



Contract Number

SAP Number

County Administrative Office

Department Contract Representative Telephone Number	<u>Shannon Bailey</u> <u>(909) 387-3102</u>
Contractor	<u>Consolidated Fire Agencies Joint Powers Authority (CONFIRE)</u>
Contractor Representative Telephone Number	<u>Nathan Cooke</u> <u>(909) 356-2377</u>
Contract Term	<u>September 9, 2023 through June 30, 2026</u>
Original Contract Amount	_____
Amendment Amount	_____
Total Contract Amount	_____
Cost Center	<u>7204001000, 7202001000,</u> <u>7203201000 HR</u>

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, the Consolidated Fire Agencies Joint Powers Authority (CONFIRE) currently receives various services from San Bernardino County (County); and

WHEREAS, the County is not a member of CONFIRE; and

WHEREAS, the County has the skills, knowledge, experience and expertise to effectively provide the services identified in this Contract to CONFIRE; and

WHEREAS, CONFIRE desires that the County provide CONFIRE the services identified in this Contract; and

WHEREAS, the County agrees to perform the services identified in this Contract as set forth below.

NOW, THEREFORE, CONFIRE and the County mutually agree to the following terms and conditions:

A. DEFINITIONS

- A.1 “ATC” shall mean the County’s Auditor-Controller/Treasurer/Tax Collector.
- A.2 “CONFIRE” is the Consolidated Fire Agencies Joint Powers Authority (JPA).
- A.3 “Contract” refers to this contract by and between CONFIRE and San Bernardino County for services.
- A.4 “County” refers to San Bernardino County.
- A.5 “County HR” refers to the County’s Human Resources Department.
- A.6 “County Fee Ordinance” means the current fees adopted by the County’s Board of Supervisors. The County Fee Ordinance is codified in Title 1, Division 6 of the San Bernardino County Code.
- A.7 “COWCAP” is the Countywide Cost Allocation Plan. COWCAP is a plan required by the federal government in order for the County to receive reimbursement for general fund allowable indirect costs associated with federal and state mandated activities. The annual COWCAP proposal is prepared in accordance with Office of Management and Budget’s Uniform Guidance 2 CFR Part 200 (formerly OMB Circular A-87). The COWCAP is reviewed, negotiated and approved by the cognizant Federal agency. In California, the State Controller’s Office acts on behalf of the Federal Government. The COWCAP charges consist of two cost components: (1) general costs: computer software/equipment depreciation, building depreciation, and utilities, and (2) Central Service units. Real Estate COWCAP costs (building depreciation, utilities, rent, and facilities management) are covered under the current lease agreements between the County and CONFIRE will not be billed under this Contract for Real Estate COWCAP costs.
- A.8 “Party” or “Parties” shall mean CONFIRE and County.

B. COUNTY RESPONSIBILITIES

B.1 County Human Resources Services.

County HR shall provide the following human resources services to CONFIRE under this Contract.

B.1.1 Provide two (2) .50 Full Time Equivalent (FTE) employees to provide human resources coordination and consultation services to CONFIRE and work closely with CONFIRE managers to meet their human resources needs. The two FTE shall be one in each of the following classifications: Human Resources Business Partner and Human Resources Analyst. On a monthly basis, CONFIRE shall reimburse County in accordance with Section E. CONFIRE shall have no role in the supervision of County employees. The services provided and/or coordinated, by these two (2) .50 FTE employees, include:

- a. Advise CONFIRE Executive Director or designee, management and supervisors in the development, administration, and interpretation of the Memorandum of Understanding (MOU), compensation plans, personnel rules, employee relations resolutions, CONFIRE human resources and employment policies, and compliance with labor and employment laws and regulations.
- b. Advise management on grievances and disciplinary actions and serve as a management advocate at formal and/or informal grievance arbitration hearings and pre-disciplinary and post-disciplinary hearings. Hearings related to charges of an Unfair Labor Practice are excluded. Management advocacy does not include legal representation.

- c. Conduct investigations into employee misconduct. County HR reserves the right to recommend that CONFIRE retain an outside investigator at CONFIRE expense.
- d. Work directly with union representatives and officials to exchange information regarding human resources and administrative issues or policies; receive complaints and take appropriate action to resolve issues.
- e. Conduct full-scope recruitment including developing test materials, preparing job announcements and recruitment plans according to the needs of CONFIRE, analyzing applicants' qualifications and test performances, evaluating test results, conducting comprehensive background checks, and on-boarding new employees.
- f. Process the "Special Transfer Request Between Two Companies" ("Special Request") when CONFIRE employees move positions to County employment, or County employees transfer to CONFIRE.
- g. Staff transferred under this Special Request shall maintain original hire date, service hours, and time accruals unless otherwise stated or restricted in the applicable MOU or ordinance which shall control over this term.
- h. Direct the compliance and ethics program consistent with applicable laws, organizational rules, and values.
- i. Develop training programs and materials and provide human resources training as requested by CONFIRE.
- j. Manage and/or conduct any special employment or human resources related projects as directed by CONFIRE.
- k. Manage CONFIRE official employee records according to industry best practice.
- l. Services provided by other County HR and/or County departments/divisions shall be invoiced to CONFIRE as set forth in Section E. The HR FTE's assigned to CONFIRE, identified above in this Section B.1.1 may assist in coordinating some or all of these services as part of their assigned role.

