



ADMINISTRATIVE COMMITTEE MEETING

TUESDAY, JUNE 27, 2023 – 1:30 PM

LOMA LINDA-EOC 25541 BARTON RD, LOMA LINDA

AGENDA

The CONFIRE Administrative Committee Meeting is scheduled for Tuesday, June 27, 2023 in the Loma Linda Fire Department Emergency Operations Center, 25541 Barton Road, Loma Linda, California.

Reports and Documents relating to each agenda item are on file at CONFIRE and are available for public inspection during normal business hours.

The Public Comment portion of the agenda pertains to items NOT on the agenda and is limited to 30 minutes; 3 minutes allotted for each speaker. Pursuant to the Brown Act, no action may be taken by the Administrative Committee at this time; however, the Committee may refer your comments/concerns to staff or request that the item be placed on a future agenda.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact CONFIRE at (909) 356-2302. Notification 48 hours prior to the meeting will enable CONFIRE to make reasonable arrangements to ensure accessibility to this meeting. Later requests will be accommodated to the extent feasible.

A recess may be called at the discretion of the Administrative Committee.

Liz Berry
1743 Miro Way, Rialto, CA 92376
909-356-2302
lberry@confire.org

A recess may be called at the discretion of the Administrative Committee.

CALL TO ORDER

- a. Flag Salute
- b. Roll call/Introductions

PUBLIC COMMENT

An opportunity provided for persons in the audience to make brief statements to the Administrative Committee. (Limited to 30 minutes; 3 minutes allotted for each speaker)

INFORMATION RELATIVE TO POSSIBLE CONFLICT OF INTEREST

Agenda items may require committee member abstentions due to conflict of interests and financial interests. CONFIRE Administrative Committee member abstentions shall be stated under this item for recordation on the appropriate item.

CONSENT ITEMS

The following items are considered routine and non-controversial and will be voted upon at one time by the Administrative Committee. An item may be removed by a Committee Member or member of the public for discussion and appropriate action.

- [1.](#) Approve Administrative Committee Minutes of May 30, 2023
- [2.](#) CONFIRE Operations Statement as of May 31, 2023
- [3.](#) Fund Balance Report as of May 31, 2023
- [4.](#) 2023 YTD Call Summary
- [5.](#) YTD Answering Times
- [6.](#) Billable Incidents
- [7.](#) EMK Consultants Agreement Renewal FY 2023-24

DIRECTOR REPORT

- a. Staffing
- b. EMD
- c. ECNS
- d. Management Updates

COMMITTEE REPORTS

- a. Support Committee Report/MIS Updates - Blessing Ugbo
- b. Ops Chief Committee Report - Chief Bruner
- c. CAD to CAD - Mike Bell

OLD BUSINESS

NEW BUSINESS

- [8.](#) CONFIRE / Chino Valley Fire Agreement for Interim Director - **Action Item**
- [9.](#) CONFIRE / Colton Fire Agreement for XBO ECC Chief - **Action Item**



ADMINISTRATIVE COMMITTEE MEETING

TUESDAY, MAY 30, 2023 – 8:30 AM

LOMA LINDA EOC – 25541 BARTON RD. LOMA LINDA

MINUTES

ROLL CALL

ADMINISTRATIVE COMMITTEE MEMBERS:

Chief Dan Harker/Chair, Loma Linda Fire Department
Chief Rich Sessler/Vice-Chair, Redlands Fire Department
Chief Buddy Peratt, Apple Valley Fire Protection District
Chief Dave Williams, Chino Valley Fire District
Chief Tim McHargue, Colton Fire Department *Arrived at 8:35 a.m.*
Chief Mike McCliman, Rancho Cucamonga Fire Department
Chief Brian Park, Rialto Fire Department-
Chief Bertral Washington, San Bernardino County Fire
Chief David Foster, Victorville Fire Department *Arrived at 8:34 a.m.*

CALL TO ORDER

- a. Flag Salute
- b. Roll call/Introductions

PUBLIC COMMENT

An opportunity provided for persons in the audience to make brief statements to the Administrative Committee. (Limited to 30 minutes; 3 minutes allotted for each speaker)

INFORMATION RELATIVE TO POSSIBLE CONFLICT OF INTEREST

Agenda items may require committee member abstentions due to conflict of interests and financial interests. CONFIRE Administrative Committee member abstentions shall be stated under this item for recordation on the appropriate item.

No conflicts were announced.

CONSENT ITEMS

The following items are considered routine and non-controversial and will be voted upon at one time by the Administrative Committee. An item may be removed by a Committee Member or member of the public for discussion and appropriate action.

