

WHEREAS, on March 4, 2020, the State of California declared a state of emergency as a result of the Coronavirus Disease 2019 (COVID-19) outbreak and on March 13, 2020, by Proclamation 9994, the President declared a national emergency concerning the COVID-19 pandemic. The COVID-19 pandemic continues to cause significant risk to the public health and safety of the Nation; and

WHEREAS, on March 11, 2021, the American Rescue Plan Act (ARPA) was signed into law by the President. The law is intended to combat the COVID-19 pandemic, including the public health and economic impacts; and

WHEREAS, pursuant to Section 9901 of the ARPA, San Bernardino County (County) received a disbursement from the United States Department of the Treasury of money associated with the Coronavirus Local Fiscal Recovery Fund (CLFRF) for Local Governments under Section 603(a), some of which may be transferred to other public entities for certain ARPA purposes; and

WHEREAS, County agreed to comply with the U.S. Department of the Treasury Coronavirus State Fiscal Recovery Fund Award Terms and Conditions (Terms and Conditions) identified in the U.S. Department of the Treasury and San Bernardino County agreement (OMB Approved No. 1505-0271) (U.S. Department of the Treasury Agreement), which is on file with the County and incorporated herein by this reference; and

WHEREAS, the Assistance Listing Number (ALN)/Federal Assistance Identification Number (FAIN) for the ARPA CLFRF is 21.027/SLT-0628 respectively; and

WHEREAS, the ARPA provides that payments from the CLFRF may be used for the following: i) to respond to the public health emergency with respect to COVID–19 or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality; ii) to respond to workers performing essential work during the COVID–19 public health emergency by providing premium pay to eligible workers that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work; iii) for the provision of government services to the extent of the reduction in revenue due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency; or iv) to make necessary investments in water, sewer, or broadband infrastructure; funding provided under ARPA must be obligated by December 31, 2024 and expended by December 31, 2026; and

WHEREAS, on February 8, 2022, the Board of Supervisors for the County and the Board of Directors for the San Bernardino County Fire Protection District (SBCFPD) are expected to enter into an agreement regarding the transfer of ARPA CLFRF dollars to SBCFPD, which may be utilized for Consolidated Fire Agencies (CONFIRE) expenditures identified in Exhibit “A,” in order to provide COVID-19 emergency response to the residents of the County and SBCFPD, which is a condition precedent to this Agreement.

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

1. The ARPA CLFRF.

This Agreement applies to an amount not to exceed \$2,100,000 ARPA CLFRF transferred to SBCFPD (“Funds”), which the County acknowledged and agreed that SBCFPD may transfer to CONFIRE for expenditures identified in Exhibit “A” to this Agreement, which is attached here and incorporated herein by this reference.

A. Disbursement of Funds:

- i. SBCFPD agrees, upon receipt and SBCFPD approval of an invoice from CONFIRE for expenditures identified in Exhibit “A” to this Agreement (“Reimbursement”), to transfer Funds to cover the invoice. SBCFPD will make a good faith effort to reimburse CONFIRE for invoices approved for reimbursement within thirty (30) days of receipt of an invoice.
- ii. CONFIRE understands and agrees as follows:
 - a. The use of Funds transferred by SBCFPD shall be used only for expenditures identified in Exhibit “A” to this Agreement and that such expenditures: i) respond to the public health emergency with respect to COVID–19 or its negative economic impacts; and ii) were incurred during the period that begins February 8, 2022, and will end December 31, 2024. For purposes of this Agreement and pursuant to federal guidance, expended or obligated costs are costs incurred by CONFIRE during the time period referenced above that are allowable for reimbursement. Any

cost obligated by CONFIRE as of December 31, 2024, must be expended by December 31, 2026 to meet the eligible costs timeframe as defined by the U.S. Department of the Treasury.

