

**COOPERATIVE AGREEMENT BETWEEN THE CITIES OF BREA AND
FULLERTON FOR CONSOLIDATION OF FIRE DEPARTMENT COMMAND STAFF**

THIS AGREEMENT is made and entered into this ~~19th~~^{1st} day of ~~July,~~
~~2014~~January, 2020, by and between the CITY OF BREA, a municipal corporation,
hereinafter referred to as "Brea," and the CITY OF FULLERTON, a municipal corporation,
hereinafter referred to as "Fullerton". Brea and Fullerton may be referred to in this
Agreement individually as "city" or "Party" and jointly as "cities" or "Parties." The City
Manager of Brea and the City Manager of Fullerton may be referred to in this
Agreement jointly as "City Managers." The City Council of Brea and the City Council of
Fullerton shall be referred to in this Agreement jointly as "City Councils."

WITNESSETH:

WHEREAS, Brea and Fullerton each maintain their own all-risk municipal fire
departments, and

WHEREAS, Brea and Fullerton ~~since May 2011 have been~~are engaged in a ~~pilot~~
~~program~~cooperative agreement operating a joint fire department command structure in
a single consolidated administrative unit in order to take advantage of fiscal and
operational efficiencies, while maintaining the service level expectations for both
communities, and

WHEREAS, Brea and Fullerton wish to maintain the consolidated command staff
structure on a long term basis while continuing to ~~study feasibility of various options~~
~~for pursue~~ a full consolidation of fire ~~service~~command staff into one regional fire
~~department, one of which is creation of a command under the jurisdiction of the North~~
~~Orange County Cities~~ Joint Powers Authority, hereinafter referred to as "NOCC JPA", and

WHEREAS, Brea and Fullerton recognize and acknowledge that to obtain the
greatest efficiencies possible from a regional or consolidated fire department, current
fire service personnel should be full partners in the development of best practices for
the newly constituted agency or ~~Joint Powers Authority~~NOCC JPA.

Formatted: Left: 1.25", Right: 1.25"

Formatted: Space Before: 6 pt, After: 6 pt

Formatted: Space Before: 6 pt, After: 18 pt

Formatted: Space Before: 6 pt, After: 6 pt

|

Formatted: Space Before: 6 pt, After: 6 pt, Line spacing: 1.5 lines

NOW, THEREFORE, Brea and Fullerton agree as follows:

A. TERM

A. Agreement Term

1. This Agreement shall be effective commencing on ~~July 19, 2014~~January 1, 2020 and shall expire on June 30, ~~2019~~2024 unless extended or sooner terminated as provided herein.
2. **Termination for Convenience.** Either Party may terminate this Agreement by providing not less than six (6) months prior written notice of its intent to terminate. This Agreement may be terminated at any time upon mutual agreement of the Parties.
3. **Termination for Cause.** Either city may terminate this Agreement for cause upon ~~personally~~personal service of a written Notice to Cure Default, therein specifying the acts or omission constituting the alleged default, and demanding that the default be cured within ten (10) days. If the default remains uncured, termination shall be effective at the end of the default cure period. Termination for cause shall include any of the following:
 - a) Failure by either city to meet any of its obligations provided for in this Agreement following receipt of a Notice to Cure Default, or
 - b) Any act of gross negligence committed by a respective city employee, official or agent during the course of delivering service under the terms of this Agreement.
4. **Temporary Suspension.** An unforeseeable financial shortfall occurring to either Party that prevents its full compliance with this Agreement shall be deemed to be a Force Majeure event, as defined in this Agreement. Should such an event occur, the City Managers shall promptly meet and confer during which time, both Parties shall be temporarily excused from having to pay divided costs as required by this Agreement provided, however, that any

Formatted: Add space between paragraphs of the same style

Formatted: Space After: 6 pt

required payment shall be deferred, not excused, for the affected period of time. If such period shall extend beyond thirty (30) days, or such other period as agreed upon in writing, then either Party may terminate this Agreement, provided, however, any and all amounts due and payable by either Party at the time of termination shall either be paid, or shall become a debt on a written contract owed to the other.

5. Extension of the Agreement. Following the completion of the contractual term, this Agreement may be extended for up to six months on a month-to-month basis with the approval of the City Managers. Either Party may terminate the month-to-month status by providing 30 days prior written notice of its intent to terminate, or by entering into another contractual term.

