

MEMORANDUM OF UNDERSTANDING

Between

SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT

and

FONTANA FIRE PROTECTION DISTRICT

for

EXTENDED USE OF FONTANA FIRE EQUIPMENT AND USE OF FONTANA TRAINING
FACILITY CLASSROOMS AND RESOURCES

July 1, 2024 – June 30, 2034

WHEREAS, San Bernardino County Fire Protection District (“SBCFPD”) and Fontana Fire Protection District (“Fontana”) entered into Agreement No. 08-805 on or about July 10, 2008; and

WHEREAS, SBCFPD and Fontana entered into subsequent Agreement 18-354 on or about July 1, 2018; and

WHEREAS, Section 2 of Agreement 18-354 permits SBCFPD to utilize certain equipment of Fontana outside of Fontana’s limits for a period not to exceed twelve hours in any twenty-four hour period or in a repetitive manner without first obtaining approval from Fontana’s Executive Director or his/her designee; and

WHEREAS, Fontana is in the process of building a fire training facility (“Training Facility”) in the City of Fontana; and

WHEREAS, SBCFPD requires extended use of that certain equipment of Fontana’s that is outside of what is described in Agreement 18-354, including but not limited to equipment that is replaced, swapped, added, increased, or substituted for existing equipment (hereafter collectively referred to as “Equipment”); and

WHEREAS, SBCFPD may require use of classrooms and classroom resources within Fontana’s Training Facility; and

WHEREAS, Fontana is willing to allow SBCFPD to use the Equipment in excess of what is allowed in Section 2 of Agreement 18-354, as well as allow SBCFPD the use of classrooms (including classroom resources) within Fontana’s Training Facility where such usage is subject to the review and approval of the Executive Director of the Fontana or his/her designee which approval will not be unreasonably withheld, as well as agree to the other terms of this Memorandum of Understanding in exchange for an annual financial credit related to the amounts due by Fontana pursuant to Agreement 18-354.

NOW THEREFORE, SBCFPD and Fontana mutually agree to the following terms and conditions:

TABLE OF CONTENTS

I.	PURPOSE OF AGREEMENT	3
II.	RESPONSIBILITIES	3
III.	FISCAL PROVISIONS	3
IV.	TERM	4
V.	TERMINATION.....	4
VI.	GENERAL PROVISIONS.....	4
VIII.	CONCLUSION	7

I. PURPOSE OF AGREEMENT

This Memorandum of Understanding (MOU) has been developed to: 1) authorize SBCFPD's use of Fontana's Equipment that exceeds what is allowed in Section 2 of Agreement 18-354; 2) authorize SBCFPD's use of classrooms, including resources within the classrooms, within Fontana's Training Facility; 3) to clarify Section 3 and 7.A of Agreement 18-354 as it relates to costs; and 4) to resolve any and all disputes between Fontana and SBCFPD over amounts billed by SBCFPD and/or paid by Fontana under Agreements 08-805 and 18-354 through the effective date of this MOU. In the event of a conflict between the terms and conditions of this MOU and Agreement 18-354, the terms and conditions of this MOU shall control.

II. RESPONSIBILITIES

A. Fontana

Fontana allows SBCFPD to utilize Fontana's Equipment beyond what is allowed in Section 2 of the Agreement 18-354 for any SBCFPD purpose. Such Equipment is delineated in Attachment 2 of Agreement 18-354 and includes, but is not limited to, equipment that is replaced, swapped, added, increased, or substituted for existing equipment. Additionally, Fontana authorizes SBCFPD to utilize the classrooms and classroom resources in Fontana's Training Facility where such usage is subject to the review and approval of the Executive Director of the DISTRICT or his/her designee, which approval will not be unreasonably withheld.

B. SBCFPD

SBCFPD, in utilizing Fontana's Equipment beyond that which is allowed in Agreement 18-354, shall provide vehicle collision and comprehensive coverage in the full replacement value through its insurance or self-insurance program. Additionally, all obligations for use, maintenance, and repair as provided in Sections 8 and 9 of Agreement 18-354 will apply to this MOU.