- b. The Funds cannot be used: i) as a revenue replacement for lower than expected tax or other revenue collections; ii) for expenditures for which CONFIRE has received any other emergency COVID-19 supplemental funding (whether state, federal or private in nature) for that same expense; or iii) as a deposit into any pension fund.
- c. CONFIRE shall prepare and submit to SBCFPD an invoice, on a monthly basis, for reimbursement to cover expenditures identified in Exhibit "A" to this Agreement that also satisfy Paragraph(s) 1.A.ii.a and 1.A.ii.b., above.
- d. If CONFIRE has insufficient cash to cover the expenditure, a prepayment may be requested from SBCFPD. Such prepayment shall not exceed the amount of the invoice or invoices that have been submitted to SBCFPD for reimbursement. The request for a prepayment must include CONFIRE's current cash balance in their Operations Fund, a copy of the invoice or invoices that have been approved for payment, and a memo/letter requesting such prepayment and the justification for the request signed by the Director and addressed to SBCFPD's Fire Chief. Any prepayment must be approved by SBCFPD's Fire Chief, in SBCFPD's Fire Chief's sole discretion. It is understood that prepayments will only be considered due to insufficient cash and are at the complete discretion of SBCFPD.
- e. CONFIRE shall establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) to support CONFIRE's requests for reimbursement which segregate and accumulate expenditures of CONFIRE covered by Exhibit "A" to this Agreement and produce monthly reports which clearly identify reimbursable costs and other allowable expenditures by CONFIRE. CONFIRE shall provide a monthly report of expenditures under this Agreement no later than the 15th day of the following month.
- f. In addition to the reporting requirements in Paragraph 1.A.ii.e, above, CONFIRE shall provide SBCFPD a quarterly report of actual expenditures reimbursed to date under this Agreement and estimated cash expenditures covered by Exhibit "A" to this Agreement through December 31, 2024 and/or December 31, 2026, whichever is applicable.
- g. CONFIRE shall retain documentation of all uses of the funds, including but not limited to invoices and/or sales receipts in a manner consistent with Section 200.334 Retention requirements for records of 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance). Such documentation shall be produced to SBCFPD upon request and may be subject to audit. Unless otherwise provided by Federal or State law (whichever is the most restrictive), CONFIRE shall maintain all documentation connected with its performance under this Agreement for a minimum of five (5) years from the date of the last payment made by SBCFPD or until audit resolution is achieved, whichever is later, and to make all such supporting information available for inspection and audit by representatives of SBCFPD, the County, the State or the United States Government during normal business hours at CONFIRE.
- h. CONFIRE shall cooperate in having an audit completed by SBCFPD, at SBCFPD's option and expense. Any audit required by the ARPA will be completed by CONFIRE, at CONFIRE's expense. CONFIRE shall repay

to SBCFPD any reimbursement for Funds that are determined by an audit to be unallowable under the ARPA within the time period required by the ARPA, but no later than one hundred twenty (120) days of CONFIRE receiving notice of audit findings, which time shall include an opportunity for CONFIRE to respond to and/or resolve the findings. Should the findings not be otherwise resolved and CONFIRE fails to reimburse moneys due SBCFPD within one hundred twenty (120) days of audit findings, or within such other period as may be agreed between both parties or required by the ARPA, SBCFPD reserves the right to withhold future payments due CONFIRE from any source under SBCFPD's control.

- i. In the event that: i) an audit is conducted by CONFIRE, the County, SBCFPD or an outside entity responsible for auditing agencies that received money through the ARPA; and ii) Funds approved by SBCFPD and disbursed to CONFIRE are determined to be ineligible, CONFIRE shall be responsible for refunding those ineligible Funds.

B. Reduction of Funds

- i. SBCFPD, through its Chief Executive Officer (CEO), in the CEO's sole discretion, reserves the right to reduce the transfer amount identified in this Agreement with ten (10) days advance written notice provided to CONFIRE.
- ii. Such reduction, shall be based on: i) CONFIRE's estimated cash expenditures as listed in their quarterly reports through December 31st of each year; or ii) a later determination by the United States Department of the Treasury, County, or SBCFPD that the expenditures identified in Exhibit "A" to this Agreement are ineligible for ARPA funding.

C. Both SBCFPD and CONFIRE agree to comply with any and all ARPA requirements, as well as any and all applicable County, SBCFPD, State, and Federal laws, regulations, policies and procedures pertaining to the funding described in this Agreement. CONFIRE agrees to comply with the Terms and Conditions applicable to County as identified in the U.S. Department of the Treasury Agreement. Therefore, for purposes of this Agreement, the term "Recipient" in the U.S. Department of the Treasury Agreement Terms and Conditions shall mean CONFIRE. SBCFPD and CONFIRE shall comply with 2 CFR Part 200, including, but not limited to 2 CFR 200.303 (internal control), 200.331 thru 200.333 (subrecipient monitoring and management), and subpart F (audit). The use of funds must also adhere to official federal guidance issued or to be issued on what constitutes a necessary expenditure. Any funds expended by CONFIRE or its subcontractor(s) in any manner that does not adhere to official federal guidance shall be returned to SBCFPD. SBCFPD and CONFIRE also agree that as additional federal guidance becomes available, a contract amendment to this Agreement may become necessary.

