ORANGE COUNTY FIRE AUTHORITY
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Keith Richter, Fire Chief **(714) 573-6000** **www.ocfa.org**

October 1, 2012 VIA CERTIFIED U.S. MAIL

The Honorable Thomas J. Borris
Presiding Judge
O.C. Grand Jury
700 Civic Center Drive West
Santa Ana, CA 92701

Dear Judge Borris,

Subject: OCFA Responses to Grand Jury Reports "Can the Consumer Price Index-Urban Keep Up with OCFA Wages?" and "Transparency Breaking Up Compensation Fog-But Why Hide Pension Costs?" 2011/12

At its September 27, 2012, meeting, the Orange County Fire Authority's Board of Directors approved and authorized the attached responses to the Findings/Conclusions and the Recommendations to the Grand Jury Reports entitled "Can the Consumer Price Index-Urban Keep Up with OCFA Wages?" and "Transparency Breaking Up Compensation Fog-But Why Hide Pension Costs?" as requested.

Please feel free to let me know if you have any questions or need additional information.

Sincerely,

Sherry A.F. Wentz

Sherry A.F. Wentz, CMC
Clerk of the Authority

c: Grand Jury Foreman Richard Garcia

Enclosure: OCFA Responses to the Grand Jury Reports "Can the Consumer Price Index-Urban Keep Up with OCFA Wages?" and "Transparency Breaking Up Compensation Fog-But Why Hide Pension Costs?" 2011/12

September 27, 2012

The Honorable Thomas J. Borris
Presiding Judge
Orange County Superior Court
700 Civic Center Drive West
Santa Ana, CA 92701

Honorable Thomas J. Borris,

The Orange County Fire Authority Board of Directors has reviewed the Grand Jury report titled "Can the Consumer Price Index-Urban Keep Up with OCFA Wages?" during its September 27, 2012, public meeting. The Board has reviewed and authorized this formal response from our agency. We appreciate the time and effort the Grand Jury has dedicated to the citizens of Orange County in the pursuit of fair governance.

As stewards of taxpayers' dollars, the Orange County Fire Authority (OCFA) continuously reviews the programs it provides to the communities served, and also reviews the salaries and benefits provided to its workforce. These areas are continuously reviewed with a focus on fiscal health, economic stability, and sustainability of services provided to the public. As the economy continues to experience below average growth, financial focus has been shifted to establishing innovative strategies for sharing costs with our employees related to salaries and benefits. This approach is further described in the attached response.

If I may be of service in the clarification of this response, please let me know.

Sincerely,

Keith Richter

Keith Richter
Fire Chief

Reserved for Board Recommendation/Action

Background and History of OCFA Labor Contracts

The Orange County Fire Authority was established in March 1995, as a successor employer to the Orange County Fire Department. In the initial years following formation, agreements were negotiated with employee labor groups on a fairly short-term basis with contracts extending only two to three years.

Since the OCFA was facing funding deficits in the early years (1995-2000), the organization was unable to provide salary increases which kept pace with the market. At that time, salaries were slipping in the marketplace making it more difficult to retain and attract the best employees. Labor-management relations became extremely strained, as did labor relations with some members of the Board of Directors. In addition to the severe strain on labor relations, the short terms of the labor contracts also compounded organizational difficulties in formulating long-term financial plans since future labor costs were unknown.

In 2000 and 2001, multi-year agreements were successfully negotiated with all three of OCFA's labor groups covering the periods shown below:

- Firefighter Unit — July 2000 – June 2005
- Fire Management Unit — December 2001 – December 2006
- General and Supervisory Units — December 2001 – December 2006

These long-term contracts enabled OCFA to project future salary costs accurately and plan accordingly. In addition, the extended term of the contracts provided time to strengthen relations between management and labor.

In 2002, 2006, and 2010, contract negotiations resulted in modifications and extensions to the existing contracts with two labor groups. The 2006 negotiations resulted in a new MOU for one of OCFA's labor groups. These changes resulted in the following contract durations, which are in effect today:

- Firefighter Unit — July 2000 – June 2014
- Fire Management Unit — December 2001 – December 2015
- General and Supervisory Units — December 2006 – December 2014

The primary purpose of the 2002 negotiation was focused on implementation of new and enhanced retirement benefits that were being adopted throughout the State for public safety employees; however, the 2006 and 2010 negotiations were focused on sharing of costs for existing benefits with employees, and reduction of costs to the employer, as described below.

