

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

Contract Number

22-212

SAP Number

San Bernardino County Fire Protection District

Department Contract Representative Dan Munsey
Telephone Number 387-5779

Contractor San Bernardino Regional Emergency Training Center Joint Powers Authority

Contractor Representative _____
Telephone Number _____

Contract Term _____

Original Contract Amount _____

Amendment Amount _____

Total Contract Amount _____

Cost Center _____

IT IS HEREBY AGREED AS FOLLOWS:

(Use space below and additional bond sheets. Set forth service to be rendered, amount to be paid, manner of payment, time for performance or completion, determination of satisfactory performance and cause for termination, other terms and conditions, and attach plans, specifications, and addenda, if any.)

AGREEMENT FOR THE TEMPORARY TRANSFER OF EQUIPMENT

This agreement is made and entered into by and between the SAN BERNARDINO COUNTY FIRE PROTECION DISTRICT, hereinafter called the "DISTRICT," and SAN BERNARDINO REGIONAL EMERGENCY TRAINING CENTER JOINT POWERS AUTHORITY, hereinafter called "JPA."

Recitals:

WHEREAS, the DISTRICT and the JPA work together to provide Aircraft Rescue and Fire Fighting ("ARFF") training to public and private fire service agencies from around the world at the San Bernardino Regional Emergency Training Center Facility ("SBRETC") through a Joint Exercise of Powers Agreement executed on June 9, 1998, and subsequently amended on March 21, 2000 (JPA Agreement);

WHEREAS, the JPA is a separate legal entity and the DISTRICT is a party to the JPA;

WHEREAS, the JPA provides the infrastructure, facilities and funds to facilitate course delivery, as well as secures funds through course fees paid by students and fire service organizations;

WHEREAS, Section 5 of the JPA Agreement provides that the parties to the JPA may use their personnel, equipment, or property in lieu of or in conjunction with other contributions or advances;

WHEREAS, the DISTRICT provides access to subject matter experts in the field of ARFF who are qualified and certified through the State of California to instruct and certify participants in the field of ARFF;

WHEREAS, the DISTRICT has access to other equipment and specialists commonly used during the course of ARFF training, specifically Self-Contained Breathing Apparatus ("SCBA");

WHEREAS, the JPA desires use of SCBAs and all necessary accessories which are current and certified for use in an Immediately Dangerous to Life and Health (IDLH) during ARFF training courses;

WHEREAS, the DISTRICT has the ability to provide JPA SCBAs and other equipment as provided for in this Agreement (hereafter referred to as Equipment, which term is further defined in Exhibit A to this Agreement);

WHEREAS, the DISTRICT's provision of DISTRICT-owned Equipment to the JPA as provided for in this Agreement supports the following DISTRICT purposes: DISTRICT personnel, regional cooperators and other cooperating agencies attend ARFF training at SBRETC for the purpose of initial and mandatory recurrent training to qualify as firefighters at airports classified by the Federal Aviation Administration. SCBAs are required to be used during training events in IDLH environments. Use of the DISTRICT-owned Equipment will provide participants with equipment during training that is the same or similar to that which is used during the course of their normal duties.

WHEREAS, the JPA agrees the Equipment will remain the property of the DISTRICT and that any cost of repairs or replacement from damage will be reimbursed to the DISTRICT by the JPA.

IT IS HEREBY MUTUALLY AGREED between the parties hereto as follows:

1. DISTRICT hereby temporarily transfers possession to JPA and JPA hereby accepts possession from DISTRICT of the Equipment defined in the attached Exhibit "A" which is by this reference made a part hereof, for use during training courses held at SBRETC. Equipment inventories (Exhibit "A") may by mutual concurrence of the DISTRICT and JPA be changed during the term of this Agreement, utilizing property accountability procedures established or approved by the DISTRICT so long as the amounts and types of Equipment remain the same.
2. The term of this Agreement shall commence as of the date of the last Party's signature, and continue thereafter through March 14, 2027. However, the Agreement may be terminated early by DISTRICT or JPA pursuant to Section 10, "Termination of Agreement," below.
3. Transfer of Possession

