

Contract Number

20-314

SAP Number

San Bernardino County Fire Protection District

Department Contract Representative Dan Munsey
Telephone Number (909) 387-5779

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|----------------------------------|---|
| Contractor | <u>County of San Bernardino, Department of Public Works, Solid Waste Management Division</u> |
| Contractor Representative | <u>Brendon Biggs, Interim Director</u> |
| Telephone Number | <u>(909) 387-7906</u> |
| Contract Term | <u>7/1/20 to 6/30/25</u> |
| Original Contract Amount | <u></u> |
| Amendment Amount | <u></u> |
| Total Contract Amount | <u>\$1,370,000 plus the portion from SWMD's gate rate relating to per vehicle fee specified in the County Fire Protection District fee schedule</u> |
| Cost Center | <u>1071602419</u> |

IT IS HEREBY AGREED AS FOLLOWS:

**AGREEMENT
 BETWEEN SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT
 AND
 COUNTY OF SAN BERNARDINO DEPARTMENT OF
 PUBLIC WORKS - SOLID WASTE MANAGEMENT DIVISION
 FOR PARTICIPATION IN THE HOUSEHOLD HAZARDOUS WASTE PROGRAM**

WHEREAS, the San Bernardino County Fire Protection District (SBCFPD) and the County of San Bernardino, Department of Public Works - Solid Waste Management Division (County or SWMD) are signatories to this Contract and shall be collectively known as "the Parties";

WHEREAS, SBCFPD operates a Household Hazardous Waste Program (HHW Program) in conformance with all federal and state laws and regulations;

WHEREAS, SBCFPD provides County HHW Program services;

WHEREAS, SBCFPD also provides HHW Program services to various municipalities located within the County of San Bernardino, and these services are provided through Board approved Contracts;

WHEREAS, SBCFPD currently provides the County HHW Program services pursuant to Agreement No. 15-214; however, this agreement expires on June 30, 2020; and,

WHEREAS, the Parties now intend by this Contract to formalize the terms, conditions and obligations of the Parties as they relate to SBCFPD's provision of HHW Program services to County effective July 1, 2020.

NOW, THEREFORE, in consideration of the mutual covenants herein set forth and the mutual benefits to be derived there from, the Parties agree as follows:

1. PURPOSE OF CONTRACT

This Contract is made to formalize the terms, conditions and obligations of the Parties as they relate to SBCFPD's provision of HHW Program services to County.

2. SCOPE OF SERVICES

SBCFPD shall provide County the following HHW Program services:

- A. Operate a comprehensive HHW Program for the safe collection, recycling, treatment and disposal of household hazardous waste, which also includes electronic waste, home generated sharps, pharmaceuticals (excluding controlled substances), oil and oil filters, latex paint and household batteries. SBCFPD's HHW Program is based on a Central Processing Facility and a regional network of collection centers sites so as to provide safe, convenient service to the public in a cost-effective manner.
- B. Provide an annual report to County, which shall include the amount and type of waste collected, participation by jurisdiction, and final disposition of the waste.
- C. Compile and provide to the Department of Toxic Substances Control, and the Certified Unified Program Agency, the Annual Form 303 Report. SBCFPD shall provide a copy of the report to County upon request.
- D. Provide data to County for County's National Pollutant Discharge Elimination System (Storm Water) and AB 939 (Waste Diversion) reports.

3. TERM

This Contract is effective from July 1, 2020 through June 30, 2025. The termination date referenced in this paragraph may be extended by approval of both Parties pursuant to paragraph 21, entitled "AMENDMENTS: VARIATIONS."

4. COMPENSATION AND METHOD OF PAYMENT

For performance of such services, COUNTY shall provide SBCFPD the following:

- A. Compensation, through SWMD's Operations Fund Franchise Fees, in the amount of \$274,000 for Fiscal Year 2020/21, \$274,000 for Fiscal Year 2021/22, \$274,000 for Fiscal Year 2022/23, \$274,000 for Fiscal Year 2023/24, and \$274,000 for Fiscal Year 2024/25. For each fiscal year identified in this subsection, SBCFPD shall request in writing County payment of the funds described herein, and County shall provide said funds to SBCFPD within 60 days of the written request.
- B. The portion of the gate fee attributable to the per vehicle charge (currently \$.80 per vehicle) specified at County Code section §16.0222(h)(1)(A) and the San Bernardino County Fire Protection District fee schedule at Section L(3). SWMD shall forward said funds to SBCFPD on a monthly basis, the first payment commencing on September 15, 2020 (to include July and August gate fee collections) and each month thereafter.

The compensation described in this section shall constitute full and complete compensation to SBCFPD under this Contract.

5. COMPLIANCE WITH LAWS

SBCFPD hereby agrees that it will comply with all applicable federal, state and local laws.

6. ACCOUNTING AND RECORDS

SBCFPD must establish and maintain on a current basis an adequate accounting system in accordance with Generally Accepted Accounting Principles. County or any appointee thereof shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested.

7. VIOLATION OF CONTRACT

If SBCFPD violates any of the terms and conditions of this Contract, County shall give written notice of violation and demand for correction. If, within thirty (30) days from receipt of written notice, SBCFPD has not corrected the violation or shown acceptable cause, County has the right to terminate this Contract. County will provide a written Notice of Termination. It is agreed that in the event of a termination due to a violation of this Contract by SBCFPD, SBCFPD shall pay to County within ten (10) days of receipt of a Notice of Termination, any and all unexpended funds. If SBCFPD violates any terms and conditions regarding the proper expenditure of funds, SBCFPD will be required to reimburse County for any improper expenditure.