B.1.2 Labor Negotiations, Classification and Compensation Studies

County HR shall direct and conduct activities related to the administration of labor and employee relations programs such as collective bargaining and union relations. County HR services provided under this Contract do not include representation in defense of unfair labor practice charges.

- a. Collective Bargaining authority shall be directed by CONFIRE through its Executive Director, Governing Board and Administrative Committee.
- b. County HR shall conduct compensation surveys and assist in development of new compensation systems and recommend reorganization of functions, systems, and personnel as appropriate.
- c. County HR shall conduct job analyses for recruitment and classification purposes; identify critical tasks and responsibilities; determine the minimum

requirements necessary to perform the job, including physical requirements; determine similarity with other internal or external positions.

B.1.3 Equal Employment Opportunity (EEO) Services

County HR shall provide information and services to ensure Equal Employment Opportunity for all employees and applicants; conduct investigations of discrimination and harassment in accordance with state and federal laws. County HR reserves the right to recommend that CONFIRE retain an outside investigator at CONFIRE expense. CONFIRE is responsible for providing their own legal representation for EEO matters.

B.1.4 Employee Benefits

County HR shall administer CONFIRE employee benefits in accordance with applicable MOU or compensation plans. On a quarterly basis, CONFIRE shall reimburse County for these services as set forth in Section E. The allocation basis used to derive CONFIRE's share of employee benefits administration cost is a rate based on FTE.

B.1.5 Employee Health and Wellness Services and Pre-Placement Physicals

On a request basis, County HR shall provide physical examinations, pre-placement physicals, occupational medicine services, and fitness-for-duty evaluations for all non-Workers' Compensation related matters. The Human Resources Department shall invoice CONFIRE for these services and CONFIRE shall reimburse County for the cost of services provided as outlined in Section E. For Workers' Compensation matters, CONFIRE will utilize medical services affiliated with their contracted Workers' Compensation provider.

B.1.6 Performance, Education and Resource Centers (PERC)

County shall provide CONFIRE with employee development and training services, as requested by CONFIRE. County shall invoice CONFIRE on a per-class basis based on the published price of classes taken by CONFIRE employees. All costs for these services will be charged through PERC and CONFIRE shall reimburse the County fund for these actual costs.

B.1.7 EMACS Processing and Development Team Services

County's Employee Management and Compensation System (EMACS) is integral to providing payroll services. County HR shall complete transaction processing for CONFIRE (including JARS, steps, new hires/terminations, labor distribution reports, etc.). The County's EMACS Manager shall provide CONFIRE with access to e-Time and Self-Service as well as technical and functional support services necessary to implement pay and/or benefits, subject to and conditioned upon the following provisions and limitations:

- a. Requests for Services must be made directly to the EMACS Manager, and received in a timely manner, in order to be considered for processing.
- b. Requests for additional programming services for changes not included in services provided by EMACS may be provided and billed separately by the County's Innovation and Technology Department (ITD).
- c. System upgrades or services outside of those stated in this Section B.1.7 may require additional EMACS work to maintain or rebuild programming changes previously requested by CONFIRE. The Human Resources Department shall invoice CONFIRE and CONFIRE shall reimburse County for the cost of services provided based on the adopted County Fee Ordinance for these services.

B.2 County Auditor-Controller/Treasurer/Tax Collector (ATC) Services.

County shall provide the following ATC services to CONFIRE under this Contract:

B.2.1 Accounts Payable / General Accounting

ATC shall process for CONFIRE transactions for disbursements, reimbursements, deposits and adjustments to CONFIRE's fund(s), as well as permit CONFIRE access to County Enterprise Resource Planning (ERP) system.

B.2.2 Payroll Services

ATC shall provide CONFIRE with payroll services consistent with the level of services provided to County departments. ATC payroll services include:

- a. Issuing standard Payroll reports
- b. Tax reporting and accounting services as prescribed by the IRS, State Franchise Tax Board, and State Employment Development Department
- c. Enhanced tax reporting to accommodate IRS provisions under 26 U.S. Code Section 4980H – Shared Responsibility for Employers Regarding Health Coverage, which includes independent, CONFIRE-specific, filing and reporting of the following:
 - i. Tax returns
 - ii. Tax deposits
 - iii. Transfers
 - iv. Trust fund reconciliation
 - v. Payroll tax adjustments
- d. Payroll direct deposits and warrants
- e. Both accounting and payroll services include central files/documents/ retention of transaction records; verification of data integrity and signature authorization; error corrections, and other processes normally associated with these services. For purposes of this Contract, the phrase “data integrity” represents and includes all data needed to process documents and assurance that all system codes are complete and valid.
- f. CONFIRE shall designate a staff member to serve as their Payroll Specialist to manage day to day payroll operations within EMACS. This includes:
 - i. Preparing, reviewing, and verifying documents related to payroll and benefit transactions.
 - ii. Verifying, adjusting, and reconciling payroll records and time sheets.
 - iii. Orienting new employees to CONFIRE payroll and EMACS procedures.
 - iv. Providing required documents for completion of the hiring and enrollment of staff, arrange for pre-employment physicals, background checks, and other processes prior to hire.
 - v. Conducting research and prepare reports of payroll records as requested.