B. CONSOLIDATED COMMAND AND SUPPORT POSITIONS

The Parties agree that the consolidated staffing structure will be comprised of (8) command positions and (2) support positions, and the associated classifications as specified in the table below, subject to the terms, and conditions contained in this Agreement:

COMMAND STAFF

Number of positions <u>Positions</u>	Classifications
1	Fire Chief
1	Deputy Chief – Operations
1	Deputy <u>Division</u> Chief – Administration/Fire Marshal <u>Marshal*</u>
1	Division Chief – Support Services
1	Division Chief – Training
3	Fire Battalion Chief

Consolidated Command Staff Positions

~~The Parties agree that the consolidated command structure will be comprised of either (8) positions and associated classifications as specified in the table below, subject to the terms, and conditions contained in this Agreement:~~

Formatted: Line spacing: Multiple 1.15 li, Position: Horizontal: Left, Relative to: Column, Vertical: In line, Relative to: Margin, Horizontal: 0", Wrap Around

Formatted Table

Formatted: Line spacing: Multiple 1.15 li, Position: Horizontal: Left, Relative to: Column, Vertical: In line, Relative to: Margin, Horizontal: 0", Wrap Around

Formatted: Line spacing: Multiple 1.15 li, Position: Horizontal: Left, Relative to: Column, Vertical: In line, Relative to: Margin, Horizontal: 0", Wrap Around

Formatted: Line spacing: Multiple 1.15 li, Position: Horizontal: Left, Relative to: Column, Vertical: In line, Relative to: Margin, Horizontal: 0", Wrap Around

Formatted: Line spacing: Multiple 1.15 li, Position: Horizontal: Left, Relative to: Column, Vertical: In line, Relative to: Margin, Horizontal: 0", Wrap Around

Formatted: Line spacing: Multiple 1.15 li, Position: Horizontal: Left, Relative to: Column, Vertical: In line, Relative to: Margin, Horizontal: 0", Wrap Around

*Fire Marshal position may be assigned at the Deputy Chief or Division Chief level depending on need or operational necessity.

SUPPORT STAFF

<u>Number of Positions</u>	<u>Classifications</u>
<u>1</u>	<u>Emergency Medical Services (EMS) Manager</u>
<u>Various – equivalent to 1 FTE</u>	<u>Utility Drivers</u>

B. _____ Changes to position titles, classifications, scope of duties, number of agreed positions, or addition of positions to the consolidated command staff shall be subject to mutual written agreement of Parties and approval of the City Councils.

Formatted: Normal, Space Before: 6 pt, No bullets or numbering

C. ~~Employment Status of Employees in Consolidated Command Staff~~

Formatted: Space Before: 6 pt

~~Positions~~ EMPLOYMENT STATUS OF EMPLOYEES IN CONSOLIDATED COMMAND POSITIONS

Any of the eight command positions in the consolidated ~~command~~ structure may be filled by either a City of Brea employee or a City of Fullerton employee. For any vacancies occurring during the term of ~~the~~this Agreement, the City Managers will jointly determine the selection process, including the determination of whether any recruitment is conducted in-house (Fullerton and Brea), or by an open recruitment. The respective Fire Department employees of each city who meet the minimum qualifications for the position(s) to be filled shall be eligible to compete for such positions on an equal basis. The Fire Chief shall have discretion to make appointments to vacant subordinate consolidated command staff positions from those qualified through the agreed selection process, subject to approval by the City Managers.

Nothing in this Agreement shall alter the employment status of those employees serving in the consolidated command structure, in that employees of Brea shall remain solely employed by Brea, and employees of Fullerton shall remain solely employed by Fullerton, and neither shall be deemed employees of the other city.

~~D. Governance~~

D. GOVERNANCE

1. The City Councils shall retain all policy-making authority for their respective cities, including approval of the annual budget for their fire departments and agreements with their employee associations.

Formatted: Space Before: 6 pt, Add space between paragraphs of the same style

~~2.1. A Consolidated Fire Services Working Committee shall be established to monitor the efficiency and effectiveness of this Agreement and to continue to study the feasibility of various options for a full consolidation of the fire services. Members of the Committee shall include two City Council members appointed by each City Council. In addition, the City Managers, the Fire Chief, and others shall participate as deemed appropriate by the City Managers.~~

Formatted: Space Before: 6 pt, Add space between paragraphs of the same style, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.5" + Indent at: 0.75"

- 3.2. The Fire Chief shall report to a committee comprised of the City Managers, who shall communicate with each other and meet, as necessary, to provide direction, supervision and evaluation of the Fire Chief.

Formatted: Space Before: 6 pt, Add space between paragraphs of the same style

- 4.3. The Fire Chief and consolidated command staff shall provide direction and supervision for the Brea and Fullerton Fire Departments.

- 5.4. The consolidated command positions described in ~~the~~this Agreement shall provide direction and supervision of sworn and non-sworn staff in their particular area of responsibility for both the Brea and Fullerton Fire Departments.

