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Contract Number

SAP Number

## San Bernardino County Fire Protection District

<b>Department Contract Representative</b>	Dan Munsey
<b>Telephone Number</b>	387-5779
<b>Contractor</b>	City of Upland
<b>Contractor Representative</b>	Steve Nix
<b>Telephone Number</b>	(909) 291-2984
<b>Contract Term</b>	February 1, 2025 - January 31, 2030
<b>Original Contract Amount</b>	\$6,000/Annually
<b>Amendment Amount</b>	
<b>Total Contract Amount</b>	
<b>Cost Center</b>	
<b>Grant Number (if applicable)</b>	

IT IS HEREBY AGREED AS FOLLOWS:

### ELECTRIC BILL AGREEMENT BETWEEN SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT AND CITY OF UPLAND

This agreement ("Agreement") is made and entered into by and between the San Bernardino County Fire Protection District (hereinafter referred to as "SBCFPD") and the City of Upland (hereinafter referred to as "City").

**WHEREAS**, the SBCFPD's Fire Station 163, located at 1350 N Benson Ave, Upland, CA 91786 has its electric meter located on the City's yard that's located at the same address; and

**WHEREAS**, the City pays the electric bill currently and requests reimbursement from SBCFPD based on the City's usage methodology; and

**WHEREAS**, the SBCFPD and the City find it more cost effective to enter into an agreement for the electric bill based on a flat monthly fee.

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

## **I. 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, City, 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.

### **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**

City 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.

City 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 City. 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**

City 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 City or office or employee of City.

#### **12. Release of Information**

No news releases, advertisements, public announcements or photographs arising out of this Agreement or City' 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.

#### **13. Assignment**

City shall not assign this Agreement without SBCFPD's advance written approval.

#### **14. 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.

### **II. Indemnity, Insurance, and General Release**

#### **1. General Release**

City releases SBCFPD and the County, as well as their employees, agents and contractors from all actions, claims or demands that City and/or its assignees, heirs, distributees, guardians, and legal representatives have or may in the future have for all injury or damage resulting from this Agreement. In approving this release, City 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.

#### **2. Indemnification and Insurance**

City 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 and/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. City 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.

**3. Additional Insured**

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

**4. Waiver of Subrogation Rights**

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

**5. 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 and the County.

**6. Severability of Interests**

City 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 City and SBCFPD and/or the County or between the County and/or SBCFPD and any other insured or additional insured under the policy.

**7. Proof of Coverage**

City shall furnish Certificates of Insurance to the County 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 City shall maintain such insurance from the time City commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, City 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.

**8. 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".

**9. 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.

## **10. 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 and the County have 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 and/or the County will be promptly reimbursed by City or any SBCFPD or County payments to City will be reduced to pay for SBCFPD or County purchased insurance.

## **11. Insurance Review**

Insurance requirements are subject to periodic review by SBCFPD and the County. 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 and the County. 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 and/or the County, inflation, or any other item reasonably related to SBCFPD and/or the County's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. City agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of SBCFPD and/or the County 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 and/or the County.

City agrees to provide insurance set forth in accordance with the requirements herein. If City uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, City agrees to amend, supplement or endorse the existing coverage to do so.

Without in anyway affecting the indemnity herein provided and in addition thereto, City shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

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 City and all risks to such persons under this contract.

If City has no employees, it may certify or warrant to SBCFPD and the County 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 the County's Director of Risk Management.

With respect to non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

Commercial/General Liability Insurance – City shall carry General Liability Insurance covering all operations performed by or on behalf of City 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.

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 City 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 City owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

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.

### **III. Fiscal Provisions**

1. SBCFPD shall compensate City the monthly amount of \$500.00.
2. At the beginning of each fiscal year, the City and SBCFPD will meet to adjust the monthly billed rate for the next twelve (12) month period. The amount will be adjusted by an amount equal to any increase or decrease in SCE adopted billing rates that have been approved by the CPUC during the previous twelve (12) month period.
3. City shall be responsible for all fees, costs, and expenses related to City's provision of services under this agreement.

4. City shall provide SBCFPD monthly invoices. SBCFPD shall make payment to the City within sixty (60) working days after receipt of invoice. Invoices shall be sent to:

San Bernardino County Fire Protection District  
Attn: Angelica Wines  
17001 Upland Ave.  
Fontana, CA 92335

#### **IV. Term**

1. The term of this Agreement is from February 1, 2025, through January 31, 2030.
2. Either party may, by ninety (90) day 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.

#### **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. Contract Execution**

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.

IN WITNESS WHEREOF, this Agreement has been executed and approved and is effective and operative as to each of the parties are herein provided.

**SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT**

▶ 

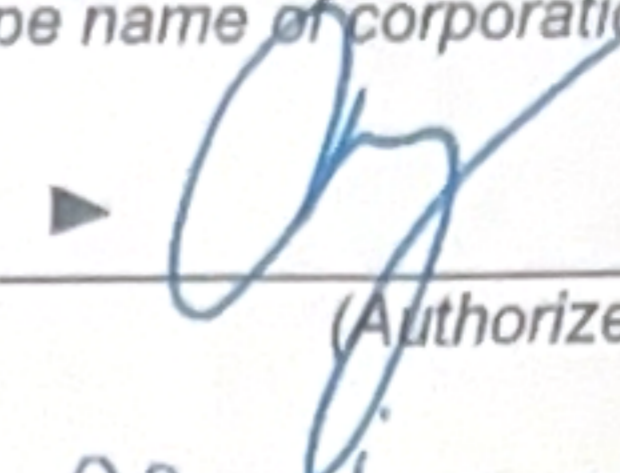
Alberto Cazares, Lead Buyer

Dated: 5-6-25

**CITY OF UPLAND**

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

By

▶ 

(Authorized signature - sign in blue ink)

Name

Michael Blay

(Print or type name of person signing contract)

Title

City manager

(Print or Type)

Dated:

1-29-25

Address

\_\_\_\_\_

**FOR COUNTY USE ONLY**

Approved as to Legal Form

▶ 

Rick Luczak, Deputy County Counsel

Date

5/5/2025

Reviewed for Contract Compliance

▶ \_\_\_\_\_

Date

Reviewed/Approved by Department

▶ \_\_\_\_\_

Date