



ORIGINAL

Contract Number

24-136

SAP Number

San Bernardino County Fire Protection District

Table with contract details: Department Contract Representative (Terry W. Thompson), Telephone Number ((909)387-5000), Contractor (Phelan Pinon Hills Community Services District), Contractor Representative, Telephone Number ((909)387-5779), Contract Term (February 6, 2024-February 5, 2034), Original Contract Amount (\$1), Amendment Amount (-), Total Contract Amount (\$1), Cost Center, Internal Order No.

Briefly describe the general nature of the contract: This Use Agreement is for the San Bernardino County Fire Protection District's non-exclusive use of Phelan Pinon Hills Community Services District Community Center located at 10433 Mountain Road in Pinon Hills, California, for fire related emergency services and emergency communication towers. The use period of this Use Agreement is from February 6, 2024 through February 5, 2034. The use fee payable by San Bernardino County Fire Protection District to Phelan Pinon Hills Community Services District under this Use Agreement shall be \$1.

FOR COUNTY USE ONLY

Approved as to Legal Form
SEE SIGNATURE PAGE
John Tubbs II, Deputy County Counsel
Date

Reviewed for Contract Compliance
Date

Reviewed/Approved by Department
Lyle Ballard, Real Property Manager, RESD
Date 1/30/24

## USE AGREEMENT

1. **PARTIES:** Phelan Pinon Hills Community Services District, hereinafter referred to as PERMITTOR, hereby permits San Bernardino County Fire Protection District, hereinafter referred to as PERMITTEE (collectively referred to as "Parties"), to use certain subsequently-designated portions of the real property owned in fee by PERMITTOR, known as the Phelan Pinon Hills Community Services District Community Center located at 10433 Mountain Road in Pinon Hills, California, and shown on Exhibit "A" attached hereto and incorporated herein by reference (hereafter referred to as "Property"). The use area of the Property identified in Exhibit "A", including interior and exterior space, as well as parking spaces ("Use Area"), will be agreed upon in advance by PERMITTOR's General Manager and PERMITTEE's Fire Chief as part of the "use plan" referenced in Paragraph 2, **TERM**. Both Parties understand and agree that PERMITTOR's operations in the Use Area and at the Property take priority over this Use Agreement and PERMITTEE's ability to occupy and use the Use Area. As a result, PERMITTOR may modify the Use Area without cause or advance notice to PERMITTEE.

2. **TERM:** The term of this Use Agreement shall be from February 6, 2024 through February 5, 2034. A written use plan that identifies the specific dates and Use Area shall be mutually agreed prior to any use as provided in Paragraph 1.

3. **USE PERIOD:** This Use Period shall be for a period which shall commence on the dates listed in the mutually agreed upon use plan ("Use Period").

4. **USE:** PERMITTEE shall use the Use Area on a non-exclusive basis during the Use Period for use of the parking lot and community center for fire related emergency services and the emergency communication towers located thereon, subject to the terms and conditions set forth herein. PERMITTEE must not use the Use Area for any other purpose. PERMITTOR has the exclusive and ultimate right, entitlement, and responsibility for managing, operating, controlling, and administering the use of the Property. Under no circumstances shall PERMITTEE be permitted to conduct munitions, incendiaries, or similar exercises on the Property. Further, PERMITTEE shall not engage in activities likely to result in destruction to the Property. PERMITTEE agrees to be responsible for any damage to the Property caused by any act or omission on the part of its employees, trainees, agents, affiliates or the like. PERMITTEE shall immediately report any incidents and injuries that occur on the Property to PERMITTOR.

5. **FEES:** PERMITTEE shall pay PERMITTOR one dollar (\$1) in consideration of any and all of the benefits provided by PERMITTOR to PERMITTEE under this Use Agreement, including the Use Area provided by PERMITTOR to PERMITTEE and any PERMITTOR-provided janitorial and maintenance services, during the Use Period. PERMITTEE will make the one dollar (\$1) payment within 60 days of effective date of this Use Agreement.

6. **INDEMNIFICATION:** The PERMITTEE shall indemnify, defend, release, protect and hold harmless the PERMITTOR, its officers, employees, agents and volunteers, from any and all costs, expenses, claims, demands, liabilities, and/or damages, including injury to persons and damage to property and attorneys' fees and costs, arising out of and/or related to any act or omission of PERMITTEE, its officers, employees, agents, trainees, contractors, or volunteers, and/or their affiliates, in connection with PERMITTEE's use of the Property. This Paragraph 6 shall survive the expiration or earlier termination of this Use Agreement.

7. **INSURANCE REQUIREMENTS AND SPECIFICATIONS:** PERMITTEE is an authorized self-insured public entity for purposes of Professional Liability, Automobile Liability, General Liability and Worker's Compensation, and warrants that through its program of self-insurance it has adequate coverage or resources to protect against any claim, demand, liability, damage, cost and expense, including reasonable attorney's fees and costs (including any claims based on PERMITTEE's indemnity obligation to PERMITTOR) arising out of PERMITTOR and PERMITTEE's performance of the terms, conditions or obligations of this Agreement.

PERMITTOR shall be named as an additional insured. PERMITTEE's policy of self-insurance is primary, and any insurance carried by PERMITTOR is excess and noncontributing with such primary insurance. PERMITTEE waives all rights of subrogation, and provides full indemnification to Phelan Pinon Hills Community Service District. Further, the limit shall reflect the types of activities that San Bernardino County Fire Protection District

is conducting on the Property. Not less than five (5) days prior to coming onto and using the Property, PERMITTEE shall deliver to PERMITTOR properly issued certificates of insurance, coverage thereof, showing compliance with the requirements of this section. All insurance shall provide for severability of interests and shall provide that an act or omission of one of the named or additional insureds shall not reduce or void coverage to the other named or additional insureds. Any deductible amounts under any insurance required herein shall be subject to Phelan Pinon Hills Community Service District prior written approval, except as otherwise specified.

