

**MODESTO REGIONAL FIRE AUTHORITY
JOINT POWERS AGREEMENT**

TABLE OF CONTENTS

| | |
|---|----------------|
| JOINT POWERS AGREEMENT | Page 1 |
| RECITALS | Page 1 |
| SECTION 1. POWERS AND PURPOSES | Page 2 |
| 1.1 Authority Created | Page 2 |
| 1.2 Purpose | Page 2 |
| 1.3 Powers | Page 2 |
| 1.4 Term and Termination | Page 4 |
| 1.5 Conflict of Interest | Page 6 |
| SECTION 2. ORGANIZATION | Page 6 |
| 2.1 Membership | Page 6 |
| 2.2 Designation of Directors | Page 6 |
| 2.3 Principal Office | Page 8 |
| 2.4 Meetings | Page 8 |
| 2.5 Quorum/Voting | Page 9 |
| 2.6 Officers | Page 9 |
| 2.7 Minutes | Page 9 |
| 2.8 Rules | Page 9 |
| 2.9 Fiscal Year | Page 10 |
| 2.10 Committees | Page 10 |
| 2.11 Additional Officers and Employees | Page 10 |
| SECTION 3. TRANSFER OF FIRE OPERATIONS | Page 11 |
| 3.1 Transition Team | Page 11 |
| 3.2 Transfer of Assets and Liabilities | Page 11 |
| 3.3 Authority Assumption of Liability | Page 12 |
| SECTION 4. FUNDING OF FIRE OPERATIONS | Page 13 |
| 4.1 General Budget | Page 13 |
| 4.2 Expenditures for the Approved Budget | Page 14 |

TABLE OF CONTENTS (cont.)

| | | |
|-------------------------|--|----------------|
| 4.3 | Contributions for Budgeted Amounts | Page 14 |
| 4.4 | Equity | Page 16 |
| 4.5 | Approval of Bonded Indebtedness | Page 16 |
| 4.6 | Authority Cooperation | Page 16 |
| SECTION 5 | ACCOUNTING AND AUDITS | Page 16 |
| 5.1 | Accounting Procedures | Page 16 |
| 5.2 | Audit | Page 17 |
| SECTION 6 | PROPERTY RIGHTS | Page 17 |
| 6.1 | Vehicles, Equipment, Facilities and Property | Page 17 |
| 6.2 | Disposition of Assets Upon Termination | Page 18 |
| 6.3 | Liabilities | Page 18 |
| 6.4 | Indemnification and Insurance | Page 18 |
| SECTION 7 | WITHDRAWAL AND ADDITION OF MEMBERS | Page 20 |
| 7.1 | Member Withdrawal | Page 20 |
| 7.2 | Addition of New Members | Page 20 |
| 7.3 | Property of Withdrawing Member | Page 21 |
| SECTION 8. | MISCELLANEOUS PROVISIONS | Page 21 |
| 8.1 | Amendment | Page 21 |
| 8.2 | Integration | Page 21 |
| 8.3 | Headings | Page 21 |
| 8.4 | Severability | Page 21 |
| 8.5 | No Continuing Waiver | Page 21 |
| 8.6 | Successors | Page 21 |
| 8.7 | No Third Party Beneficiary | Page 22 |
| 8.8 | Counterpart Execution | Page 22 |
| SIGNATURES | | Page 23 |

**MODESTO REGIONAL FIRE AUTHORITY
JOINT POWERS AGREEMENT**

This Joint Powers Agreement is made and entered into by and among the CITY OF MODESTO, a charter city and municipal corporation in the State of California, the SALIDA FIRE PROTECTION DISTRICT, a duly organized fire protection district under the Fire Protection District Law of 1987, and the COUNTY OF STANISLAUS, a political subdivision of the State of California, on January 17, 2011.

RECITALS

A. The City of Modesto Fire Department ("Modesto") provides fire protection, prevention and suppression services and related services such as emergency medical services, emergency preparedness, mitigation of hazardous materials incidents and special operations including, but not limited to, confined space rescue, technical rescue and water rescue within the corporate limits of the City of Modesto.

B. The Salida Fire Protection District ("Salida") provides fire protection, prevention and suppression services and related services such as emergency medical services, emergency preparedness, mitigation of hazardous materials incidents, technical rescue and water rescue within the unincorporated communities of Salida, Del Rio and North West Stanislaus County.

C. The County of Stanislaus, through the Fire Warden's Office and the Office of Emergency Services ("County"), provides support services for all city fire departments and fire protection districts in Stanislaus County, emergency management, Operational Area Coordinator responsibilities, countywide disaster planning and preparedness, Homeland Security grant administration, and serves as the Fire and Rescue Mutual Aid Coordinator, the County Fire Warden and the Assistant Director of Emergency Services.

D. Modesto, Salida and the County (collectively, the "Members") have determined that creation of a joint power entity to administer fire and emergency services, operations and delivery achieves each entity's needs for policy input and cost control.