- 6.5. The Fire Chief shall have responsibility for evaluating performance of all employees in subordinate consolidated positions under this Agreement subject to the rules of each employing city. Evaluation of City of Brea employees shall be done in consultation with the Brea City Manager. Evaluation of City of Fullerton employees shall be done in consultation with the Fullerton City Manager.

E. Policies and Procedures

E. POLICIES AND PROCEDURES

1. Both Fire Departments shall retain their own personnel and operational policies and procedures contained in their respective Department policy manuals, ~~memorandums~~ Memorandums of understanding Understanding (MOUs), and city personnel rules. Cities will continue to work toward the consolidation of their policies and procedures, where feasible.
2. ~~Both fire departments~~ Each Fire department shall retain sole discretion over their station and company configurations and employment strategies. The Fire Chief may recommend operational modifications to each city. However, each city reserves the right to make its own future budget and deployment decisions during the term of this Agreement, including but not limited to the use of apprentice firefighters, redeployment of personnel, and the use or non-use of overtime to achieve savings.
3. The Parties shall continue to participate in the Metro Cities Fire Authority for Fire dispatch services. Each ~~party~~ Party shall bear its own costs for ~~membership in the Authority~~ service.
4. The Parties shall continue to participate in the Orange County City Hazardous Materials Emergency Response Authority (OCCHMERA) for hazardous material response. Each Party shall bear its own costs for subscription to this service.
- 4.5. The Fire Chief and all consolidated command staff shall become familiar with and comply with all policies and procedures for both city fire departments.
- 5-6. The Fire Chief and other consolidated command staff shall wear the patch ~~designed during the trial consolidation period~~ that contains the names of both fire departments as part of its design. Any changes to the design of the patch during the term of ~~the~~ this Agreement shall be subject to approval of the City Managers.

Formatted: Space Before: 6 pt, Add space between paragraphs of the same style

Formatted: Space Before: 6 pt, Add space between paragraphs of the same style

6-7. The final authority and responsibility for discipline of respective employees engaged in the consolidated services, including Command Staff, and other employee relations matters incident to the performance of such services, shall remain with the employing city.

7-8. Any and all property acquired under and pursuant to this Agreement by either city, whether by government grant funds or otherwise, shall be and at all times remain the property of that city without any division or distribution thereof upon termination of this Agreement, except as otherwise agreed upon in writing.

8-9. The Fire Chief and all other consolidated command staff shall establish and maintain office hours in both cities to maintain an adequate presence and connection to both fire departments and cities, as well as to maintain proper communication with and supervision of each city's sworn and non-sworn staff.

9-10. The Fire Chief shall attend the City Council meetings of both Cities on a schedule agreed ~~between~~upon by the City Managers. A ~~Deputy-Chief Officer~~ shall attend ~~Brea~~-City Council meetings in lieu of the Fire Chief when the Fire Chief is attending ~~Fullerton~~ City Council ~~meetings and conversely shall attend Fullerton City Council meetings in lieu of the Fire Chief when the Fire Chief~~other city or is attending Brea City Council meetings otherwise unavailable.

10-11. The Fire Chief shall attend and participate in the weekly staff meetings, and other management staff functions of both cities. In the event of meeting conflicts, the Fire Chief will rotate his attendance between cities on a schedule agreed between the City Managers and shall assign a Chief Officer to attend any meetings he is not attending.

~~F. Salaries and Benefits~~

F. SALARIES AND BENEFITS

1. Wages, hours and other terms and conditions of employment for the Fire Chief shall be set forth in an employment agreement or letter of employment approved by the City Managers.

Formatted: Space Before: 6 pt, Add space between paragraphs of the same style

2. Wages, hours and other terms and conditions of employment for consolidated command shared positions other than the Fire Chief are set forth in the Memorandum Memorandums of Understanding (MOU MOUs) between each city and the applicable employee association representing the Fire Management employees in their employing city associations. Changes to such MOUs during the term of this Agreement shall be handled in accordance with Section (G)(4) below.

G. ~~Determination and Division of Costs of Services/Maintenance of City Independent Authority~~

Formatted: Space Before: 6 pt, Add space between paragraphs of the same style, Tab stops: 0.75", Left

DETERMINATION AND DIVISION OF COSTS OF SERVICES / MAINTENANCE OF CITY INDEPENDENT AUTHORITY

The parties Parties shall divide the costs of services for the consolidated fire command staffing structure as agreed herein. Each city shall pay and provide benefits to its own employees in the consolidated command positions and other positions specified in this Section through its normal payroll and benefits delivery systems. In addition, each city shall make expenditures for other divided costs referenced herein through its normal operational or procurement procedures. Thereafter, reimbursement of divided costs referenced herein shall be invoiced in accordance with Section (G)(9) below.