CONFIRE is responsible for compliance requirements under the provisions of 26 U.S. Code Section 4980H.

B.2.3 SAP Center of Excellence Services

The SAP Center of Excellence shall provide CONFIRE with access to limited SAP modules as well as technical and functional support services (services) necessary to initiate requests for disbursements, reimbursements and adjustments, subject to and conditioned upon the following provisions and limitations:

- a. Requests for services must be made directly to the SAP Center of Excellence Division Chief, and received in a timely manner, in order to be considered for processing
- b. Requests for additional programming services for changes not included in services provided by SAP Center of Excellence may be billed separately.
- c. System upgrades or services outside of those stated in B.2.3, may require additional SAP Center of Excellence work to maintain or rebuild programming changes previously requested by CONFIRE. If such work is warranted, CONFIRE shall pay for the additional work required on the same basis on which the original change was accomplished.

B.2.4 Additional Accounting and Auditing Services

Any accounting and auditing services not addressed in this Contract shall be performed only if agreed to by the parties by amendment pursuant to Section C.2 of this Contract.

B.2.5 Exclusions

Notwithstanding the previous paragraphs, pursuant to CONFIRE's direction and as a consequence of CONFIRE transferring accounting information, CONFIRE and ATC agree that the following services are not included in this Contract:

- a. Providing and maintaining ATC VISA cards
- b. Issuing County fixed asset tags and related fixed asset reporting
- c. Detecting and investigating fraud and/or cash losses
- d. Developing personnel billing rates/Indirect Cost Rate Proposals (ICRPs)
- e. Preparing audited financial statements. CONFIRE acknowledges that as a separate legal entity from County, CONFIRE is not included within the audited financial statements of County.

B.3 County Purchasing Department Services. County shall provide the following Purchasing Department services to CONFIRE:

B.3.1 Mail/Courier services will be provided by the County's Purchasing Department to CONFIRE on the same basis as that provided to County departments. All costs for these services will be charged through the internal service funds. The County shall provide monthly and/or quarterly reports justifying costs charged to CONFIRE, and CONFIRE shall reimburse the internal service fund for these actual costs.

B.3.2 Surplus Property and Storage services will be provided by the County's Purchasing Department to CONFIRE on the same basis as that provided to County departments. All costs for these services will be charged through the internal service funds. CONFIRE shall reimburse the internal service fund for these actual costs.

B.4 Printing Services.

Printing services will be provided by County to CONFIRE on the same basis as that provided to County departments. All costs for these services will be charged through the internal service funds. CONFIRE shall reimburse the internal service fund for these actual costs.

B.5 Innovation and Technology.

County shall allow CONFIRE the continued use of the Countywide Geographic Information System (GIS). Costs for this access are included in the County's State of California approved COWCAP charges. This MOU shall not affect or supersede any ITD contracts currently in effect between County and CONFIRE.

B.6 Services not addressed in this Contract shall be performed only if agreed to by the parties by amendment pursuant to Section C.2 of this Contract.

C. GENERAL CONTRACT REQUIREMENTS

C.1 Recitals

The recitals set forth above are true and correct and incorporated herein by this reference.

C.2 Contract Amendments

Both Parties agree any alterations, variations, modifications, or waivers of the provisions of the Contract, shall be valid only when reduced to writing, executed and attached to the original Contract and approved by the person(s) authorized to do so on behalf of CONFIRE and County.

C.3 Contract Assignability

Without the prior written consent of both Parties, the Contract is not assignable by County or CONFIRE either in whole or in part.

C.4 Contract Exclusivity

This is not an exclusive Contract. The County reserves the right to enter into a contract with other contractors for the same or similar services.

C.5 Attorney's Fees and Costs

If any legal action is instituted to enforce any Party's rights hereunder, each Party shall bear its own costs and attorney's fees, regardless of who is the prevailing Party. This paragraph shall not apply to those costs and attorney's fees directly arising from a third-party legal action against a Party hereto and payable under Indemnification and Insurance Requirements.

C.6 Change of Address

Both Parties shall notify the other Party in writing, of any change in mailing address within ten (10) business days of the change.

C.7 Choice of Law

This Contract shall be governed by and construed according to the laws of the State of California.

C.8 Confidentiality

Both Parties shall protect from unauthorized use or disclosure names and other identifying information concerning persons receiving Services pursuant to this Contract, except for statistical information not identifying any participant. Neither Party shall use or disclose any identifying information for any other purpose other than carrying out County's obligations under this Contract, except as may be otherwise required by law. No protected health information, as defined and governed by Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act, will be provided by CONFIRE to County under this MOU. This provision will remain in force even after the termination of the Contract.