1. Approve Administrative Committee Minutes of March 28, 2023
2. CONFIRE Operations Statement as of April 30, 2023

3. Fund Balance Report as of April 30, 2023
4. 2023 YTD Call Summary YTD
5. PSAP Answering Times YTD 2023
6. Billable Incidents
7. Contract Renewals – Big Bear, Montclair, Needles, County Road Dept., running Springs, and San Manuel
8. Matt Fratus Renewal

Motion to accept all items on Consent

Motion by: Chief Mike McCliman

Second by: Chief Bertral Washington

Yes - 7

No - 0

Abstain - 0

Absent – 2, Chief Tim McHarge and Chief David Foster

DIRECTOR REPORT

- a. Staffing
CONFIRE recently hired 15 new employees but has lost 6 due to performance issues. Currently have 4 onboarding, should be fully staffed within 30 days. Pay, Moral and culture remain intact.
- b. EMD
EMD numbers have increased in a positive direction. We continue to work with the academy to retain our accreditation.
- c. ECNS
Four full time nurse call takers currently onboarding. REMSA will remain on contract to be utilized as needed.
Leslie Parham addressed the Chiefs question regarding the possibility of securing funding from IEHP and Kaiser to fund the ECNS program. She advised the Chiefs that there is a group, headed by Harris Koenig, that is compiling the numbers requested by IEHP and Kaiser before any commitments are made.
- d. Management Updates

Alisha Johnson has been promoted to Interim Dispatch Manager, replacing Tim Franke who voluntarily demoted to Assistant Dispatch Manager.

Otto Schramm has been promoted to Interim Assistant Manager, backfilling the position John Tucker will be vacating early next year.

COMMITTEE REPORTS

- a. Support Committee Report/MIS Updates - Blessing Ugbo
 - *The new service desk implementation has been delayed a few weeks.*
 - *Next Gen Firewall is approximately 55% complete.*
 - *Backup system implementation is fully complete.*
 - *ISA III candidate has been found and offered, update at next meeting.*
- b. Ops Chief Committee Report – Chief Augie Barreda
 - *New OES MARS F-42 need all members to create a profile.*
 - *Replacement OPS Chief Liaison for BC Bruner*
9. CAD to CAD – Mike Bell – **ACTION ITEM**

Motion to approve CONFIRE Interim Assistant Director Mike Bell to participate on the FIRESCOPE CAD to CAD Committee. This includes the allocation of appropriate time and financial resources to accommodate this engagement.

Motion by: Chief Dave Williams

Second by: Chief Tim McHargue

Yes - 9

No - 0

Abstain - 0

Absent - 0

OLD BUSINESS

NEW BUSINESS

10. XBO ECC Chief – Nathan Cooke – **DISCUSSION ITEM**
XBO ECC Chief from a Member Agency to be a contracted staff position working 40 hours per week, starting July 1, 2023.

Chief Tim McHargue offered BC Henry Perez for the period of 1 year, no other member agency had staff to spare.

In the future all agencies will have the opportunity to participate and allow interested individuals to interview for this position.

11. Budget FY23/24 – Karen Hardy – **ACTION ITEM**

Motion to accept the CONFIRE Revenue Report for Fiscal Year 2024.

Motion by: Chief Tim McHargue

Second by: Chief Mike McCliman

Yes - 9

No - 0

Abstain - 0

Absent - 0

12. County Clarification Project Update – Chief McHargue – **DISCUSSION**

Progress being made in the following areas:

- *Contract with the County for the provision of certain County services is 90% complete.*
- *Resolution to participate in CIRA Workers Comp is going to the Board of Directors.*
- *Resolution to participate in SBCERA as a separate entity is being presented to the Board of Directors.*

13. Officer Elections – **ACTION ITEM**

Per CONFIRE By-Laws “He/She shall serve a one (1) year term as Chairperson/Vice-Chairperson and shall be elected to that position annually by the members of the Administrative Committee.”

Motion to Elect Dan Harker to a 1-year term as Chairperson and Chief Rich Sessler to a 1-year term as Vice-Chairperson.

Motion by: Chief Tim McHargue

Second by: Chief Mike McCliman

Yes - 9

No - 0

Abstain - 0

Absent - 0

ROUND TABLE

CLOSED SESSION

14. The Admin. Committee will meet in closed session to review and update anticipated Litigation – Significant exposure to litigation to Government Code section 4596.9(b): County Ambulance RFP
15. Pursuant to Government Code section 54956.9 (a), the Administrative Committee will meet in closed session to receive an update on litigation to which CONFIRE is a part.
16. Conference with Labor Negotiator – Government Code section 54957.6 CONFIRE Negotiator – Nathan Cooke, Employee Organization(s) – Emergency Service Dispatchers of San Bernardino County Association.

No reportable action taken during closed session.

ADJOURNMENT

Motion to adjourn the CONFIRE Administrative Committee Meeting

The meeting adjourned at 9:53 a.m.

Upcoming Meetings:

Next Regular Meeting: June 27, 2023, at 1:30 p.m.

 /s/ Liz Berry

Liz Berry

Administrative Secretary I



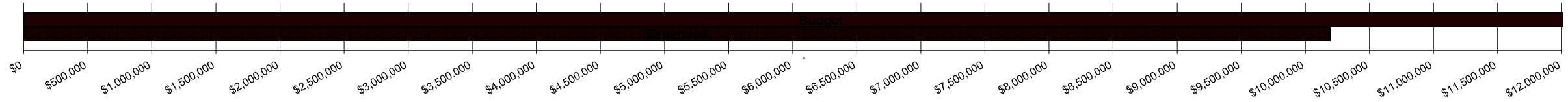
**OPERATIONS FUND 5008
MONTHLY SUMMARY FY 2022-23**

Transactions thru May 31, 2023

Item 2.

