

JOINT EXERCISE OF POWERS AGREEMENT

between the CITY OF LIVERMORE

and

THE CITY OF PLEASANTON

creating the

LIVERMORE-PLEASANTON FIRE DEPARTMENT JOINT POWERS AUTHORITY

JOINT EXERCISE OF POWERS AGREEMENT

THIS AGREEMENT, dated as of 12-3, 1996, between the CITY OF LIVERMORE, a general law city, (Livermore), and the CITY OF PLEASANTON, a general law city (Pleasanton),

WITNESSETH:

WHEREAS, Articles 1 through 4 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the "Act") authorize Livermore and Pleasanton to create a joint exercise of powers entity (the Livermore-Pleasanton Fire Department Joint Powers Authority or the "Authority") which has the power to jointly exercise any powers common to Livermore and Pleasanton and to exercise the powers granted to it under the Act;

WHEREAS, Livermore and Pleasanton are each authorized to create and maintain a fire department;

WHEREAS, in August 1996, Livermore, Pleasanton and the City of Dublin entered into an agreement to develop a joint exercise of powers agreement for management of fire protection services for all three jurisdictions;

WHEREAS, the City of Dublin has decided not to participate in such agreement for management or full consolidation of the fire departments but chose instead to contract with the Alameda County Fire Department;

WHEREAS, Livermore and Pleasanton continue to recognize the benefits of combining their respective fire service providers into one provider;

WHEREAS, by this Agreement, Livermore and Pleasanton desire to create and establish the Livermore-Pleasanton Fire Department Joint Powers Authority for the purposes set forth herein and to exercise the powers described herein;

NOW, THEREFORE, Livermore and Pleasanton, for and in consideration of the mutual promises and agreements herein contained, do agree as follows:

SECTION 1. DEFINITIONS

Unless the context otherwise requires, the terms defined in this Section 1 shall for all purposes of this Agreement have the meanings herein specified.

Act

The term "Act" shall mean Articles 1 through 4 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, as amended.

Authority

The term "Authority" shall mean the Livermore-Pleasanton Fire Department Joint Powers Authority created by this Agreement.

Board

The term "Board" shall mean the governing board of the Authority.

Livermore

The term "Livermore" shall mean the existing municipal corporation known as the City of Livermore, a general law city duly organized and existing under and by virtue of the laws and the constitution of the State of California.

Pleasanton

The term "Pleasanton" shall mean the existing municipal corporation known as the City of Pleasanton, a general law city duly organized and existing under and by virtue of the laws and the constitution of the State of California.

SECTION 2. PURPOSE

This agreement is made pursuant to the Act and for the purpose of allowing Livermore and Pleasanton to share a combined fire department in order to increase each existing department's effectiveness and operating efficiency; its purpose is not to determine if, when or how either of the two cities approve development within their respective jurisdictions.

SECTION 3. TERM

This Agreement shall become effective as of the date hereof and shall continue in full force and effect until terminated.

SECTION 4. AUTHORITY

A. Creation of Authority

There is hereby created pursuant to the Act an agency and public entity to be known as the "Livermore-Pleasanton Fire Department Joint Powers Authority." As provided in the Act, the Authority shall be a public entity separate from Livermore and Pleasanton. The debts, liabilities and obligations of the Authority shall not constitute debts, liabilities or obligations of Livermore or Pleasanton.

Within 30 days after the effective date of this Agreement or any amendment hereto, the Authority will cause a notice of this Agreement or amendment to be prepared and filed with the

office of the Secretary of State of the State of California in the manner set forth in Section 6503.5 of the Act.

B. Governing Board

The Authority shall be administered by the Board whose members shall be, at all times, the Mayor of Livermore, the Mayor of Pleasanton, one councilmember from Livermore and one councilmember from Pleasanton. The councilmembers shall be appointed as determined by the respective City Councils. As to the Mayor from each city, the term of office as a member of the Board shall terminate when such member of the Board shall cease to be the Mayor; as to the councilmember from each city, the term of office as a member of the Board shall terminate when a different city councilmember is appointed. The successor to each Mayor and the new appointments from the respective City Councils shall become members of the Board.