In September 2006, the OCFA Board of Directors approved substantial changes to its Retiree Medical post-employment benefit plan. Employee contributions towards future Retiree Medical benefits were increased from 1% to 4%. Furthermore, the Retiree Medical *defined benefit* plan was closed to new employees and an alternative *defined contribution* plan was implemented for new employees hired on or after January 1, 2007. The increased employee contribution was a substantial concession obtained from labor, and the conversion of the Retiree Medical plan to a *defined contribution* plan for new hires was groundbreaking for fire service agencies at the time.

In 2010, the OCFA Board of Directors approved MOU amendments with all three labor groups which included even greater concessions from labor than those approved in 2006. The 2010 contract amendments were 100% focused on economic concessions to reduce employer costs associated with salaries and benefits that were guaranteed by the existing labor contracts through 2012. The 2010 concessions were substantial:

- All labor groups agreed to phased-in employee retirement contributions to a level of 9% of pay (cost-sharing with employees).
- All labor groups agreed to implement a new tier for reduced retirement benefits for future employees (cost-reduction for employer).
- All labor groups agreed to a new Trigger Formula for determining if, and when, future salary increases would be provided (risk-sharing between employer and employees).

The Trigger Formula required that OCFA's fiscal health criteria be met first, with fiscal health encompassing a balanced General Fund budget *and* satisfaction of all OCFA reserve fund requirements. There were no strings attached to the amount of expenditures that could be authorized by the Board for delivering services to the community. With approval of the Trigger Formula, the Board retained the right to determine service levels and associated expenditures in its adoption of the annual budget. As a result, if OCFA's revenues increased in its annual budget, and if a simultaneous service increase was needed to meet the needs of the communities served, the Board could approve that service increase, which could potentially prevent salary increases from being triggered.

The process of negotiating the Trigger Formula has aligned labor and management's interests in fiscal prudence and control of spending more than ever before. Furthermore, the Trigger Formula was not only viewed as being connected to OCFA's fiscal health, but was also viewed as being connected to the health of the communities served by OCFA. This was because OCFA's revenue base is largely driven by increases or decreases in the assessed value of properties within its jurisdiction, and assessed value historically rises and falls in sync with a community's economics.

When the OCFA Board of Directors approved the Trigger Formula in 2010, they were highly focused on the likelihood of whether or not salary increases would be triggered. Staff was required to provide answers to questions regarding the percentage growth that would have to occur in property tax revenue (since it was more than 70% of our revenue base), before a salary increase might be triggered at either a minimum or maximum level.

Assuming no change in service levels or associated expenditures, the growth rates shown below would have been required to trigger a salary increase:

Potential Trigger Date	Growth Required for Minimum Raise (any amount over 0%)	Growth Required for Maximum Raise (capped at 5% per MOU)
February 2012	Property tax growth greater than **8.01%** within one year	Property tax growth greater than **12.50%** within one year
February 2013	Property tax growth greater than **4.99%** average for each of two years	Property tax growth greater than **7.10%** average for each of two years
February 2014	Property tax growth greater than **4.20%** average for each of three years	Property tax growth greater than **5.55%** average for each of three years

Furthermore, at the time this Trigger Formula was approved, property tax growth projections were as follows:

- 2010/11 -2.27%
- 2011/12 -0.77%
- 2012/13 +0.39%
- 2013/14 +1.41%
- 2014/15 +2.41%

The property tax growth parameters that would be required to trigger pay raises were not expected to even come close to being met. Staff also advised the Board that all three labor groups had been clearly informed that ***no salary increases*** were anticipated under the new Trigger Formula.

The OCFA has completed its first year in which the Trigger Formula was in place, and as anticipated, no salary increase was triggered.

Based on the discussion provided above, the OCFA believes that the new Trigger Formula has certainly reversed the trend of past salary increases outpacing the Consumer Price Index-Urban. Formal responses to the Grand Jury findings and recommendations are provided below.

Response to Findings and Recommendations

F1. The costs of labor of the OCFA, excluding benefits, are growing annually almost ten times faster than the increase of personnel and 3.5 faster than the Consumer Price Index-U.

The OCFA disagrees partially with the finding. Contrary to statements in the Grand Jury report, the labor costs reported by the Grand Jury and used in their analysis include salaries *and* employee benefits. Therefore, much of the difference between the CPI growth rate and the labor cost growth rate can be explained by increases in retirement rates, medical insurance rates, workers' compensation rates, unemployment rates, and Medicare rates *in addition to* growth in salary costs.