8. **GOVERNING LAW AND DISPUTES:** The laws of the State of California shall govern the validity and performance of this Use Agreement.

9. **TERMINATION:** In the event that either party is in default of any of the terms and conditions of this Use Agreement, the non-defaulting party may give written notice to the defaulting party of specific violations. If, within three (3) business day after written notice, the defaulting party has not corrected such default, the non-defaulting party shall have the right to terminate this Use Agreement. Both Parties have the right to terminate this Use Agreement without cause with thirty (30) days advance notice to the other party. Both Parties understand and agree that PERMITTOR's operations take priority over this Use Agreement and PERMITTEE's ability to occupy and use the Use Area. As a result, PERMITTOR's General Manager may modify the Use Area with thirty (30) days advance notice and without cause. If PERMITTOR changes the Use Area, it shall provide thirty (30) days advance notice to PERMITTEE, and if the change in Use Area renders it no longer fit for PERMITTEE's purpose, PERMITTEE may then terminate this Use Agreement if acceptable alternative use areas are not available.

10. **LIABILITY:** The PERMITTEE acknowledges that financial and civil liability, if any for the acts and omissions of its employees remains vested with the PERMITTEE.

11. **NOTICES:** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party under the provisions of this Use Agreement shall be in writing and shall be served personally, delivered by reputable overnight courier service, or sent by United States mail, postage prepaid, certified, or registered, return receipt requested. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party, shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notices shall be deemed delivered and effective upon the earlier of (i) actual receipt or (ii) the date of delivery or refusal of the addressee to accept delivery if such notice is sent by reputable overnight courier service or United States mail, postage prepaid, certified or registered, return receipt requested. Any notices received after 5:00 pm local time on a business day shall be deemed effective on the following business day.

PERMITTEE: San Bernardino County Fire Protection District  
Attn: Fire Chief  
157 W. 5<sup>th</sup> Street, 2<sup>nd</sup> Floor  
San Bernardino, CA 92415

PERMITTOR: Phelan Pinon Hills Community Services District  
Attn: General Manager  
P.O. Box 294049  
Phelan, CA 92329

12. **SURRENDER:** PERMITTEE agrees that it will, upon any termination of this Use Agreement, return the Use Area in a clean and tidy condition with all trash and debris caused by the PERMITTEE removed and all damages to the extent caused by the PERMITTEE repaired or restored to substantially as good a condition as existed immediately prior to the damage caused by the PERMITTEE, reasonable wear and tear excluded.

13. **VENUE:** The parties acknowledge and agree that this Use Agreement was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue for any action or claim brought by any party to this Use Agreement will be the Superior Court of the State of California, San Bernardino County. Each party hereby waives any law, statute (including but not limited to Code of Civil Procedure section 394), or rule of court which would allow them to request or demand a change of venue. If any action or claim

concerning this Use Agreement is brought by any third party, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of the State of California, San Bernardino County.

14. **LAW**: This Use Agreement shall be construed and interpreted in accordance with the laws of the State of California.

15. **SEVERABILITY**: If any word, phrase, clause, sentence, paragraph, section, article, part or portion of this Use 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 Use Agreement or any other portion thereof.

16. **SURVIVAL**: The obligations of the parties that, by their nature, continue beyond the Use Period, will survive the termination of this Use Agreement.

17. **DISPUTE**: In the event of a dispute, the Parties shall use their best efforts to settle the dispute through negotiation with each other in good faith.

18. **CONTRACT ASSIGNABILITY**: Without the prior written consent of both Parties, the Use Agreement is not assignable either in whole or in part.

19. **AUTHORIZED SIGNATORS**: The parties to this Use Agreement represent for itself that its respective signators executing this document are fully authorized to enter into this Use Agreement.

20. **ENTIRE AGREEMENT**: This Use Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, express or implied, oral or written, of any nature whatsoever with respect to the subject matter hereof. No modifications or waiver will be binding unless made in writing and signed by both parties.

21. **SIGNATURE**: This Use 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, PERMITTOR and PERMITTEE have each caused this Use Agreement to be subscribed by its respective duly authorized officers, on its behalf.

**SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT**

By:   
Dawn Rowe, Chair  
Board of Directors

Date: FEB 06 2024


**PHELAN PINON HILLS COMMUNITY SERVICES DISTRICT**

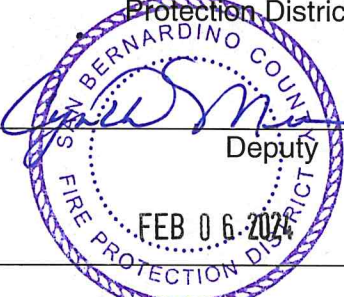
By:   
Print Name: Donald Bartz  
Title: General Manager

Date: January 22, 2024

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

Lynna Monell  
Secretary of the Board of  
Directors  
San Bernardino County Fire  
Protection District

By:   
Deputy  
Date: FEB 06 2024



Approved as to Legal Form:

TOM BUNTON, County Counsel  
San Bernardino County, California

By:   
John Tubbs II, Deputy County Counsel

Date: 1-30-24

**EXHIBIT "A"**  
**(Outlined with Red Border)**