The following outlines the steps required to complete the transfer of the Equipment listed on the attached Exhibit "A" from the DISTRICT to JPA:

- a. Within seven (7) days of the execution of this Agreement by both Parties, the DISTRICT shall provide the JPA with any and all Equipment defined within this Agreement.
- b. DISTRICT staff shall provide JPA with a comprehensive training session specific to the operation and maintenance of the Equipment. JPA through its Training Instructors and Subject Matter Experts will ensure that all students using the Equipment will receive instruction on the proper use of the Equipment prior to use in an IDLH environment.

The following outlines the steps required to complete the return of the Equipment listed on the attached Exhibit "A" from JPA to the DISTRICT:

- a. JPA or DISTRICT shall notify the other party of the intent to return the Equipment to the

DISTRICT.

- b. JPA shall return the Equipment to the following DISTRICT address:
2824 East W Street, Bldg. 302
San Bernardino, California 92408
- c. JPA shall be responsible for all travel expenses associated with Equipment drop-off.
- d. SBCFPD and JPS agree to perform a pre-inspection of the Equipment prior to delivery of the Equipment to the JPS.
- e. Both parties agree to perform a post-inspection upon return of Equipment to SBCFPD to determine the condition of the Equipment.

4. Housing, Maintenance, Repair and Replacement

- a. Equipment shall be housed on property of JPA in a manner to provide reasonable protection against inclement weather, sabotage, theft or malicious damage.
- b. Only DISTRICT or its vendors shall maintain the Equipment to certify the Equipment for use in IDLH, including, but not limited to, annual flow testing, software updates, hydrostatic testing of bottles and manufacture warranty issues. This maintenance will be at no cost to JPA.
- c. Only DISTRICT or its vendors shall repair the Equipment. JPA will reimburse DISTRICT in full for the actual costs, including labor, for any repairs to the Equipment while in the possession of the JPA.
- d. JPA, through the training instructors and subject matter experts, agree to keep the Equipment clean and sanitized for use per manufacturer recommendations.
- e. JPA will reimburse the DISTRICT in full for the actual cost of replacement of the Equipment should it be damaged or destroyed beyond repair, lost, stolen or consumed while in the possession of JPA.

5. Inspection of Equipment

JPA agrees that representatives of DISTRICT and other authorized DISTRICT personnel may inspect the Equipment at any time, with or without advance notice.

6. Staffing

Reasonable and continual training shall be carried on so that trained personnel shall be available to staff and operate said Equipment at all times.

7. Training

Personnel assigned to Equipment shall have and maintain all applicable licenses, certifications required by federal, state and local laws.

8. Reports and Records

JPA shall maintain reports on the details of the use of the Equipment identified in this Agreement.

9. Report of Accidents

JPA shall immediately notify DISTRICT following any and all accidents involving the Equipment. It shall be the responsibility of JPA to fill out and file the report with the DISTRICT. A copy of this report shall be retained by JPA and the original forwarded to the DISTRICT.

10. Termination of Agreement

- a. Either party may terminate this Agreement, with or without cause, upon thirty (30) days written notice to other party, or JPA may relinquish or DISTRICT may repossess any portion of the Equipment upon like notice to the other party, except that DISTRICT may repossess any portion thereof without written notice whenever it deems the same is not being housed, maintained or used in accordance with this Agreement.
- b. Upon the termination of this Agreement, JPA agrees to return said Equipment in the same condition as received, reasonable wear and tear excepted.
- c. As inventory changes occur, or items of equipment are replaced, deleted or added by the DISTRICT or replaced by JPA, it is mutually agreed that no amendment to this Agreement need be made at the time of the change; provided however, at the termination of this Agreement a complete reconciliation of all equipment will be made. JPA further agrees that all replacements for Equipment will be made with identical or substantially like items as approved by the DISTRICT.
- d. Nothing in this Agreement shall be construed to create a new property interest or right of action for JPA.