In addition, the CPI figures quoted in the Grand Jury report were for the US as a whole. Since the Grand Jury report stated that salary increases should be tied to the local economy, OCFA obtained data from the Bureau of Labor Statistics for All Urban Consumers: Los Angeles-Riverside-Orange Counties and found that these CPI growth rates were higher than CPI for the US as a whole, creating a different basis for comparison.

Furthermore, since the growth in personnel and the growth in CPI occurred simultaneously, those two factors should be combined to form a more meaningful comparison against OCFA's overall growth in labor costs. Consequently, OCFA agrees that total labor costs (including salaries and benefits) did grow faster than CPI, but at a much reduced rate compared to the figures quoted by the Grand Jury. As previously stated, the OCFA believes that the new Trigger Formula agreed to in 2010 has certainly reversed the trend of past salary increases outpacing the Consumer Price Index-Urban.

F2. Labor agreements of the past have included salary increases of 3 and 4 percent per year while the cost of living represented by the Consumer Price Index-Urban has averaged slightly more than 2.3 percent per year. Future wage increases are based on a "trigger formula" that is tied to the "secured property tax dollar amount" and any "General Fund Surplus/Deficit", and the average of the top quarter of neighboring non-Authority fire departments.

The OCFA disagrees partially with the finding. The Trigger Formula is not tied to "secured property tax dollar amounts", but rather is tied to the amount of OCFA's General Fund surplus or deficit, which is impacted by changes to revenue (including, among other sources, secured property taxes), changes to expenditures, and satisfaction of OCFA's reserve requirements. Any future wage increase, effective 2012 for one labor group and 2013 for the remaining labor groups, will be based on this Trigger Formula, and is independent of the CPI.

It is correct that parity calculations are based on the average of the top quarter (top three) non-Authority fire departments in Orange County. However, the last time the parity calculation actually resulted in a salary adjustment for the OCFA Firefighter Unit was in 2002. The only other time the parity calculation was performed was in 2010 but that survey did not result in a salary adjustment. The next parity calculation will not be performed again until 2015 and is not anticipated to result in a salary adjustment (particularly since the Santa Ana Fire Department recently joined the OCFA).

F3. Basing firefighter's salaries to the "secured property tax" that are founded primarily on the assessed value of the property served may not be the most economically responsive (or seemingly rational to the public) method of calculating wages from a taxpayer perspective. This method produces salaries that do not appear to be compatible with actual wages within the communities they serve. Furthermore, basing salaries on those of neighboring firefighters can result in "spiraling" increases if those agencies base their wages on those of the OCFA.

The OCFA disagrees with the finding. Firefighter salaries are not based solely on available secured property tax. The Trigger Formula referenced in the report has been agreed to by all labor groups and secured property tax is only one factor included in the formula. In summary, the Trigger Formula works as follows:

> Using revenue and expenditure figures from the adopted budget, and updating only the secured property tax figure based on the actual secured tax roll provided by the County, general fund revenues must cover all general fund expenditures, the incremental increase

to the general fund contingency fund balance, and 5% of general fund expenditures must be transferred to the Capital Improvement Funds before any salary increases are triggered.

After reviewing the firefighter Memoranda of Understanding posted on the websites of the ten municipal fire departments in Orange County, the following facts have been discovered:

- Eight of the ten make no mention of other fire departments' salaries in calculating their salary adjustments (Anaheim, Brea, Fountain Valley, Garden Grove, Huntington Beach, Laguna Beach, Newport Beach, and Orange).

- Fullerton uses the compensations of the other municipal fire departments in Orange County (excluding OCFA) merely as guidelines.

- Costa Mesa uses the salaries of Fountain Valley, Huntington Beach, Newport Beach, Santa Ana, and the OCFA to calculate their salary adjustments to insure that Costa Mesa is fifth highest among these departments. With Santa Ana joining the OCFA, this provision will insure that Costa Mesa's salaries are at or below OCFA's.

This review of the city fire department MOUs indicates that "spiraling increases" of firefighter salaries as a result of the wage parity formula will not occur at the OCFA.

F4. Labor agreements for the firefighters that do not appear to reflect the overall economy and finances of the taxpayers and cities they serve may show a deficiency of civic duty of the Directors in making the tough choices and balancing the needs of the citizens that they serve.

The OCFA disagrees with the finding. When OCFA's labor agreements were negotiated, the state of the economy and the financial strength of the organization were major factors in determining increases to salaries and benefits. In addition to using financial forecasts to measure the impact of potential salary increases, the Trigger Formula noted in item F3 is a current example of how management and the Directors have, in the current poor economic environment, put the financial stability of the organization first and foremost above the granting of salary increases to labor groups.

