
WESTCOMM JOINT POWERS AUTHORITY AGREEMENT

BETWEEN

THE CITY OF CYPRESS;

THE CITY OF LOS ALAMITOS; and

THE CITY OF SEAL BEACH

Dated as of December 23, 1996

**WESTCOMM JOINT POWERS AUTHORITY AGREEMENT
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 THE CITY OF CYPRESS;
 THE CITY OF LOS ALAMITOS; and
 THE CITY OF SEAL BEACH**

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WEST CITIES COMMUNICATIONS CENTER (Westcomm)

JOINT POWERS AUTHORITY AGREEMENT

In order to establish, operate and maintain a public safety communications center for the Cities of Cypress, Los Alamitos, and Seal Beach, the parties agree to the following:

This Agreement, effective December 23, 1996, by and among the Cities of Cypress, Los Alamitos, and Seal Beach (hereinafter referred to collectively as "Parties" and individually as "Party") is entered into pursuant to the provisions of Title I, Division 7, Chapter 5, Article I (Sections 6500, *et seq.*) of the California Government Code, (hereinafter the "Act"), relating to joint exercise of powers, for the purpose of operating a public safety communications center.

W I T N E S S E T H

WHEREAS, the Parties are each empowered by law to construct, equip, staff, maintain, operate public buildings and related facilities for the purposes of public safety communications; and,

WHEREAS, the Parties desire to acquire, equip, staff, and operate a West Orange County public safety communications center (hereinafter referred to as "Center") and to provide a structure for the accomplishment thereof; and,

WHEREAS, the Parties desire to accomplish the aforesaid purpose of jointly exercising their common powers in the manner set forth in this Agreement.

NOW, THEREFORE, the Parties, for and in consideration of the mutual benefits, promises, and agreements set forth herein, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, agree as follows:

Section 1. Purpose.

The purpose of this Agreement is to establish and operate the Center by equipping, maintaining, operating, and staffing a single site facility which provides emergency call receiving and dispatching services to the Parties. The Center may also provide services on a contractual basis to other governmental entities and may amend the Agreement to add additional parties.

The intention of the parties in the creation of the Authority is to share communications obligations and responsibilities and to accordingly save the Parties some of the individual expense of such obligations and responsibilities. In furtherance

of that goal, the Parties intend to utilize the personnel and resources of the Parties to provide financial, legal, personnel, risk management and other services and functions to the Authority on a basis which is acceptable to all of the Parties.

Section 2. Creation of Authority.

Pursuant to Section 6506 of the Act, there is hereby created a public entity, separate and apart from the individual Parties, to be known as the "West Cities Communications Center Joint Powers Authority," hereinafter referred to as the "Authority," for the purpose of operating the West Communications Center.

Section 3. Governance.

A. Board of Directors

The Board of Directors, comprised of three (3) elected officials, one designated by each Party, shall establish policy for the Authority and shall exercise the responsibilities and powers set forth in State law. It shall also have the budget duties set forth in Section 6.B. hereof. The powers of the Board of Directors shall include decisions to acquire, hold, lease, or dispose of real property, to incur debt not included in the annual operating budget, to amend this Agreement and to provide communications services to non-Party entities, public or private.

B. Administrative Oversight Staff

The Authority shall be managed by an Administrative Oversight Staff of six (6) persons. The Administrative Oversight Staff shall be composed of the City Manager and the Chief of Police of each City. The Administrative Oversight Staff shall recommend policy, and shall exercise appropriate management powers.

C. Dispatch Administrator

The Administrative Oversight Staff shall appoint the Dispatch Administrator for the Authority. The Dispatch Administrator shall be responsible for the day to day operations of the Center and shall also be custodian of the property and records of the Authority.

The Dispatch Administrator is authorized to act on behalf of the Administrative Oversight Staff in all matters of personnel administration, given the positions and funding authorized by the Board of Directors in the

Authority's annual budget. This includes, but is not limited to, hiring, supervisory direction, performance evaluations, disciplinary actions, and terminations.