11. Unauthorized Use of DISTRICT Equipment

Use of the Equipment other than as specified in the recitals and paragraph 1 will be considered a breach of this Agreement.

12. Notices

All notices herein provided to be given, or which may be given by either party to the other shall be deemed to have been fully given when made in writing and deposited in the U.S. mail, registered and postage prepaid and addressed as follows: To JPA at 2235 East Perimeter Road, San Bernardino, CA 92408 and to the DISTRICT at San Bernardino County Fire Protection District 157 W. 5th Street, 2nd Floor, San Bernardino, CA 92415. The address to which notices shall or may be mailed as aforesaid to either party may be changed by written notice given by such party to the other, as hereinabove provided; but nothing herein contained shall preclude the giving of any such notice by personal service.

13. Alterations and Variations

It is mutually understood and agreed that no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and that no oral understanding or agreements not incorporated herein, and no alterations or variations of the terms hereof unless made in writing between the parties hereto shall be binding on any of the parties hereto.

14. Waivers

No failure to enforce any provision of this Agreement shall be construed as a waiver of the provision. Any waiver, in order to be effective, must be in writing and shall only be effective for the instance specified in the writing.

15. Contract Amendments

JPA agrees any alterations, variations, modifications, or waivers of the provisions of the Contract, shall be valid only when reduced to writing, executed and attached to the original Contract and approved by the person(s) authorized to do so on behalf of JPA and DISTRICT.

16. Contract Assignability

Without the prior written consent of the DISTRICT, the Contract is not assignable by JPA either in whole or in part.

17. Contract Exclusivity

This is not an exclusive Contract. The DISTRICT reserves the right to enter into a contract with other contractors for the same or similar services. The DISTRICT does not guarantee or represent that JPA will be permitted to perform any minimum amount of work, or receive compensation other than on a per order basis, under the terms of this Contract.

18. Attorney's Fees and Costs

If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under Indemnification and Insurance Requirements.

19. Change of Address

JPA shall notify the DISTRICT in writing, of any change in mailing address within ten (10) business days of the change.

20. Choice of Law

This Contract shall be governed by and construed according to the laws of the State of California.

21. Primary Point of Contact

JPA will designate an individual to serve as the primary point of contact for the Contract. JPA or designee must respond to DISTRICT inquiries within two (2) business days. JPA shall not change the primary contact without written acknowledgement to the DISTRICT. JPA will also designate a back-up point of contact in the event the primary contact is not available.

22. County Internship Initiative

JPA agrees to be contacted by the County to solicit its participation in an internship initiative known as GenerationGo! Career Pathways, involving the potential placement and hiring of interns by JPA's business. JPA is encouraged, and agrees to make good faith efforts, to utilize the County's program to aid the *County's Vision for a skilled workforce and jobs that create countywide prosperity, and its goal to Create, Maintain and Grow Jobs and Economic Value in the County*. The County's objective with its internship initiative is to focus on training, education, employment and support services to develop a more highly-educated and trained workforce. When participating in the County's internship initiative, JPA remains an independent contractor and shall not be construed as agents, officers, or employees of the County. More information about the County's GenerationGo! Career Pathways Program can be located at <http://wp.sbcounty.gov/workforce/career-pathways/>.

23. District Representative

The Fire Chief or his/her designee shall represent DISTRICT in all matters pertaining to the services to be rendered under this Contract, including termination and assignment of this Contract, and shall be the final authority in all matters pertaining to the Services/Scope of Work by JPA. If this contract was initially approved by the DISTRICT's Board of Directors, then the Board of Directors must approve all amendments to this Contract.

24. Debarment and Suspension

JPA certifies that neither it nor its principals or subcontracts is presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See the following United States General Services Administration's System for Award Management website <https://www.sam.gov>). JPA further certifies that if it or any of its subcontractors are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State.