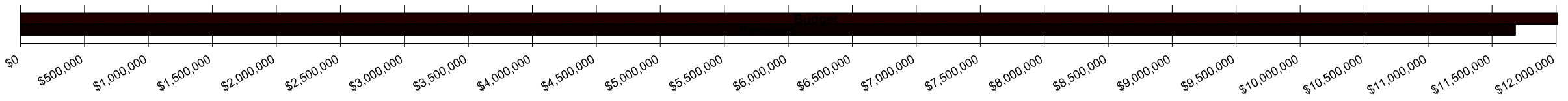
Expenditures	3 PP											3 PP June	Total YTD Expended	2022/23 Budget	Bud - Exp Difference	% Used
	July	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May					
Salary/Benefits	479,125	474,647	480,955	536,867	722,854	543,772	489,153	529,588	594,327	685,434	812,429	-	6,349,151	8,168,858	\$1,819,707	77.7%
Overtime/Call Back	30,415	32,897	33,822	32,497	46,289	31,703	27,647	39,659	39,444	52,839	36,626	-	403,838	323,000	-\$80,838	125.0%
Phone/Circuits/Internet	38,249	31,909	44,221	48,353	46,048	35,312	46,919	30,602	67,591	37,459	25,271	-	451,934	589,467	\$137,533	76.7%
County IS/Data Services/Counsel	13,287	(6,244)	8,333	9,927	17,780	7,666	1,221	13,578	21,626	(43,227)	17,865	-	61,810	60,926	-\$884	101.5%
Radio/Pager, Console Maint	-	41,784	42,098	43,871	41,255	45,609	42,132	42,182	41,767	42,374	42,259	-	425,333	516,947	\$91,614	82.3%
Computer Software	18,738	1,148,207	212,456	(64,623)	46,978	-	650	1,633	570,576	300	59,882	-	1,994,798	1,891,258	(\$103,540)	105.5%
Computer Hardware	129	(129)	-	-	866	-	-	552	-	(856)	856	-	1,419	18,450	\$17,031	7.7%
Office Exp/Copier Lease	6,539	2,693	3,383	4,027	4,574	5,465	3,057	5,954	31,918	3,956	7,044	-	78,611	98,245	\$19,634	80.0%
Insurance/Auditing	31,987	-	22,522	4,788	8,000	4,600	-	-	-	-	5,000	-	76,897	69,792	(\$7,105)	110.2%
Payroll/HR/Medical Director	74,878	904	5,473	10,081	8,570	3,912	9,094	6,068	19,726	2,745	9,531	-	150,983	352,183	\$201,200	42.9%
Travel/Training	3,498	612	4,662	720	1,820	5,003	245	6,180	1,392	3,005	1,125	-	28,263	70,000	\$41,737	40.4%
Auto/Structure/Fuel	-	1,942	4,309	2,319	6,905	2,916	1,628	1,709	(3,062)	2,250	1,258	-	22,174	30,077	\$7,903	73.7%
Other/HDGC Rent/Equip Trans	13,658	13,789	26,416	141	14,273	14,752	12,082	15,028	12,750	12,085	13,042	-	148,016	251,488	\$103,472	58.9%
Total	710,504	1,743,011	888,650	628,970	966,212	700,711	633,828	692,732	1,398,056	798,364	1,032,188	-	10,193,226	12,440,691	\$2,247,465	81.9%

% Fiscal Year Passed 91.7%



Revenue	3 PP											June	Received	Budget	Difference	% Rcvd
	July	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May					
Services	3,144,053	15	(7,103)	3,167,239	15	15	3,216,492	-	-	3,194,486	109,465	-	12,824,676	12,432,190	(\$392,486)	103%
Interest	7,689	(7,689)	-	11,854	-	-	18,572	-	-	34,727	-	-	65,153	-	(\$65,153)	
Other	-	59,228	14,627	13,033	-	-	(72)	1,490	(1,305,500)	-	8,107	-	(1,209,088)	-	\$1,209,088	
Total	3,151,741	51,554	7,524	3,192,126	15	15	3,234,991	1,490	(1,305,500)	3,229,213	117,572	-	11,680,741	12,432,190	\$751,449	94%

% Fiscal Year Passed 91.7%





**FY 2022-2023
Fund Balance Report
as of May 31, 2023**

Operations Fund (5008)

Audited Fund Balance 7/1/22		* \$	2,695,737
Revenue	12,978,134		
Expenditures	(10,186,269)		
	Net		2,791,865
Board Approved March 2023			
Transfers Out to Fund 5010 for 25% Balance	(305,500)		
Transfers Out to 5020 - EMS Startup	(1,000,000)		
	Net Transfers In/Out		(1,305,500)
	Total Fund Balance	\$	4,182,102

