

SECOND AMENDED AND RESTATED JOINT POWERS AGREEMENT

This Second Amended And Restated Joint Powers Agreement (this “Agreement”) is entered into on the Effective Date set forth herein by and between the public agencies signatory hereto and also those which may hereinafter become signatory hereto (hereinafter “public agencies”):

WITNESSETH:

WHEREAS, said public agencies recognize the dire communications congestion problem and the resultant ramifications thereof within that certain geographical region of the County of Los Angeles known as the “South Bay”; and,

WHEREAS, the State Legislature, in 1972, added Article 6 to Title 5, Division 2, Part 1, Chapter 1, of the Government Code of the State of California which mandates the implementation of a uniform emergency telephone number designated “911” by January 31, 1982, for use throughout the State of California; and,

WHEREAS, said public agencies have heretofore determined that the system through which the uniform emergency telephone number service is to be provided should be a regional center responsive to the local needs of the citizenry of said public agencies; and,

WHEREAS, said public agencies have heretofore determined a need to establish a consolidated, regional, computer-assisted dispatch operation to best serve the needs of all of the citizens of said public agencies; and,

WHEREAS, said public agencies have heretofore determined that the interests of the citizens of each of said public agencies can best be served by the coordinated use of public safety radio channels; and,

WHEREAS, said public agencies recognize the mutual benefit of a consolidated, regional joint effort for the development, implementation and the subsequent operation and maintenance of such a consolidated regional system; and,

WHEREAS, said public agencies desire to consolidate and provide emergency call receiving, dispatching, and related operations; and,

WHEREAS the cost of developing, implementing, operating and maintaining said consolidated regional system is more than can be borne by one or a few municipalities within the “South Bay” area; and,

WHEREAS, said public agencies have heretofore determined that it is desirable and necessary to collectively direct the management policies and operational practices of said consolidated regional system; and,

WHEREAS, the Joint Exercise of Powers Act, being Title 1, Division 7, Chapter 5 of the Government Code of the State of California (the “Joint Powers Act”), authorizes said public agencies to enter into agreements for the joint exercise of any power common to them; and,

WHEREAS, said public agencies possess the power to consolidate public safety services communications by the execution and implementation of this Agreement.

WHEREAS, in light of the facts set forth in the above recitals, the public agencies previously entered in that certain Joint Powers Agreement effective as of November 4, 1975 (the “Original JPA”) to establish a joint exercise of powers authority known and as designated as the “South Bay Regional Public Communications Authority” (the “Authority”); and

WHEREAS, the public agencies have previously amended and restated the Original JPA by entering in that certain Amended and Restated Joint Powers Agreement effective as of April

25, 2001 (the “First Amended JPA”), which clarifies the method by which the Authority’s purpose will be accomplished; and

WHEREAS, the public agencies believe it to be in their best interests to further amend and restate the First Amended JPA to make certain clarifications and address certain amendments to the Joint Powers Act by entering into this Agreement, which will replace and supersede the First Amended JPA in its entirety;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL ADVANTAGES TO BE DERIVED THEREFROM, AND IN CONSIDERATION OF THE EXECUTION OF THIS AGREEMENT BY OTHER PUBLIC AGENCIES ELIGIBLE FOR MEMBERSHIP IN THE AUTHORITY, each of the parties hereto does hereby agree as follows:

1. Authority Established by Original JPA; Authority as a Separate Public Entity; Amendment and Restatement of First Amended JPA. Pursuant to the joint powers authorization of the Government Code, the Authority has been established by the Original JPA and designated as the “South Bay Regional Public Communications Authority.” The members of the Authority consist of all of the public agencies signatory hereto and those public agencies which may hereafter become signatory hereto. Said Authority is an agency and public entity separate from the parties to this Agreement. The Original JPA was amended, restated, and superseded by the First Amended JPA. As of the Effective Date set forth herein, this Agreement amends, restates, and supersedes the First Amended JPA.

2. By-Laws. The Authority shall be subject to, and shall be governed by, those certain By-Laws originally adopted on October 14, 1975 by the unanimous express consent of all public agencies signatory hereto, as heretofore amended, together with any amendments not inconsistent with or contrary to the laws of the State of California or this Agreement which hereafter may be

made by the Board of Directors to said By-Laws in the manner and means therein set forth, provided that the Board of Directors may not delegate to any other body, officer or person its authority hereunder to amend the By-Laws. The By-Laws shall be consistent with this Agreement and shall provide for the administration and management of the Authority, the regulation of its business, and the conduct of its affairs. In the event of a conflict between the provisions of the By-Laws and the provisions of this Agreement, the provisions of this Agreement shall govern.