Members of the Board shall not receive any compensation for serving as such.

C. Meetings of Board

(1) **Regular Meetings.** The Board shall hold at least one meeting annually and may hold additional meetings if necessary.

(2) **Legal Notice.** All meetings of the Board shall be called, noticed, held and conducted subject to the provisions of the Ralph M. Brown Act (Chapter 9 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California (Sections 54950-54961)) or any successor legislation hereinafter enacted.

(3) **Minutes.** The Secretary of the Authority shall cause minutes of all meetings of the Board to be kept and shall, as soon as possible after each meeting, cause a copy

of the minutes to be forwarded to each member of the Board and to each member of the Livermore and Pleasanton City Councils.

(4) Quorum. A majority of the members of the Board shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn meetings from time to time.

D. Limitations on Authority's Power. The Authority itself is not intended directly to own any physical assets, nor to contract for services, nor to operate any facilities, but may do so upon approval by the City Council of Livermore and Pleasanton.

E. Board Referral to Livermore and Pleasanton City Councils.

(1) In order to refer a matter to the City Councils, at least three of the four Board members must vote to do so; provided, however, that the Board may reconsider at any time any matter not receiving three votes to refer. Moreover, the Board may refer again any matter, once referred, that does not receive approval by both City Councils.

(2) The Board shall as soon as practical consider the following:

Employer-Employee Relations Procedures and Personnel Rules and Regulations applicable to the Authority's Fire Department. The Board may approve either or both items without referring the items to the respective city councils for consideration as provided in subsection E.(1) above. It shall take three affirmative votes to approve either or both items.

(3) The Board shall also as soon as practical consider the following: cost allocation plan, two year budget, service goals, service performance standards and labor relations agreement (MOU). If the Board approves any or all these items, the items shall be referred to the respective city councils for consideration as provided in subsection E.(1) above.

F. Officers; Duties; Bonds

- (1) The officers of the Authority shall be the Chair, Vice-Chair, Joint Executive Directors, Secretary and Treasurer.
- (2) The Joint Executive Directors shall be the City Managers of Livermore and Pleasanton. The Joint Executive Directors shall appoint the Authority's Fire Chief.
- (3) The Joint Executive Directors and the Fire Chief shall serve as a technical advisory committee to the Board.
- (4) The City Clerk of Pleasanton is hereby designated as the Secretary.
- (5) The Director of Finance of Pleasanton is hereby designated as Treasurer of the Authority. The Treasurer is designated as the depository of the Authority to have custody of all the money of the Authority, from whatever source, and, as such, shall have the powers, duties and responsibilities specified in Section 6505.5 of the Act.
- (6) The Treasurer of the Authority designated is designated as the public officer or person who has charge of, handles, or has access to any property of the Authority, and such officer shall file an official bond in the amount of \$25,000 as required by Section 6505.1 of the Act; provided, that such bond shall not be required if the Authority does not possess or own property or funds with an aggregate value of greater than \$500.00.

SECTION 5. POWERS

The Authority is authorized, in its own name, to do all acts necessary for the exercise of said powers for said purposes. Except as otherwise provided herein, such power shall be exercised subject only to such restrictions upon the manner of exercising such power as are imposed upon Livermore and Pleasanton in the exercise of similar powers, as provided in Section

6509 of the Act. Notwithstanding the foregoing, the Authority shall have any additional powers conferred under the Act or under applicable law, insofar as such additional powers may be necessary to accomplish the purposes set forth in Section 2 hereof.

SECTION 6. TERMINATION OF POWERS

The Authority shall continue to exercise the powers herein conferred upon it until the termination of this Agreement or until Livermore and Pleasanton have mutually rescinded this Agreement.

SECTION 7. FISCAL YEAR

Unless and until changed by resolution of the Board, the fiscal year of the Authority shall be the period from July 1 of each year to and including the following June 30, except for the first fiscal year which shall be the period from the date of this Agreement to June 30, 1997.

SECTION 8. DISPOSITION OF ASSETS

Upon the termination of this Agreement, all assets of the Authority shall be distributed as provided in Section 9 hereof.

