

TOLLING AGREEMENT

This Tolling Agreement (“Tolling Agreement”) is made as of August 8, 2023, (the “Effective Date”) by and between the Fontana Fire Protection District (“District”) and San Bernardino County Fire Protection District (“SBCFPD”). Fontana and SBCFPD may be referred to collectively as “Parties” and individually as “Party.”

RECITALS

A. The Parties entered into a Fire Protection and Emergency Medical Services Agreement effective July 1, 2018 (Contract No. 18-357), in which SBCFPD agreed to provide District with certain fire protection and emergency medical services. The Agreement has been amended by those certain Amendments No. 1 through No. 7, which together with the Agreement is referred to herein as the “Contract”.

B. A dispute has arisen between the Parties with regards to certain pension costs which are included in the calculation of the annual fee that is payable by District to SBCFPD pursuant to the Contract (“Dispute”).

C. The Parties are in the process of preparing Amendment No. 8 to the Contract to set the annual fee for Fiscal Year 2023-2024 which commences on July 1, 2023.

D. The Parties desire to move forward with Amendment No. 8 in order to avoid any interruption in performance under the Contract and defer or avoid litigation at this time regarding any and all petitions, rights, causes of action, counter claims, cross claims, claims and defenses, if any, arising from or in connection with the Dispute between the Parties pursuant to the terms of the Contract .

E. The Parties desire to enter into this Tolling Agreement to toll the time the Parties would have to bring an action regarding the Dispute pursuant to the terms of the Contract.

F. By entering into this Tolling Agreement, the Parties do not admit to the veracity or merit of any disputes, allegations, claims, causes of actions, rights, damages, or losses arising out of or in connection with the Dispute.

TERMS

The Parties, incorporating the above recitals as part of their Tolling Agreement and in consideration of the mutual promises and obligations as contained herein, agree as follows:

1. The Parties agree that the period from October 1, 2022 until the Effective Termination (defined below) of this Tolling Agreement (the “Tolling Period”) shall be excluded from, and not be counted in, the computation of time for the purposes of any statute of limitations, time to sue provisions, or any other time-based limitations or defenses, including, without limitation, laches, estoppel, or waiver, whether at law or in equity, under statute, contract, tort or otherwise, that might be asserted as a bar, limitation, or defense to any suit, action, cause of action, or claim by District against SBCFPD, or by SBCFPD against District, arising out of or in connection with the Dispute.

2. This Tolling Agreement is intended to satisfy California Code of Civil Procedure section 360.5 and any other provision of law necessary to extend any statute of limitations or statute of repose. Notwithstanding the maximum period imposed by California Code of Civil Procedure 360.5, the Parties agree that this Tolling Agreement and the Tolling Period shall automatically terminate on June 30, 2024 (“Effective Termination”) unless renewed in writing signed by both Parties.

3. The Parties have discussed this Tolling Agreement with their respective counsel and governing bodies and understand its terms and implications.

4. This Tolling Agreement may be signed in counterparts by one or more of the Parties, and those counterparts, when taken together, will have the same force and effect as if a single, original document had been signed by all of the Parties.

5. By entering into this Tolling Agreement, the Parties do not admit any fact or assume any liability of any kind.

6. If any provision of this Tolling Agreement is found invalid or unenforceable, the balance of the Tolling Agreement will remain in full force and effect.

7. This Tolling Agreement will be interpreted and enforced pursuant to the laws of the State of California.

8. This Tolling Agreement has been arrived at through negotiations and each Party has had a full and fair opportunity to revise the terms of this Tolling Agreement. As a result, the normal rule of construction that any ambiguities are to be resolved against the drafting Party do not apply in the construction or interpretation of this Tolling Agreement.

9. By signing this Tolling Agreement, each party warrants and acknowledges that the party has read this Tolling Agreement, understands it, and has the legal authority to sign for the party represented by his or her signature.

10. This Tolling Agreement constitutes the entire agreement of the Parties with respect to the subject matter of this Tolling Agreement and supersedes any prior oral or written agreement, understanding, or representation relating to the subject matter of this Tolling Agreement.

11. Any modifications to this Tolling Agreement must be in writing only.

12. This Tolling Agreement is effective as of the date first noted herein.

signature page follows

*Signature Page to the Tolling Agreement Between Fontana Fire
Protection District and San Bernardino County Fire Protection District
Dated: August 8, 2023*

FONTANA FIRE PROTECTION DISTRICT

By: _____
Name: _____
Title: _____

Approved as to form:

By: _____
Ruben Duran, Partner
Best Best & Krieger LLP

SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT

By: _____
Name: _____
Title: _____

Approved as to form:

By: _____