Formatted: Font: Bold

1. **Command and Support Staff Compensation.** In accordance with the provisions of this Section, the Parties shall divide the actual compensation and benefits for each of the eight employees in consolidated command staff positions, including utility drivers, or the EMS Manager. Shared compensation costs subject to division between the Parties shall include the following parameters as determined by the applicable MOUs in effect as of January 1, 2020:

Formatted: Space Before: 6 pt, Add space between paragraphs of the same style

- a. Salary and any increment pay or uniform allowance.
- b. City contributions for CalPERS retirement or FICA Replacement Plan.
- c. City contributions for medical insurance, dental insurance, vision insurance, long-term disability insurance, life insurance, wellness reimbursement and employee assistance program premiums.
- d. Conversion of compensatory time ~~to cash~~ and holiday ~~pay~~ leave to cash for those hours earned by employees ~~in the consolidated command positions~~ during the term of this Agreement.
- e. Conversion of accrued vacation and sick leave to cash or contribution to a retirement health savings plan (RHSP) for leave accrued during the term of this ~~agreement, limited to the lesser conversion benefit available in either city~~ Agreement.
- f. Payments made to employees to reimburse education or tuition expenses during the term of this Agreement, ~~limited to the lesser tuition or education reimbursement benefit available in either city~~.

2. Command staff compensation Brea Compensation Parameters.

Compensation for Brea employees subject to division under Section (G)(1) of this Agreement shall not exceed the compensation parameters set forth in the ~~Memorandum of Understanding~~ ratified MOU between the City of Brea and the ~~Fire Management Association for the Period January 1, 2013 through March 31, 2015 unless and until an amendment to this Agreement is approved~~ applicable employee associations, adopted by the City ~~Councils~~ incorporating a change in compensation or benefits.

3.2. Command staff compensation for Fullerton employees subject to division ~~under Section (G)(1) of this agreement shall not exceed the compensation parameters set forth in the Agreement between the of Brea City of Fullerton and the Fullerton Fire Management Association for the Period March 29, 2014 through July 3, 2015 Council as of January 1, 2020, unless and until an~~

Formatted: Space Before: 6 pt, Add space between paragraphs of the same style

amendment to this Agreement is approved by the City Councils incorporating a change in compensation or benefits.

3. ~~Maintenance~~ Fullerton Compensation Parameters. Compensation for Fullerton employees subject to division under Section (G) (1) of this Agreement shall not exceed the compensation parameters set forth in the ratified employment agreement between the City of Fullerton and the applicable employee associations, adopted by the City of Fullerton City Council as of January 1, 2020, unless and until an amendment to this Agreement is approved by the City Councils incorporating a change in compensation or benefits.

Formatted: Font: Not Bold

4. City Independent Authority. Nothing in this Agreement shall prevent either city from reaching separate agreements on wages, hours and working conditions with the employee ~~association~~ associations representing the command staff employees in its employ. ~~However,~~ Increases that are beyond the control of the Parties shall be shared (i.e. independently set PERS rates). ~~Negotiated~~ increases ~~into~~ compensation ~~or benefit costs shall and benefits that occur during the term of this Agreement will~~ not automatically be subject to ~~division and cost sharing under this Agreement. Increased unless agreed upon by both Parties. Shared compensation and benefit amounts as of January 1, 2020 shall remain constant through the duration of the contract unless an amendment to this Agreement is approved by the Parties. The Parties may agree to incorporate City Council approved increases to compensation or~~ benefit costs shall be subject benefits. If no amendment is made to this Agreement ~~only upon approval by each City Council of an amendment incorporating, then any~~ such increases. The provisions of this Agreement shall in no way be construed to obligate one of the Parties for future increased compensation or benefit costs assumed by the other. shall be the sole responsibility of the Party ~~through reaching~~ agreement with its employees. ~~their respective employee associations.~~

Formatted: Space Before: 6 pt, Add space between paragraphs of the same style

5. **Other Costs.** The following costs for employees in consolidated command positions, utility drivers, or the EMS Manager shall be divided pursuant to the ~~relevant~~corresponding Percent Shares as specified in Section (G)(6) below or as otherwise specified herein:

