

Contract Number

SAP Number

San Bernardino County Fire Protection District

Department Contract Representative Dan Munsey
Telephone Number 387-5779

Contractor _____
Contractor Representative _____
Telephone Number _____
Contract Term _____
Original Contract Amount _____
Amendment Amount _____
Total Contract Amount _____
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.)

2021 SPARK OF LOVE TOY DRIVE AGREEMENT

WHEREAS, the San Bernardino County Fire Protection District (hereinafter "SBCFPD") is participating in the 2021 Spark of Love Toy Drive (hereinafter "Toy Drive"); and

WHEREAS, other participants of the Toy Drive include ABC7, Toy Drive sponsors, Toy Drive partners, participating public entities, Southern California Firefighters, and all other persons and entities associated with these parties or the Toy Drive; and

WHEREAS, the purpose of the Toy Drive is to collect new, unwrapped toys and sports equipment (collectively referred to as "Toys") for underserved children and teens in Los Angeles, San Bernardino, Orange, Ventura, and Riverside counties; and

WHEREAS, Toys collected in the respective counties are distributed locally; and

WHEREAS, _____ is recognized under State and Federal laws and regulations as a non-profit organization ("Non-profit") and is in good standing with the State and Federal government; and

WHEREAS, Non-profit desires to accept Toys collected by SBCFPD pursuant to the Toy Drive and distribute them directly, or have a third party distribute them to underserved children and teens in San Bernardino County ("County") in accordance with the purpose of the Toy Drive.

NOW THEREFORE, SBCFPD and Non-profit agree to the following terms and conditions.

I. Toy Drive

1. The above recitals of this Agreement are incorporated into the body of this Agreement by this reference.
2. In accordance with the purpose of the Toy Drive and the terms of this Agreement, including the above recitals, Non-profit will accept Toys from SBCFPD and will distribute, or have a third party distribute, Toys to underserved children and teens in the County by December 24, 2021 ("Distribution Deadline"). Time is of the essence with respect to each and every term of this Agreement, including, but not limited to, the Distribution Deadline. Non-profit will use its best efforts to distribute or have a third party distribute Toys by the Distribution Deadline. Any toys that are not distributed by the Distribution Deadline will be returned to SBCFPD by January 14, 2022. Non-profit shall follow all applicable County, State, and Federal COVID-19 guidelines when carrying out the terms and conditions of this Agreement.
3. This Agreement does not guarantee any minimum or maximum number of Toys, and Non-profit agrees that it is possible that it may receive no Toys at all.
4. The Toy Drive ends on the Distribution Deadline. The term of this Agreement is the date it is signed and approved by authorized representatives of SBCFPD and Non-profit through January 14, 2022. SBCFPD, through its Fire Chief/Fire Warden, reserves the right, in the Fire Chief/Fire Warden's sole discretion, to terminate this Agreement with or without cause with 10 days written notice to Non-profit. In the event the agreement is terminated, Non-profit will return to SBCFPD any Toys that it has not distributed in accordance with the Purpose of the Toy Drive and terms of this Agreement. Sections I.2., I.4., I.6. and Sections III. and IV. shall survive the termination of this Agreement.
5. This Agreement is a non-exclusive agreement. SBCFPD reserves the right to enter into an agreement(s) with other parties for the same services described in this Agreement.
6. SBCFPD, County, State and Federal governments shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have the absolute right to monitor the performance of Non-profit in its distribution of Toys under this Agreement. Non-profit shall give full cooperation, in any auditing or monitoring conducted. Non-profit shall cooperate with SBCFPD in the implementation, monitoring and evaluation of this Agreement and comply with any and all reporting requirements established by SBCFPD. Non-profit shall repay to SBCFPD within thirty (30) days of receipt of audit findings the value of the Toys provided by SBCFPD to Non-profit that are determined by subsequent audit to have been distributed by Non-profit in violation of the purpose of the Toy Drive, the terms of this Agreement, or by law.

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, Non-profit, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the County or SBCFPD.

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.

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 Contract 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 Contract, and shall be the final authority in all matters pertaining to the Agreement. The SBCFPD Board of Directors must approve all amendments to this Contract.

9. **Venue**

The venue of any action or claim brought by any party to this Agreement will be the Superior Court of California, County of San Bernardino, 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, County of San Bernardino, San Bernardino District.

10. **Improper Consideration**

Non-profit 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 the County and SBCFPD in an attempt to secure favorable treatment regarding this Agreement.

Non-profit 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 Non-profit. 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**

Non-profit 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 Non-profit or office or employee of Non-profit.

12. Release of Information

No news releases, advertisements, public announcements or photographs arising out of this Agreement or Non-profit's relationship with SBCFPD may be made or used without prior written approval of SBCFPD's Fire Chief/Fire Warden, or the Fire Chief/Fire Warden's designee.

III. Indemnity and General Release

Non-profit releases SBCFPD and the County, as well as their employees, agents and contractors from all actions, claims or demands that Non-profit 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 Toys identified in this Agreement. In approving this release, Non-profit 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.

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

Non-profit agrees to indemnify, defend (with counsel reasonably approved by SBCFPD and County) and hold harmless SBCFPD and County and their 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 or County 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. Non-profit indemnification obligation applies to SBCFPD and County's "active" as well as "passive" negligence but does not apply to SBCFPD or County's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

IV. Waiver of Subrogation Rights

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

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 five (5) pages is the full and complete document describing the terms regarding the transfer of the equipment described herein.

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

►

Dated: _____

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

By ►

(Authorized signature - sign in blue ink)

Name _____

(Print or type name of person signing contract)

Title _____

(Print or Type)

FOR COUNTY USE ONLY

Approved as to Legal Form

►

Scott Runyan, Supervising Deputy County Counsel

Date _____

Reviewed for Contract Compliance

►

Date _____

Reviewed/Approved by Department

►

Date _____