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Contract Number

SAP Number

County Administrative Office

Department Contract Representative	Matthew Erickson
Telephone Number	(909) 387-5423
Contractor	San Bernardino County Fire Protection District <u>DUNS No. 027766398</u>
Contractor Representative	Fire Chief Dan Munsey
Telephone Number	(909) 387-5779
Contract Term	Effective Date through June 30, 2021
Original Contract Amount	\$2,835,862
Amendment Amount	
Total Contract Amount	
Cost Center	

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AGREEMENT BETWEEN THE COUNTY OF SAN BERNARDINO AND THE SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT RELATED TO THE CARES ACT CORONAVIRUS RELIEF FUND FOR LOCAL GOVERNMENTS

WHEREAS, on March 4, 2020, the State of California declared a state of emergency as a result of the COVID-19 outbreak and on March 10, 2020, the County of San Bernardino (County) proclaimed the existence of a local emergency resulting from COVID-19; and

WHEREAS, on March 27, 2020, the United States Congress passed the Federal Coronavirus Aid, Relief, and Economic Security (CARES) Act in response to the COVID-19 pandemic; and

WHEREAS, pursuant to Section 5001 of the CARES Act, the County received a disbursement from the United States Department of the Treasury of money associated with the Coronavirus Relief Fund (Fund) for Local Governments under Section 601(a) of the Social Security Act, some of which may be transferred to other public entities for certain CARES Act purpose; and

WHEREAS, the Federal Catalog of Federal Domestic Assistance (CFDA) number for the Fund is 21.019; and

WHEREAS, the CARES Act provides that payments from the Fund may only be used to cover costs that: i) are necessary expenditures incurred due to the public health emergency with respect to COVID-19; ii) were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act); and iii) were incurred during the period that begins March 1, 2020, and ends December 30, 2020; and

WHEREAS, on May 19, 2020, the Board of Supervisors for the County approved and the Board of Directors for the San Bernardino County Fire Protection District (SBCFPD) accepted the transfer from Fund in the amount of \$289,862 for the purchase of various equipment to assist the SBCFPD's Incident Management Team with responding to the COVID-19 pandemic, and

WHEREAS, County desires to transfer and SBCFPD desires to accept an additional amount of CARES Act Fund dollars for SBCFPD expenditures identified in Exhibit "1," and CONFIRE expenditures identified in Exhibit "A," in order to provide additional COVID-19 emergency response to the residents of the County and SBCFPD.

NOW, THEREFORE, in consideration of the above, the County and SBCFPD agree as follows:

1. The CARES Act Fund.

- a. This Agreement applies to following CARES Act Fund transfers:
 - i. The transfer by the County of \$289,862 to SBCFPD for the purchase of various equipment to assist the SBCFPD's Incident Management Team with responding to the COVID-19 pandemic.
 - ii. The transfer by the County of an amount not to exceed \$2,546,000 to SBCFPD on a reimbursement basis for SBCFPD expenditures identified in Exhibit "1" and CONFIRE expenditures identified in Exhibit "A." Both Exhibit "1" and Exhibit "A" are attached hereto and incorporated herein by this reference. County acknowledges and agrees that SBCFPD will be administering the transfer of funds for the expenditures identified in Exhibit "A" by separate agreement between SBCFPD and CONFIRE. In the separate SBCFPD and CONFIRE agreement, CONFIRE shall provide SBCFPD on or before October 31, 2020, and on or before November 30, 2020, a report of actual cash expenditures to date under this Agreement, and estimated cash expenditures through December 30, 2020. SBCFPD shall provide said CONFIRE reports to County. County, through its Chief Executive Officer (CEO), in the CEO's sole discretion, reserves the right to reduce the transfer amount identified in this Agreement with fifteen (15) days advance written notice provided to SBCFPD. The reduction would be based: A) on CONFIRE's estimated cash expenditures through December 30, 2020 as identified in the October 31, 2020 and November 30, 2020 reports; or B) a later determination by the United States Department of the Treasury, County, or SBCFPD that the costs identified in this Agreement are ineligible for CARES Act funding.
- b. SBCFPD certifies that the use of funds submitted for reimbursement from the Fund under Paragraph 1.a.i. and Exhibit "1" of this contract will be used only to cover those costs that: i) are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19); ii) were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act); and iii) were incurred during the period that begins March 1, 2020, and ends December 30, 2020. **For purposes of this Agreement and pursuant to federal guidance, a cost is "incurred" when SBCFPD or CONFIRE has expended funds to cover the cost.**

