



Contract Number

SAP Number

County Administrative Office

Department Contract Representative Telephone Number _____

Contractor San Bernardino County Fire Protection District

Contractor Representative Telephone Number Fire Chief Dan Munsey
(909) 387-5779

Contract Term Effective Date through June 30, 2027_

Original Contract Amount As provided in the Agreement

Amendment Amount _____

Total Contract Amount _____

Cost Center _____

AGREEMENT BETWEEN SAN BERNARDINO COUNTY AND THE SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT RELATED TO CERTIFIED UNIFIED PROGRAM AGENCY SERVICES

WHEREAS, on December 31, 1996, the California Environmental Protection Agency designated San Bernardino County ("County") as the Certified Unified Program Agency ("CUPA") for the County, effective January 1, 1997; and

WHEREAS, the County's CUPA Program protects the public from hazardous waste and hazardous materials; and

WHEREAS, the County implements six program elements in the Unified Hazardous Waste and Hazardous Materials Management Regulatory Program (Unified Program) within the County; and

WHEREAS, the San Bernardino County Fire Protection District ("SBCFPD") resulted from a reorganization approved in 2008 by the Local Agency Formation Commission for San Bernardino County; and

WHEREAS, before and after the reorganization of SBCFPD in 2008, SBCFPD and its predecessor-in-interest, managed and implemented the County's CUPA Program; and

WHEREAS, the intent of this Agreement is to formalize SBCFPD's management and implementation of the County's CUPA Program, as well as the collection and retention of CUPA-related fees, Administrative Enforcement Order penalty assessments, and Judgments.

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

1. On behalf of the County, SBCFPD, through SBCFPD's Office of the Fire Marshal, Hazardous Materials Section, shall:
 - a. Fully implement, manage and enforce the County's six program elements in the Unified Program within the County. The six Unified Program elements that are part of the County's CUPA include:
 - 1) Hazardous Materials Release Response Plans and Inventory (Business Plan);
 - 2) Hazardous Waste Generation and Onsite Treatment;
 - 3) Aboveground Petroleum Storage Act/Spill Prevention, Control, and Countermeasure Plan;
 - 4) Underground Storage Tanks;
 - 5) California Accidental Release Program; and
 - 6) Hazardous Materials Management Plans and Inventory Statements under the Fire Code.
 - b. Adopt and retain fees to recover costs for providing the necessary services associated with the County's CUPA program.
 - c. Collect and retain any penalty assessments to be paid to SBCFPD on behalf of the County associated with Settlement Agreements (Stipulation and Orders, as well as Consent Orders) related to Administrative Enforcement Orders issued by SBCFPD, on behalf of the County as the CUPA as provided by Board of Supervisors and Board of Directions action on July 26, 2022 (Item No. 63) and use the penalty assessments for the services described in this Agreement consistent with Chapter 6.11 of Division 20 of the Health and Safety Code. Pursuant to Health and Safety Code section 25404.1.1, these funds are to be used solely to fund activities of the County's CUPA program in enforcing hazardous materials laws and regulations.
 - d. Accept from the County any funds collected by County pursuant to Section 2.d. of this Agreement. Pursuant to Health and Safety Code section 25404.1.1, these funds shall only be used by SBCFPD to fund activities of the County's CUPA program in enforcing hazardous materials laws and regulations.
 - e. Comply with the San Bernardino County Code, the Health and Safety Code, and all other applicable laws and regulations in providing the services described in this Agreement.
2. County agrees to:
 - a. SBCFPD recovering its costs for services rendered by SBCFPD to County for the provision of services associated with the County's CUPA program as described in Section 1, above.
 - b. SBCFPD adopting and retaining fees to reimburse SBCFPD for providing the necessary services associated with the County's CUPA program as described in Section 1, above.
 - c. SBCFPD collecting and retaining any penalty assessments to be paid to the County associated with Settlement Agreements (Stipulation and Orders, as well as Consent Orders) related to Administrative Enforcement Orders issued by SBCFPD, on behalf of

the County as the CUPA as provided by Board of Supervisors and Board of Directions action on July 26, 2022 (Item No. 63) and using the assessments for the provision of services associated with the County's CUPA program as described in Section 1, above, consistent with Chapter 6.11 of Division 20 of the Health and Safety Code. Pursuant to Health and Safety Code section 25404.1.1, these funds are to be used solely to fund activities of the County's CUPA program in enforcing hazardous materials laws and regulations.