**FY 2022-23 Operating costs 10% is \$1,282,856 Per Board Policy*

Equipment Reserve Fund (5009)

Audited Fund Balance 7/1/22		\$	2,235,361
Revenue	692,270		
Expenditures	(501,172)		
	Net		191,098
	Total Fund Balance	\$	2,426,459

General Reserve Fund (5010)

Audited Fund Balance 7/1/22		* \$	6,151,643
Revenue	351,015		
Expenditures	(1,065,207)		
Grant Funds Due to CAD to CAD	-		
	Net		(714,192)
	Total Fund Balance		5,437,451
Board Approved Transfers			
Transfers-In to from Fund 5019 (Loan Pmt.)	500,000		
Transfer-In from Fund 5008 - Replenish 25%	305,500		
			805,500
	Total Fund Balance	\$	6,242,951.01
Restricted Fund Balance			
Reserve for CIP	3,000,000		
EMD Optimization (ECNS) Project	250,000		
	Net Committed		3,250,000
	Available Fund Balance	\$	2,992,951

**FY 2022-23 Operating costs 25% is \$3,207,140*



**FY 2022-2023
Fund Balance Report
as of May 31, 2023**

Term Benefits Reserve Fund (5011)

Audited Fund Balance 7/1/22		\$ 1,610,781
Revenue	280,354	
Expenditures	<u>(10,000)</u>	
	Net	270,354
Transfer Comp. Absence From 5008	-	
Unfunded Liability		
	Net Transfers In/Out	-
	Total Fund Balance	<u><u>\$ 1,881,135</u></u>

CAD-to-CAD Project Special Revenue Fund (5019)

Audited Fund Balance 7/1/22		\$ 904,203
Revenue	165,005	
Expenditures	<u>(263,429)</u>	
	Net	(98,424)
Transfers-out back into Fund 5010 (Loan Pmt.)	<u>(500,000)</u>	
	Net Transfers In/Out	(500,000)
	Total Fund Balance	<u><u>\$ 305,779</u></u>

Emergency Medical Service Division Enterprise Fund (5020)

Fund Balance 01/01/23		\$ -
Revenue	124,452	
Expenditures	<u>-</u>	
	Net	124,452
Board Approved March 2023		
Transfer In from Fund 5008 - Start up Fund	<u>\$ 1,000,000</u>	
	Net Transfers In/Out	1,000,000
	Available Fund Balance	<u><u>\$ 1,124,452</u></u>

Total Beginning Fund Balance - 07/01/22	\$ 13,597,725
Total Ending Fund Balance - 02/28/23	\$ 16,162,878



Call Summary

CONFIRE/Comm Center

1743 W Miro Way
Rialto, CA 92376 County: San Bernardino

Year: 2023

From: 1/1/2023

To: 5/31/2023

Period Group: Month

Call Type: All

Abandoned Filters: Include Abandoned

CONFIRE

Date	911	911 Abdn	Total 911	911 Abdn Percentage	10-Digit Emergency Inbound	10-Digit Emergency Abdn	Total 10-Digit Emergency	Admin Outbound	Admin Inbound	Admin Inbound Abandoned	Total Admin	Total All Calls	Average Call Duration
Jan-22	17428	41	17469	0.23%	11753	374	12127	14651	4522	104	19277	48873	101.8
Feb-22	16539	64	16603	0.39%	11441	366	11807	14177	4174	128	18479	46889	103.4
Mar-23	17634	59	17693	0.33%	12769	502	13271	17310	4768	99	22177	53141	109.7
Apr-23	17536	85	17621	0.48%	11581	365	11946	15027	4848	69	19938	49505	113.5
May-23	17749	65	17814	0.36%	12048	383	12431	15682	4820	89	20591	50836	116.4
2023 Totals	86886	314	87200	0.36%	59592	1990	61582	76852	23132	483	100467	249249	109.1
2022 Totals	93125	2001	95126	2.10%	60390	4169	64559	73291	26169	996	100456	260141	110.1



CONFIRE

PSAP Answer Time

CONFIRE/Comm Center
 1743 W Miro Way
 Rialto, CA 92376 County: San Bernardino

Month - Year: 1/1/2023 - 5/31/2023
 Agency: Fire
 Affiliation:

From: 1/1/2023
 To: 5/31/2023
 Period Group: Month
 Time Group: 60 Minute
 Time Block: 00:00 - 23:59
 Call Type: 911 Calls