25. Drug and Alcohol Free Workplace

In recognition of individual rights to work in a safe, healthful and productive work place, as a material condition of this Contract, JPA agrees that JPA and JPA's employees, while performing service for the DISTRICT, on DISTRICT property, or while using DISTRICT equipment:

- a. Shall not be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance.
- b. Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal or controlled substance.
- c. Shall not sell, offer, or provide alcohol or an illegal or controlled substance to another person, except where JPA or JPA's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

JPA shall inform all employees that are performing service for the DISTRICT on DISTRICT property, or using DISTRICT equipment, of the DISTRICT's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the DISTRICT.

The DISTRICT may terminate for default or breach of this Contract and any other Contract JPA has with the DISTRICT, if JPA or JPA's employees are determined by the DISTRICT not to be in compliance with above.

26. Duration of Terms

This Contract, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties, provided no such assignment is in violation of the provisions of this Contract.

27. Employment Discrimination

During the term of the Contract, JPA shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. JPA shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VI and Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

28. Environmental Requirements

In accordance with County Policy 11-08, the DISTRICT prefers to acquire and use products with higher levels of post-consumer recycled content. Environmentally preferable goods and materials must perform satisfactorily and be available at a reasonable price. The DISTRICT requires JPA to use recycled paper for any printed or photocopied material created as a result of this Contract. JPA is also required to use both sides of paper sheets for reports submitted to the DISTRICT whenever practicable.

To assist the DISTRICT in meeting the reporting requirements of the California Integrated Waste Management Act of 1989 (AB 939), JPA must be able to annually report the DISTRICT's environmentally preferable purchases. JPA must also be able to report on environmentally preferable goods and materials used in the provision of their service to the DISTRICT, utilizing a DISTRICT approved form.

29. Improper Influence

JPA shall make all reasonable efforts to ensure that no DISTRICT officer or employee, whose position in the DISTRICT enables him/her to influence any award of the Contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of the Contract or shall have any relationship to JPA or officer or employee of JPA.

30. Improper Consideration

JPA shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the DISTRICT in an attempt to secure favorable treatment regarding this Contract.

The DISTRICT, by written notice, may immediately terminate this Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the DISTRICT with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once a contract has been awarded.

JPA shall immediately report any attempt by a DISTRICT officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from JPA. The report shall be made to the supervisor or manager charged with supervision of the employee or the County Administrative Office. In the event of a termination under this provision, the DISTRICT is entitled to pursue any available legal remedies.

31. Informal Dispute Resolution

In the event the DISTRICT determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this Contract or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

32. Legality and Severability

The parties' actions under the Contract shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. The provisions of this Contract are specifically made severable. If a provision of the Contract is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

33. Licenses, Permits and/or Certifications

JPA shall ensure that it has all necessary licenses, permits and/or certifications required by the laws of Federal, State, County, and municipal laws, ordinances, rules and regulations. JPA shall maintain these licenses, permits and/or certifications in effect for the duration of this Contract. JPA will notify DISTRICT immediately of loss or suspension of any such licenses, permits and/or certifications. Failure to maintain a required license, permit and/or certification may result in immediate termination of this Contract.

34. Material Misstatement/Misrepresentation

If during the course of the administration of this Contract, the DISTRICT determines that JPA has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the DISTRICT, this Contract may be immediately terminated. If this Contract is terminated according to this provision, the DISTRICT is entitled to pursue any available legal remedies.

35. Mutual Covenants

The parties to this Contract mutually covenant to perform all of their obligations hereunder, to exercise all discretion and rights granted hereunder, and to give all consents in a reasonable manner consistent with the standards of "good faith" and "fair dealing".