F5. The terms of office of the Board of Directors (some of which are only a year) appear to be too short for directors to become thoroughly acquainted with the complex operations and finances of this large agency.

The OCFA disagrees partially with the finding. In actual fact, the terms of office of OCFA Board Members range from one year to seventeen years with an average of 3.7 years (excluding Santa Ana, which only joined OCFA on 4/20/12). Additionally, the current members (again excluding Santa Ana) have served thus far for an average of 3.3 years. Admittedly, retaining knowledgeable and experienced Board Members would be preferable, but term limits, elections, health issues, assignment rotations on the City Councils, and deaths have concluded the tenures of many OCFA Directors.

Currently, the Joint Powers Agreement provides that each member city shall designate one representative to the OCFA Board of Directors from its governing body (and two from the County of Orange) who will serve at the pleasure of the appointing body. No further restrictions are placed on the member agencies' selections.

<u>Recommendation 1:</u> The OCFA should state on their website how firefighters' salaries are based in the past on the OCFA revenue, and currently on the OCFA general fund surplus/deficit rather than on the living costs and financial conditions of the cities and citizens they serve.

The recommendation has been implemented. Page 94 of the OCFA Firefighter MOU (see link under References) shows the annual salary adjustments, which prior to the most recent negotiations were not tied to any economic factor. Page 143 of the same document shows a detailed example of how the current Trigger Formula will work. Furthermore, the data contained in the most recently posted Five-Year Financial Forecast (see link under References), demonstrates that the conditions for executing the Trigger are not anticipated to occur until FY 2015/16 and will result in a salary adjustment of less than 1% for that year.

In addition, the OCFA has responded to a separate Grand Jury report regarding compensation cost transparency indicating that the OCFA will comply with Grand Jury recommendations regarding disclosure and transparency of compensation costs on our website by November 2012. Compensation costs will be disclosed in the format and with the content and clarity recommended by the Grand Jury.

<u>Recommendation 2:</u> Prior to entering into or negotiating any labor agreements, the OCFA Board of Directors should ensure that the law of supply and demand or the overall economic health of the communities that they serve is reflected in the salaries and benefits packages. Preferably, methods in determining salaries and benefits, among others, might include:

- **Relating salaries and benefits to what the market will bear, i.e., high applications numbers for a job would usually lead to offering lower salaries and benefits;**

- **Tying salaries and benefits to local economic indexes that reflect the economies of the communities served.**

The recommendation has been implemented. OCFA believes that the new Trigger Formula agreed to in 2010 is connected to the health of the communities served by OCFA. This is because OCFA's revenue base is largely driven by increases or decreases in the assessed value of properties within its jurisdiction, and assessed value historically rises and falls in sync with a community's economics.

In addition, the most recent iteration of the OCFA's Five-Year Financial Forecast suggests that, due to the Trigger Formula, the next salary adjustment will not occur until FY 2015/16 and will be slightly less than one percent. However, the CPI for the Los Angeles-Riverside-Orange County area is anticipated to increase by 10.7% during the same four year period (assuming the 17 year historical average). Therefore, the past trend of growth in salary costs has been drastically reversed, resulting in flat salaries for the foreseeable future. This action did take into consideration the economic health of the communities served.

Recommendation 3. OCFA salaries should be renegotiated annually to reflect the actual economic trends of those citizens they serve as opposed to entering into labor agreement that project salary and benefit increase too far in the future with set increases that do not reflect the unreliable economic volatile future.

The recommendation will not be implemented because it is not warranted or is not reasonable. Annual labor negotiations, while having the potential to match salary increases with current economic conditions, would also have significant negative impacts on the organization including: 1) The significant amount of staff time required to prepare for and conduct negotiations, which ranges from three to six months, takes the attention of both labor and management away from focusing on current operations and future planning of the organization; 2) The labor/management relationship would be unstable much of the time due to the significant portion of the year spent in contentious negotiations; 3) Working relationships between employees and managers would be continuously strained due to the typically sensitive nature of negotiations; 4) Without solid contract terms going out at least a few years, there is difficulty in accurately planning and budgeting for the future.

Even with the existence of contracts lasting more than one year, management and labor have demonstrated the ability to successfully agree to reopen contracts in order to achieve cost reducing concessions when necessary due to economic conditions. This was demonstrated during the 2010/11 fiscal year with all labor groups reopening their contracts and providing the organization with significant concessions to improve its financial outlook.

