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Contract Number

23-1396

SAP Number

San Bernardino County Fire Protection District

Department Contract Representative	Dan Munsey
Telephone Number	387-5779
Contractor	Consolidated Fire Agencies Joint Powers Authority
Contractor Representative	
Telephone Number	
Contract Term	Certification Date through 12/31/24
Original Contract Amount	N/A
Amendment Amount	
Total Contract Amount	N/A
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.)

AID AGREEMENT FOR EMERGENCY MEDICAL SERVICES BETWEEN SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT AND CONSOLIDATED FIRE AGENCIES JOINT POWERS AUTHORITY

This Agreement is made and entered into by and between the San Bernardino County Fire Protection District, (hereinafter referred to as "SBCFPD") and the Consolidated Fire Agencies Joint Powers Authority (hereinafter to as "CONFIRE").

WHEREAS, SBCFPD maintains complete administrative and operational control of the ambulances operating within its areas of responsibility according to its authority under state law; and,

WHEREAS, SBCFPD is authorized to contract for emergency ambulance services in its areas of responsibility and is authorized to enter into joint powers agreements and mutual aid agreements; and,

WHEREAS, CONFIRE is working to receive all applicable and required licenses and approvals to become a pre-hospital emergency medical services provider in San Bernardino County; and,

WHEREAS, CONFIRE represents that once it is an authorized pre-hospital emergency medical services provider in the County, it will be able to provide these services to its member agencies who request this assistance; and,

WHEREAS, SBCFPD is a member agency of CONFIRE; and,

WHEREAS, SBCFPD is experiencing an increase in the number of emergency medical calls in the High Desert Region of the County within SBCFPD's area of responsibility; and,

WHEREAS, both SBCFPD and CONFIRE desire that CONFIRE provide aid to SBCFPD in the form of supplemental as-needed emergency medical services ("Services") in the High Desert Region of County within SBCFPD's area of responsibility; and,

WHEREAS, it is the intent of the parties hereto that pursuant to the above-cited authorities, CONFIRE provide Services for the herein described area of SBCFPD, subject to the terms and conditions contained herein.

NOW, THEREFORE, it is agreed as follows:

1. SCOPE OF WORK:

- A. CONFIRE will provide Services that include a fully equipped and staffed emergency ground ambulance and or ambulances on an as needed basis, at the request of SBCFPD, if CONFIRE has emergency ground ambulance(s) available.
- B. CONFIRE personnel assigned to provide Services under this Agreement will be comparably equipped and trained as other like positions within SBCFPD and shall have all applicable licenses.
- C. CONFIRE represents and warrants to SBCFPD that it has the necessary infrastructure, resources, personnel, training, and licenses to provide the Services under this Agreement in accordance with all terms of this Agreement.

2. PAYMENT: CONFIRE agrees to provide these Services at no cost to SBCFPD as aid to SBCFPD. Should CONFIRE invoice any third party for the Services, any invoice shall be in CONFIRE's sole discretion and only as allowed by and in conformance with all laws and regulations.

3. TERM OF AGREEMENT: This Agreement shall become effective on the date CONFIRE certifies in writing to SBCFPD that, with respect to the provision of Services, it is in compliance with all laws and regulations and has all applicable and required licenses and approvals (Certification). This Agreement shall remain in full force and effect from the Certification Date until December 31, 2024, unless terminated in accordance with the provisions herein. CONFIRE shall provide to SBCFPD's Fire Chief the Certification on the date it issues the Certification in accordance with Paragraph 11 of this Agreement (Certification Date).

Either party may, by written notice to the other party, terminate this Agreement at any time and without cause by giving written notice to the other party of such termination, and specifying the effective date thereof, at least ninety (90) days after the date of such notice.

4. MODIFICATIONS TO AGREEMENT: A review of the Agreement terms may be initiated at any time by either party, upon written notice to the other. The parties agree to negotiate in good faith and deal fairly with respect to performance under this Agreement and to any proposed modifications to this Agreement. This Agreement may be modified only in writing and with the approval of both CONFIRE and SBCFPD, through each entity's governing body.

