

WHEREAS, on March 4, 2020, the State of California declared a state of emergency as a result of the COVID-19 outbreak and on March 10, 2020, the County of San Bernardino (County) proclaimed the existence of a local emergency resulting from COVID-19; and

WHEREAS, on March 27, 2020, the United States Congress passed the Federal Coronavirus Aid, Relief, and Economic Security (CARES) Act in response to the COVID-19 pandemic; and

WHEREAS, pursuant to Section 5001 of the CARES Act, the County received a disbursement from the United States Department of the Treasury of money associated with the Coronavirus Relief Fund (Fund) for Local Governments under Section 601(a) of the Social Security Act, some of which may be transferred to other public entities for certain CARES Act purpose; and

WHEREAS, the Federal Catalog of Federal Domestic Assistance (CFDA) number for the Fund is 21.019; and

WHEREAS, the CARES Act provides that payments from the Fund may only be used to cover costs that: i) are necessary expenditures incurred due to the public health emergency with respect to COVID-19; ii) were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act); and iii) were incurred during the period that begins March 1, 2020, and ends December 30, 2020; and

WHEREAS, on June 23, 2020, 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 CARES Act Fund 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 CARES Act Fund.

This Agreement applies to an amount not to exceed \$2,071,000 of CARES Act Funds 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 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 fifteen (15) 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) are necessary expenditures incurred due to the public health emergency with respect to COVID-19; ii) were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act); and iii) were incurred during the period that begins March 1, 2020, **and ends December 30, 2020.** **For purposes of this Agreement and pursuant to federal guidance, a cost is "incurred" when CONFIRE has expended funds to cover the cost.**
 - b. The Funds cannot be used: i) as a revenue replacement for lower than expected tax or other revenue collections; or 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.
 - 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 can 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.

- 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 10th day of the following month.
- f. In addition to the reporting requirements in Paragraph 1.A.ii.e, above, CONFIRE shall provide SBCFPD a report of actual expenditures reimbursed to date under this Agreement, and estimated cash expenditures covered by Exhibit A to this Agreement through December 30, 2020, on or before:
 - October 31, 2020; and
 - November 30, 2020.
- 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 §200.333 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 CARES Act 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 CARES Act within the time period required by the CARES Act, 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 CARES Act, 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 CARES Act; 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 through December 30, 2020 as identified in the October 31, 2020 and November 30, 2020 reports; 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 CARES Act funding.

C. Both SBCFPD and CONFIRE agree to comply with any and all CARES Act 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. SBCFPD and CONFIRE shall comply with 2 CFR Part 200, including, but not limited to 2 CFR 200.303 (internal control), 200.330 thru 200.332 (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 June 30, 2021. **SBCFPD shall only reimburse costs incurred 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 200.87, 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. This Agreement shall be governed by the laws of the State of California. Any action or proceeding between SBCFPD and CONFIRE 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.
6. 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.
7. 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.
8. 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.
9. The recitals of this Agreement are incorporated into the body of this Agreement by this reference.
10. This Agreement shall take effect on the date it is signed and approved by authorized representatives of both SBCFPD and CONFIRE (Effective Date).
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 SBCFPD or CONFIRE.
15. 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.

16. 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.

IN WITNESS WHEREOF, the San Bernardino County Fire Protection District and CONFIRE have each caused this Contract 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: _____
SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

Dated: _____

Lynna Monell, Secretary

By _____
Deputy

FOR COUNTY USE ONLY

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