- d. If in its sole discretion, the County elects to apply for and receive a court judgment for an administrative penalty under Health and Safety Code section 25404.1.3, the County shall forward any funds collected by County to SBCFPD under this Agreement. Pursuant to Health and Safety Code section 25404.1.1, these funds shall only be used by SBCFPD to fund activities of the County's CUPA program in enforcing hazardous materials laws and regulations.
3. This Agreement may be terminated by either party without cause upon 365 days' advance written notice. This Agreement may also be terminated immediately by either party in the event of a breach of the Agreement terms by the other party. In such event, the non-breaching party shall be entitled to pursue any available remedies authorized by law or regulations.
4. Unless this Agreement is terminated early, the term of this Agreement is from the Effective Date as defined herein through June 30, 2027. Sections 5 and 26, herein, shall survive the termination of this Agreement.
5. 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.

6. 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.
7. 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.
8. During the term of this Agreement, the County and 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.

9. 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.
10. The recitals of this Agreement are incorporated into the body of this Agreement by this reference.
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. The parties' actions under this Agreement shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. If a provision of this Agreement is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.
16. In the performance of this Agreement, SBCFPD, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the County.
17. Both parties shall notify the other party in writing of any change in mailing address within ten (10) business days of the change.
18. This Agreement is not assignable by either party, whether in whole or in part, without the consent of the other party.
19. Both parties agree any alterations, variations, modifications, or waivers of the provisions of the Agreement, shall be valid only when reduced to writing, executed and attached to the original Agreement and approved by the person(s) authorized to do so on behalf of SBCFPD and the County.
20. If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorneys' 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 Section 5.

21. Both parties shall make all reasonable efforts to ensure that none of their officers or employees, whose positions in their entities enable them to influence any award of this Agreement or any competing offer, shall have any direct or indirect financial interest resulting from the award of this Agreement or shall have any relationship to the other parties or officer or employee of the other parties.
22. County and SBCFPD 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 other party in an attempt to secure favorable treatment regarding this Agreement. Both parties, by written notice, may immediately terminate this Agreement if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the other party 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. Both parties shall immediately report any attempt by an officer, employee or agent of the other party to solicit (either directly or through an intermediary) improper consideration from the party. 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, the parties are entitled to pursue any available legal remedies.
23. Any written notice provided pursuant to this section shall be sent via interoffice mail to the following addresses:
- County: Matthew Erickson
San Bernardino County
Mail Code: 0120
- SBCFPD: Dan Munsey, Fire Chief
San Bernardino County Fire Protection District
Mail Code: 0451
- and
Monica Ronchetti, Fire Marshal
San Bernardino County Fire Protection District – Office of the Fire Marshal
Mail Code: 0153
24. 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 Agreement, that party shall, within twenty-four (24) hours, give notice thereof, including all relevant information with respect thereto, to the other party.
25. This Agreement and any 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.
26. The County, 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 SBCFPD in the delivery of services provided under this Contract. SBCFPD shall give full cooperation, in any auditing or monitoring

conducted. SBCFPD shall cooperate with the County in the implementation, monitoring, and evaluation of this Contract and comply with any and all reporting requirements established by the County. All records pertaining to services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by County representatives for a period of three years after final payment under the Contract or until all pending County, State and Federal audits are completed, whichever is later.

27. 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.

28. This Agreement shall take effect on the date it is signed and approved by both County and SBCFPD ("Effective Date").

IN WITNESS WHEREOF, San Bernardino County and the San Bernardino County Fire Protection District have each caused this Agreement to be subscribed by its respective duly authorized officers, on its behalf.

SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT

SAN BERNARDINO COUNTY

►

Dawn Rowe, Chair, Board of Directors

►

Dawn Rowe, Chair, Board of Supervisors

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

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

Lynna Monell, Secretary

Lynna Monell, Clerk

By _____
Deputy

By _____
Deputy

FOR COUNTY USE ONLY

<p>Approved as to Legal Form</p> <p>► _____ Julie Surber, Principal Assistant County Counsel</p> <p>Date _____</p>	<p>Reviewed for Contract Compliance</p> <p>► _____</p> <p>Date _____</p>	<p>Reviewed/Approved by Department</p> <p>► _____</p> <p>Date _____</p>
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