8. ASSIGNMENT

This Contract is not assignable by SBCFPD, without the express written consent of County. Any attempt by SBCFPD to assign any performance of the terms of this Contract shall be null and void and shall constitute a material breach of this Contract.

9. TERMINATION AND TERMINATION COSTS

This Contract may be terminated at any time by either party upon giving three hundred and sixty-five (365) days' notice in writing to the other party.

10. REVERSION OF ASSETS

Upon Contract termination, SBCFPD shall transfer to County all County funds on hand at the time of expiration and any accounts receivable attributable to the use of County funds.

11. INDEPENDENT CONTRACTOR

All Parties hereto in the performance of this Contract will be acting in independent capacities and not as agents, employees, partners, joint ventures, or associates of one another. The employees or agents of one party shall not be deemed or construed to be the agents or employees of the other party for any purpose whatsoever.

12. DISCRIMINATION

No person shall, on the grounds of race, sex, creed, color, religion, or national origin, be excluded from participating in, be refused the benefits of, or otherwise be subjected to discrimination in any activities, programs, or employment supported by this Contract.

13. CONTRACT COMPLIANCE

During the term of the Contract, SBCFPD 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. SBCFPD 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.

14. IMPROPER CONSIDERATION

SBCFPD shall not offer (either directly or through an intermediary) any improper consideration, such as, but not limited to, cash, discounts, services or the provision of travel or entertainment, or any items of value to any officer, employee or agent of County in an attempt to secure favorable treatment regarding this Contract or any Contract awarded by County. County, by notice, may immediately terminate this Contract or any County Contract if it determines that any improper consideration as described in the preceding sentence was offered to any officer, employee or agent of County with respect to any proposal or award process involving this Contract or any other County Contract. This prohibition shall apply to any amendment, extension or evaluation process once this Contract or any County Contract has been awarded. SBCFPD shall immediately report any attempt by any County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from SBCFPD. The report shall be made to the supervisor or manager charged with supervision of the employee or to the County Administrative Office. In the event of a termination under this provision, County is entitled to pursue any available legal remedies.

15. MISREPRESENTATION

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

16. INDEMNIFICATION

SBCFPD agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless County 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 County 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 the indemnitees. SBCFPD's indemnification obligation applies to County's "active" as well as "passive" negligence but does not apply to County's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

17. INSURANCE REQUIREMENTS

County and SBCFPD are authorized self-insured public entities for purposes of Professional Liability, General Liability, Automobile Liability and Workers' Compensation and warrant that through their respective programs of self-insurance, they have adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this agreement.

18. INSURANCE REVIEW

Insurance requirements are subject to periodic review by County. The County's Risk Manager, 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 county. In addition, if Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Risk Manager, 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 County, inflation, or any other item reasonably related to the County's risk. Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Contract. SBCFPD agrees to execute any such amendment within thirty (30) days of receipt. Any failure, actual or alleged, on the part of County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on part of County.

19. ELECTRONIC FUNDS

SBCFPD shall accept all payments from County via electronic funds transfer (EFT) directly deposited into the SBCFPD's designated checking or other bank account. SBCFPD shall promptly comply with directions and accurately complete forms provided by County required to process EFT payments.

20. LEGAL FEES

SBCFPD understands and agrees that any and all legal fees or costs associated with lawsuits concerning this Contract against the County shall be the SBCFPD's sole expense and shall not be charged as a cost under this Contract. In the event of any Contract dispute hereunder, each party to this Contract shall bear its own attorney's fees and costs regardless of who prevails in the outcome of the dispute.

21. AMENDMENTS: VARIATIONS

This writing, with attachments, embodies the whole of the Contract of the Parties hereto. There are no oral Contracts contained herein. Except as herein provided, addition or variation of the terms of this Contract shall not be valid unless made in the form of a written amendment to this Contract and formally approved and executed by both Parties.

22. INVALID CONDITIONS

If any one or more of the terms, provisions, sections, promises, covenants or conditions of this Contract shall to any extent be judged invalid, unenforceable, void or voidable for any reason whatsoever, by a court of competent jurisdiction, each and all of the remaining terms, provisions, sections, promises, covenants and conditions of the Contract shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

23. NOTICES

All notices shall be served in writing. The notices shall be sent to the following addresses:

San Bernardino County Fire Protection District
157 W. 5th Street, 2nd floor
San Bernardino, CA 92415
Attn: Jose Rodriguez

County of San Bernardino
Department of Public Works
Solid Waste Management Deputy Director
222 West Hospitality Lane, 2nd Floor
San Bernardino, CA 92415-0017

24. EXECUTION

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.

San Bernardino County Fire Protection District

▶ 
Curt Hagman, Chairman, Board of Directors

Dated: MAY 19 2020

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

Lynna Monell, Secretary

By 
Deputy



County of San Bernardino

▶ 
Curt Hagman, Chairman, Board of Supervisors

Dated: MAY 19 2020

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

Lynna Monell, Clerk of the Board of Supervisors

By 
Deputy



FOR COUNTY USE ONLY

Approved as to Legal Form

▶ 
Scott Runyan, Deputy County Counsel

Date 5-8-2020

Reviewed for Contract Compliance

▶ _____

Date _____

Reviewed/Approved by Department

▶ _____

Date _____