5. EMPLOYEE STATUS/WORKERS' COMPENSATION: It is expressly understood that in the performance of the Services herein provided for, CONFIRE shall be, and is, an independent contractor and is not an agent or employee of SBCFPD. CONFIRE has and shall retain the right to exercise full control and supervision of the Services and full control over the employment, direction, assignment, compensation and discharge of all persons employed by CONFIRE and assisting in the performance of Services

hereunder. CONFIRE shall be solely responsible for all matters relating to the payment of its employees including compliance with social security, workers' compensation, withholding, and all regulations governing such matters.

6. INDEMNIFICATION:

CONFIRE agrees to indemnify, defend (with counsel reasonably approved by SBCFPD) and hold harmless SBCFPD and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of the performance of this Agreement by CONFIRE, and/or its officers, employees, agents, contractors or volunteers, including the acts, errors, or omissions of CONFIRE 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 indemnitees. CONFIRE's indemnification obligation shall not apply to SBCFPD's negligence or "willful" misconduct within the meaning of Civil Code Section 2782.

7. INSURANCE:

A. Additional Insured

All policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming SBCFPD and its officers, employees, agents and volunteers as additional 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 SBCFPD to vicarious liability but shall allow coverage for SBCFPD 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.

B. Waiver of Subrogation Rights

CONFIRE 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 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 SBCFPD.

C. 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 SBCFPD.

D. 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 SBCFPD or between SBCFPD and any other insured or additional insured under the policy.

E. Proof of Coverage

CONFIRE shall furnish Certificates of Insurance to the SBCFPD 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 CONFIRE 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.

F. 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. **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.

H. **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, SBCFPD 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 SBCFPD will be promptly reimbursed by CONFIRE or SBCFPD payments to CONFIRE will be reduced to pay for SBCFPD purchased insurance.

I. **Insurance Review**
Insurance requirements are subject to periodic review by SBCFPD. 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 SBCFPD. 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 SBCFPD, inflation, or any other item reasonably related to SBCFPD'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 SBCFPD 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 SBCFPD.

J. 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:

i. 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 and all risks to such persons under this contract.

If CONFIRE has no employees, it may certify or warrant to 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 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.

- ii. 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.

- iii. 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.

- iv. 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.

- v. 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.

- vi. Abuse/Molestation Insurance – Contractor shall have abuse or molestation insurance providing coverage for all employees for the actual or threatened abuse or molestation by anyone of any person in the care, custody, or control of any insured, including negligent employment, investigation and supervision. The policy shall provide coverage for both defense and indemnity with liability limits of not less than one million dollars (\$1,000,000) with a two million dollars (\$2,000,000) aggregate limit.

8. CONFIRE RECORDS:

CONFIRE 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 CONFIRE's 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.

SBCFPD, State and Federal government shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have absolute right to monitor the performance of CONFIRE in the delivery of Services provided under this Contract. CONFIRE shall give full cooperation, in any auditing or monitoring conducted. CONFIRE shall cooperate with SBCFPD in the implementation, monitoring, and evaluation of this Contract and comply with any and all reporting requirements established by SBCFPD. CONFIRE shall not disclose any protected health information or any other record or information protected by state and/or federal law to SBCFPD, State and Federal government under this section of the Agreement.

All records pertaining to Services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by SBCFPD representatives for a period of three years after final payment under this Contract or until all pending SBCFPD, State and Federal audits are completed, whichever is later.

9. **WAIVER:** No waiver of a breach of any provision of this Agreement will constitute a waiver of any other breach, or of such provision. Failure of either party to enforce at any time, or from time-to-time, any provision of this agreement will not be construed as a waiver thereof. The remedies herein reserved will be cumulative and additional to any other remedies in law or equity.
10. **PARTIAL INVALIDITY:** Should any part, term, portion, or provision of this Agreement be finally decided to be in conflict with any law of the United States or the State of California, or otherwise be unenforceable or ineffectual, the validity of the remaining parts, terms, portions, or provisions will be deemed severable and will not be affected thereby, provided such remaining portions or provisions can be construed in substance to constitute the agreement which the parties intended to enter into in the first instance.
11. **NOTICES:** All notices required or permitted to be given pursuant to this Agreement may be personally served on the other party by the party giving such notice or may be served by certified mail, return receipt requested, to the following addresses:

**Consolidated Fire Agencies
Joint Powers Authority**
Attn: Nathan Cooke
1743 Miro Way
Rialto, CA 92376

**San Bernardino County
Fire Protection District**
Dan Munsey, Fire Chief/ Fire Warden
157 W. 5th Street, 2nd Floor
San Bernardino, CA 92415-0450

12. **APPLICABLE LAW:** At all times during the term of this Agreement, SBCFPD and CONFIRE shall comply with all applicable laws, ordinances, rules and regulations of the United States of America, the State of California including all agencies and subdivisions thereof, and the Inland Counties Emergency Medical Agency.
13. **VENUE:** The venue of any action or claim brought by any party to the Agreement will be the Superior Court of San Bernardino County. 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 the 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 San Bernardino County.