3. Purpose. The purpose of this Agreement shall be as set forth in the recitals hereinabove and the preamble to the By-Laws. Said purpose shall be accomplished and carried out, in part, through the issuance by the Authority of its Revenue Bonds, pursuant to Article 2 or Article 4 of the Joint Powers Act (together, the “Bond Acts”) to pay the cost and expenses of acquiring or constructing a project for any of the purposes permitted thereby and hereby, and in the manner set forth in said By-Laws. In addition, said purpose shall be accomplished and carried out through entering into project operating and service agreements with public agencies, pursuant to which the authority will operate a project in conformity with the recitals hereinabove.

4. Powers of the Authority; Restrictions on Powers. The Authority shall have all of the powers common to the public agencies and all additional powers set forth in the Joint Powers Act (including but not limited to those set forth in Article 4 thereof) and other statutes applicable to the Authority, and is hereby authorized to do all acts necessary or appropriate for the exercise of such powers toward and in connection with accomplishing the purposes of the Authority. Without limiting the foregoing, the Authority shall have the power in its own name, to make and enter into contracts and leases, to employ agents and employees, to acquire, hold and dispose of property, real and personal, to sue and be sued in its own name, and to incur debts, liabilities or obligations necessary for the accomplishment of the purposes of this Agreement, including but not

limited to, the issuance of bonds, notes, commercial paper, certificates of participation, and any other evidences of indebtedness pursuant to the Bond Acts and any other applicable state law providing authority therefor. However, the debts, liabilities and obligations of the Authority shall not constitute any debt, liability or obligation to any of the individual public agencies which are signatory to this Agreement; provided, pursuant to Government Code Section 6508.1, if the Authority contracts with a public retirement system (as defined in Section 6508.1(b)), the retirement liabilities of the Authority shall be debts, liabilities, and obligations of the individual public agencies which are signatory to this Agreement to the extent and in such manner provided by the Joint Powers Act, including but not limited to Sections 6508.1 and 6508.2 therein (i.e., upon termination of the retirement plan contract, or a decision by the Board of Directors to dissolve or cease the operations of the Authority). The Authority shall have the power of eminent domain which power shall not be exercised except with the unanimous consent of all member agencies.

Pursuant to and to the extent required by Section 6509 of the Joint Powers Act, the Authority shall be restricted in the exercise of its powers in the same manner as the City of Hawthorne is restricted in its exercise of similar powers.

5. Accounts and Reports. The Authority shall strictly account for all funds and compile a report of all receipts and disbursements made by the Authority. The Authority hereby designates the Manhattan Beach City Treasurer as the Treasurer and Controller of the Authority, and such Treasurer and Controller shall have the powers and duties set forth in Sections 6505 and 6505.5 of the Joint Powers Act. The Authority hereby designates its Finance & Performance Audit Manager as the Auditor of the Authority, and such Auditor shall have the duties and functions set forth in Section 6505.6 of the Joint Powers Act.

Unless the financial statements of the Authority are audited by the Controller of the State of California to satisfy federal audit requirements, the Auditor shall either make or contract with a certified public accountant to make an annual audit of the accounts and records of the Authority; provided, however, that if the Auditor is an officer or employee of the Authority but not the treasurer of one of the public agencies signatory hereto, the Auditor must contract with a certified public accountant to perform such audit. In any case, the minimum requirements of the audit shall be those prescribed by the California State Controller for special districts under Section 26909 of the Government Code, and shall comply with generally accepted auditing standards. A report of said audit shall be filed as a public record with each of the contracting parties listed on the signature page hereto, as well as with the county auditor of Los Angeles County within twelve months of the end of the Authority's fiscal year. The Authority shall send a copy of the audit report to any public agency or person in California that submits a written request for such report to the Authority.

Any costs of the audit, including contracts with, or employment of, certified public accountants, shall be borne by the Authority and shall be a charge against any unencumbered funds of the Authority available for such purpose.

6. Disposition of Assets. Upon dissolution as provided herein and in the By-Laws, any assets or surplus cash owned by the Authority after the payment of all liabilities, costs, expenses and charges validly incurred hereunder shall be divided among the then Authority members in proportion to the amount of contributions made by such member agencies.