E. Each Member is a public agency as defined by Government Code section 6500 et seq. and is authorized and empowered to contract for the joint exercise of powers common to each Member.

F. The Members now wish to jointly exercise their powers to provide for mutual fire protection, prevention and suppression services, emergency management and preparedness as identified in Paragraphs A through C above, and related services, including but not limited to, creation, development, ownership and operation of programs, facilities, and funds therefor through the establishment of the Modesto Regional Fire Authority.

NOW, THEREFORE, in consideration of the mutual promises set out, the Members agree as follows:

SECTION 1. POWERS AND PURPOSES

1.1 Authority Created. Modesto Regional Fire Authority ("Authority") is formed by this Agreement pursuant to the provisions of Article 1, Chapter 5, Division 7, Title I (commencing with section 6500) of the Government Code of the State of California. As provided in Government Code section 6507, the Authority shall be a public entity separate from the parties hereto and its debts, liabilities and obligations shall not be the debts, liabilities and obligations of its Members. The Authority shall, within 30-days after the Effective Date, cause a notice of this Agreement, and amended notices as necessary, to be prepared and filed with the Office of the Secretary of State, as required by Government Code, section 6503.5.

1.2 Purpose of the Agreement; Common Powers to be Exercised. Each Member individually has the statutory ability to provide fire suppression, protection and prevention, emergency management, and related services including but not limited to technical rescue, emergency medical and transport services, and hazardous materials mitigation, as well as providing facilities and personnel for such services. In accordance with Government Code section 6503, the purpose of this Agreement is to jointly exercise the foregoing common powers in the manner set forth in this Agreement.

1.3 Powers. Pursuant to and to the extent required by Government Code section 6509, the Authority shall be restricted in the exercise of its powers in the same manner as is the

City of Modesto. The Authority shall have the common powers of the Members, and is authorized, in its own name, to do all acts necessary or convenient for the exercise of such powers, and all other acts authorized by statute, including, but not limited to any or all of the following:

- (a) To exercise the common powers of its Members in providing fire suppression, protection, prevention and related services, and those powers that may be conferred upon it by subsequently enacted legislation.
- (b) To make and enter into contracts, including contracts with its Members; provided, however, the Authority may not enter into real property development agreements pursuant to Government Code section 65865.
- (c) To assume existing fire department, fire district and County contracts relating to fire suppression, protection, prevention and related services.
- (d) To determine compensation and working conditions and negotiate contracts with employees and employee organizations.
- (e) To employ such agents, employees and other persons as it deems necessary to accomplish its purpose.
- (f) To lease, acquire, hold and dispose of real and personal property.
- (g) To invest reserve funds.
- (h) To incur debts, liabilities, or obligations, provided that all long term bonded indebtedness, certificates of participation or other long-term debt financing require the prior consent of the Members as set out in Section 4 hereof.
- (i) To sue and be sued in its own name.
- (j) To apply for grants, loans, or other assistance from persons, firms, corporations, or governmental entities.

- (k) To use any and all financing mechanisms available to the Authority, subject to the provisions of Section 4 of this agreement.
- (l) To prepare and support legislation related to the purposes of the Agreement.
- (m) To lease, acquire, construct, operate, maintain, repair and manage new or existing facilities as well as to close or discontinue the use of such facilities.
- (n) To levy and collect payments and fees for services, provided that paramedic or ambulance user fees shall be approved by the Member(s) affected.
- (o) To impose new special taxes or assessments as authorized by law to the extent allowed by law, and in coordination with the underlying jurisdiction.
- (p) To provide related services as authorized by law including, but not limited to emergency medical services, emergency preparedness, mitigation of hazardous materials incidents and confined space rescue.
- (q) To contract for the services of attorneys, consultants and other services as needed.
- (r) To purchase insurance or to self-insure and to contract for risk management services.
- (s) To adopt rules, regulations, policies, bylaws and procedures governing the operation of the Authority, including the determination of compensation of Directors.
- (t) To exercise the power of eminent domain.

1.4 Term and Termination of Agreement.

- (a) The Authority shall be formed as of January 17, 2011, or such later date as agreed to in writing by all the Members (the "Effective Date").

(b) This Agreement shall continue in full force and effect without a specific term until it is terminated or rescinded upon the mutual agreement of the original Members to this Agreement. The Authority may vote to terminate this Agreement, or termination will occur if only one Member is left in the Authority.

(c) Each Member specifically agrees to remain a Member for a minimum of 10-years after joining the Authority. Any Member can terminate membership in this Agreement after the tenth year of membership by providing notice to all other Members by resolution of intent to withdraw adopted by the governing board of the withdrawing party. The notice of intent to withdraw shall be given at least five years before the start of the fiscal year in which it shall be effective, but in no circumstance will termination be effective until 10-years after becoming a Member of the Authority. The advance notice is intended to give Members sufficient time to make appropriate arrangements to provide fire protection, prevention and suppression services and related services. Upon the effective date of withdrawal, the withdrawing party shall cease to be bound by the Agreement, except for any long-term financing obligations placed upon the withdrawing party under this Agreement.