- ~~a. Costs for training employees in the consolidated command structure.~~
- ~~b. Pay and city contributions to CalPERS or City of Fullerton FICA replacement plan for service of Utility Drivers employed by Fullerton during the term of this Agreement.~~
- ~~c. The cities agree to share the costs of EMS Coordinator services for the consolidated command staff. At the inception of this agreement, these duties are to be performed on a temporary basis by a Brea employee. Fullerton agrees to share the cost of compensation for this employee during the course of this temporary assignment. The Parties agree the compensation subject to cost sharing under this agreement during this temporary assignment shall be actual compensation, less \$7,500 per quarter, divided by the percentage for the EMS Coordinator in Section (G)(6). During the term of this Agreement, the Parties shall study the options for contracting this assignment out or instituting an appropriate classification and employment benefits to be utilized for this assignment. Thereafter, an amendment shall be made to this Agreement regarding division of costs.~~
 - a. Recruitment and testing costs.
 - b. Fire related training costs.
 - ~~d. Vehicle maintenance, insurance and operation costs for vehicles assigned to the consolidated command positions shall be divided by the agreed Percent Shares for the classification of the position to which the vehicle is assigned.~~

~~e. Vehicle maintenance, insurance and operation costs for the vehicle utilized by the Fullerton Fire Utility Drivers shall be divided by the Utility Driver Percent Share.~~

~~f.c. Replacement cost funding for each of the vehicles in Section (G)(5)(a) and (b) above shall be calculated using a formula agreed to by the City Managers operating costs.~~

~~g.d. Maintenance, operation, and replacement costs for radios, cell phones, iPads and other similar equipment utilized by employees in the consolidated command positions, utility drivers, or EMS Coordinator shall be divided by the agreed Percent Shares for the classification/assignment/function to which the equipment is assigned.~~

~~e. Office supplies and equipment utilized by the The costs for fire command staff to attend and coordinate fire services for special events occurring within the jurisdiction of each City.~~

~~h.f. Replacement cost funding for each of the 10 vehicles (8 vehicles deployed in operation and 2 reserve vehicles) utilized by employees in the consolidated command structure shall be divided equally between the cities calculated using a formula agreed to by the City Managers.~~

~~g. The cost of office supplies shall be the individual responsibility of each City in order to maintain a functional office space.~~

6. Percent ~~Share~~Shares. The Parties agree to divide employment or contracting costs as provided in ~~the~~this Agreement related to the following classifications, assignments or functions by the Percent Shares specified in the ~~table below.~~following table: ~~Changes to the Percent Shares shall require approval by the City Councils.~~

Formatted: Space Before: 6 pt, Add space between paragraphs of the same style

Formatted: Space Before: 6 pt, Add space between paragraphs of the same style

Formatted: Space Before: 6 pt, Add space between paragraphs of the same style

Classification/Assignment/Function	Brea Percent Share	Fullerton Percent Share
Fire Chief	50%	50%
Deputy Division Chief / Fire Marshal*	50%	50%
Deputy Chief / Operations	50%	50%
Division Chief / Training	50%	50%
Battalion Chief	41%	59%
EMS Coordinator Manager	41%	59%
Utility Driver	41%	59%

*Fire Marshal position may be assigned at the Deputy Chief or Division Chief level depending on need or operational necessity.

Changes to the Percent Shares shall require approval by the City Councils. The Parties agree that additional analysis is required to determine

7. **Unfunded Liability Analysis.** An independent review of the impact of this Agreement on the long term liabilities of the cities related to CalPERS and ~~Other Post Unfunded Liability~~ has been completed. The analysis revealed that the costs of employment have been shared appropriately resulting in an equitable distribution of long term liabilities. The most recently completed analysis indicates that this cooperative Agreement requires no additional provisions regarding Unfunded Liability or Post-Employment Benefits. As such, ~~an~~The Parties agree to a recurring independent analysis ~~of such~~ impacts shall be undertaken every three years to determine if these costs remain balanced among the participating agencies. The cost of ~~which this~~ analysis is to be shared equally by both cities. At the conclusion of the analysis, the Parties shall mutually agree to amendments to this Agreement ~~where~~ appropriate to address the findings ~~in the analysis~~.
8. **Expanded Scope of Shared Costs.** The Parties agree that during the term of this Agreement, they shall study the feasibility of expanding the scope of ~~divided~~shared costs to ~~maintenance~~components of Fire service ~~vehicles~~delivery that are not currently included herein ~~as well as~~. Such

Formatted: Add space between paragraphs of the same style, Line spacing: Multiple 1.15 li

Formatted Table

Formatted: Add space between paragraphs of the same style, Line spacing: Multiple 1.15 li

Formatted: Add space between paragraphs of the same style, Line spacing: Multiple 1.15 li

Formatted: Add space between paragraphs of the same style, Line spacing: Multiple 1.15 li

Formatted: Add space between paragraphs of the same style, Line spacing: Multiple 1.15 li

Formatted: Add space between paragraphs of the same style, Line spacing: Multiple 1.15 li

Formatted: Add space between paragraphs of the same style, Line spacing: Multiple 1.15 li

Formatted: Add space between paragraphs of the same style, Line spacing: Multiple 1.15 li

Formatted: Space Before: 6 pt, Add space between paragraphs of the same style

components may include the purchase and maintenance of Fire service vehicles and equipment, and the addition of staffing including Fire Prevention personnel, Emergency Preparedness Analyst, Public Information Officer and administrative support. Such costs shall only be included upon written amendment of this Agreement approved by the City Councils.