D. Treasurer

The Board of Directors shall appoint the Treasurer of the Authority who shall also be the Treasurer of one of the Parties. The Treasurer shall attend the meetings of the Board of Directors and advise the Board in connection with any accounting, budgetary, monetary, or other financial matters relating to the Authority. The duties and responsibilities of the Treasurer include, but are not limited to, those set forth in California Government Code Sections 6505, 6505.5, and 6509.5 and shall include the following:

- (1) With the approval of the Administrative Oversight Staff, create the annual budget format, accounts, and documentation pertaining thereto, which most nearly reflect the objectives of the Authority and the operation of the Center and which are consistent with standard municipal budgetary format;
- (2) Establish and maintain the particular funds and accounts as required by generally accepted accounting practices and which most accurately and appropriately record and report the operations of the Authority as represented by the annual budget document;
- (3) Enforce strict compliance with the approved annual budget and approve only expenditures authorized therein;
- (4) Ensure that all available cash on hand is at all times fully invested in a cash management program and investment portfolio pertaining thereto which is consistent with the practices of the City providing the finance services to the Authority; and to further ensure that sufficient liquidity is maintained to meet the Authority's cash disbursement needs;
- (5) Furnish monthly revenue, expenditure, and funds status reports to the Dispatch Administrator and the Administrative Oversight Staff;
- (6) Maintain an inventory of all property of the Authority;
- (7) Make all books and records of the Authority in his/her hands open to inspection at all reasonable times to Board Members; and
- (8) Make a report on, at least a quarterly basis, the amount of money held for the Authority and the amount of receipts and expenses since the last

report. Such report shall be verified and provided to the Dispatch Administrator, the Administrative Oversight Staff, the Board of Directors, and all Parties to this Agreement.

E. General Counsel

The Board of Directors shall engage the services of one of the Parties' City Attorney as the General Counsel for the Authority. The Authority General Counsel shall be responsible for providing all legal services to the Authority.

F. Auditor and Depositary

The Treasurer of one of the Parties shall be the depositary and have custody of the money of the Authority. In the event the Authority ceases to employ one of the Parties' Treasurer, the Board of Directors shall appoint a qualified person or firm to act as the independent auditor for the Authority. In such event, the Board of Directors shall also appoint a depositary for the Authority's money. The Authority's Auditor shall perform such functions as may be required by this Agreement, the Bylaws, the direction of the Administrative Oversight Staff, or other applicable laws. The Authority's Auditor shall specifically be responsible for ensuring that the Authority's filing requirements with each party pursuant to Government Code Section 6505 are completed.

Section 4. Meetings of the Board of Directors

A. Time of Meetings

The Board of Directors shall meet at least twice annually, once to approve and adopt the budget and once in mid-year to review budget compliance and address any adjustment recommendations. The Board may provide for additional meetings as may be needed depending upon the pressure of business or as may reasonably be requested by any Board Member. The date and hour of any regular meeting shall be scheduled by order of the Board. The location for the conduct of meetings shall be Westcomm Center, unless otherwise specified in the meeting notice.

B. Minutes

The Dispatch Administrator shall keep minutes of regular, adjourned and special meetings. As soon as possible after each meeting, a copy of the minutes shall be provided to each of the Parties.

C. Quorum

A majority of the Board of Directors shall constitute a quorum for the transaction of business, except that a lesser number may adjourn for lack of a quorum.

D. Conflict of Interest Code

Pursuant to the provisions of the Political Reform Act, the Board of Directors shall cause to be prepared a Conflict of Interest Code which shall be adopted by the Board and filed and amended as required by State law.

E. Brown Act

All meetings of the Board of Directors shall be called, noticed and conducted in accordance with the provisions of the Ralph M. Brown Act (Government Code Section 54950 *et seq.*).

Section 5. Powers and Duties of the Authority.

The Authority shall have the powers common to the Parties as set forth in the recitals of this Agreement and the Authority is authorized in its own name to perform all acts necessary for the exercise of common powers, including, but not limited to, any and all of the following:

1. To make and enter into contracts;
2. To employ agents and employees;
3. To acquire, construct, manage, maintain, and operate any buildings, works, or improvements;
4. To acquire, hold, lease, or dispose of property;
5. To incur debts, liabilities, or obligations;
6. To receive gifts, contributions, and donations of property and funds, services, and other forms of financial assistance, from persons, firms, and corporations and any governmental entity;
7. To rent or lease communications services to non-public agencies; and,

8. To sue and be sued in its own name.

Section 6. Fiscal Year, Annual Budget/Financing and Assessments.