C.9 Primary Point of Contact

CONFIRE will designate an individual to serve as the primary point of contact for the Contract. CONFIRE or designee must respond to County inquiries within two (2) business days. CONFIRE shall not change the primary contact without written acknowledgement to the County. CONFIRE will also designate a back-up point of contact in the event the primary contact is not available.

C.10 County Representative

The Chief Executive Officer or his/her designee shall represent the County in all matters pertaining to the services to be rendered under this Contract, including termination and assignment of this Contract, and shall be the final authority in all matters pertaining to the Services/Scope of Work provided by County. If this contract was initially approved by the San Bernardino County Board of Supervisors, then the Board of Supervisors must approve all amendments to this Contract.

C.11 Reserved

C.12 Debarment and Suspension

CONFIRE certifies that neither it nor its principals or subcontractors is presently debarred, 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>). CONFIRE further certifies that if it or any of its subcontractors are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State.

C.13 Duration of Terms

This Contract, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties, provided no such assignment is in violation of the provisions of this Contract.

C.14 Employment Discrimination

During the term of the Contract, CONFIRE 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. CONFIRE 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.

C.15 Environmental Requirements

In accordance with County Policy 11-08, the County prefers to acquire and use products with higher levels of post-consumer recycled content. Environmentally preferable goods and materials must perform satisfactorily and be available at a reasonable price. The County requires CONFIRE to use recycled paper for any printed or photocopied material created as a result of this Contract. CONFIRE is also required to use both sides of paper sheets for reports submitted to the County whenever practicable.

To assist the county in meeting the reporting requirements of the California Integrated Waste Management Act of 1989 (AB 939), CONFIRE must be able to annually report the County's environmentally preferable purchases. CONFIRE must also be able to report on environmentally preferable goods and materials used in the provision of their service to the County, utilizing a County approved form.

C.16 Improper Influence

Both Parties shall make all reasonable efforts to ensure that no County or CONFIRE officer or employee, whose position in the County or CONFIRE, respectively, enables that person to influence any award of the Contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of the Contract or shall have any relationship to the other Party or officer or employee of the other Party.

C.17 Improper Consideration

Both Parties 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 Contract.

Both Parties, by written notice, may immediately terminate this Contract 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.

The Party 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, for the County, to the County Administrative Office. In the event of a termination under this provision, the Party that terminates the Contract is entitled to pursue any available legal remedies.

C.18 Informal Dispute Resolution

In the event that either Party determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this Contract 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.

C.19 Legality and Severability

The Parties' actions under the Contract shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. The provisions of this Contract are specifically made severable. If a provision of the Contract is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

C.20 Licenses, Permits and/or Certifications

The Parties shall ensure that it has all necessary licenses, permits and/or certifications required by the laws of Federal, State, County, and municipal laws, ordinances, rules and regulations. The Parties shall maintain these licenses, permits and/or certifications in effect for the duration of this Contract. The Parties shall provide immediate notice of loss or suspension of any such licenses, permits and/or certifications. Failure to maintain a required license, permit and/or certification may result in immediate termination of this Contract.

C.21 Material Misstatement/Misrepresentation

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

C.22 Mutual Covenants

The Parties to this Contract mutually covenant to perform all of their obligations hereunder, to exercise all discretion and rights granted hereunder, and to give all consents in a reasonable manner consistent with the standards of “good faith” and “fair dealing”.

C.23 Nondisclosure

Both Parties shall hold as confidential and use reasonable care to prevent unauthorized access by storage, disclosure, publication, dissemination to and/or use by third parties of, confidential information that is either: (1) exchanged between the Parties or their agents, or otherwise made available in connection with this Contract; or, (2) acquired, obtained, or learned by the Parties or their agents in the performance of this Contract. For purposes of this provision, confidential information means any data, files, software, information or materials in oral, electronic, tangible or intangible form and however stored, compiled or memorialize and includes, but is not limited to, technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data.

C.24 Notice of Delays

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 contract, that party shall, within twenty-four (24) hours, give notice thereof, including all relevant information with respect thereto, to the other Party.

C.25 Ownership of Documents

All documents, data, products, graphics, computer programs and reports prepared by County pursuant to the Contract shall be considered property of CONFIRE upon payment for services (and products, if applicable). All such items shall be delivered to CONFIRE at the completion of work under the Contract, subject to the requirements of Section D–Term of the Contract. Unless otherwise directed by CONFIRE, County may retain copies of such items.

C.26 Air, Water Pollution Control, Safety and Health

Both Parties shall comply with all air pollution control, water pollution, safety and health ordinances and statutes, which apply to the work performed pursuant to this Contract.

C.27 Records

Both Parties shall maintain all records and books pertaining to the delivery of services under this Contract and demonstrate accountability for contract performance. All records shall be complete and current and comply with all Contract requirements. Failure to maintain acceptable records shall be considered grounds for withholding of payments for invoices submitted and/or termination of the Contract.