9. **Service Reimbursements.** If any divided cost of services is reimbursed from another source, such reimbursement shall be divided between Fullerton and Brea based on the agreed Percent Shares as set forth in Section (G)(6) above.

10. **Invoicing of Divided Costs.** Within 30 calendar days of March 31st, June 30th, September 30th and December 31st of each year this Agreement is in effect, each city shall itemize its share costs as defined herein and shall provide to the other city such itemization and invoice for the appropriate share of the divided costs of services. Each city shall issue payment of the invoiced amount within fifteen (15) calendar days of receipt of the invoice.

11. **Audit of Divided Costs.** Either city may request a comprehensive year-end audit process that would serve to verify the validity of all billings for services to be shared by the cities. The cost for the audit shall be shared equally by Brea and Fullerton.

H. Liability and Insurance Provisions

12. **Expanded Participation.** The Parties agree that further consideration will be given to the inclusion of additional cities into the command staff consolidation to explore savings opportunities, efficiencies through economies of scale and shared resources. Changes to the shared command staff and the terms of this Agreement will be subject to approval of the city councils of each participating entity.

13. **Fire Services Working Committee.** A Consolidated Fire Services Working Committee shall be established to develop a plan and timeline to formally move the command structure to the jurisdiction of the NOCC JPA. The

Formatted: Space Before: 6 pt, Add space between paragraphs of the same style, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.5" + Indent at: 0.75"

Committee shall be comprised of two City Council members appointed by each City Council. In addition, the City Managers, the Fire Chief, and others shall participate as deemed appropriate by the City Managers.

H. LIABILITY AND INSURANCE PROVISIONS

1. **Workers Compensation.** Each city shall obtain and maintain workers compensation coverage for all of its employees who may provide any services to the other city for the duration of this Agreement. Such coverage shall encompass the entire scope of duties of each employee to be performed hereunder, including shared services to be performed by any employee, as required by this Agreement. It is the intent of the Parties that both cities be considered to have secured worker's compensation coverage pursuant to Labor Code Section 3602(d). Each city may self-~~insured~~insure to these limits of coverage. Notwithstanding the provisions of subsection (5) (Mutual Indemnification) below, each city shall indemnify, defend, and hold harmless the other city regarding any claims or lawsuits by the first city's employees for injuries arising from the performance of services under this Agreement.
2. **Facilities and Equipment.** Each city shall obtain and maintain insurance coverage to replace or repair its own fire department facilities and equipment. Such insurance coverage shall be maintained in accordance with each City's own policies and procedures, and each city shall not be responsible for any property loss of the other city. Each city may self-insure to satisfy the requirements of this subsection.
3. **Automobile and General Liability.** At all times during the term of this Agreement, or any extension thereof, each city shall maintain automobile liability coverage and comprehensive general liability insurance, including employment practices coverage, in a mutually acceptable form, covering all services provided pursuant to this Agreement, with applicable single limits of

Formatted: Space Before: 6 pt, Add space between paragraphs of the same style

at least \$20,000,000 per occurrence; such policy(ices) shall name the other city, its elected officials, officers, employees and volunteers as additional insureds.

4. **Evidence of Coverage.** Upon request, each city shall provide the other with evidence of coverage to fulfill its insurance obligations under this Agreement, and shall promptly notify each other of any change of coverage, terms, limits or providers. Each city waives the right of subrogation against the other. Each city may self-insure to satisfy the requirements of this subsection.

5. **Mutual Indemnification.** To the maximum extent permitted by law, Brea shall defend, indemnify, and hold harmless Fullerton, its elected officials, officers, employees, and volunteers, with respect to any and all losses, liabilities, damages, including property damages and damages for bodily injury or death, costs and expenses, and payment of reasonable attorneys' and experts' fees and costs, actually or allegedly arising out of the acts or omissions of Brea or those of any of its elected officials, officers, employees, or volunteers, in the performance of this Agreement. However, if an act or omission is actually or allegedly attributable to a Brea employee in a consolidated command position in the course of performing services for the Fullerton Fire Department, then Fullerton shall have the duty to defend, indemnify, and hold harmless Brea, and its elected officials, officers, employees, and volunteers. A Brea employee in a consolidated command position shall be deemed to have been in the course of performing services for the Fullerton Fire Department if, absent this Agreement, those services would have been performed by Fullerton Fire Department command staff.