14. **ATTORNEYS' 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 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.
15. **CONTRACT ASSIGNABILITY:** Without the prior written consent of SBCFPD's Board, CONFIRE may not assign or subcontract its obligations under the Contract either in whole or in part.
16. **RECITALS:** The recitals set forth above are true and correct and incorporated herein by this reference.
17. **CONFIDENTIALITY:**
Pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act, regulations have been promulgated governing the privacy of individually identifiable health information. CONFIRE acknowledges that it is a covered entity and subject to the requirements of HIPAA and HITECH, and their implementing regulations. CONFIRE agrees to fully comply with the terms of HIPAA and HITECH, and regulations promulgated thereunder, and to ensure any subcontractors utilized to fulfill Services pursuant to this Contract comply with said provisions. CONFIRE further agrees to comply with the requirements of all other applicable federal and state laws/regulations that pertain to the protection of health information.
18. **RELEASE OF INFORMATION:** No news releases, advertisements, public announcements or photographs arising out of the Contract or CONFIRE's relationship with SBCFPD may be made or used without prior written approval of SBCFPD.
19. **TIME OF THE ESSENCE:** Time is of the essence in performance of this Contract and of each of its provisions.
20. **CORRECTION OF PERFORMANCE DEFICIENCIES:**
 - A. Failure by CONFIRE to comply with any of the provisions, covenants, requirements or conditions of this Contract shall be a material breach of this Contract.
 - B. In the event of a non-cured breach, SBCFPD may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
 - i. Afford CONFIRE thereafter a time period within which to cure the breach, which period shall be established at the sole discretion of SBCFPD; and/or
 - ii. Terminate this Contract immediately and be relieved of the payment of any consideration to CONFIRE. In the event of such termination, SBCFPD may proceed with the work in any manner deemed proper by SBCFPD. The cost to SBCFPD shall be deducted from any sum due to CONFIRE under this Contract and the balance, if any, shall be paid by CONFIRE upon demand.
21. **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.
22. **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.

23. **DEBARMENT AND SUSPENSION:** 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>). 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.
24. **CONTRACT EXCLUSIVITY:** This is not an exclusive Contract. SBCFPD and CONFIRE reserve the right to enter into a contract with other contractors for the same or similar services. SBCFPD does not guarantee or represent that CONFIRE will be permitted to perform any minimum amount of work, or receive compensation other than on a per order basis, under the terms of this Contract.
25. **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. Any prior agreement, promises, negotiations or representations relating to the subject matter of 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 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.
26. **MISCELLANEOUS:** CONFIRE shall ensure all personnel providing Services under this Agreement have all required licenses and certifications required by the State of California and the Inland Counties Emergency Medical Agency.
27. **DISPUTES:** 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.

IN WITNESS WHEREOF, CONFIRE and SBCFPD have caused this Agreement to be executed by their authorized agents.

SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT

► *Dawn Rowe*
Dawn Rowe, Chair, Board of Directors

Dated: DEC 19 2023
SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIR OF THE BOARD



By *Lynna Monell*
Lynna Monell, Secretary
Deputy

Consolidated Fire Agencies Joint Powers Authority
(Print or type name of corporation, company, contractor, etc.)

By ► *Nathan Cooke*
(Authorized signature - sign in blue ink)

Name Nathan Cooke
(Print or type name of person signing contract)

Title Interim Director
(Print or Type)

Dated: 12/14/23

Address 1743 Mira Way
Rialto CA 92376

FOR COUNTY USE ONLY

Approved as to Legal Form
► *Scott Runyan*
Scott Runyan, Principal Assistant County Counsel
Date 12/14/23

Reviewed for Contract Compliance
► _____
Date _____

Reviewed/Approved by Department
► _____
Date _____