All records relating to the Parties’ personnel, consultants, subcontractors, Services/Scope of Work and expenses pertaining to this Contract shall be kept in a generally acceptable accounting format. Records should include primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must comply with the appropriate Office of Management and Budget (OMB) Circulars, which state the administrative requirements, cost principles and other standards for accountancy.

C.28 Relationship of the Parties

Nothing contained in this Contract shall be construed as creating a joint venture, partnership, or employment arrangement between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto.

C.29 Release of Information

No news releases, advertisements, public announcements or photographs arising out of the Contract or CONFIRE's relationship with County may be made or used without prior written approval of both Parties.

C.30 Representation of the County

In the performance of this Contract, County, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of CONFIRE.

C.31 Strict Performance

Failure by a Party to insist upon the strict performance of any of the provisions of this Contract by the other Party, or the failure by a Party to exercise its rights upon the default of the other Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by the other Party with the terms of this Contract thereafter.

C.32 Subpoena

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Goods or Services provided under this Contract is served upon CONFIRE or County, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. CONFIRE and County further agree to cooperate with the other party in any lawful effort by such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by CONFIRE for County.

C.33 Termination for Convenience

The County and CONFIRE each reserve the right to terminate the Contract, for any reason, with one (1) year written notice of termination. Such termination may include all or part of the services described herein. Upon such termination, payment will be made to County for services rendered and expenses reasonably incurred prior to the effective date of termination. Upon receipt of termination notice County shall discontinue services unless the notice directs otherwise. County shall deliver promptly to CONFIRE and transfer title (if necessary) all completed work, and work in progress, including drafts, documents, plans, forms, data, products, graphics, computer programs and reports.

C.33.1 CONFIRE has the right to terminate individual services with sixty (60) days written notice, if the cost for those individual services as described in the Board approved Fee Ordinance, and/or wages for staff (as outlined in their MOU or compensation plan), increases by more than 10% in a fiscal year. Any termination of service will require an amendment to this agreement.

C.33.2 Termination of individual services covered under COWCAP, requires CONFIRE to notify ATC and the impacted department (HR and/or ITD) with 60 days' notice.

C.34 Time of the Essence

Time is of the essence in performance of this Contract and of each of its provisions.

C.35 Venue

The Parties acknowledge and agree that this Contract 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 Contract 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 Contract 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.

C.36 Conflict of Interest

CONFIRE shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the County. CONFIRE shall make a reasonable effort to prevent employees, CONFIRE, or members of governing bodies from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and state law. In the event the County determines a conflict of interest situation exists, any increase in costs, associated with the conflict of interest situation, may be disallowed by the County and such conflict may constitute grounds for termination of the Contract. This provision shall not be construed to prohibit employment of persons with whom CONFIRE's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.

C.37 Former County Administrative Officials

CONFIRE agrees to provide, or has already provided information on former San Bernardino County administrative officials (as defined below) who are employed by or represent CONFIRE. The information provided includes a list of former County administrative officials who terminated County employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of CONFIRE. For purposes of this provision, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, County Executive Officer or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

C.38 Disclosure of Criminal and Civil Procedures

The County reserves the right to request the information described herein from CONFIRE. Failure to provide the information may result in a termination of the Contract. The County also reserves the right to obtain the requested information by way of a background check performed by an investigative firm. CONFIRE also may be requested to provide information to clarify initial responses. Negative information discovered may result in Contract termination.

CONFIRE is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees (as that term is defined herein), within the last ten years, has been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense arising directly or indirectly from the conduct of the firm's business, or whether the firm, or any of its partners, principals, members, associates or key employees, has within the last ten years, been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense involving financial misconduct or fraud. If the response is affirmative, CONFIRE will be asked to describe any such indictments or charges (and the status thereof), convictions and the surrounding circumstances in detail.

In addition, CONFIRE is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees, within the last ten years, has been the subject of legal proceedings as defined herein arising directly from the provision of services by the firm or those individuals. "Legal proceedings" means any civil actions filed in a court of competent jurisdiction, or any matters filed by an administrative or regulatory body with jurisdiction over the firm or the individuals. If the response is affirmative, CONFIRE will be asked to describe any such legal proceedings (and the status and disposition thereof) and the surrounding circumstances in detail.

For purposes of this provision “key employees” includes any individuals providing direct service to the County. “Key employees” do not include clerical personnel providing service at the firm’s offices or locations.

D. TERM OF CONTRACT

This Contract is effective September 9, 2023 and expires June 30, 2026, but may be terminated earlier in accordance with provisions of this Contract.