To the maximum extent permitted by law, Fullerton shall defend, indemnify, and hold harmless Brea, its elected officials, officers, employees, and volunteers, with respect to any and all losses, liabilities, damages, including property damages and damages for bodily injury or death, costs and expenses, and payment of reasonable attorneys' and experts' fees and

Formatted: Font: Bold

costs, actually or allegedly arising out of the acts or omissions of Fullerton or those of any of its elected officials, officers, employees, or volunteers, in the performance of this Agreement. However, if an act or omission is actually or allegedly attributable to a Fullerton employee in a consolidated command position in the course of performing services for the Brea Fire Department, then Brea shall have the duty to defend, indemnify, and hold harmless Fullerton, and its elected officials, officers, employees, and volunteers. A Fullerton employee in a consolidated command position shall be deemed to have been in the course of performing services for the Brea Fire Department if, absent this Agreement, those services would have been performed by Brea Fire Department command staff.

In the event either ~~party~~Party is required by this subsection to provide a defense, then the ~~party~~Party to whom a defense is being provided shall be represented by legal counsel of its choice.

6. **Claim Notification.** Each city shall promptly notify the other of any and all claims or actions for which it seeks indemnification, defense and/or liability insurance coverage pursuant to this Agreement. The provision of subsection (H) (5), above, shall survive the termination or expiration of this Agreement.

I. Dispute Resolution

DISPUTE RESOLUTION

Any disputes concerning the interpretation or application of this Agreement and claim arising out of this Agreement shall be resolved as follows:

1. **Administrative Remedies.** Disputes regarding the interpretation or application of this Agreement shall first be submitted to the City Manager of each city for investigation and resolution. The City Managers will make a good faith and reasonable effort to reach an agreeable resolution. Any disputes that cannot be resolved in that manner shall be submitted to non-binding arbitration as set forth below.

Formatted: Indent: Left: -0.13", Hanging: 0.19", Space Before: 6 pt, Add space between paragraphs of the same style, Tab stops: 0.75", Left

Formatted: Space Before: 6 pt, Add space between paragraphs of the same style

2. Formal Remedies. In the event the administrative remedy does not resolve the dispute, the injured Party may, but is not required to as a condition of pursuing any legal remedies, serve a demand for arbitration on the Party claimed to be in default ("Defaulting Party"). The Parties will continue to perform obligations under this Agreement so long as the Defaulting Party diligently commences to cure the alleged default ~~in~~ In the event there is imminent danger to the public health, safety or general welfare resulting from the default, the Defaulting Party shall take immediate action to cure the immediate threat.

Within five (5) business days of receipt of the demand, and providing the default remains uncured, the matter shall be submitted to non-binding arbitration. The cities shall make reasonable efforts to jointly select an arbitrator using any reasonable method including selection by chance. The arbitration shall be conducted in accordance with the California Arbitration Act (Code of Civil Procedure section 1280 et seq.) The arbitrator shall render a decision with written findings. The costs of arbitration (excluding each City's own costs) shall be borne by the Parties equally. Either Party that is not satisfied with the arbitrator's decision shall be entitled to pursue all remedies available in a court of law or equity.

~~**J. Representative's Authority; Notices.**~~

J. REPRESENTATIVE'S AUTHORITY; NOTICES

1. Each Party's representative for purposes of administration of this Agreement, including provisions of consent or approval where permitted or required, shall be each city's City Manager and/or designee thereof. The Parties recognize that to maximize the effectiveness of this program, it may, from time to time, be necessary to amend the operational specifics set forth herein, or any other provision of this Agreement for the benefit of the Parties. The provisions of this Agreement affecting operational matters may

Formatted: Space Before: 6 pt, Add space between paragraphs of the same style

Formatted: Font color: Auto

be amended in writing and executed on behalf of both Parties by each of their City Managers, ~~provided, however.~~ However, nothing in this Agreement shall authorize either City Manager to agree to any modification of this Agreement that would result in a change to ~~the percent share~~ public policy or fiscal matters, such as the Percent Shares as set forth in Section (G)(6), without both Cities' Councils' approval.

2. Any notice required or permitted to be given or served pursuant to this Agreement, shall be effected by personally delivery of the same, as follows:

_____ To Brea:
_____ City of Brea
_____ 1 Civic Center Circle
_____ Brea, California 92821
_____ Attention: City Manager

_____	To Fullerton:
<u>City of Brea</u>	City of Fullerton
<u>1 Civic Center Circle</u>	303 W Commonwealth Avenue
<u>Brea, California 92821</u>	Fullerton CA 92832
<u>Attention: City Manager</u>	Attention: City Manager

Service of the notice shall be effective immediately upon delivery during normal business hours. The foregoing addresses for notice may be modified by either Party giving written notice of such modification to the other Party calling specific attention to this Agreement.