36. Nondisclosure

JPA shall hold as confidential and use reasonable care to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, confidential information that is either: (1) provided by the DISTRICT to JPA or an agent of JPA or otherwise made available to JPA or JPA's agent in connection with this Contract; or, (2) acquired, obtained, or learned by JPA or an agent of JPA in the performance of this Contract. For purposes of this provision, confidential information means any data, files, software, information or materials in oral, electronic, tangible or intangible form and however stored, compiled or memorialize and includes, but is not limited to, technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data.

37. Notice of Delays

Except as otherwise provided herein, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this contract, that party shall, within twenty-four (24) hours, give notice thereof, including all relevant information with respect thereto, to the other party.

38. Air, Water Pollution Control, Safety and Health

JPA shall comply with all air pollution control, water pollution, safety and health ordinances and statutes, which apply to the work performed pursuant to this Contract.

39. Records

JPA shall maintain all records and books pertaining to the delivery of services under this Contract and demonstrate accountability for contract performance. All records shall be complete and current and comply with all Contract requirements. Failure to maintain acceptable records shall be considered grounds for withholding of payments for invoices submitted and/or termination of the Contract.

All records relating to JPA's personnel, consultants, subcontractors, Services/Scope of Work and expenses pertaining to this Contract shall be kept in a generally acceptable accounting format. Records should include primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must comply with the appropriate Office of Management and Budget (OMB) Circulars, which state the administrative requirements, cost principles and other standards for accountancy.

40. Relationship of the Parties

Nothing contained in this Contract shall be construed as creating a joint venture, partnership, or employment arrangement between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto.

41. Release of Information

No news releases, advertisements, public announcements or photographs arising out of the Contract or JPA's relationship with DISTRICT may be made or used without prior written approval of the DISTRICT.

42. Representation of the DISTRICT

In the performance of this Contract, JPA, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the DISTRICT.

43. Strict Performance

Failure by a party to insist upon the strict performance of any of the provisions of this Contract by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Contract thereafter.

44. Subcontracting

JPA shall obtain DISTRICT's written consent, which DISTRICT may withhold in its sole discretion, before entering into Contracts with or otherwise engaging any subcontractors who may supply any part of the Services to DISTRICT.

45. Subpoena

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Goods or Services provided under this Contract is served upon JPA or DISTRICT, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. JPA and DISTRICT further agree to cooperate with the other party in any lawful effort by such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by JPA for DISTRICT.

46. Time of the Essence

Time is of the essence in performance of this Contract and of each of its provisions.

47. Venue

The parties acknowledge and agree that this Contract was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Contract will be the Superior Court of California, County of San Bernardino, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino, San Bernardino District.

48. Conflict of Interest

JPA shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the DISTRICT. JPA shall make a reasonable effort to prevent employees, JPA, or members of governing bodies from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and state law. In the event the DISTRICT determines a conflict of interest situation exists, any increase in costs, associated with the conflict of interest situation, may be disallowed by the DISTRICT and such conflict may constitute grounds for termination of the Contract. This provision shall not be construed to prohibit employment of persons with whom JPA's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.

49. Former County Administrative Officials

JPA agrees to provide, or has already provided information on former County of San Bernardino administrative officials (as defined below) who are employed by or represent JPA. The information provided includes a list of former County administrative officials who terminated County employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of JPA. For purposes of this provision, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, County Executive Officer or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

50. Disclosure of Criminal and Civil Procedures

The DISTRICT reserves the right to request the information described herein from JPA. Failure to provide the information may result in a termination of the Contract. The DISTRICT also reserves the right to obtain the requested information by way of a background check performed by an investigative firm. JPA

also may be requested to provide information to clarify initial responses. Negative information discovered may result in Contract termination.

JPA is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees (as that term is defined herein), within the last ten years, has been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense arising directly or indirectly from the conduct of the firm's business, or whether the firm, or any of its partners, principals, members, associates or key employees, has within the last ten years, been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense involving financial misconduct or fraud. If the response is affirmative, JPA will be asked to describe any such indictments or charges (and the status thereof), convictions and the surrounding circumstances in detail.