Call Hour	Answer Times In Seconds							
	0 - 10	11-15	16 - 20	21 - 40	41 - 60	61 - 120	120+	Total
January 2023 Total	16,325	465	252	329	71	27	0	17,469
% answer time ≤ 10 seconds	93.45%	2.66%	1.44%	1.88%	0.41%	0.15%	0.00%	100.00%
% answer time ≤ 15 seconds	96.11%							
% answer time ≤ 40 seconds	99.44%							
February 2023 Total	15,275	504	283	415	77	48	1	16,603
% answer time ≤ 10 seconds	92.00%	3.04%	1.44%	1.88%	0.41%	0.15%	0.00%	100.00%
% answer time ≤ 15 seconds	95.04%							
% answer time ≤ 40 seconds	99.24%							
March 2023 Total	15,937	672	369	495	160	57	3	17,693
% answer time ≤ 10 seconds	90.08%	3.80%	2.09%	2.80%	0.90%	32.00%	2.00%	100.00%
% answer time ≤ 15 seconds	93.87%							
% answer time ≤ 40 seconds	98.76%							
April 2023 Total	16,524	487	244	273	62	27	4	17,621
% answer time ≤ 10 seconds	93.77%	2.76%	1.38%	1.55%	0.35%	0.15%	0.02%	100.00%
% answer time ≤ 15 seconds	96.54%							
% answer time ≤ 40 seconds	99.47%							
May 2023 Total	16,792	455	212	276	55	24	0	17,621
% answer time ≤ 10 seconds	94.26%	2.55%	1.19%	1.55%	0.31%	0.13%	0.00%	100.00%
% answer time ≤ 15 seconds	96.82%							
% answer time ≤ 40 seconds	99.56%							
Year to Date 2023 Total	80,853	2,583	1,360	1,788	425	183	8	87,200
% answer time ≤ 10 seconds	92.72%	2.96%	1.56%	2.05%	0.49%	0.21%	0.01%	100.00%
% answer time ≤ 15 seconds	95.68%							
% answer time ≤ 40 seconds	99.29%							
Year to Date 2022 Total	81,702	3,472	2,470	4,516	1,632	1,186	148	95,126
% answer time ≤ 10 seconds	85.89%	3.65%	2.60%	4.75%	1.72%	1.25%	0.16%	100.00%
% answer time ≤ 15 seconds	89.54%							
% answer time ≤ 40 seconds	96.88%							

CONFIRE Billable Incidents

Period: 01/01/2023 thru 05/31/2023

Jurisdiction	# of Incidents	% of Total
San Bernardino County	53,378	53.41%
VictorvilleFD	9,478	9.48%
RanchoCucamonga	7,217	7.22%
ChinoValleyFD	5,243	5.25%
AppleValley	5,241	5.24%
Redlands	4,771	4.77%
Rialto	4,770	4.77%
Colton	2,815	2.82%
MontclairFD	1,971	1.97%
Loma Linda	1,795	1.80%
Big Bear Fire	1,648	1.65%
San Manuel FD	794	0.79%
Running Springs	325	0.33%
Baker Ambulance	318	0.32%
Road Department	168	0.17%
Total	99,932	100%
BDC Division	# of Incidents	% of Total
East Valley	17,787	33.32%
Fontana	8,599	16.11%
Valley	7,435	13.93%
South Desert	5,214	9.77%
Hesperia	5,066	9.49%
North Desert	4,883	9.15%
Mountain	2,264	4.24%
Adelanto	2,061	3.86%
Hazmat	69	0.13%
Total	53,378	100%

**INDEPENDENT CONTRACTOR AGREEMENT FOR SPECIAL SERVICES
[Support with Emergency Communications Nurse System (ECNS) Project]**

This agreement (“Agreement”) is by and between the Consolidated Fire Agencies (“CONFIRE”) and [EMK Consultants Inc] (“Contractor”) (together, they are referred to as “Parties,” and individually, as a “Party”).

RECITALS

1. CONFIRE is authorized by Section 53060 of the California Government Code to contract with and employ any persons to furnish special services and advice in financial, economic, accounting, engineering, legal or administrative matters, if those persons are specially trained and experienced and competent to perform the special services that are required.
2. CONFIRE is in need of such services and advice and the Contractor warrants that it is specially trained, licensed and experienced and competent to perform the services required by CONFIRE.

AGREEMENT

1. EXHIBITS

This Agreement has multiple Exhibits. Any Exhibit that is specified in this Agreement is by this reference made a part of it.

Exhibits include:

- Exhibit A: Scope of Services
- Exhibit B: Compensation
- Exhibit C: General Terms and Conditions
- Exhibit D: Insurance

2. EFFECTIVE DATE AND TERM

- a. This Agreement is effective on [7/1/2023] (“Effective Date”).
- b. Unless terminated or otherwise cancelled in accordance with a provision of this Agreement, the term of this Agreement shall be: (i) from the Effective Date to (ii) [6/30/2024].
- c. This agreement may be extended for one additional year with Administrative Committee approval with an annual increase of 4 percent (%).

3. INDEPENDENT CONTRACTOR

Contractor, in the performance of this Agreement, is and shall act as an independent contractor. Contractor understands and agrees that Contractor and all of Contractor’s employees shall not be considered officers, employees, agents, partner, or joint venture of

CONFIRE, and are not entitled to benefits of any kind or nature normally provided employees of CONFIRE and/or to which CONFIRE’s employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker’s Compensation. Contractor shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Contractor’s employees.