7. Surplus Moneys. After completion of the purpose set forth in Section 3, any surplus money on hand after payment of all expenses, including but not limited to all expenses incurred in connection with the issuance of any bonds by the Authority, shall be returned to the constituent entities of the Authority in proportion to the contributions made by each such entity.

8. Membership. Each public agency signatory to this Agreement, and each additional public agency eligible for membership pursuant to the provisions of said By-Laws, which may hereafter sign said Agreement, is a member of said Authority and is entitled to all the rights and privileges and is subject to the obligations of membership, all as provided in said By-Laws.

9. Termination of Membership. This Agreement shall remain in full force and effect as to all member agencies from and after the Effective Date hereof. Any party to this Agreement may cease to be a party hereto and may withdraw from membership in Authority by the adoption by its legislative body of a resolution of intention to withdraw and the giving of written notice thereof to the Executive Director of the Authority and to each of the other public agencies signatory to this Agreement at least ninety (90) days prior to the end of the then current fiscal year. Said termination shall be effective at midnight on the last day of said current fiscal year. Notwithstanding anything herein to the contrary, no termination of membership by a public agency shall be effective unless such termination is in compliance with such public agency's project operating and service agreement. A member withdrawing from membership at a time when such withdrawal does not result in dissolution of the Authority or any member agency terminated from membership as provided herein, shall forever forfeit its claim to any assets of the Authority. Upon withdrawal or termination of any member of the Authority, the equipment in the sole possession and use of that member agency shall be returned to the Authority within 30 days unless otherwise prohibited by any law, contract or grant.

In the event said member agencies cannot unanimously agree upon the manner of disposition of such assets, said assets (other than any fixtures or improvements made to the premises or property by any member agency which cannot reasonably be removed therefrom) shall be sold by the Authority and the cash derived from said sale shall be distributed in the manner

hereinabove provided. Any fixtures or improvements not so removed from any member agency shall become the property of such member agency and the then current market value of such fixtures or improvements shall be credited to such agency for purposes of determining the distribution to be made hereunder.

10. Administration. Pursuant to the provisions of the Joint Powers Act, the Authority, as established by this Agreement and as governed by said By-Laws, shall be the joint powers agency authorized to administer this Agreement.

11. Board of Directors. The governing body of the Authority shall be known as the Board of Directors. The Board of Directors shall be vested with all of the rights, powers, duties, privileges and immunities of the Authority.

A. Membership. Representation on the Board of Directors shall be as follows:

1) The membership of the Board of Directors shall be composed of one representative from each member agency of the Authority.

2) Only the official representative or designated alternate representative from each member agency, as hereinafter provided, shall represent such member agency on the Board of Directors.

3) The official representative and alternate representative from each member agency shall be members of the legislative body of each such agency. The legislative body of each member agency shall designate in writing to the Authority the names of the official representative and the alternate representative to the Board of Directors. Such notice of designation shall include the mailing address of the persons so appointed. The names and addresses shown on such notice shall be used as the official mailing roster for the purpose of giving any notices required by this Agreement or the By-Laws.

4) An official representative or alternate representative shall serve until a successor is appointed by the respective member agency, except if an official representative or alternate representative ceases to be a member of the legislative body of the appointing member agency, in which case, the seat of the official representative or alternate representative shall be vacant until a successor is appointed.

5) Each public agency that is a member of the Authority shall be entitled to one vote on the Board of Directors. Such votes shall be cast only by the official representative in actual attendance, or by the designated alternate representative if the official representative is absent. No proxy votes or absentee voting shall be permitted.

6) Non-voting, ex-officio members of the Board of Directors may be established by the By-Laws.

B. Meetings. Regular public meetings of the Board of Directors shall be held at least twice annually. The Board of Directors shall fix by resolution the date, time and place at which each regular meeting is to be held. Each meeting of the Board of Directors shall be called, noticed, held, and conducted in accordance with the Ralph M. Brown Act, being California Government Code Section 54950, et seq. The Board of Directors shall have minutes of regular, adjourned regular, and special meetings kept by the Secretary of the Board of Directors appointed in the manner set forth in the By-Laws. A majority of the members of the Board of Directors shall be a quorum for the transaction of business. However, less than a quorum may adjourn a meeting from time to time.

