

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number

22-150

SAP Number

Registrar of Voters

Department Contract Representative	Bob Page
Telephone Number	909-387-2100
Contractor	San Bernardino County Fire Protection District
Contractor Representative	Dan Munsey
Telephone Number	909-387-5779
Contract Term	March 1, 2022 to February 28, 2026
Original Contract Amount	\$0
Amendment Amount	-
Total Contract Amount	\$0
Cost Center	
Internal Order No.	1011239

Briefly describe the general nature of the contract: This Use Agreement is for the San Bernardino County Registrar of Voters' non-exclusive use of various San Bernardino County Fire Protection District facilities associated with San Bernardino County elections. The use period of this Use Agreement is from March 1, 2022, to February 28, 2026. The use fee payable by San Bernardino County under this Use Agreement shall be \$0.

FOR COUNTY USE ONLY

Approved as to Legal Form

▶ SEE SIGNATURE PAGE
Jolena E. Grider, Deputy County Counsel

Date

Reviewed for Contract Compliance

▶

Date

Reviewed/Approved by Department

▶

Bob Page, Registrar of Voters

Date

USE AGREEMENT

1. **PARTIES:** The San Bernardino County Fire Protection District, hereinafter referred to as PERMITTOR, hereby permits San Bernardino County, hereinafter referred to as PERMITTEE (collectively referred to as "Parties"), to use the real property shown on Exhibit "A" attached hereto and incorporated herein by reference. PERMITTOR also has no objection to PERMITTEE using the real property shown in Exhibit "B" that PERMITTOR uses but does not own, so long as PERMITTEE receives approval from the property owner to use the real property shown in Exhibit "B." The real property identified in Exhibit "A" and Exhibit "B" shall be collectively referred to in this Use Agreement as "Property." The use area ("Use Area") of each Property identified in Exhibit "A" and Exhibit "B," including interior and exterior space, as well as parking spaces, will be agreed upon in advance by the SBCFPD Fire Chief and County Registrar of Voters as part of the "use plan" referenced in Paragraph 2, TERM. Both Parties understand and agree that PERMITTOR's operations in the Use Area and at the Property take priority over this Use Agreement and PERMITTEE's ability to occupy and use the Use Area. As a result, SBCFPD's Fire Chief may modify the Use Area without cause or advance notice to PERMITTEE.

2. **TERM:** The term of this agreement shall be from March 1, 2022 to February 28, 2026. A written use plan that identifies the specific dates and Use Area shall be mutually agreed prior to the election.

3. **USE PERIOD:** This Use Agreement shall be for a period which shall commence on the dates listed in the mutually agreed upon use plan. ("Use Period").

4. **USE:** PERMITTEE shall use the Use Area on a non-exclusive basis during the Use Period for only the following purpose: polling places, early voting sites, election supply, and/or poll worker training locations. PERMITTEE must not use the Use Area for any other purpose.

5. **FEES:** PERMITTEE shall pay no fee for the use of the facility, PERMITTOR-provided janitorial and maintenance services, during the Use Period.

6. **INDEMNIFICATION:** The PERMITTOR agrees to indemnify, defend (with counsel reasonably approved by PERMITTEE) and hold harmless the PERMITTEE and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this Use Agreement from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the PERMITTEE on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The PERMITTOR's indemnification obligation applies to the PERMITTEE's "active" as well as "passive" negligence but does not apply to the PERMITTEE's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

The PERMITTEE agrees to indemnify, defend (with counsel reasonably approved by PERMITTOR) and hold harmless the PERMITTOR and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this Use Agreement from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the PERMITTOR on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The PERMITTEE's indemnification obligation applies to the PERMITTOR's "active" as well as "passive" negligence but does not apply to the PERMITTOR's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782. In the event PERMITTOR and/or PERMITTEE is found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under the Agreement, PERMITTOR and/or PERMITTEE shall indemnify the other to the extent of its comparative fault.

This Paragraph 6 shall survive the expiration or earlier termination of this Use Agreement.

7. **INSURANCE REQUIREMENTS AND SPECIFICATIONS:** PERMITTOR and PERMITTEE are authorized self-insured public entities for purposes of Professional Liability, Automobile Liability, General Liability and Worker's Compensation, and warrant that through their respective programs of self-insurance they have adequate coverage or resources to protect against liabilities arising out of PERMITTOR and PERMITTEE's

performance of the terms, conditions or obligations of this Agreement.