III. FISCAL PROVISIONS

SBCFPD shall deduct from the lump sum amount charged to Fontana and due to SBCFPD under Section 3 of Agreement 18-354, the lump sum amount identified in the chart below on an annual basis. The amounts identified below are fixed lump sum amounts that shall not change and are in consideration for parties agreement to terms of this MOU, including the purposes identified in Section 1. The amounts identified below are annual deductions from the annual lump sum charge to Fontana as it relates to Agreement 18-354. Therefore, in the event Agreement 18-354 terminates early, Fontana shall not be entitled to any additional payments from SBCFPD. In addition, in the event this MOU and/or Agreement

18-354 terminates early, the entire annual deduction that was applied by SBCFPD to the first month of service in Section 3 of Agreement 18-354 shall be prorated on a daily basis and Fontana shall refund SBCFPD the amount that represents days remaining in the fiscal year after the effective date of the termination. This Section III. shall survive any termination of this MOU.

Fiscal Year	Annual Deduction Amount
2024-25	\$2,050,000
2025-26	\$2,150,000
2026-27	\$2,250,000
2027-28	\$2,350,000
2028-29	\$2,450,000
2029-30	\$2,550,000
2030-31	\$2,650,000
2031-32	\$2,750,000
2032-33	\$2,800,000
2033-34	\$2,861,298

For fiscal year 2024-25, the credit will be applied to the monthly payment due following approval of this MOU. For all other fiscal years, the first month of service payment amount under Agreement 18-354 shall exclude the entire annual deduction amount identified in this section.

IV. TERM

This MOU is effective retroactive to July 1, 2024, and expires June 30, 2034, but may terminate earlier in accordance with provisions of Section V of this MOU.

V. TERMINATION

This MOU shall terminate when/if Agreement 18-354 terminates. In the event Agreement 18-354 terminates early, this MOU shall also terminate on the same date as Agreement 18-354.

VI. GENERAL PROVISIONS

- A. No waiver of any of the provisions of the MOU documents shall be effective unless it is made in writing and executed by the Parties. No course of dealing and no delay or failure of a Party in exercising any right under any MOU document shall affect any other or future exercise of that right or any

exercise of any other right. A Party shall not be precluded from exercising a right by its having partially exercised that right or its having previously abandoned or discontinued steps to enforce that right.

- B. Any alterations, variations, modifications, or waivers of provisions of the MOU, unless specifically allowed in the MOU, shall be valid only when they have been reduced to writing, duly signed and approved by the authorized representatives of all parties as an amendment to this MOU. No oral understanding or agreement not incorporated herein shall be binding on any of the Parties hereto.
- C. SBCFPD and Fontana are authorized self-insured public entities and warrant that through their respective programs of self-insurance and/or insurance, they have adequate coverage or resources to protect against liabilities arising out of the performance of the term, conditions or obligations of this MOU.
- D. In further consideration of the mutual covenants and agreements set forth in this MOU, Fontana releases and forever waives any causes of action against SBCFPD, its officers, Board of Directors, employees, and representatives, arising from the amounts billed by SBCFPD and/or paid by Fontana under Agreement 18-354 or Agreement No. 08-805 through the effective date of this MOU, on behalf of itself, its heirs, and its assigns. Fontana agrees and irrevocably, knowingly, and voluntarily waives and relinquishes all rights and benefits afforded to it under the provisions of Section 1542 of the Civil Code of the State of California, which provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Fontana has carefully read this Section VI.D and fully understands its contents as a full waiver and release of all liability of SBCFPD. As provided in Section VI.H below, this Section VI.D shall survive, and continue to be fully enforceable, regardless of the expiration, termination, and/or early termination of this MOU and/or Agreement 18-354, which expiration, termination, and/or early termination shall have no impact on the enforceability of Section VI.D.