2. This Agreement may be terminated by SBCFPD, through SBCFPD's CEO, for any reason, with a thirty (30) day written notice to CONFIRE of termination. Upon such termination, payment will be made to CONFIRE for the expenses reasonably incurred prior to the effective date of termination. This Agreement may also be terminated immediately by SBCFPD in the event of a breach of the Agreement terms by CONFIRE. In such event, SBCFPD shall be entitled to pursue any available remedies authorized by law or regulations.
3. This Agreement is from the Effective Date defined in Paragraph 10 through December 31, 2024. **SBCFPD shall only reimburse costs incurred and expended through the dates identified in Exhibit "A."** Paragraph 1.A.ii.a., b., e., g., h., i., Paragraph 1.C., and Paragraphs 4 and 5 shall survive the termination of this Agreement. The costs to be reimbursed under this

Agreement do not include Research and Development as defined in 2 CFR 200.1, nor do they include indirect costs.

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

CONFIRE 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 CONFIRE's negligent acts or omissions which arise from CONFIRE's performance of its obligations under this Agreement.

In the event SBCFPD and/or CONFIRE is found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under the Agreement, SBCFPD and/or CONFIRE shall indemnify the other to the extent of its comparative fault.

5. 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, the 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, the CONFIRE shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

- A. 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 the CONFIRE and all risks to such persons under this contract.

If CONFIRE has no employees, it may certify or warrant to the SBCFPD that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the SBCFPD's Director of Risk Management.

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.

- B. 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.

- C. 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.

- D. 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.

- E. Cyber Liability Insurance - Cyber Liability Insurance with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall protect the involved SBCFPD entities and cover breach response cost as well as regulatory fines and penalties.

- F. Additional Insured
All policies, except for Worker’s Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the SBCFPD/County and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the SBCFPD/County to vicarious liability but shall allow coverage for the SBCFPD/County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

- G. Waiver of Subrogation Rights
CONFIRE shall require the carriers of required coverages to waive all rights of subrogation against the SBCFPD/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 SBCFPD/County.

- H. 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 SBCFPD/County.

- I. 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 SBCFPD/County or between the SBCFPD/County and any other insured or additional insured under the policy.

J. Proof of Coverage

CONFIRE shall furnish Certificates of Insurance to the Department administering the Agreement evidencing the insurance coverage at the time the Agreement 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 CONFIRE commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this Agreement, 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.

K. 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".

L. 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.

M. Failure to Procure Coverage

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

N. Insurance Review

Insurance requirements are subject to periodic review by the SBCFPD/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 SBCFPD/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 SBCFPD/County, inflation, or any other item reasonably related to the SBCFPD/County's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. CONFIRE agrees to execute any such amendment within thirty (30) days of receipt.

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

6. This Agreement shall be governed by the laws of the State of California. The parties acknowledge and agree that this Agreement 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 Agreement 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 Agreement 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
7. During the term of the Agreement, 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.
8. CONFIRE certifies that neither it nor its principals or subcontracts is presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See the following United States General Services Administration's System for Award Management website <https://www.sam.gov>). Any contracts funded by this Agreement shall be with vendors that meet this certification.
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. This Agreement shall take effect on the date it is signed and approved by authorized representatives of both SBCFPD and CONFIRE (Effective Date).
12. Time is of the essence for each and every provision of this Agreement.
13. 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.
14. 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.

15. Nothing contained in this Agreement shall be construed as a relinquishment of any rights now held by SBCFPD or CONFIRE.
16. Without the prior written consent of the County, the Agreement is not assignable by SBCFPD either in whole or in part.
17. If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney 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 Indemnification and Insurance Requirements.
18. This Agreement and other documents incorporated herein, represents the final, complete and exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of this Agreement not expressly set forth herein are of no force or effect. This Agreement is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this Agreement and signs the same of its own free will.
19. 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.
20. CONFIRE and its sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.
21. Any publications produced with funds from this award must display the following language:
"This project [is being] [was] supported, in whole or in part, by federal award number SLT-0628 awarded to County of San Bernardino by the U.S. Department of the Treasury."
22. In accordance with 41 U.S.C. § 4712, CONFIRE may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public

health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.

The list of persons and entities referenced in the paragraph above includes the following: i) a member of Congress or a representative of a committee of Congress; ii) an Inspector General; iii) the Government Accountability Office; iv) a Treasury employee responsible for contract or grant oversight or management; v) an authorized official of the Department of Justice or other law enforcement agency; vi) a court or grand jury; or vii) a management official or other employee of the County, SBCFD, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct. CONFIRE shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

23. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), SBCFPD encourages CONFIRE to adopt and enforce on-the-job seat belt policies and programs for their employees when operating entity-owned, rented or personally owned vehicles.
24. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), SBCFD encourages CONFIRE to adopt and enforce policies that ban text messaging while driving.

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

SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT

CONSOLIDATED FIRE AGENCIES

►

Curt Hagman, Chairman, Board of Directors

►

Dated: _____

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

Lynna Monell, Secretary

By _____
Deputy

FOR COUNTY USE ONLY

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
► _____ Scott Runyan, Supervising Deputy County Counsel	► _____ Date _____	► _____ Date _____