(d) This Agreement may be terminated upon the consent of the Authority Board and the consent of each of the governing bodies of the original Members to terminate this Agreement. Any such termination shall provide that the effective termination date shall not occur unless Members have sufficient time to make appropriate arrangements to independently provide fire protection, prevention and suppression services and related services, but in no case more than five years after approval of termination by the governing bodies of the original Members.

(e) Notwithstanding any other provision in this Agreement, in no event shall the exercise of the powers herein granted be terminated until all indebtedness, claims and liabilities incurred, including liability on Certificates of Participation or Bonds, are fully and completely satisfied, or provision for the complete satisfaction of such obligations are made and approved by the Authority and each Member.

(f) Pursuant to Government Code section 6511, upon termination of this Agreement, any surplus property owned or held by the Authority shall be distributed pro rata to the Federal, State, or local agency or the Member that provided the property. The parties shall

use good faith efforts and fair dealing in processing and dividing any surplus property that cannot be attributed to any single Member.

(g) Pursuant to Government Code section 6512, any surplus money on hand after termination of the Agreement shall be returned to the funding source from which funds were furnished, or to the agency making the contribution. The parties shall use good faith efforts and fair dealing in processing and dividing any surplus funds that cannot be attributed to any single Member, keeping in mind the position of the parties before they entered into this Agreement.

1.5 Conflict of Interest. The Authority Board shall adopt and, thereafter, maintain a conflict of interest code in compliance with applicable provisions of the Political Reform Act (Gov. Code, § 87300 et seq.) And the regulations adopted by the Fair Political Practices Commission (Cal. Code Regs., tit. 2, § 1870 et seq.).

SECTION 2. ORGANIZATION

2.1 Membership. The Members of the Authority shall be the original parties to this Agreement that have not withdrawn from the Authority. In addition, any city or public fire service agency may join the Authority after execution of this Agreement on terms and conditions approved by the Board and as set out in Section 7 of this Agreement.

2.2 Designation of Directors. The Authority shall be governed by a Board of Directors consisting of a representative from each original Member (Modesto, Salida and County), and not more than one representative from additional city fire departments that become Members, and not more than one representative from additional fire districts that become Members. The Board of Directors shall not exceed five members.

(a) **Original Members.** Each original Member (Modesto, Salida and County) by resolution of its governing body shall designate and appoint one representative to act as its Director on the Authority Board of Directors (the "Board"). The term of office shall be January 1 of each year, or the Effective Date in the year of its formation, to and including the following December 31 of that year, and a Director can serve multiple terms at the discretion of the appointing body. Each representative shall be a current elected member of the governing body.

Each Director shall hold office until the selection of a successor by the appointing body. Each Member shall also appoint an alternate to act in each Director's absence. Each alternate shall be a current elected representative of the governing board of the Member. Each Director and alternate shall serve at the pleasure of his or her appointing body and may be removed at any time, with or without cause, at the sole discretion of that appointing body. Any vacancy shall be filled in the same manner as the original appointment of a Director and/or alternate.

(b) Additional City Members. If or when another city becomes a Member of the Authority, there shall be one additional "City Director" appointed to serve as a director on the Board that shall represent all additional Members that are city fire departments.

(i) The first additional city to become a Member of the Authority shall, by resolution of its governing body, designate and appoint one representative to serve as the additional City Director, and an alternate to act in that Director's absence for a one-year term of office starting January 1 of each year, or the date it joins the Authority, to and including the following December 31 of that year. The additional City Director and the alternate shall be a current elected member of the appointing governing body, and shall hold office until the selection of a successor. Each Director and alternate shall serve at the pleasure of his or her appointing body and may be removed at any time, with or without cause, at the sole discretion of that appointing body. Any vacancy shall be filled in the same manner as the original appointment of the Director and/or alternate.

(ii) If or when more than one additional city becomes a Member of the Authority, the additional city members shall select one of the cities to fill the additional City Director position for a term of one year, and if unable to reach a consensus, the original Members will make a selection. The city so selected shall designate and appoint a City Director and an alternate as provided in Section 2.2(b)(i) above.

(c) Additional Fire Protection District Members. If or when another fire protection district ("district"), including multi-county districts and out-of-county districts, becomes a Member of the Authority, there shall be one additional "District Director" appointed to serve as a director on the Board that shall represent all additional Members that are fire protection districts.

(i) The first additional district to become a Member of the Authority shall, by resolution of its governing body, designate and appoint one representative to serve as the additional District Director, and an alternate to act in that Director's absence for a one-year term of office starting January 1 of each year, or the date it joins the Authority, to and including the following December 31 of that year. The additional District Director and the alternate shall be a current elected or appointed member of the appointing governing body, and shall hold office until the selection of a successor. Each Director and alternate shall serve at the pleasure of his or her appointing body and may be removed at any time, with or without cause, at the sole discretion of that appointing body. Any vacancy shall be filled in the same manner as the original appointment of the Director and/or alternate.