SECTION 9. CONTRIBUTIONS AND ADVANCES

Contributions or advances of public funds and of personnel, equipment or property may be made to the Authority by Livermore and Pleasanton for any of the purposes of this Agreement. Payment of public funds may be made to defray the cost of any such contribution. Any such advance shall be made subject to repayment, and shall be repaid, in the manner agreed upon by Livermore or Pleasanton, as the case may be, and the Authority at the time of making such advance. It is mutually understood and agreed that neither Livermore nor Pleasanton has any obligation to make advances or contributions to the Authority to provide for the costs and

expenses of administration of the Authority, even though either may do so. Livermore or Pleasanton may allow the use of personnel, equipment or property in lieu of other contributions or advances to the Authority.

SECTION 10. AGREEMENT NOT EXCLUSIVE

This Agreement shall not be exclusive and shall not be deemed to amend or alter the terms of other agreements between Livermore and Pleasanton, except as the terms of this Agreement shall conflict therewith, in which case the terms of this Agreement shall prevail.

SECTION 11. ACCOUNTS AND REPORTS

The Authority shall establish and maintain such funds and accounts as may be required by good accounting practice. The books and records of the Authority shall be open to inspection at all reasonable times by Livermore and Pleasanton and their representatives.

SECTION 12. CONFLICT OF INTEREST CODE

The Authority, to the extent required by law, hereby adopts as its Conflict of Interest Code the Conflict of Interest Code of Pleasanton, with appropriate substitution regarding references to the governing body and the officers.

SECTION 13. BREACH

If default shall be made by Livermore or Pleasanton Authority in any covenant contained in this Agreement, such default shall not excuse either Livermore or Pleasanton from fulfilling its obligations under this Agreement and Livermore and Pleasanton shall continue to be liable for the payment of contributions and the performance of all conditions herein contained. Livermore and Pleasanton hereby declare that this Agreement is entered into for the benefit of the Authority created hereby and Livermore and Pleasanton hereby grant to the Authority the right to enforce

by whatever lawful means the Authority deems appropriate all of the obligations of each of the parties hereunder. Each and all of the remedies given to the Authority hereunder or by any law now or hereafter enacted are cumulative and the exercise of one right or remedy shall not impair the right of the Authority to any or all other remedies.

SECTION 14. SEVERABILITY

Should any part, term, or provision of this Agreement be decided by the courts to be illegal or in conflict with any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms or provisions hereof shall not be affected thereby.

SECTION 15. SUCCESSORS: ASSIGNMENT

This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties. Except to the extent expressly provided herein, neither party may assign any right or obligation hereunder without the consent of the other.

SECTION 16. AMENDMENT OF AGREEMENT

This Agreement may be amended, and the Authority may be terminated or its powers may be changed, restricted or eliminated by supplemental agreement executed by Livermore and Pleasanton at any time.

SECTION 17. TERMINATION OF AGREEMENT

Either party may terminate this agreement at any time by giving 12 months notice of its intent to terminate. During this 12 month period, any joint assets shall be distributed to each city as provided under the cost allocation plan.

SECTION 18 . FORM OF APPROVALS

Whenever an approval is required in this Agreement, unless the context specifies otherwise, it shall be given, in the case of Livermore, by resolution duly adopted by the City Council of Livermore, and, in the case of Pleasanton, by resolution duly adopted by the City Council of Pleasanton, and, in the case of the Authority, by resolution duly adopted by the Board. Whenever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

SECTION 19. NOTICES

Notices to Livermore and/or Pleasanton shall be sufficient if delivered to the City Clerk of each city.

SECTION 20. SECTION HEADINGS

All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

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 LIVERMORE

By: *Arnold M. P. Miller*
City Manager

[SEAL]

ATTEST:

Rudie Hays
City Clerk

APPROVED AS TO FORM:

Thomas C. ...
City Attorney, City of Livermore

CITY OF PLEASANTON

By: *Deborah ...*
City Manager

[SEAL]

ATTEST:

Peggy ...
City Clerk

APPROVED AS TO FORM:

Thomas ...
City Attorney, City of Pleasanton