A. Fiscal Year

The Authority's fiscal year shall be the twelve month period commencing each July 1, except if the effective date of this Agreement is other than July 1, the first fiscal year shall be the short year commencing the effective date and ending the following June 30.

B. Annual Budget

- (1) The Authority shall operate only under a fiscal year budget approved and adopted by the Board of Directors as set forth in this Section. The Authority may not operate at a deficit. The Parties shall pay for the entire operation of the Authority, with the annual expenditure budget determining the total amount of assessments required.
- (2) The total annual assessment shall be divided among the Parties as follows: The City of Seal Beach shall pay 30.3%, the City of Cypress shall pay 45.3% and the City of Los Alamitos shall pay 24.4% of the entire operating and capital cost of the Authority.
- (3) Each annual operating budget shall be approved and adopted by majority vote of the Board of Directors of the Authority.

C. Budget Elements

The Board of Directors, in adopting an annual budget, thereby fixes the assessment against the Parties which shall be binding on each of them. The budget shall include, but is not limited to, the following components:

(1) Operation and Maintenance Expenses

The costs of operating and maintaining a facility and the communications/computer equipment housed therein shall include, but is not limited to, personnel salaries and benefits, office and computer supplies and other consumables, payments to lease a facility, and replacement parts necessary to repair Facility equipment due to normal wear and tear from ordinary usage.

(2) Capital Expenditures

Capital expenditures shall include the costs of original purchase of communications and computer equipment, hardware, software, and other fixed asset items typically having a useful life of more than one (1) year, including equipment improvements and additions, as opposed to replacement parts from ordinary maintenance during the useful life of the capital items. All costs associated with such purchase, such as installation, shall be capitalized. Replacement of equipment at the end of its useful life shall be a capital item.

Capital expenditures shall be shared by the Parties in conformance with the costs formula as established under Section 6.B.2 of this Agreement, except capital expenditures which are incurred for and which are unique to a minority of the Parties, in which case such minority shall share the expense equally.

D. Assessments

Upon adoption of the fiscal year budget by the Board of Directors, and the forwarding thereof to the governing bodies of the Parties by the Dispatch Administrator, the assessments fixed therein are automatically due and payable without further notice as follows:

July 15:	35% of total assessment
October 15:	25% of total assessment
January 15:	25% of total assessment
April 15:	15% of total assessment

The Board of Directors may set a different payment schedule to accommodate capital, if sufficient monies would not otherwise be on hand for such purchases.

A five percent (5%) late charge shall be imposed upon assessment payments not received by the Authority within thirty (30) calendar days following the scheduled dates for payment. An additional five percent (5%) shall be imposed if payment is not received within an additional thirty (30) calendar days. If an assessment, including late charges, is not paid in full within seventy-five (75) calendar days following any scheduled due date, the Party shall be in default and subject to immediate and automatic termination as a Party in accordance with Section 10 of this Agreement.

E. Budget Authority of Dispatch Administrator

The Dispatch Administrator for the Authority shall have the authority to fully implement the approved budget. However, the Dispatch Administrator may not exceed the personnel staffing authorized in the budget, either in number, position, or classification or salary. In addition, the Dispatch Administrator may not alter the capital budget, utilize the reserve contingency, or increase the total amount of the approved expenditure budget without the approval of the Board of Directors. Transfer between expenditure categories must be approved by the Administrative Oversight Staff.

Section 7. Term of Agreement.

This Agreement shall become effective as of the date hereof and shall be binding upon all parties hereto until the close of five (5) full fiscal years following said effective date, and shall thereafter continue in full force and effect from year to year.

Section 8. Liability, Indemnity, and Insurance.

A. Liabilities

Except as otherwise provided herein, the debts, liabilities, and obligations of the Authority shall be the debts, liabilities, or obligations of the Authority alone and not of the Parties of this Agreement.

B. Several Liability

Each Party's responsibility for the debts, liabilities, and obligations of the Authority shall be strictly several, and not joint and several, and nothing herein shall be construed as creating any type of partnership, joint venture, association, or trust between the Parties. The debts, liabilities, and obligations of the Authority shall be the debts, liabilities, or obligations of the Authority alone and not of Parties, unless expressly specified herein.