4. SCOPE OF SERVICES

Contractor shall furnish to CONFIRE the services described in Exhibit A (“Services”).

5. COMPENSATION

Contractor shall receive payment, for Services satisfactorily rendered pursuant to this Agreement, as specified in Exhibit B (“Compensation”).

6. GENERAL TERMS AND CONDITIONS

The General Terms and Conditions are set forth in Exhibit C.

7. INSURANCE

Exhibit D, entitled Insurance, is attached and incorporated by reference.

8. NOTICE

Any notice required by this Agreement may be given either by personal service or by deposit (postage prepaid) in the U.S. mail addressed as follows:

To CONFIRE:
Consolidated Fire Agencies
Attn: Art Andres, Director
1743 Miro Way
Rialto, CA 92376

To Contractor:
EMK Consultants Inc
Attn: Elaine Messerli-Kelly
7440 Lacerta Drive
Sparks, NV 89436

9. LIMITATION OF LIABILITY

Other than as provided in this Agreement, CONFIRE's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall CONFIRE be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.

The Parties have executed this Agreement on the dates indicated below.

CONSOLIDATED FIRE AGENCIES

EMK Consultants Inc

Date: _____, 20__

Date: 6-22, 2023

By: _____

By: Elaine M. Kelly

Print Name: Nathan Cooke

Print Name: Elaine Messerli-Kelly

Its: Interim Communications Director

Its: Owner

EXHIBIT A
to AGREEMENT FOR SERVICES

SCOPE OF SERVICES

Consultant is to provide services related to the following actions items and deliverables:

- Engage with Client to ensure that the Emergency Communication Nurse System (ECNS) is implemented and operationalized for success.
- Support Client in projects and activities which address low acuity callers to the 911 system.
- Collaborate with Client to identify and address obstacles with a goal of ultimately achieving ACE (Accredited Center of Excellence) Accreditation and sustainability.
- Support Client in the education of the Emergency Medical Dispatch (EMD) team. The EMD's will team up with the Emergency Communication Nurse (ECN) to navigate low acuity patients to the most appropriate care level. This process will help reduce non-emergent transports.
- Provide subject matter expertise with the ECN team to develop a cohesive culture. Provide subject matter expertise while implementing the education and quality program for the Client utilizing the International Academy of Emergency Dispatch (IAED) Emergency Communication Nurse Quality (ECN-Q) standards.
- Conduct Client quality audits utilizing the Advanced Quality Assurance (AQUA) software provided by the IAED. Support the client's ECN-Q while conducting internal quality audits in support of ACE Compliance.
- Collaborate with Client to identify opportunities for improvement for each ECN as well as the ECN team.
- Develop education regarding the IAED ECNS and ECN-Q Standards

The Services will also include any other consulting tasks which the Parties may agree on. The Consultant hereby agrees to provide such Services to the Client.

**EXHIBIT B
to AGREEMENT FOR SERVICES**

COMPENSATION

A. Compensation

\$99.00 per hour

Not to exceed the sum of \$40,000.

B. Payment

- a. Schedule
 - (1) To be billed in monthly installments
- b. Process

Payment shall be made (for all undisputed amounts) within thirty (30) calendar days after the Contractor submits an invoice to CONFIRE for Services actually completed.

EXHIBIT C to AGREEMENT FOR SERVICES

GENERAL TERMS AND CONDITIONS

1. **STANDARD OF CARE.** Contractor's Services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of his/her profession for services to California public agencies.
2. **ORIGINALITY OF SERVICES.** Contractor agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to CONFIRE and/or used in connection with this Agreement, shall be wholly original to Contractor and shall not be copied in whole or in part from any other source, except those submitted to Contractor by CONFIRE as a basis for such services.
3. **PRODUCT.** Contractor understands and agrees that all matters produced under this Agreement shall become the property of CONFIRE and cannot be used without CONFIRE's express written permission. CONFIRE shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of CONFIRE. Contractor consents to use of Contractor's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.
4. **TERMINATION.**
 - a. **Without Cause by CONFIRE.** CONFIRE may, at any time, with or without reason, terminate this Agreement and compensate Contractor only for services satisfactorily rendered to the date of termination. Written notice by CONFIRE shall be sufficient to stop further performance of services by Contractor. Notice shall be deemed given when received by the Contractor or no later than three (3) days after the day of mailing, whichever is sooner.
 - b. **Without Cause by Contractor.** Contractor may not terminate this Agreement without cause.
 - c. **With Cause by CONFIRE.** CONFIRE may terminate this Agreement upon giving written notice of intent to terminate for cause. Cause shall include:
 - (1) material violation of this Agreement by the Contractor; or
 - (2) any act by Contractor exposing CONFIRE to liability to others for personal injury or property damage; or
 - (3) Contractor is adjudged bankrupt, Contractor makes a general assignment for the benefit of creditors, or a receiver is appointed on account of Contractor's insolvency.