(ii) If or when more than one additional district becomes a Member of the Authority, the additional district members shall select one of the districts to fill the additional District Director position for a term of one year, and if unable to reach a consensus, the original Members will make a selection. The district so selected shall designate and appoint a District Director and an alternate as provided in Section 2.2(c)(i) above.

(d) Members of the Board of Directors and their alternates shall not receive any compensation for serving as such. However, with approval of the Board, a Director or alternate may be reimbursed for reasonable expenses incurred in the conduct of the business of the Authority.

(e) Pursuant to Government Code section 6505, the Board is designated as the administrator of this Agreement and the Authority's affairs, and shall perform its duties and responsibilities in a accordance with all provisions of this Agreement.

2.3. Principal Office. The principal office of the Authority shall be 600 11th Street, Modesto, California 95354, or as may be otherwise designated by the Authority from time to time.

2.4 Meetings. The Board shall meet at the principal office of the Authority or at such other place as may be designated by the Board. The time and place of the regular meetings of the Board shall be determined by resolution adopted by the Board, and a copy of such resolution shall be furnished to each party hereto. All Board meetings, including regular,

adjourned and special meetings, shall be called, noticed and held in accordance with the Ralph M. Brown Act (Government Code, § 54950 et seq. (the "Brown Act")) as it may be amended from time to time.

2.5 Quorum; Voting. A majority of the Directors shall constitute a quorum for the purpose of the transaction of business relating to the Authority. Each Director, or alternate in the absence of any voting Director, shall be entitled to one vote; provided, however, that in the event there are four Directors on the Board (three original members and one additional city or district member), the Director representing Modesto shall have a weighted vote of two. Unless otherwise provided herein, a vote of the majority of those present and qualified to vote shall be sufficient for the adoption of any motion, resolution or order and to take any other action deemed appropriate to carry forward the objectives of the Authority.

2.6 Officers. The Board shall elect from among its Members a chair and vice-chair and thereafter at the first meeting in each fiscal year the Board shall elect or re-elect a chair and vice-chair. In the event that the chair or vice-chair ceases to be a Director, the resulting vacancy shall be filled in the same manner at the next regular meeting of the Board held after such vacancy occurs. In the absence or inability of the chair to act, the vice-chair shall act as chair. The chair, or in his or her absence the vice-chair, shall preside at and conduct all meetings of the Board. In the absence of the chair and vice-chair, the Board shall elect a chair pro tempore to preside at and conduct the meeting. The Board shall also appoint a clerk of the Authority.

2.7 Minutes. The clerk of the Authority shall provide notice of, prepare and post agendas for and keep minutes of regular, adjourned regular, and special meetings of the Board, and shall cause a copy of the minutes to be forwarded to each Director. The clerk will otherwise perform the duties necessary to ensure compliance with the Brown Act and other applicable rules or regulations.

2.8 Rules. The Board may adopt from time to time such bylaws, rules and regulations for the conduct of its affairs that are not in conflict with this Agreement, as it may deem necessary.

2.9 Fiscal Year. The Authority's fiscal year shall be July 1 of each year, or the Effective Date in the year of its formation, to and including the following June 30.

2.10 Committees. The Board may establish standing or ad hoc committees or subcommittees composed of Board members, staff and/or the public to make recommendations on specific matters.

2.11 Additional Officers and Employees; Contract Services.

(a) Pursuant to Government Code Sections 6505.5 and 6505.6, the Board shall appoint an officer or employee of the Authority, an officer or employee of a Member public agency or a certified public accountant to hold the offices of treasurer and auditor for the Authority. Such person or persons shall possess the powers of and shall perform the treasurer and auditor functions for the Authority required by Government Code Sections 6505, 6505.5, and 6505.6, including any subsequent amendments thereto. Pursuant to Government Code Section 6505.1, the clerk of the Authority and the auditor and treasurer shall have charge of certain property of the Authority. The treasurer and auditor shall assure that there shall be strict accountability of all funds and reporting of all receipts and disbursements of the Authority. In the Board's discretion, the treasurer, auditor and clerk of the Authority may be required to file an official bond with the Board in an amount which established by the Board. Should the existing bond or bonds of any such officer be extended to cover the obligations provided herein, said bond shall be the official bond required herein. The premiums on any such bonds attributable to the coverage required herein shall be appropriate expenses of the Authority.

(b) The Board shall appoint general counsel and special counsel to the Authority to serve as necessary.

(c) The Board may contract with a Member, or its officers, to provide necessary administrative services to the Authority as appropriate. Any administrative duties also may rotate from year to year.

(d) The Authority shall reimburse Members, or its Officers, for services provided under this Section 2.11 in accordance with the normal and usual rates and/or contractual provisions used by that Member or its Officers.