C. Indemnification and Insurance

- (1) From and after the effective date of this Agreement, the Authority shall fully indemnify, defend, protect, and hold harmless each Party and their respective officers, employees, agents, and representatives ("Party" hereinafter) with respect to any loss, damage, injury, claim, demand, action, litigation, or liability and all expenses and costs relating thereto (including actual attorneys' fees) arising out of or in

any way related to (a) the performance of this Agreement; (b) any contract or agreement assumed by or otherwise transferred to the Authority; and (c) any asset transferred to and accepted by the Authority, including but not limited to real property, personal property, equipment and apparatus. It is also understood and agreed that, pursuant to California Government Code Section 895.4, the Authority shall fully indemnify, defend, protect, and hold harmless each Party from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of any acts or omissions on the part of the Authority. In the event that, notwithstanding Government Code Section 6508.1 and this subsection (1), the Parties are found jointly and severally liable for any negligent or wrongful act or omission committed by the Authority in the performance of this Agreement pursuant to Section 895.2 of the Government Code, which imposes certain tort liability jointly upon public entities solely by reason of such entities being parties to an agreement as defined in Section 895 of said Code, or in the event the Authority's liability exceeds its insurance coverage, the parties hereto, as between themselves, pursuant to the authorization contained in Section 895.4 and 859.6 of said Code, allocate said Party's responsibility for that liability in accordance with the formula set forth in Subsection B(2) of Section 6 herein.

- (2) From and after the effective date, the Authority shall maintain during the term of this Agreement, workers compensation insurance as required by law and, in addition, general comprehensive liability insurance in the minimum limit of \$10,000,000 combined single limit per occurrence and annual aggregate. Each of the Parties' members shall be named as an insured on the general comprehensive liability policy. Alternatively, the Authority may self-insure, subject to the approval of the Parties. Prior to the Effective Date, the Authority shall provide each of the Parties with certificates of insurance or proof of self insurance evidencing the coverage. Such insurance is a condition precedent to performance under this Agreement, and until the Authority obtains insurance as provided for in this Paragraph, performance under this Agreement is excused and no Party shall have any right against any other member in equity or law.
- (3) Each Party hereto agrees to fully indemnify, defend, protect, and hold harmless the Authority and the other parties and their respective officers, employees, agents, and representatives from any liability for damages, actual or alleged, to persons or property arising out of or resulting from negligent or wrongful acts or omissions of that Party. It is also understood and agreed that, pursuant to Government Code Section 895.4, each Party shall fully indemnify, defend, protect and

hold harmless the Authority and the other parties and their respective officers, employees, agents, and representatives from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of any negligent or wrongful acts or omissions on the part of that Party. In the event liability arises out of or results from negligent or wrongful acts or omissions of two or more of the Parties, those Parties will assume the full liability imposed respectively upon them or any of their officers, employees, agents, and representatives by law to the same extent that such liability would be imposed in the absence of Section 895.2 of said Code. To achieve the above stated purposes, each Party indemnifies and holds harmless the other parties for any cost or expense that may be imposed upon such other parties solely by virtue of said Section 895.2.

- (4) The Parties agree that no immunity available to the Parties under state or federal law or regulation shall be waived with respect to any third party claim.

Section 9. Termination, Withdrawal.

A. Termination

Each Party shall remain a Party to this Agreement and share in the costs of start up and operation of the Facility for the term of this Agreement. If, in the interim, a Party defaults on payment of any assessment as defined in Section 6, or otherwise breaches this Agreement, such Party shall be automatically terminated as a Party to this Agreement. The terminated Party remains liable for the defaulted payment and late charges for the balance of the year's assessment, and for assessments for years remaining in the minimum five (5) year term of agreed participation. Such subsequent assessments will be determined as if the terminated Party were still a Party to the Agreement; the assessment will be due and payable in full on the first day of the fiscal year for which it is levied.

After expiration of the five (5) full years of participation, any Party defaulting on payment shall be automatically terminated as a Party to this Agreement and shall be liable for any defaulted payments and late charges.

B. Withdrawal

A Party may withdraw as a Party to this Agreement without penalty provided the effective date of the withdrawal shall not be sooner than the close of the initial five year term of this Agreement and provided the withdrawing party

has given at least two years' prior written notice of withdrawal to the Authority. A withdrawing Party shall perform all obligations required by this Agreement until the noticed date of withdrawal.

C. Legal Redress

The Authority retains the right to seek legal redress, if necessary, to obtain payment on amounts due. A terminated Party which withdraws forfeits any claim to any assets of the Authority.