E. CONFIRE RESPONSIBILITIES AND COST OF SERVICES

E.1 Cost of Services: For County HR services identified in Section B.1 of this Contract:

- E.1.1** CONFIRE shall provide County all necessary information for County to provide these services to CONFIRE.
- E.1.2** For the staff services described in Section B.1.1, the actual costs for these employees will be tracked in EMACS and invoiced monthly by County and paid by CONFIRE as described in Section B.1.1.
- E.1.3** For the Employee Benefits services described in Sections B.1.4, CONFIRE shall pay the Department Recharge Rate which will be invoiced quarterly by County and based on CONFIRE FTEs.
- E.1.4** For the County Employee Health and Wellness services described in Section B.1.5, the services will be invoiced by County and paid by CONFIRE on a monthly basis as CONFIRE utilizes these services, at the rate listed in the Fee Ordinance as approved by the County’s Board of Supervisors.
- E.1.5** For the training services provided by PERC, as described in Section B.1.6, the actual costs for these services will be invoiced by County and paid by CONFIRE on an as-used basis.
- E.1.6** For the EMACS Team services as described in Section B.1.7, the County will charge CONFIRE on a quarterly basis as established by the County’s State of California approved COWCAP through a Journal Entry
- E.1.7** Additional EMACS Team services, beyond what is outlined in Section B.1.7, performed on behalf of CONFIRE will be billed based on the adopted County Fee Ordinance for services on an as-used basis.
- E.1.8** Unless otherwise indicated, other Human Resources services described in this MOU which are not identified in the County’s Board-approved Fee Ordinance, shall be charged by County and paid by CONFIRE on a quarterly basis established by the County’s State of California approved COWCAP. COWCAP charges will be adjusted annually reflecting the County’s current State of California approved COWCAP and such adjustments shall constitute an automatic amendment to this contract.

E.2 Funding: For County ATC services identified in Section B.2 of this Contract:

- E.2.1** CONFIRE agrees to maintain a positive cash balance in its fund(s) at all times to meet its disbursement needs.
- E.2.2** CONFIRE agrees to fully fund all salary and benefit costs for CONFIRE employees. CONFIRE shall at all times maintain at a minimum, the equivalent of 150 percent of one pay period’s salary and benefit costs on deposit with the County. This funding level represents estimated CONFIRE salary and benefit costs and allows for periods of unusually high salary amounts, typically associated with payouts and unexpected overtime. If such fluctuations are anticipated in an upcoming pay period, CONFIRE agrees to monitor and adjust its funding level, accordingly.
- E.2.3** CONFIRE agrees to fund its annual service cost billing. CONFIRE shall at all times maintain 10 percent above their existing operating costs along with any reserves that they maintain, on deposit with the County.

- E.2.4** If a cash deficit occurs, County requires and CONFIRE agrees to deposit, sufficient funds in its fund(s) the earlier of these two timeframes:
- a. Within 72 hours of receipt of written notice (email) from County; or
 - b. By two working days prior to the Friday confirmation of payroll preceding a scheduled pay day.
- E.2.5** CONFIRE agrees that County is under no obligation to process its payroll if it has insufficient funds in County Treasury Pool to cover CONFIRE's payroll cost. If insufficient funds are on deposit to fully fund payroll for all CONFIRE employees, County reserves the right to pay only those employees for which there are sufficient funds available, beginning with the lowest paid employees.
- E.2.6** CONFIRE agrees that County, at ATC discretion, may interrupt or suspend other disbursement services if CONFIRE's funds in the County Treasury Pool are insufficient. CONFIRE assumes all liability for interrupted disbursement services if inadequate deposits are available.
- E.2.7** CONFIRE agrees that any cash deficit in its fund(s) resulting from the provision of services under this contract and its predecessor agreements shall be charged interest at the Treasurer's Investment Pool rate, plus any ATC staff costs incurred to remedy such deficit.
- E.2.8** CONFIRE also agrees that any cash deficit may be cause for termination of this Contract, including cessation of County payroll and accounting services provided to CONFIRE, and termination of CONFIRE's voluntary depositor status in the County Treasury Pool. ATC shall have the authority to provide notice and terminate the contract under this paragraph. County shall give CONFIRE a minimum 90 days' advance notice of such termination.

E.3 Documentation / Tax Reporting

- E.3.1** CONFIRE shall provide its board-approved documentation containing specific pay and benefit information for new employees and/or changes to pay and benefits for existing employees to ATC and Human Resources. CONFIRE's employees shall receive economic benefits and leave accruals for which County employees are eligible, including CONFIRE participating active employer with a pension plan, separate and apart from the County.
- E.3.2** CONFIRE is required to provide its Federal Employer Identification Number (FEIN) and State Employer Identification Number (SEIN) to the County for reporting personal income tax withholding, Medicare, and Social Security, if applicable.
- E.3.3** CONFIRE agrees to appoint County as its Tax Reporting Agent and is required to complete Internal Revenue Service Form 8655- Reporting Agent Authorization and Employment Development Department (EDD) Form DE 48 – Power of Attorney Declaration, establishing County as CONFIRE's depositing and paying agent.
- E.3.4** If CONFIRE does not file and pay its own SDI and UI, then CONFIRE shall annually provide to County copy of EDD form DE 2088 - Notice of Contribution Rates and Statement of Unemployment Insurance Reserve Account for Calendar Year.