In addition, JPA is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees, within the last ten years, has been the subject of legal proceedings as defined herein arising directly from the provision of services by the firm or those individuals. "Legal proceedings" means any civil actions filed in a court of competent jurisdiction, or any matters filed by an administrative or regulatory body with jurisdiction over the firm or the individuals. If the response is affirmative, JPA will be asked to describe any such legal proceedings (and the status and disposition thereof) and the surrounding circumstances in detail.

For purposes of this provision "key employees" includes any individuals providing direct service to the DISTRICT. "Key employees" do not include clerical personnel providing service at the firm's offices or locations.

51. Audit

The DISTRICT, State and Federal government shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have absolute right to monitor the performance of JPA under this Contract. JPA shall give full cooperation, in any auditing or monitoring conducted. JPA shall cooperate with the DISTRICT in the implementation, monitoring, and evaluation of this Contract and comply with any and all reporting requirements established by the DISTRICT.

All records pertaining to services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by DISTRICT representatives for a period of three years after final payment under this Contract or until all pending DISTRICT, State and Federal audits are completed, whichever is later.

52. Indemnification and Insurance

a. Indemnity

JPA agrees to indemnify, defend (with counsel reasonably approved by DISTRICT) and hold harmless the DISTRICT and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of this Contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the DISTRICT 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 indemnities. JPA indemnification obligation applies to the DISTRICT's "active" as well as "passive" negligence but does not apply to the DISTRICT's "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782.

b. Additional Insured

All policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the DISTRICT and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the DISTRICT to vicarious liability but shall allow coverage for the

DISTRICT to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

- c. **Waiver of Subrogation Rights**
JPA shall require the carriers of required coverages to waive all rights of subrogation against the DISTRICT, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit JPA and JPA's employees or agents from waiving the right of subrogation prior to a loss or claim. JPA hereby waives all rights of subrogation against the DISTRICT.
- d. **Policies Primary and Non-Contributory**
All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the DISTRICT.
- e. **Severability of Interests**
JPA agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between JPA and the DISTRICT or between the DISTRICT and any other insured or additional insured under the policy.
- f. **Proof of Coverage**
JPA shall furnish Certificates of Insurance to the DISTRICT Department administering the Contract evidencing the insurance coverage at the time the Contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and JPA shall maintain such insurance from the time JPA commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, JPA shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.
- g. **Acceptability of Insurance Carrier**
Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".
- h. **Deductibles and Self-Insured Retention**
Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.
- i. **Failure to Procure Coverage**
In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, the DISTRICT has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by the DISTRICT will be promptly reimbursed by JPA or DISTRICT payments to JPA will be reduced to pay for DISTRICT purchased insurance.
- j. **Insurance Review**
Insurance requirements are subject to periodic review by the DISTRICT. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the DISTRICT. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance

coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the DISTRICT, inflation, or any other item reasonably related to the DISTRICT's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. JPA agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of the DISTRICT to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the DISTRICT.

- k. JPA agrees to provide insurance set forth in accordance with the requirements herein. If JPA uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, JPA agrees to amend, supplement or endorse the existing coverage to do so.

Without in anyway affecting the indemnity herein provided and in addition thereto, JPA shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

- i. Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of JPA and all risks to such persons under this contract.

If JPA has no employees, it may certify or warrant to the DISTRICT that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the DISTRICT's Director of Risk Management.

With respect to contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

- ii. Commercial/General Liability Insurance – JPA shall carry General Liability Insurance covering all operations performed by or on behalf of JPA providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:
- a. Premises operations and mobile equipment.
 - b. Products and completed operations.
 - c. Broad form property damage (including completed operations).
 - d. Explosion, collapse and underground hazards.
 - e. Personal injury.
 - f. Contractual liability.
 - g. \$2,000,000 general aggregate limit.