8. **ATTORNEY'S FEES AND COSTS:** If any legal action is instituted to enforce or declare any party's rights hereunder, each party, regardless of which party is the prevailing party, must bear its own costs and attorneys' fees. This paragraph will not apply to those costs and attorneys' fees directly arising from any third-party legal action against PERMITTEE, including such attorneys' fees and costs payable under Paragraph 6, INDEMNIFICATION, and Paragraph 7, INSURANCE REQUIREMENTS AND SPECIFICATIONS.

9. **TERMINATION:** In the event that either party is in default of any of the terms and conditions of this Use Agreement, the non-defaulting party may give written notice to the defaulting party of specific violations. If, within three (3) business day after written notice, the defaulting party has not corrected such default, the non-defaulting party shall have the right to terminate this Use Agreement. PERMITTOR has the right to terminate this Agreement without cause with five (5) days advance notice to PERMITTEE. Both Parties understand and agree that PERMITTOR's operations take priority over this Use Agreement and PERMITTEE's ability to occupy and use the Use Area. As a result, PERMITTOR's Fire Chief may modify the Use Area without advance notice and without cause.

10. **COMPLIANCE WITH LAWS:** The Parties shall comply with all applicable ordinances, statutes, and laws of San Bernardino County, State of California, the United States of America, and all other governmental or regulatory agencies having jurisdiction over PERMITTEE's use and the Use Area.

11. **NOTICES:** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party under the provisions of this Use Agreement shall be in writing and shall be served personally, delivered by reputable overnight courier service, or sent by United States mail, postage prepaid, certified, or registered, return receipt requested. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party, shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notices shall be deemed delivered and effective upon the earlier of (i) actual receipt or (ii) the date of delivery or refusal of the addressee to accept delivery if such notice is sent by reputable overnight courier service or United States mail, postage prepaid, certified or registered, return receipt requested. Any notices received after 5:00 pm local time on a business day shall be deemed effective on the following business day.

PERMITTEE: San Bernardino County
Attn: Registrar of Voters
777 E. Rialto Avenue
San Bernardino, CA 92415

PERMITTOR: San Bernardino County Fire Protection District
Attn: Fire Chief
157 W. 5th Street, 2nd Floor
San Bernardino, CA 92415

12. **SURRENDER:** PERMITTEE agrees that it will, upon any termination of this Use Agreement, return the Use Area in a clean and tidy condition with all trash and debris caused by the PERMITTEE removed and all damages to the extent caused by the PERMITTEE repaired or restored to substantially as good a condition as existed immediately prior to the damage caused by the PERMITTEE, reasonable wear and tear excluded.

13. **VENUE:** The parties acknowledge and agree that this Use Agreement was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue for any action or claim brought by any party to this Use Agreement will be the Superior Court of the State of California, San Bernardino County. Each party hereby waives any law, statute (including but not limited to Code of Civil Procedure section 394), or rule of court which would allow them to request or demand a change of venue. If any action or claim concerning this Use Agreement is brought by any third party, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of the State of California, San Bernardino County.

14. **LAW:** This Use Agreement shall be construed and interpreted in accordance with the laws of San Bernardino County, State of California.

15. **SEVERABILITY:** If any word, phrase, clause, sentence, paragraph, section, article, part or portion of this Use Agreement is or shall be invalid for any reason, the same shall be deemed severable from the remainder hereof and shall in no way affect or impair the validity of this Use Agreement or any other portion thereof.

16. **SURVIVAL:** The obligations of the parties that, by their nature, continue beyond the Use Period, will survive the termination of this Use Agreement.

17. **AUTHORIZED SIGNATORS:** The parties to this Use Agreement represent for itself that its respective signators executing this document are fully authorized to enter into this Use Agreement.

18. **ENTIRE AGREEMENT:** This Use Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, express or implied, oral or written, of any nature whatsoever with respect to the subject matter hereof. No modifications or waiver will be binding unless made in writing and signed by both parties.

19. **SIGNATURE:** This Use Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

IN WITNESS WHEREOF, San Bernardino County and San Bernardino County Fire Protection District have each caused this Use Agreement to be subscribed by its respective duly authorized officers, on its behalf.

SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT

By: 
Curt Hagman, Chairman

Date: MAR 01 2022

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

By: 
Lynna Monell, Secretary
Deputy

Approved as to Legal Form:

TOM BUNTON County Counsel
San Bernardino County, California

By: 
Jolene E. Grider, Deputy County Counsel

Date: 2/17/22

SAN BERNARDINO COUNTY

By: Pete Mendoza 

Title: Purchasing Director Interim

Date: 02/23/22