Written notice by CONFIRE shall contain the reasons for such intent to terminate and unless within three (3) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, CONFIRE may secure the required services from another Contractor. If the expense, fees, and/or costs to CONFIRE exceeds the cost of providing the service pursuant to this Agreement, the Contractor shall immediately pay the excess expense, fees, and/or costs to CONFIRE upon the receipt of CONFIRE's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to CONFIRE.
 - d. **With Cause by Contractor.** Contractor may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:
 - (1) material violation of this Agreement by CONFIRE; or
 - (2) any act by CONFIRE exposing the Contractor to liability to others for personal injury or property damage; or
 - (3) CONFIRE is adjudged bankrupt, CONFIRE makes a general assignment for the benefit of creditors or a receiver is appointed on account of Contractor's insolvency.

Written notice by Contractor shall contain the reasons for such intention to terminate and unless within thirty (30) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the thirty (30) calendar days cease and terminate. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to Contractor.
 - e. Upon termination, Contractor shall provide CONFIRE with all documents produced maintained or collected by Contractor pursuant to this Agreement, whether or not such documents are final or draft documents.
5. **INDEMNIFICATION/ DEFENSE /HOLD HARMLESS.**
 - a. **Generally.** To the furthest extent permitted by

California law, Contractor shall indemnify, defend, and hold free and harmless the Indemnified Parties from any Claim to the extent that the Claim:

- (1) arises out of, pertains to, or relates to the negligent errors or omissions (active or passive, ordinary or gross), recklessness (ordinary or gross), or willful misconduct of Contractor, its directors, officials, officers, employees, contractors, subcontractors, consultants, or subconsultants; *or*
 - (2) arises out of, pertains to, or relates to the performance of this Agreement
- b. **Indemnified Parties, Defined.** The “Indemnified Parties” are CONFIRE, its officers, consultants, employees, and trustees.
- c. **Claim, Defined.** A “Claim” consists of actions, assessments, counts, citations, claims, costs, damages, demands, judgments, liabilities (legal, administrative or otherwise), losses, notices, expenses, fines, penalties, proceedings, responsibilities, violations, reasonable attorney’s and consultants’ fees and causes of action to property or persons, including personal injury and/or death, except that:
- (1) If the Contract is a contract for design professional services under Civ. Code, § 2782.8, a “Claim” shall be limited to those that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor; and
 - (2) If the Contract is a construction contract with a public agency under Civ. Code, § 2782, a “Claim” shall exclude any loss to the extent that such loss arises from the active negligence, sole negligence, or willful misconduct of the Indemnified Parties or defects in design furnished by those persons.
- d. CONFIRE may accept or reject legal counsel Contractor proposes to defend CONFIRE with, in its sole and absolute discretion, and may thereafter appoint, legal counsel to defend CONFIRE at Contractor’s expense against a Claim set forth in Section 5.a, supra, of this Exhibit C.
6. **INSURANCE.** The Contractor shall procure and maintain at all times it performs any portion of the Services the insurances specified in Exhibit D to the Agreement.
7. **CONFIDENTIALITY.** The Contractor and the Contractor’s agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services (“Confidential Information”), and shall not disclose Confidential Information, including information derived from Confidential Information, to any person not a party

to this Agreement without the express prior written consent of CONFIRE, except as required by law or as necessary for Contractor’s agents, personnel, employee(s), and/or subcontractor(s) to perform the Services. If Contractor or any of Contractor’s agents, personnel, employee(s), and/or subcontractor(s) is served with any subpoena, court order, or other legal process seeking disclosure of any Confidential Information, both Contractor and the person served shall each promptly send to CONFIRE notice(s) of the legal process”, but in no event shall do so any later than forty-eight (48) hours or such shorter time frame as necessary so that CONFIRE may exercise any applicable legal rights and remedies. Contractor shall require its agents, personnel, employee(s), and/or subcontractor(s), as a condition of their retention, appointment, employment, or contract, to agree to comply with the provisions of this Section, and shall not permit its agents, personnel, employee(s), and/or subcontractor(s) access to Confidential Information in the absence of such agreement being effective. The obligations imposed in this Section shall survive the termination of this Agreement.

8. **CONFLICT OF INTEREST.** Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provisions of Gov. Code, § 1090 et seq. and Chapter 7 of the Political Reform Act of 1974 (Gov. Code, § 87100 et seq.), and certifies that it does not know of any facts that constitute a violation of those provisions. In the event Contractor receives any information subsequent to execution of this Agreement that might constitute a violation of these provisions, Contractor agrees it shall immediately notify CONFIRE of this information.
9. **APPROVAL OF LEGISLATIVE BODY.** This Agreement shall not be binding upon CONFIRE until CONFIRE’s legislative body has approved all the terms and conditions contained herein.
10. **DISPUTES.** In the event of a dispute between the parties as to performance of Services, Agreement interpretation, or payment, the Parties shall attempt to resolve the dispute by negotiation and/or mediation, if agreed to by the Parties. Pending resolution of the dispute, Contractor shall neither rescind the Agreement nor stop performing the Services.
11. **COMPLIANCE WITH LAWS.** Contractor shall observe and comply with all rules and regulations of the governing board of CONFIRE and all federal, state, and local laws, ordinances and regulations. Contractor shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Services as indicated or specified. If Contractor observes that any of the Services required by this Agreement is at variance with any

such laws, ordinance, rules or regulations, Contractor shall notify CONFIRE, in writing, and, at the sole option of CONFIRE, any necessary changes to the scope of the Services shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon Contractor's receipt of a written termination notice from CONFIRE. If Contractor performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying CONFIRE of the violation, Contractor shall bear all costs arising therefrom.