SECTION 3. TRANSFER OF FIRE OPERATIONS

3.1 Transition Team; List of Assets and Liabilities. The Members shall designate a transition team to plan for and implement the transfer of assets, liabilities and services from the Members to the Authority necessary to achieve the purposes of this Agreement. An up-to-date list of all personnel, employment agreements, pension agreements, assets (including but not limited to real property, equipment, reserves, contracts and deposits) and all known liabilities (including but not limited to tort and workers' compensation cases and claims) shall be prepared by the transition team.

3.2 Transfer of Assets and Liabilities. The transition team will prepare a plan for transition of assets, liabilities and services for approval by the Board, taking into account the terms and conditions set forth in the Member's existing Memoranda of Understanding ("MOU's"), employment agreements and all other applicable employment rules, regulations, ordinances and resolutions (the "Transition Plan").

(a) Personnel.

(i) Civil Service Employees. The parties agree that personnel/human resource services initially shall be provided by Modesto, with the intention that the Authority shall eventually provide its own personnel/human resource services in accordance with an approved Transition Plan. Employees of a Member identified in the Transition Plan to be Authority employees shall become employees of the Authority in accordance with the approved Transition Plan. The Board shall forthwith adopt or ratify such MOU's, employment agreements, and employment rules, regulations, ordinances and resolutions as set forth in the Transition Plan, and shall take such other and further actions as authorized and necessary to implement this subparagraph (a). The Board also shall take all necessary steps to confirm continuation of membership in a valid and existing public employee retirement system.

(ii) Volunteers. The parties agree that initially Salida will direct, coordinate and administer volunteers, paid call employees, interns and persons of similar employment status, and that volunteers will transition to Authority direction and control in accordance with an approved Transition Plan.

(iii) Pursuant to Government Code section 53291, the Authority may prescribe the qualifications and conditions under which employees of a Member will become employees of the Authority. Any employees of a Member who do not meet such qualifications or conditions shall not become employees of the Authority in the Authority's sole discretion. The Authority shall comply with the provisions of Government Code section 53292 to the extent applicable to the Authority.

(b) Assets. All Member assets included in the Transition Plan for transfer to the Authority, including and not limited to real property, and personal property and equipment and apparatus, shall transfer to the Authority in their "as is" condition as of the date specified in the Transition Plan. Each Member agency agrees to execute any and all documents necessary to affect the transfer of assets and liabilities to the Authority in accordance with the approved Transition Plan.

(c) Contracts. All existing agreements and contracts involving fire services and related services by the Members or its personnel, including but not limited to contracts for providing services with the Less Than Countywide Fire Tax Fund, mutual aid agreements, automatic aid agreements, and entry, access and roadwork agreements, shall be assigned to the Authority as of the date specified in the approved Transition Plan, with any service or obligation to be provided or performed thereafter by the Authority. A list of all such contracts shall be developed during the transition period. The Authority agrees to assume all of the obligations, duties and liabilities of the Members under said agreements and contracts.

(d) Records. Any and all business records and files, whether computer records, hard copy, microfilm or fiche, historical data, rosters, personnel records, organizational charts, job descriptions, deeds, easements, equipment logs, warranties, manuals and so forth, necessary or helpful to provide services shall be transferred during the transition period to the Authority by the Member in possession or control of such record.

3.3 Authority Assumption of Liability. The Authority shall assume responsibility for any and all loss, litigation, liability, injury, damage, claim, demand, and tort or workers' compensation incidents that occur on or after the date personnel or contracts are transferred to the Authority. The Member agency shall retain responsibility and liability for any and all such incidents that occur prior to the transfer and shall retain all risk management reserves that have

been set aside for such prior incidents. The Authority may contract with a Member agency to receive risk management services on such terms as agreed to by the Authority and the Member.

SECTION 4 FUNDING OF FIRE OPERATIONS

4.1 General Budget. Within sixty (60) days after the first meeting of the Authority Board, a preliminary general budget for the first fiscal year shall be adopted by the vote of a majority of all of the Directors. The initial budget and each succeeding budget shall include, but not be limited to, the following:

- (a) the general administrative expenses, operating expenses and necessary reserves of the Authority to be incurred during the period covered by the budget;
- (b) the allocation of costs among the Members of the Authority in the amounts necessary to cover the budget items set out 4.1(a) above. Service levels and resource allocation will be based on the Members' funding levels, with the objective of maintaining or enhancing response performance. Should a Member experience an unanticipated reduction in any of its funding sources, a proportionate reduction in service levels will affect that Member's response area and service level; and
- (c) retained earnings of Authority funds shall remain with the Authority and distributed in accordance with Section 1.4(g) upon termination of this Agreement.

Thereafter, at or prior to the last meeting of the Board for each fiscal year, a general budget shall be adopted for the ensuing fiscal year or years by a vote of at least a majority of all of the Directors of the Board. A written budget performance report shall be presented to the Board.

4.2 Expenditures for the Approved Budget. All expenditures within the designations and limitations of the approved general budget shall be made on the authorization of the Board for general budget expenditures without further action. No expenditures in excess of those budgeted shall be made without the approval of a majority of all of the Directors of the Board.