E.4 Cost of Services

- E.4.1** Payroll and accounting services as outlined in Section B.2 will be charged to CONFIRE on a quarterly basis by ATC as established by the County's State of California approved COWCAP. Charges will be adjusted annually reflecting the County's current State of California approved COWCAP and such adjustments shall constitute an automatic amendment to this contract.
- E.4.2** Any CONFIRE-specific required reporting, accounting, enhanced services described in this contract in Section B.2, such as bi-weekly tax deposits and quarterly payroll tax filings, or services requested by CONFIRE that fall outside the scope of COWCAP services, will be invoiced on a quarterly basis at the ATC hourly rate as stated in the Fee Ordinance as approved by the County's Board of Supervisors.
- E.4.3** Any SAP Center of Excellence services performed on behalf of CONFIRE as outlined in Sections B.2.3 is billed through the County's State of California approved COWCAP and/or through other active agreements with ATC and CONFIRE. Requests for enhanced services or additional programming services will be invoiced by ATC based on the Fee Ordinance or actual hours worked at the current contracted hourly rates charged for such services, on an as-used basis.
- E.5** For County Purchasing services identified in Section B.3 of this Contract, mail/courier and surplus property services as described in Section B.3.1 and B.3.2, the actual costs for these services will be invoiced by County and paid by CONFIRE on an as-used basis.
- E.6** For Printing services identified in Section B.4 of this Contract, the actual costs for these services will be invoiced by County and paid by CONFIRE on an as-used basis.
- E.7** For the County services provided under this Contract, CONFIRE represents and warrants it has all necessary State/Federal taxpayer identification numbers and will provide the numbers to the County upon request.
- E.8** CONFIRE shall be a participating active employer with a retirement/pension plan, separate and apart from the County.
- E.9** CONFIRE shall adopt and provide to the County any compensation plans for its non-represented/exempt employees, as well as any and all amendments to the compensation plan. For represented employees, CONFIRE shall adopt and provide to the County any MOUs and all side letter agreements. County Human Resources must be consulted before any benefit changes are made, to determine if the changes would require contract or plan amendments.

F. FISCAL PROVISIONS

- F.1** CONFIRE shall pay for the full costs of County services identified and provided to CONFIRE under this Contract. County's Chief Executive Officer, or the Chief Executive Officer's designee will notify CONFIRE when rates for the Board-approved Fee Ordinance, wages based on the current MOU covering the Human Resources Business Partner or Human Resources Analyst or COWCAP charges change. County COWCAP charges and the Fee Ordinance are subject to change annually.
- F.2** County will accept payments from CONFIRE via electronic funds transfer (EFT) directly deposited into the County's designated checking or other bank account. CONFIRE shall promptly comply with directions and accurately complete forms provided by County required to process EFT payments. For the costs of Human Resources Department services and COWCAP, CONFIRE agrees to be directly debited by County on a quarterly basis via a journal entry within SAP.
- F.3** CONFIRE shall pay County within 60 days from receipt of invoice.

- F.4** CONFIRE has the right to terminate individual services in Section C.33,
- F.5** CONFIRE agrees to assume responsibility for COWCAP charges starting in Fiscal Year 2023-24, effective July 1, 2023.
- F.5.1** The COWCAP billing cycle is based on services provided two fiscal years prior, therefore discontinuance of services covered through COWCAP, will require CONFIRE to continue to pay COWCAP charges through the entire Fiscal Year (FY) billing cycle which includes the date of discontinuance. E.g., COWCAP services terminated in November 2024 will require COWCAP payments through June 2027, as the billing cycle for FY 2024-25 will not be charged until FY 2026-27.

G. INDEMNIFICATION AND INSURANCE REQUIREMENTS

G.1 Indemnification

- G.1.1** CONFIRE agrees to indemnify, defend (with counsel approved by County) and hold harmless the County, its officers, employees, agents, and volunteers from any and all claims, actions, or losses, damages, and/or liability arising out of CONFIRE's negligent acts or omissions which arise from CONFIRE's performance of its obligations under this Agreement.
- G.1.2** County agrees to indemnify, defend (with counsel approved by CONFIRE) and hold harmless CONFIRE, its officers, employees, agents, and volunteers from any and all claims, actions, or losses, damages, and/or liability arising out of County's negligent acts or omissions which arise from County's performance of its obligations under this Agreement.
- G.1.3** In the event CONFIRE and/or County is found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under the Agreement, CONFIRE and/or County shall indemnify the other to the extent of its comparative fault.

G.2 Insurance

The County is a self-insured public entity for purposes of Professional Liability, General Liability, Automobile Liability and Workers' Compensation and warrants that through its program of self-insurance, it has adequate coverage or resources to protect against liabilities arising out of the County's performance of the terms, conditions or obligations of this Contract.

G.3 Waiver of Subrogation Rights

CONFIRE shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit CONFIRE and CONFIRE's employees or agents from waiving the right of subrogation prior to a loss or claim. CONFIRE hereby waives all rights of subrogation against the County.