- c. Based on a certification SBCFPD received from CONFIRE through an agreement between SBCFPD and CONFIRE, SBCFPD certifies that the use of funds submitted for reimbursement from the Fund under Exhibit "A" of this contract will be used only to cover those costs that: i) are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19); ii) were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act); and iii) were incurred during the period that begins March 1, 2020, and ends October 30, 2020.
- d. SBCFPD agrees that the funds provided pursuant to this Agreement cannot be used: i) as a revenue replacement for lower than expected tax or other revenue collections; or ii) for expenditures for which SBCFPD has received any other emergency COVID-19 supplemental funding (whether state, federal or private in nature) for that same expense.
- e. SBCFPD shall prepare and submit to County an invoice for reimbursement of eligible funding expenses identified in Paragraph 1.a., above. Invoices may be submitted to County as frequently as monthly. County shall reimburse to SBCFPD the amount of the invoices submitted within thirty (30) days of receipt.
- f. Both County and SBCFPD agree to comply with any and all CARES Act requirements, as well as any and all applicable County, SBCFPD, State, and Federal laws, regulations, policies and procedures pertaining to the funding described in this Agreement. County and SBCFPD shall comply with 2 CFR Part 200, including, but not limited to 2 CFR 200.303 (internal control), 200.330 thru 200.332 (subrecipient monitoring and management), and subpart F (audit). The use of funds must also adhere to official federal guidance issued or to be issued on what constitutes a necessary expenditure. Any funds expended by SBCFPD or its subcontractor(s) in any manner that does not adhere to official federal guidance shall be returned to the County. County and SBCFPD also agree that as additional federal guidance becomes available, a contract amendment to this Agreement may become necessary.
- g. SBCFPD shall retain documentation of all uses of the funds, including but not limited to invoices and/or sales receipts in a manner consistent with §200.333 Retention requirements for records of 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance). Such documentation shall be produced to County upon request and may be subject to audit. Unless otherwise provided by Federal or State law (whichever is the most restrictive), SBCFPD shall maintain all documentation connected with its performance under this Agreement for a minimum of five (5) years from the date of the last payment made by County or until audit resolution is achieved, whichever is later, and to make all such supporting information available for inspection and audit by representatives of the County, the State or the United States Government during normal business hours at SBCFPD. Copies will be made and furnished by SBCFPD upon written request by County.
- h. SBCFPD shall establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) to support SBCFPD's requests for reimbursement which segregate and accumulate costs of SBCFPD and produce monthly reports which clearly identify reimbursable costs, matching fund costs, indirect cost allocation, and other allowable expenditures by SBCFPD. SBCFPD shall provide a monthly report of expenditures under this Agreement no later than the 20th day of the following month.
- i. SBCFPD shall cooperate in having an audit completed by County, at County's option and expense. Any audit required by the CARES Act will be completed by SBCFPD and/or CONFIRE, as applicable, at SBCFPD and/or CONFIRE's expense.

- j. SBCFPD shall repay to County any reimbursement for CARES Act funding that is determined by subsequent audit to be unallowable under the CARES Act within the time period required by the CARES Act, but no later than one hundred twenty (120) days of SBCFPD receiving notice of audit findings, which time shall include an opportunity for SBCFPD to respond to and/or resolve the findings. Should the findings not be otherwise resolved and SBCFPD fail to reimburse moneys due County within one hundred twenty (120) days of audit findings, or within such other period as may be agreed between both parties or required by the CARES Act, County reserves the right to withhold future payments due SBCFPD from any source under County's control.
2. This Agreement may be terminated by County, through the County's CEO, for any reason, with a thirty (30) day written notice to SBCFPD of termination. Upon such termination, payment will be made to SBCFPD for the expenses reasonably incurred prior to the effective date of termination. This Agreement may also be terminated immediately by County in the event of a breach of the Agreement terms by SBCFPD. In such event, County shall be entitled to pursue any available remedies authorized by law or regulations.
3. This Agreement is from the Effective Date defined in Paragraph 10 through June 30, 2021. **County shall only reimburse costs incurred through the dates identified in Exhibit "1" and Exhibit "A."** Paragraphs 1f through 1j, 4 and 5 shall survive the termination of this Agreement. **The costs to be reimbursed under this Agreement do not include Research and Development as defined in 2 CFR 200.87, nor do they include indirect costs.**
4. County agrees to indemnify, defend (with counsel reasonably approved by SBCFPD) and hold harmless SBCFPD and its officers, employees, agents, and volunteers from any and all claims, actions or losses, damages, and/or liability resulting from the County's negligent acts or omissions which arise from County's performance of its obligations under this Agreement.

SBCFPD agrees to indemnify, defend (with counsel reasonably approved by County), and hold harmless County and its officers, employees, agents, and volunteers from any and all claims, actions or losses, damages, and/or liability resulting from the SBCFPD's negligent acts or omissions which arise from SBCFPD's performance of its obligations under this Agreement.

In the event the County and/or SBCFPD is found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under the Agreement, the County and/or SBCFPD shall indemnify the other to the extent of its comparative fault.
5. This Agreement shall be governed by the laws of the State of California. Any action or proceeding between the County and SBCFPD concerning the interpretation or enforcement of this Agreement, or which arises out of or is in any way connected with this Agreement, shall be instituted and tried in the appropriate state court in the County of San Bernardino, California.
6. 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.

7. SBCFPD 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>). Any contracts funded by this Agreement shall be with vendors that meet this certification.
8. If any word, phrase, clause, sentence, paragraph, section, article, part or portion of this 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 Agreement or any other portion thereof.
9. The recitals of this Agreement are incorporated into the body of this Agreement by this reference.
10. This Agreement shall take effect on the date it is signed and approved by authorized representatives of both County and the SBCFPD (Effective Date).
11. Time is of the essence for each and every provision of this Agreement.
12. Since the parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any party.
13. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a party shall give the other party any contractual rights by custom, estoppel, or otherwise.
14. Nothing contained in this Agreement shall be construed as a relinquishment of any rights now held by the County or SBCFPD.
15. This Agreement and other documents incorporated herein, represents the final, complete and exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of this Agreement not expressly set forth herein are of no force or effect. This Agreement is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this Agreement and signs the same of its own free will.
16. 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 County of San Bernardino and the San Bernardino County Fire Protection District have each caused this Contract to be subscribed by its respective duly authorized officers, on its behalf.

SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT

COUNTY OF SAN BERNARDINO



Curt Hagman, Chairman, Board of Directors



Curt Hagman, Chairman, Board of Supervisors

Dated: _____

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

Dated: _____

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

Lynna Monell, Secretary

Lynna Monell, Clerk

By _____

Deputy

By _____

Deputy

FOR COUNTY USE ONLY

Approved as to Legal Form

Reviewed for Contract Compliance

Reviewed/Approved by Department



Scott Runyan, Deputy County Counsel





Date _____ | Date _____ | Date _____