- iii. Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If JPA is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If JPA owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

- iv. Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.
- v. Professional Liability – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim and two million (\$2,000,000) aggregate limits
or

Errors and Omissions Liability Insurance – Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits

If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the state of the contract work. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after contract completion.

- 53. State of Emergency, Natural Disaster or Other Extenuating Circumstance. In the event of a State of Emergency, Natural Disaster or other extenuating circumstance where the DISTRICT has an immediate need for the return of the Equipment to provide fire and emergency services to the general public, the DISTRICT may reclaim any and all Equipment from the JPA for the period of time of which the State of Emergency, Natural Disaster or other extenuating circumstance occurs. The DISTRICT agrees to return the Equipment to the JPA at the conclusion of the period of time needed to provide fire and emergency services during these events without being in breach of this Agreement.
- 54. Reserved.
- 55. Captions, Table of Contents and Cover Page. The paragraph captions, table of contents and the cover page of this Agreement shall have no effect on its interpretations.
- 56. Survival. The obligations of the Parties that, by their nature, continue beyond the term of this Agreement, will survive the termination of this Agreement.
- 57. Incorporation of Prior Agreement. This Agreement contains all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Agreement, and no prior agreement or understanding pertaining to any such matter in the use of the Equipment shall be effective for any purpose.
- 58. Effective Date. This Agreement is deemed executed as of the date of the last signature and is effective until such time the Agreement is terminated.
- 59. Interpretations. As this Agreement was jointly prepared by both parties, the language in all parts of this Agreement shall be construed, in all cases, according to its fair meaning, and not for or against either party hereto.
- 60. Recitals. The recitals of this Agreement are incorporated into the body of this Agreement.

61. Entire Agreement. This 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, the parties hereto have executed this Agreement upon the dates identified below. DISTRICT and JPA have each caused this Agreement to be subscribed by its respective duly authorized officers, on its behalf.

San Bernardino County Fire Protection District

▶ 
 Curt Hagman, Chairman, Board of Directors

Dated: **MAR 15 2022**
 SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

Lynna Monell, Secretary
 Deputy



San Bernardino Regional Emergency Training Center
 (Print or type name of corporation, company, contractor, etc.)

By ▶ 
 (Authorized signature - sign in blue ink)

Name Stephanie Houston
 (Print or type name of person signing contract)

Title President
 (Print or Type)

Dated: 03/09/2022

Address 2235 E. Perimeter Rd.
San Bernardino, CA 92408

FOR COUNTY USE ONLY

Approved as to Legal Form
 ▶
 Scott Runyan, Supervising Deputy County Counsel
 Date: _____

Reviewed for Contract Compliance
 ▶
 Date _____

Reviewed/Approved by Department
 ▶
 Dan Munsey, Fire Chief/Fire Warden
 Date _____

61. Entire Agreement. This 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, the parties hereto have executed this Agreement upon the dates identified below. DISTRICT and JPA have each caused this Agreement to be subscribed by its respective duly authorized officers, on its behalf.

San Bernardino County Fire Protection District

(Print or type name of corporation, company, contractor, etc.)

▶ _____
 Curt Hagman, Chairman, Board of Directors

By ▶ _____
(Authorized signature - sign in blue ink)

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

Name _____
(Print or type name of person signing contract)

Lynna Monell, Secretary

Title _____
(Print or Type)

By _____
 Deputy

Dated: _____

Address _____

FOR COUNTY USE ONLY

Approved as to Legal Form

Reviewed for Contract Compliance

Reviewed/Approved by Department

▶ 
 Scott Runyan, Supervising Deputy County Counsel

▶ _____

▶ _____
 Dan Munsey, Fire Chief/Fire Warden

Date 3/8/22

Date _____

Date _____

Exhibit "A"

Equipment

The DISTRICT shall provide to the JPA the use of 15 SCBAs with battery pack, 25 SCBA Bottles, 15 medium masks, 2 large masks, 2 small masks and any other future accessories required for SCBA use during training courses held at SBRETC (the Equipment).