Recommendation 4. The OCFA Board of Directors should clarify and explain which part of the current Memorandum of Understanding controls: Article XXIV that sets annual increases through 2015, or the requirement of Article XXIX that requires compatibility with neighboring non-Authority fire departments, and explain the reasoning for that rationale. This should be included on OCFA's website under the Memorandum of Understanding.

The recommendation has been implemented. The Memorandum of Understanding (MOU) constitutes a mutual recommendation officially ratified by majority vote of the members of the Orange County Professional Firefighters Association (OCPFA) Local 3631 and the Orange County Fire Authority Board of Directors on 12/2/2010. The agreement contains both Articles XXIV and XXIX which were negotiated and approved by the OCFA Board. Each Article is a stand-alone article. The negotiated increases are clearly defined in Article XXIV and provided the pay-periods when the respective salary adjustments are effective. It also defined that effective January 1, 2013, the salary adjustments of Article XXIV will be based the "trigger formula" tied to the General Fund Surplus.

Article XXIX clearly defines the rationale for implementing the parity calculations. The purpose of this policy, as stated, is to attract and retain highly qualified personnel in the classifications of Fire Captain, Fire Apparatus Engineer, and Firefighter as employees of the Orange County Fire

Authority. The parity calculation may trigger an increase in salary, if warranted, but not until 2015.

The OCFA website does include the Memorandum of Understanding for all three labor groups.

<u>Recommendation 5.</u> **The OCFA Board of Directors should provide and make public both a short-term and long-term plan that brings the labor agreements in line with the living cost of the citizens they serve rather than solely upon the revenues derived from secured property tax of the property and city fees in their realm.**

The recommendation will not be implemented because it is not warranted or is not reasonable. Historically, salary adjustments have not been tied to either secured property tax receipts nor cash contract charges. Furthermore, as a result of the most recent labor negotiations, salary adjustments are now tied to OCFA's General Fund Deficit/Surplus and can range from 0% to 5%. Consequently, salary adjustments can be effected either by an increase in revenue, a reduction in expenditures, or a combination of both. Additionally, as stated in R2, over the course of the next four years, salaries are anticipated to growth by less than 1% while CPI may grow by 10.7% (assuming the 17 year historical average).

<u>Recommendation 6.</u> **If the growth of firefighter's salaries is reduced to reflect the economy of the citizens they serve, the OCFA should consider reducing the fees that they charge their contract cities to reflect the change and to be responsive to the financial realities of the cities.**

The recommendation has been implemented. Changes to annual charges to cash contract cities have historically been based on annual changes to budgeted expenditures. Therefore, any reduction in growth of salaries will be reflected in the budget and passed onto the cash contract cities.

<u>Recommendation 7.</u> **The OCFA should consider requiring the terms of office of the directors to be at least two years to provide longer time for continuity of the leadership.**

The recommendation will not be implemented because it is not warranted or is not reasonable. With an average tenure of 3.7 years for all Board Members throughout its history, OCFA currently exceeds this Grand Jury's recommendation of a two year minimum. Furthermore, adding additional requirements to the member agencies' selections of their representatives would require an amendment to the JPA. Such an amendment would have to be ratified not only by the OCFA Board of Directors, but also by a majority of the governing bodies of the member agencies. The time, effort, and expense to accomplish such an amendment are not warranted, given OCFA's history.

Furthermore, the OCFA's Board Members are elected officials, appointed by each city from each city's existing City Council members. Therefore, the terms of these elected officials could not be controlled by an amendment to OCFA's JPA.

References:

Bureau of Labor Statistics CPI for All Urban Consumers: Los Angeles-Riverside-Orange Counties:
http://data.bls.gov/pdq/SurveyOutputServlet?data_tool=dropmap&series_id=CUURA421SA0,CUUSA421SA0

OCFA's Firefighter Memorandum of Understanding:
http://www.ocfa.org/_uploads/pdf/Firefighter%20MOU%202000%20-%202014.pdf

OCFA's Five-Year Financial Forecast:
http://www.ocfa.org/_uploads/pdf/budget/2011-12BudgetPages30-35.pdf

City of Costa Mesa Firefighter MOU:
http://www.costamesaca.gov/modules/showdocument.aspx?documentid=755

City of Fullerton Firefighter MOU:
http://www.ci.fullerton.ca.us/civicax/filebank/blobdload.aspx?BlobID=3616