12. Powers of the Board of Directors; Officers. Except as otherwise provided in this Agreement, the Board of Directors shall exercise all powers and conduct all business of the Authority, either directly or, with respect to its functions of program development, policy

formulation (but not policy adoption, which shall be reserved to the Board of Directors and may not be delegated), or program implementation, by delegation to other bodies, officers, or persons as may be provided for by the Authority in its By-Laws. Subject to the foregoing, the officers of the Authority shall include (i) a Treasurer and Controller, as designated in Section 5; (ii) an Auditor, as designated in Section 5; (iii) an Executive Director who shall be the chief administrative officer of the Authority and have such powers and duties and be appointed in the manner set forth in the By-Laws; and (iv) a Secretary who shall keep minutes of the meetings of the Board of Directors as specified in Section 11.B and have such powers and be appointed in the manner set forth in the By-Laws. The Board of Directors may not delegate its authority under Section 2 to amend the By-Laws. The Board of Directors may establish any other officers and administrative or advisory bodies of the Authority as may be provided in By-Laws of the Authority, in each instance subject to the limitations and provisions set forth in this Section 12. The Board of Directors shall cause to be prepared, and shall review, modify as necessary, and adopt the annual operating budget of the Authority. Adoption of the budget may not be delegated. The Board of Directors shall receive, review and act upon periodic reports and audits of the funds of the Authority. The Board of Directors shall have such other powers and duties as are reasonably necessary to carry out the purposes of the Authority.

13. Bonding Persons Having Access to Property. The public agencies signatory to this Agreement hereby designate the Executive Director of the Authority and the Treasurer and Controller of the Authority, and the designee or designees of each of them, as the persons who shall have charge of, handle, or have access to any property of the Authority. Such person or persons shall file an official bond in the amount required by the Board of Directors by resolution adopted from time to time, which shall be in a minimum amount of \$100,000 and may be in the

form of a public employees blanket bond, or an insurance policy providing coverage to the Authority equivalent to or greater than the loss protections provided by such a fidelity bond, purchased by the Authority from an appropriate insurance company. The Authority shall pay the cost of premiums associated with the bond.

14. Amendment. This Agreement may not be amended, except by written agreement of all the then parties to it, provided, however, that the By-Laws hereafter adopted may be amended from time to time by the method and means provided therein.

15. Duration of Agreement; Dissolution. This Agreement shall continue in effect until terminated by unanimous consent of the then parties to it or until dissolution of the Authority in the manner provided in said By-Laws. Upon such termination, or dissolution, the assets remaining, including any surplus money, shall be disposed of in the manner set forth in this Agreement, including but not limited to Sections 6 and 7, and in said By-Laws.

The public agencies signatory hereto shall comply with Section 6508.2 of the Joint Powers Act. Without limiting the foregoing, the public agencies signatory hereto shall mutually agree as to the apportionment of the public agencies' retirement obligations among themselves in such a manner that the agreement equals 100 percent of the Authority's retirement liability in the event of any of the following: (a) if the Authority contracts with the California Public Employees' Retirement System (CalPERS), prior to filing a notice of termination pursuant to Section 20570 or 20571 of the Public Employees Retirement Law (California Government Code Section 20000 et seq.); or (b) if the Authority does not contract with CalPERS, a decision by the Board of Directors to dissolve or cease the operations of the Authority. If such an event occurs and the public agencies are unable to mutually agree upon the apportionment of the public agencies' retirement obligations among themselves, the board of the pension or retirement system with which the Authority

contracts shall apportion the retirement liability of the Authority among such public agencies in the manner provided by Section 6508.2 of the Joint Powers Act.

16. Enforcement. Authority is hereby given the power to enforce this Agreement. If suit is necessary to enforce any of the provisions hereof, including any provision of the By-Laws, the defaulting member shall pay reasonable attorney fees to Authority as adjudicated and determined by the Court.

17. Effective Date of Agreement. This Agreement shall become effective (the “Effective Date”) upon its execution by the Cities of Gardena, Hawthorne and Manhattan Beach.

IN WITNESS WHEREOF, the undersigned public agencies have set their signatures on the respective dates set forth below.

Dated: _____

CITY OF GARDENA

Attest: _____

City Clerk

By: _____

Mayor

Dated: _____

CITY OF HAWTHORNE

Attest: _____

City Clerk

By: _____

Mayor

Dated: _____

CITY OF MANHATTAN BEACH

Attest: _____

City Clerk

By: _____

Mayor