4.3 Contributions for Budgeted Amounts. The governing body of each Member shall determine the kind and level of service to be provided by the Authority and shall provide funding for the Authority to provide that service. At a minimum, the original Members are obligated to provide the following resources.

(a) **Modesto.** Modesto shall contribute the following revenue sources to the Authority budget:

- (1) Modesto General Fund contribution sufficient to maintain current Memoranda of Understanding and Letters of Understanding with represented employee groups and to fund emergency operations at current levels based on Fiscal Year 2010-2011;
- (2) All Fees generated by fire department operations;
- (3) Contract fees for services provided to other agencies;
- (4) Cost recovery;
- (5) Advanced Life Support/Basic Life Support contract fees;
- (6) Internal Service Credits;
- (7) Miscellaneous revenues related to provision of fire and emergency services;
- (8) Revenues generated from areas covered under agreements for annexation without detachment; and
- (9) Capital budget for fire and emergency services.

(b) **Salida.** Salida shall contribute the following revenue sources to the Authority budget:

- (1) All property taxes collected within the district;
- (2) All direct assessments applied to parcels within the District;
- (3) All revenues collected as a result of the establishment of a

Community Facilities District;

- (4) All miscellaneous revenues, fees, rents, and reimbursements; and
- (5) All reserves and fund balances.

(c) County. County shall contribute the following revenue sources to the Authority budget:

- (1) County General Fund contribution and County Match based on Fiscal Year 2010-2011 levels for OES/Fire Warden and County Fire Service Fund budget units (\$1,572,094);
- (2) Less Than Countywide Fire Tax, including fund balance on the effective date of this Agreement;
- (3) All other funding sources identified in the Fiscal Year 2010-2011 budgets, including grants, reimbursements, weed abatement funds and fees; and
- (4) In accordance with Section 4.3, funding for the kind and level of special operations, such as hazardous materials response and technical rescue, that the County requests the Authority to provide.

(d) Annual Adjustment. Contributions by each Member to the Authority General Fund will be evaluated annually to provide the ability to adjust service levels as warranted by economic conditions. Each Member shall support opportunities for development of alternate funding sources.

(e) Revenue and Tax Sharing Agreements. Agreements related to funding of fire services and related services existing prior to the Effective Date shall, to the greatest extent practicable, be transferred to the Authority or integrated into this Agreement. Such agreements include, but are not limited to, the Agreement Between the City of Modesto and the Salida Fire Protection District for the Allocation of District Revenue Resulting from the Annexation of Property Within the Kiernan Business Park to the City dated June 9, 2010. All future annexations without detachment affecting one or more members shall provide for revenue sharing based on equitable sharing of fire services.

(f) **Termination.** Failure by any Member to make payments when due constitutes grounds for expulsion from the Authority. Prior to expulsion, the Authority shall provide written notice of its intention to expel such Member if payment is not received within thirty (30) days of the date of such notice. Repeated failure to make payments when due shall constitute grounds for expulsion and/or imposition of an Authority-determined late fee. Alternatively, or in addition to the remedies set forth herein, the Authority may bring legal action to collect unpaid amounts.

4.4 Equity. Annually after the conclusion of each fiscal year and consideration of the audited financial statements for that year, and after consideration of the Authority's financial needs, the Board of Directors in its sole discretion shall determine whether sufficient unencumbered funds from that fiscal year are available for additional services or resources to Members. In the event the Board determines that (1) such funds are available, (2) a distribution is warranted, and (3) that it is appropriate to do so, it shall allocate those funds, or any portion thereof, to a Member in furtherance of the purpose of this Agreement.

4.5 Approval of Bonded Indebtedness. By a two-thirds vote of all Members, the Authority may authorize the issuance of any long term bonded indebtedness. Any Member that withdraws pursuant to Section 7 shall, after ceasing to be a Member of the Authority, not be responsible for payment of its proportional share of any bonded indebtedness approved by the Authority. Short-term tax anticipation notes with a one-year (or shorter) term may be authorized by a majority vote of all of the directors of the Board.

4.6 Authority Cooperation. The Authority agrees to fully cooperate with each of the Members in pursuing federal and state claims for emergency response reimbursements.

SECTION 5 ACCOUNTING AND AUDITS

5.1 Accounting Procedures. Full books and accounts shall be maintained for the Authority in accordance with practices established by, or consistent with, those utilized by the Controller of the State of California for like public entities. In particular, the Authority's auditor and treasurer shall comply strictly with requirements governing joint powers agencies, Article 1, Chapter 5, Division 7, Title 1 (commencing with Section 6500) of the Government Code of the State of California.

5.2 **Audit.** The records and accounts of the Authority shall be audited annually by an independent certified public accountant and copies of the audited financial reports, with the opinion of the independent certified public accountant, shall be filed with the County Auditor, the State Controller and each Member within six (6) months of the end of the fiscal year under examination.

