun-15	31	4,763	13.7%	\$ 1,637,027	14.2%	\$ 1,689,750	14.8%	\$ 1,736,248
Enchitas Fire Department	Jun-86	Jun-15	29	3,813	12.0%	\$ 1,426,507	12.5%	\$ 1,489,822	13.2%	\$ 1,572,084
Vista Fire Department	Jun-86	Jun-15	29	7,192	16.6%	\$ 1,978,061	16.5%	\$ 1,967,799	16.4%	\$ 1,954,465
Carlsbad Fire Department	Jul-03	Jun-15	12	6,999	12.4%	\$ 1,472,713	11.6%	\$ 1,360,467	10.6%	\$ 1,260,616
North County Fire Protection District	Jun-05	Jun-15	10	3,663	7.3%	\$ 875,206	7.1%	\$ 845,905	6.8%	\$ 807,836
Oceanside Fire Department	Jul-06	Jun-15	9	13,082	20.0%	\$ 2,302,261	18.0%	\$ 2,142,445	15.4%	\$ 1,830,865
		<b>TOTAL</b>		<b>42,741</b>	<b>100.0%</b>	<b>\$ 11,920,307</b>	<b>100.0%</b>	<b>\$ 11,920,307</b>	<b>100.0%</b>	<b>\$ 11,920,307</b>

Assumptions :

- JPA Board of Directors votes to disband the JPA at the end of fiscal year June 30, 2015.
- Amount of Calpers Hypothetical Termination Liability based on latest Actuarial Valuation of \$9,730,521 as of end June 2012.
- Best guess estimate for June 2015 valuation only include 2% mortality load continuity (compounded annually) in accordance with Calpers Board Policy
- Other demographics not included in the 2015 estimate and will impact Calpers Termination Liability are age of employees, years in service, wages, investment rates and inflation assumptions.
- Calpers releases latest Actual Valuation Plan at the beginning of fall of each year.

**ATTACHMENT B**

**JPA WITHDRAWAL LANGUAGE  
HYPOTHETICAL CALPERS TERMINATION LIABILITY**  
As of end June 2012

Member	Date Joined the JPA	Hypothetical Termination Date	Years in the JPA	Ave Call Count/ Year	OPTION 1 Simple Average Membership Years (41%) and Call Count (59%)		OPTION 2 Average of the Average Membership Years (50%) and Call Count (50%)		OPTION 3 Average of the Average Membership Years (60%) and Call Count (40%)	
					Weighted Average in %	Weighted Average in \$	Weighted Average in %	Weighted Average in \$	Weighted Average in %	Weighted Average in \$
Rancho Santa Fe Fire Protection District	Jun-84	Jun-12	28	1,589	9.5%	\$ 928,838	10.8%	\$ 1,046,606	12.2%	\$ 1,182,528
Solana Beach Fire Protection District	Jun-84	Jun-12	28	1,040	8.8%	\$ 854,414	10.1%	\$ 983,174	11.6%	\$ 1,131,782
San Marcos Fire Protection District	Jun-84	Jun-12	28	4,763	14.0%	\$ 1,398,711	14.5%	\$ 1,412,990	15.2%	\$ 1,475,635
Endicott Fire Department	Jun-86	Jun-12	26	3,813	12.1%	\$ 1,179,080	12.8%	\$ 1,241,653	13.5%	\$ 1,313,905
Vista Fire Department	Jun-86	Jun-12	26	7,192	16.8%	\$ 1,636,833	16.8%	\$ 1,631,824	16.7%	\$ 1,626,042
Carlsbad Fire Department	Jul-03	Jun-12	9	6,999	12.1%	\$ 1,175,270	11.1%	\$ 1,082,680	10.0%	\$ 976,248
North County Fire Protection District	Jun-05	Jun-12	7	3,663	6.9%	\$ 674,620	6.6%	\$ 638,721	6.1%	\$ 597,288
Oceanside Fire Department	Jul-06	Jun-12	6	13,082	19.8%	\$ 1,922,785	17.4%	\$ 1,692,676	14.7%	\$ 1,427,094
<b>TOTAL</b>				<b>62,741</b>	<b>100.0%</b>	<b>\$ 9,730,521</b>	<b>100.0%</b>	<b>\$ 9,730,521</b>	<b>100.0%</b>	<b>\$ 9,730,521</b>

**Assumptions:**

1. Amount of Calpers Hypothetical Termination Liability based on latest Actuarial Valuation as of end June 2012.
2. Plan liability on a termination basis is calculated differently compared to the plan's ongoing funding liability.
3. Calpers releases latest Actual Valuation Plan at the beginning of fall of each year and the report 2 fiscal years behind. FY 2013 Actuarial Valuation to be release Fall of 2014.