Section 10. Dissolution.

The Board of Directors may mutually agree to terminate this Agreement and the Authority shall thereby dissolve in accordance with applicable law. The vote of the Board of Directors to dissolve shall be unanimous. Dissolution shall only be effective upon the last day of the fiscal year, but shall in no event be effective until the requirements of Section 12 are met.

Section 11. Disposition of Assets.

A. Process

This Agreement may not be terminated or disposition of assets made to the Parties to the Agreement until the Authority reasonably exhausts all means of collecting any monies due the Authority, and identifies and satisfies all obligations and liabilities of the Authority. The Board of Directors must formally accept a final accounting prepared by the Treasurer before any final disposition of net assets may be made and termination of the Agreement consummated.

B. Asset Ownership

In the event of the withdrawal of one of the member parties to this agreement, the Authority shall distribute to the withdrawing party that party's *pro rata* share of the operating equipment and other liquid assets determined in proportion to the withdrawing party's relative assessment as set forth in Section 6.B.2. of this agreement. Such distribution shall be made by the Board of Directors, in the form of either a cash payment, operating equipment, or a combination thereof.

In the event of a dissolution, the assets of the Authority shall be divided among the parties in proportion to each party's respective assessment percentage as set forth in Section 6.B.2.

For purposes of this section, operating equipment shall not include the structure, radio and telephone lines or other permanent fixtures, which shall become the property of the City of Seal Beach upon any dissolution.

The value of assets for purposes of this section shall be the fair market value and such value shall be established as of the effective date of the withdrawal or dissolution.

C. Debt Obligation

If the Authority issues debt, each Party at the time of the issuance is responsible for its share of the annual debt service payment regardless of whether it has withdrawn as a Party.

Section 12. Amendment to Agreement.

This Agreement may be amended only by a unanimous vote of the Parties to the Agreement. Any proposed amendment shall be formally directed to the Board of Directors. The Board shall then review the proposed amendment and forward it with a Board recommendation to the governing body of each Party to the Agreement. The proposal shall be accompanied by a copy of the proposed amendments to the Agreement, which shall be adopted, properly executed, and returned to the Board of Directors if the Party concurs with the amendment. The Dispatch Administrator shall notify each Party of the resultant action.

Section 13. Additional Parties to Agreement.

Public entities which are not Parties to this Agreement, may become Parties hereto only by amendment to this Agreement as defined in Section 12 and subject to the following terms and conditions:

- A. The Board of Directors shall determine a buy-in fee for long term fixed assets (capital expenditures) and associated debt owned by the Authority at the time of the buy-in.
- B. The effective date of the amendment to this Agreement and inclusion as an additional Party shall only occur on the first day of the fiscal year. Such public agencies which become Parties hereto shall be entitled to all rights and

obligations of the Authority and shall become Board Members as defined in this Agreement.

Section 14. Miscellaneous

A. Bonding

Any officer, official, or employee of the Authority who has charge or disbursement authority over Authority funds or property shall obtain a surety bond in the amount of \$100,000. The premium, if any, of any such bond shall be a lawful charge and obligation of the Authority.

B. Notice of Creation

A notice of the creation of the Authority by this Agreement shall be filed by the Authority with the Secretary of State, pursuant to Section 6503.5 of the Act.

C. Dispatch Service to Other Agencies

The Authority may provide dispatch service to public agencies not a party to this Agreement (hereinafter referred to as "User Agency" or "User Agencies" as appropriate), but only upon majority approval of the Board of Directors. Such service shall be by annual contract approved by the Board of Directors.

Section 15. Severability.

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

Section 16. Successors.

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

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

CITY OF CYPRESS




TOM CARROLL, Mayor

ATTEST:



LILLIAN HAINA, City Clerk

APPROVED AS TO FORM:



JOHN E. CAVANAUGH, City Attorney

CITY OF LOS ALAMITOS



ALICE JEMPSA, Mayor

ATTEST:



DONNA VELIN, City Clerk

APPROVED AS TO FORM:




THOMAS W. ALLEN, City Attorney

CITY OF SEAL BEACH



GWEN FORSYTHE, Mayor

ATTEST:



JOANNE YEO, City Clerk

APPROVED AS TO FORM:



QUINN BARROW, City Attorney