SECTION 6 PROPERTY RIGHTS

6.1 Vehicles, Equipment, Facilities and Property.

(a) **Ownership.** Except as provided herein, all real and personal property, including but not limited to, facilities constructed, installed, acquired or leased by the Authority, apparatus and equipment, personnel and other records and any and all reserve funds shall be held in the name of the Authority for the benefit of the Members of the Authority in accordance with the terms of this Agreement. Any real or personal property, including apparatus and facilities, necessary to achieve the purposes of this Agreement that are owned and not initially transferred to the Authority by the Members shall be dedicated to the Authority for its beneficial use, which property shall be operated and maintained by the Authority in a reasonable and prudent manner. Dedicated property shall be transferred to the Authority by the Member in accordance with the Transition Plan.

(b) **Capital Improvements.** Capital improvements to facilities owned by the Members and not transferred to the Authority shall be the responsibility of that Member. Such capital improvements may be required by the Authority upon a determination by the Authority, after good faith consultation with a Member agency, that such improvements are needed to protect the health, safety or welfare of Authority employees or to maintain the station in a state of operational readiness. Capital improvements to stations owned by the Authority shall be the responsibility of the Authority.

(c) **Equipment, Vehicle and Facility Replacement/Depreciation Programs.** Members shall participate in funding the Authority's equipment, vehicle and facility replacement/depreciation programs. Such programs shall be administered fairly and equitably by the Authority and in accordance with Generally Accepted Accounting Principles.

6.2 Disposition of Assets Upon Termination. Upon termination of this Agreement, all surplus money and property of the Authority shall be conveyed or distributed to each Member in accordance with Section 1.4(f) and (g) of this Agreement. Each Member shall execute any instruments of conveyance necessary to effectuate such distribution or transfer.

6.3 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.

6.4 Indemnification and Insurance.

(a) Pursuant to Government Code section 820.9, as may be amended, members of the Board of Directors for the Authority are not vicariously liable for injuries caused by the act or omission of the Authority or any of its Members. Nothing in this section exonerates an official from liability for injury caused by that individual's own wrongful conduct. Nothing in this section affects the immunity of any other public official.

(b) Except as provided in Section 6.4(f) below, from and after the Effective Date, the Authority shall defend, indemnify and hold harmless the Members and their officers, employees, agents and representatives with respect to any loss, damage, injury, claim, demand, litigation or liability and all expenses and costs relating thereto (including attorneys' fees) arising out of or in any way related to the performance of services pursuant to this Agreement.

(c) Except as provided in Section 6.4(f) below, from and after the date of transfer, the Authority shall defend, indemnify and hold harmless each Member and its officers, employees, agents and representatives with respect to any loss, damage, injury, claim, demand, litigation or liability and all expenses and costs relating thereto (including attorneys' fees) arising out of or in any way related to any contract or agreement assumed by or otherwise transferred to the Authority.

(d) Except as provided in Section 6.4(f) below, from and after the date of transfer, the Authority shall defend, indemnify and hold harmless the Members and their officers, employees, agents and representatives with respect to any loss, damage, injury, claim,

demand, litigation or liability and all expenses and costs relating thereto (including attorneys' fees) arising out of or in any way related to any Member asset to be transferred to the Authority, including but not limited to real property, personal property, equipment and apparatus.

(e) Prior to the transfer of personnel to the Authority, and continuing thereafter, 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 \$5,000,000 combined single limit per occurrence and annual aggregate. Each of the Authority Members shall be named as an additional insured on the general comprehensive liability policy. Alternatively, the Authority may self-insure.

(f) From and after the Effective Date, each Member shall defend, indemnify and hold harmless the Authority, the Authority Directors, officers, employees, agents and representatives, each other Member and their respective officers, employees, agents and representatives with respect to any loss, damage, injury, claim, demand, litigation or liability and all expenses and costs relating thereto (including attorneys' fees) arising out of the Member's actions or omissions prior to the Effective Date that are related to the provision of fire services or to the administration of related contracts, facilities, sites or assets, and which may include past, present or ongoing, or any future release of any hazardous material, hazardous substance or hazardous waste as defined under state and federal law or regulation. The Members agree, pursuant to Government Code sections 895.4 and 6508.1, that each Member shall indemnify and contribute to satisfaction of such judgment against the Authority, the Authority Directors, officers, employees, agents and representatives, upon any liability arising out of the performance or of this Agreement in proportion to that Member's contribution to the Authority budget in the fiscal year in which an incident causing such liability occurs. The Members further agree that the provisions of Article 4 (commencing with section 825), Chapter 4, Part 2, Division 3.6, Title 1 of the Government Code shall apply to issues related to indemnification of Member or Authority Directors, officers, employees, agents and representatives.

(g) Notwithstanding Section 6.4, the Members agree that no immunity or defense available to the Members under State or federal law or regulation shall be waived with respect to any third party claim.