- E. Fontana is aware, understands, and agrees that: 1) the annual cost identified in Section 3 of Agreement 18-354 includes all costs associated with SBCFPD's services provided pursuant to Agreement 18-354 including,

but not limited to, personnel costs, labor costs, benefit costs, including, but not limited to, all retirement contribution costs (including, but not limited to, annual contributions for all unfunded actuarial accrued liabilities), related to SBCFPD's employees performing services under Agreement 18-354; and 2) Section 7.A. of Agreement 18-354 does not limit SBCFPD from including the above costs in the annual cost identified in Section 3 of Agreement 18-354. Such costs shall be considered in establishing the annual amount due by Fontana to SBCFPD for services under Agreement 18-354. As provided in Section VI.H below, this Section VI.E shall survive, and continue to be fully enforceable, regardless of the expiration, termination, and/or early termination of this MOU and/or Agreement 18-354, which expiration, termination, and/or early termination shall have no impact on the enforceability of Section VI.E.

- F. Fontana, to the extent permitted by law, agrees to indemnify and hold harmless SBCFPD and its officers, agents, employees, and volunteers from any and all claims, including, but not limited to, injuries of SBCFPD's arising out of Fontana's willful or grossly negligent acts or omissions which arise from Fontana's performance of its obligations under this MOU. As provided in Section VI.H below, this Section VI.F shall survive, and continue to be fully enforceable, regardless of the expiration, termination, and/or early termination of this MOU and/or Agreement 18-354, which expiration, termination, and/or early termination shall have no impact on the enforceability of Section VI.F.
- G. SBCFPD, to the extent permitted by law, agrees to indemnify and hold harmless Fontana and its officers, agents, employees, and volunteers from any and all claims, including, but not limited to, injuries of Fontana's personnel related to SBCFPD's use of Fontana's Equipment, employment related claims, losses, or damages and/or liability, and actions, arising out of SBCFPD's negligent acts or omissions which arise from SBCFPD's performance obligations under this MOU. As provided in Section VI.H below, this Section VI.G shall survive, and continue to be fully enforceable, regardless of the expiration, termination, and/or early termination of this MOU and/or Agreement 18-354, which expiration, termination, and/or early termination shall have no impact on the enforceability of Section VI.G.
- H. Sections III, VI.D, VI.E, VI.F, and VI.G shall survive expiration, termination, and/or early termination of this MOU and/or Agreement 18-354 and shall continue to be fully enforceable ad infinitum. Termination, early termination and/or expiration of this MOU and/or Agreement 18-354 shall have no impact on the enforceability of Sections III, VI.D, VI.E, VI.F, and VI.G.

- I. The parties acknowledge and agree that this MOU 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 MOU will be the Superior Court of California, San Bernardino County, 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 MOU 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, San Bernardino County, San Bernardino District.
- J. This MOU shall be governed by and construed according to the laws of the State of California.
- K. In the event of any other dispute, claim, question or disagreement arising from or relating to this MOU 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.
- L. Without the prior written consent of the Parties, the MOU is not assignable by Fontana nor SBCFPD either in whole or in part.
- M. The recitals of this MOU are incorporated into the body of this MOU.

VII. CONCLUSION

- A. This MOU, consisting of eight (8) pages, is the full and complete document.
- B. The signatures of the Parties affixed to this MOU affirm that they are duly authorized to commit and bind their respective parties to the terms and conditions set forth in this MOU.
- C. This MOU 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 MOU. The Parties shall be entitled to sign and transmit an electronic signature of this MOU (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 MOU upon request.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties hereto have executed this MOU as set forth below.

FONTANA FIRE PROTECTION DISTRICT

By: _____

Name: Matthew Ballantyne

Title: Executive Director, Fontana Fire Protection District

Address: 8353 Sierra Ave.
Fontana, CA 92335

Date: _____

SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT

By: _____

Name: Dawn Rowe

Title: Chair, San Bernardino County Fire Protection
District Board of Directors

Address: 598 S. Tippecanoe Ave., 2nd Floor
San Bernardino, CA 92415

Date: _____