K. Independent Contractor

_____ No officer or employee of either city shall for any purpose be deemed to be an employer or employee of the other, and no officer or employee of either city shall be entitled to participate in any insurance, medical care, vacation, sick leave or other

Formatted: Space Before: 6 pt, Tab stops: 0.75", Left

Formatted: Space Before: 6 pt, Add space between paragraphs of the same style

Formatted: Space Before: 6 pt, Tab stops: 0.75", Left

benefits provided to the other city's officers or employees. No officer or employee of either city shall have any power to incur any debt, obligation, or liability on behalf of the other city or otherwise act on behalf of the other city as an agent, except to the extent expressly provided herein. No officer or employee of either city shall, at any time, or in any manner, represent that he or she is in any manner an agent or employee of the other city, except to the extent expressly provided herein.

L. General Provisions

- 1. No Waiver.** No delay or omission in exercising any right or remedy pursuant to this Agreement shall impair such right or remedy or be construed as a waiver thereof. All rights and remedies pursuant to this Agreement shall be cumulative, except with respect to any right or remedy expressly stated to be exclusive.
- 2. Compliance with All Laws.** Both Parties shall comply with all applicable local ordinances, and state and Federal statutes, laws and regulations, including, but not limited to, laws governing conflicts, at all times during their performance of this Agreement.
- 3. No Third Party Beneficiary.** It is the Parties' intent that nothing in this Agreement shall create any third party beneficiary rights.
- 4. Force Majeure.** Neither Party shall be considered to be in default in the performance of any material obligation under this Agreement when a failure of performance shall be due to a Force Majeure event. A Force Majeure event shall mean any cause beyond the reasonable control of the affected Party and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which it has been unable to overcome. Neither Party shall be relieved of its obligation to perform if such failure is due to causes arising out of its own negligence or due to matters under its control with it fails to remedy within a reasonable time period.

Either Party rendered unable to fulfill any of its obligations under this

Formatted: Space Before: 6 pt, Add space between paragraphs of the same style

Agreement by reason of a Force Majeure event shall give prompt written notice of such fact to the other Party. During such period, both Parties shall cooperate to ensure that critical services are maintained, while the affected Party shall diligently work to restore its services required by this Agreement.

5. **Severability.** In the event that any clause or provision of this Agreement or any part thereof becomes or shall be declared by a court of competent jurisdiction invalid, illegal, void, or unenforceable, this Agreement shall continue in full force and effect without said provisions, provided that no such severability shall be effective if it materially changes the benefits or obligations of either Party hereunder.
6. **Integrated Agreement.** This Agreement, which includes the recitals and all exhibits and attachments, constitutes the entire understanding of the Parties with respect to the subject matter herein. No representation, express or implied, that is not set forth herein, shall be binding or have any force or effect.
7. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be original, and all of which together shall constitute one and the same Agreement. A signature delivered by facsimile shall be deemed to be an original signature and shall be effective upon receipt thereof by the other Party.

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

Formatted: Space Before: 6 pt

CITY OF FULLERTON

CITY OF BREa

Formatted: Space Before: 6 pt, After: 6 pt, Line spacing: 1.5 lines

By: _____

By: _____

Formatted: Space Before: 6 pt, After: 6 pt, Line spacing: 1.5 lines

Mayor, City of Fullerton

Mayor, City of Bre

Formatted: Space Before: 6 pt, After: 6 pt, Line spacing: 1.5 lines

Dated: _____

Dated: _____

Formatted: Space Before: 6 pt, After: 6 pt, Line spacing: 1.5 lines

ATTEST:

ATTEST:

Formatted: Space Before: 6 pt, After: 6 pt, Line spacing: 1.5 lines

Formatted: Space Before: 6 pt, After: 6 pt, Line spacing: 1.5 lines

City Clerk, City of Fullerton

City Clerk, City of Bre

Formatted: Space Before: 6 pt, After: 6 pt, Line spacing: 1.5 lines

APPROVED AS TO FORM:

APPROVED AS TO FORM

Formatted: Space Before: 6 pt, After: 6 pt, Line spacing: 1.5 lines

Formatted: Space Before: 6 pt, After: 6 pt, Line spacing: 1.5 lines

City Attorney, City of Fullerton

City Attorney, City of Bre

Formatted: Space Before: 6 pt, After: 6 pt, Line spacing: 1.5 lines

Formatted: Font: 11 pt

Formatted: Space Before: 6 pt