SECTION 7 WITHDRAWAL AND ADDITION OF MEMBERS

7.1 Member Withdrawal.

(a) Initial Term. Members to this Agreement, including additional city or district Members, agree to remain a Member of the Authority for an initial 10-year term.

(b) Subsequent Terms. Membership terms shall automatically renew, on the same terms and conditions as the prior term, provided, however, that a Member may give notice of intention to withdraw pursuant to Section 1.4(c) of this Agreement.

(c) Removal From Board After Notice of Withdrawal. In the event a notice of withdrawal is given by a city, or deemed to have been given, that city's representative shall be removed from the Board of Directors on the effective date of the withdrawal.

(d) Rescission of Notice. Any notices required hereunder may be rescinded by the Member with approval of the Board of Directors.

(e) Property Tax Transfer Negotiations. Withdrawal by a Member may be subject to equitable re-allocation of property taxes and/or assessments as required by applicable law.

7.2 Addition of New Members. Notwithstanding any other provisions herein, a non-Member city or fire protection district may join the Authority upon the request by resolution of the governing body of the non-Member, and upon consent of a majority of all of the Directors of the Board and agreement to terms and conditions determined by the Board, which terms and conditions may vary from those set forth in this Agreement. A new Member may be required to transfer to the Authority its fire facilities and assets or to reimburse the Authority for a proportionate share of facilities which the new Member will utilize. As a condition of membership, a new Member may also be required to accept responsibility for a proportion of the debts, obligations, and liabilities of the Authority from its transferred facilities, to the extent agreed upon by the Authority and the new Member at the time of membership. The Authority Board may determine to waive all or part of such contribution requirements in return for an offsetting transfer of the new Member's fire facilities and assets to the Authority.

7.3 Property of Withdrawing Members. Property, equipment and facilities provided by a Member upon becoming a Member, shall be returned to that member upon its withdrawal from the Authority. This provision is not applicable to any property, equipment and facilities acquired by the Authority after a Member joins the agency.

SECTION 8. MISCELLANEOUS PROVISIONS

8.1 Amendment. This Agreement may not be amended or modified except by a vote of two-thirds of all of the Members; provided, however, that no amendment shall change the length of a term during the pendency of any term, and no amendment shall cause the Authority to violate any condition or restriction in any resolution, trust agreement or indenture providing for long-term financing, including without limitation, certificates of participation or bonds.

8.2 Integration. This Agreement represents the sole and entire agreement between the parties and supersedes all prior agreements, negotiations and discussions between the parties hereto and/or their respective counsel with respect to the subject matter of this Agreement.

8.3 Headings. The headings in this Agreement are for convenience only and are not to be construed as modifying or explaining the language in the section referred to.

8.4 Severability. Should any part, term, or provision of this Agreement be determined by a court to be illegal or unenforceable, the remaining portions or provisions of this Agreement shall nevertheless be carried into effect.

8.5 No Continuing Waiver. No waiver of any term or condition of this Agreement shall be considered a continuing waiver thereof.

8.6 Successors. This Agreement shall inure to the benefit of and be binding upon any successors or assigns of the Members. No Member may assign any right or obligation hereunder without the written consent of a majority of all of the Directors of the Board.

8.7 No Third Party Beneficiary. The Members agree that the provisions of this Agreement are not intended to directly benefit, and shall not be enforceable by, any person or entity not a party to this Agreement.

8.8 Counterpart Execution. This Agreement, or any amendment to this Agreement, may be executed in counterparts, each of which shall be deemed to be an original and said counterparts shall constitute one in the same document which may be sufficiently evidenced by one counterpart.

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be executed and attested by their duly authorized officers as of the date first above written.

— Signatures on Following Pages —

**MODESTO REGIONAL FIRE AUTHORITY
JOINT POWERS AGREEMENT**

Member Agency Approval

CITY OF MODESTO

By: _____
Jim Ridenour
Mayor

ATTEST:

By: _____
Stephanie Lopez
City Clerk

APPROVED AS TO FORM

By: _____
Susana Alcala-Wood
City Attorney

**MODESTO REGIONAL FIRE AUTHORITY
JOINT POWERS AGREEMENT**

Member Agency Approval

SALIDA FIRE PROTECTION DISTRICT

By: _____
Tom Burns
Chair

ATTEST:

By: _____
Dale Skiles
Fire Chief

APPROVED AS TO FORM

By: _____
William D. Ross
District Counsel

**MODESTO REGIONAL FIRE AUTHORITY
JOINT POWERS AGREEMENT**

Member Agency Approval

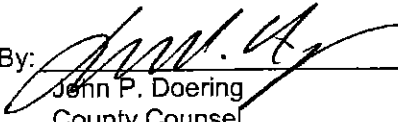
COUNTY OF STANISLAUS

By: _____
Dick Monteith
Chair

ATTEST:
Christine Ferraro Tallman
Clerk of the Board of Supervisors

By: _____
Deputy Clerk

APPROVED AS TO FORM

By: 
John P. Doering
County Counsel