G.4 Policies Primary and Non-Contributory

All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

G.5 Severability of Interests

CONFIRE agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between CONFIRE and the County or between the County and any other insured or additional insured under the policy.

G.6 Proof of Coverage

CONFIRE shall furnish Certificates of Insurance to the County Department administering the Contract evidencing the insurance coverage at the time the Contract is executed, additional

endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and CONFIRE shall maintain such insurance from the time County commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, CONFIRE shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

G.7 Acceptability of Insurance Carrier

Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

G.8 Deductibles and Self-Insured Retention

Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

G.9 Failure to Procure Coverage

In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by CONFIRE or County payments to CONFIRE will be reduced to pay for County purchased insurance.

G.10 Insurance Review

Insurance requirements are subject to periodic review by the County. The Director of Risk Management 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 the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management 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 the 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. CONFIRE agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of the 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 the part of the County.

G.11 CONFIRE agrees to provide insurance set forth in accordance with the requirements herein. If CONFIRE uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, CONFIRE agrees to amend, supplement or endorse the existing coverage to do so.

Without in anyway affecting the indemnity herein provided and in addition thereto, CONFIRE shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

G.11.1 Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to

meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of CONFIRE.

CONFIRE shall provide to the County's Risk Management Department, payment of \$351,000 for the County to resolve Workers' Compensation claims associated with employees that work at CONFIRE who suffered an injury on or before June 30, 2023.

Except as provided under Section G.1.2, CONFIRE shall be responsible for any CONFIRE employee's injury that occurs on or after July 1, 2023.

With respect to contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

G.11.2 Commercial/General Liability Insurance – CONFIRE shall carry General Liability Insurance covering all operations performed by or on behalf of CONFIRE providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- a. Premises operations and mobile equipment.
- b. Products and completed operations.
- c. Broad form property damage (including completed operations).
- d. Explosion, collapse and underground hazards.
- e. Personal injury.
- f. Contractual liability.
- g. \$2,000,000 general aggregate limit.

G.11.3 Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If CONFIRE is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If CONFIRE owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

G.11.4 Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

H. CORRECTION OF PERFORMANCE DEFICIENCIES

Failure by the Parties to comply with any of the provisions, covenants, requirements or conditions of this Contract shall be a material breach of this Contract.

In the event of a non-cured breach, the non-breaching Party may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

- H.1** Afford the breaching Party thereafter a time period within which to cure the breach, which period shall be established at the sole discretion of the non-breaching Party; and/or
- H.2** Discontinue reimbursement to the breaching Party for and during the period in which the Party is in breach, which reimbursement shall not be entitled to later recovery; and/or
- H.3** Withhold funds pending duration of the breach; and/or
- H.4** Offset against any monies billed by the breaching Party but yet unpaid by the non-breaching Party those monies disallowed pursuant to Item "H.2" of this paragraph; and/or
- H.5** Terminate this Contract immediately and be relieved of the payment of any consideration to the breaching Party. In the event of such termination, the non-breaching Party, may proceed with the work in any manner deemed proper by the non-breaching Party. The cost to the non-breaching Party shall be deducted from any sum due to the breaching Party under this Contract and the balance, if any, shall be paid by the breaching Party upon demand.

I. NOTICES

All written notices provided for in this Contract or which either Party desires to give to the other shall be deemed fully given, when made in writing and either served personally, or by facsimile, or deposited in the United States mail, postage prepaid, and addressed to the other party as follows:

*San Bernardino County
County Administrative Office
5th Floor
385 N. Arrowhead Ave
San Bernardino, CA 92415*

*CONFIRE
1743 Miro Way
Rialto, CA 92376*

Notice shall be deemed communicated two (2) County working days from the time of mailing if mailed as provided in this paragraph.

J. ENTIRE AGREEMENT

This Contract, including all Exhibits and other attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, complete and exclusive agreement between the Parties hereto relating to the specific services identified in this Contract. Except as provided in Section B.5 of this Contract, any prior agreement, promises, negotiations or representations relating to the specific services identified in this Contract not expressly set forth herein are of no force or effect. This Contract 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 Contract and signs the same of its own free will. This Contract 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 Contract (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 Contract upon request.

K. ELECTRONIC SIGNATURES

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 mail 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 San Bernardino County and CONFIRE have each caused this Contract to be subscribed by its respective duly authorized officers, on its behalf.

SAN BERNARDINO COUNTY

CONFIRE

(Print or type name of corporation, company, contractor, etc.)

By:

►

Dawn Rowe, Chair, Board of Supervisors

Dated: _____

Name: Nathan Cooke, Interim Director

By:

(Authorized signature - sign in blue ink)

Dated: _____

Address:
1743 Miro Way
Rialto, CA 92376

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

By: Lynna Monell
Clerk of the Board of Supervisors of San Bernardino County

By: _____

Dated: _____

FOR COUNTY USE ONLY

<p>Approved as to Legal Form</p> <p>► _____ Scott Runyan, 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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