



Contract Number

SAP Number

San Bernardino County Fire Protection District

Department Contract Representative Dan Munsey
Telephone Number 909-387-5779

Contractor Fontana Rotary Club
Contractor Representative _____
Telephone Number _____
Contract Term _____
Original Contract Amount _____
Amendment Amount _____
Total Contract Amount NON-FINANCIAL
Cost Center _____

IT IS HEREBY AGREED AS FOLLOWS:

(Use space below and additional bond sheets. Set forth service to be rendered, amount to be paid, manner of payment, time for performance or completion, determination of satisfactory performance and cause for termination, other terms and conditions, and attach plans, specifications, and addenda, if any.)

**AGREEMENT BETWEEN
SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT
AND
FONTANA ROTARY CLUB
FOR
TRANSFER OF SURPLUS VEHICLE**

WHEREAS, San Bernardino County Fire Protection District (hereinafter "SBCFPD") has a surplus Water Tender and has no use for this item; and

WHEREAS, SBCFPD has researched and found that no local agencies have a need for the equipment; and,

WHEREAS, Fontana Rotary Club (hereinafter "Rotary") has a need to donate a Water Tender to a fire department in Zacapo, Mexico; and

WHEREAS, in consideration of Rotary providing SBCFPD a full release for the equipment, SBCFPD is transferring the equipment at no cost to Rotary.

NOW THEREFORE, SBCFPD and Rotary agree to the following terms and conditions.

I. Agreement

- A. In consideration of benefits provided to SBCFPD under this Agreement, SBCFPD shall transfer to Rotary a 1998 Paystar i5000 Water Tender (Equipment No. 048003/Vehicle Identification Number 1HTTNADT9WJ00006Y) at no cost.
- B. Rotary understands that the Surplus Property is outdated and may be in need of repair. Rotary has or will inspect the Surplus Property prior to use.
- C. Rotary accepts all responsibility for the Surplus Property and acknowledges that the Surplus Property is provided in "as is" condition and without warranty.
- D. SBCFPD and Rotary shall cooperate in the transfer of title of the Surplus Property.

II. General Terms and Conditions

1. Legality and Severability

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

2. Representation of the County and District

In the performance of the Agreement, Rotary, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of San Bernardino County or the San Bernardino County Fire Protection District.

3. Relationship of the Parties

Nothing contained in this Agreement 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.

4. Duration of Terms

This Agreement, 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 Agreement. Any assignment by Rotary of this Agreement must be approved by SBCFPD.

5. Mutual Covenants

The parties to this Agreement 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".

6. Attorney Fees and Costs

If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorneys' fees, regardless of who is the prevailing party.

7. Choice of Law

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

8. San Bernardino County Fire Protection District Representative

The Fire Chief/Fire Warden or his/her designee shall represent SBCFPD in all matters pertaining to the services to be rendered under this Agreement, and shall be the final authority in all matters pertaining to the Agreement. The San Bernardino County Fire Protection District Board of Directors must approve all amendments to this Agreement.

9. **Venue**

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.

10. **Improper Consideration**

Rotary 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 San Bernardino County (County) and SBCFPD in an attempt to secure favorable treatment regarding this Agreement.

Rotary shall immediately report any attempt by a County or SBCFPD officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Rotary. The report shall be made to the supervisor or manager charged with supervision of the employee or to the County Administrative Office. In the event of a termination under this provision, SBCFPD is entitled to pursue any available legal remedies.

11. **Improper Influence**

Rotary shall make all reasonable efforts to ensure that no County officer or employee or SBCFPD officer or employee, whose position in the County or SBCFPD enables him/her to influence any award of the Agreement or any competing offer, shall have any direct or indirect financial interest resulting from this Agreement, or shall have any relationship to Rotary or office or employee of Rotary.

12. **Release of Information**

No news releases, advertisements, public announcements or photographs arising out of this Agreement or Rotary' relationship with SBCFPD may be made or used without prior written approval of SBCFPD.

13. **Dispute Resolution**

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.

III. Indemnity and General Release

Rotary accepts all liability and costs for the Surplus Property and hereby releases SBCFPD and its Board, officers, employees, volunteers, agents and contractors from all actions, claims or demands that Rotary and/or its assignees, heirs, distributees, guardians, and legal representatives have or may in the future have for all injury or damage resulting from the Surplus Property. In approving this release, Rotary agrees to and does hereby waive and relinquish all rights and benefits afforded under the provisions of Section 1542 of the Civil Code of the State of California, which provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Rotary has carefully read this release and fully understands its contents. Rotary is aware that this is a release of liability and approves it on Rotary's own free will.

Rotary agrees to indemnify, defend (with counsel reasonably approved by SBCFPD) and hold harmless SBCFPD and its Board, authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by SBCFPD on account of any claim except where such indemnification is prohibited by law. This indemnification

provision shall apply regardless of the existence or degree of fault of indemnities. Rotary indemnification obligation applies to SBCFPD's "active" as well as "passive" negligence but does not apply to SBCFPD's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

IV. Waiver of Subrogation Rights

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

V. Full Understanding

This Agreement represents the full and complete understanding of the parties with respect to the subject matter hereto, and this Agreement supersedes all prior oral and written agreements or understandings between the parties with respect to the subject hereto. Any amendment to this Agreement shall be in writing, signed by both parties.

VI. Conclusion

This Agreement consisting of four (4) pages is the full and complete document describing the terms regarding the transfer of the equipment described herein.

VII. Signature

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterpart 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.

SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT

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

►

Dawn Rowe, Chair, Board of Directors

By ► _____
(Authorized signature - sign in blue ink)

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

Name _____
(Print or type name of person signing contract)

Lynna Monell, Secretary

Title _____
(Print or Type)

By _____
Deputy

Dated: _____

Address _____

FOR COUNTY USE ONLY

<p>Approved as to Legal Form</p> <p>► _____ Rick Luczak, Deputy 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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