- 12. PERMITS/LICENSES.** Contractor and all Contractor's employees or agents shall secure and maintain in force all permits and licenses that are required by law in connection with the furnishing of Services pursuant to this Agreement.
- 13. SAFETY AND SECURITY:** Contractor is responsible for maintaining safety in the performance of this Agreement. Contractor shall be responsible to ascertain from CONFIRE the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.
- 14. ANTI-DISCRIMINATION.** It is the policy of CONFIRE that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work 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, age, sexual orientation, or military and veteran status, or any other class or status protected by applicable law, and therefore the Contractor agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the Contractor agrees to require like compliance by all its subcontractor(s).
- 15. AUDIT.** Contractor shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Contractor transacted under this Agreement. Contractor shall retain these books, records, and systems of account during the Term of this Agreement and for three (3) years thereafter. Contractor shall permit CONFIRE, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time,

provided that CONFIRE shall give reasonable prior notice to Contractor and shall conduct audit(s) during Contractor's normal business hours, unless Contractor otherwise consents.

- 16. EVALUATION OF CONTRACTOR AND SUBORDINATES.** CONFIRE may evaluate the Contractor in any manner which is permissible under the law. CONFIRE's evaluation may include, without limitation:
- Requesting CONFIRE employee(s) evaluate the Contractor and the Contractor's employees and subcontractors and each of their performance.
 - Announced and unannounced observance of Contractor, Contractor's employee(s), and/or subcontractor(s)
- 17. TIME IS OF THE ESSENCE.** Time is of the essence in the performance of Services and the timing requirements agreed upon by the Parties, if any, shall be strictly adhered to unless otherwise modified in writing in accordance with Section 28 of this Agreement. Contractor shall commence performance and shall complete all required Services no later than the dates agreed upon by the Parties. Any Services for which times for performance are not specified shall be commenced and completed by Contractor in a reasonably prompt and timely manner based upon the circumstances and direction communicated to Contractor by CONFIRE.
- 18. PROVISIONS REQUIRED BY LAW DEEMED INSERTED.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted and this Agreement shall be read and enforced as though it were included. If through mistake or otherwise, any provision is not inserted or is not correctly inserted, then upon application of either Party, the Agreement shall be amended to make the insertion or correction. All references to statutes and regulations shall include all amendments, replacements, and enactments in the subject which are in effect as of the date of this Agreement, and any later changes which do not materially and substantially alter the positions of the Parties.
- 19. ASSIGNMENT AND SUCCESSORS.** Neither CONFIRE nor Contractor shall, without the prior written consent of the other Party, assign the benefit or in any way transfer their respective obligations under this Agreement. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and, except as otherwise provided herein, upon their executors, administrators, successors, and assigns.
- 20. SEVERABILITY.** In the event that any provision of this Agreement shall be construed to be illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions hereof, but

such illegal or invalid provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal or invalid provision had never been included herein, unless to do so would frustrate the intent and purpose of this Agreement.

- 21. FORCE MAJEURE.** No Party shall be liable to any other Party for any loss or damage of any kind or for any default or delay in the performance of its obligations under this Agreement (except for payment obligations) if and to the extent that the same is caused, directly or indirectly, by fire, flood, earthquake, elements of nature, epidemics, pandemics, quarantines, acts of God, acts of war, terrorism, civil unrest or political, religious, civil or economic strife, or any other cause beyond a Party's reasonable control.
- 22. VENUE/GOVERNING LAWS.** This Agreement shall be governed by the laws of the State of California and venue shall be in the County and/or federal judicial district in which CONFIRE's principal administrative office is located.
- 23. ATTORNEY'S FEES.** If suit is brought by either Party to enforce any of the terms of this Agreement, each Party shall bear its own attorney's fees and costs.
- 24. EXHIBITS.** All Exhibits referred to in this Agreement are incorporated in this Agreement and made a part of this Agreement as if fully set forth herein.
- 25. ENTIRE AGREEMENT.** This Agreement represents the entire agreement between CONFIRE and Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended or modified only by an agreement in writing, signed by both CONFIRE and Contractor.
- 26. MODIFICATION.** This Agreement may be amended at any time by the written agreement of CONFIRE and Contractor.
- 27. WAIVER.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this Agreement.
- 28. AUTHORITY.** The individual executing this Agreement on behalf of Contractor warrants that he/she is authorized to execute the Agreement on behalf of Contractor and that Contractor will be bound by the terms and conditions contained herein.
- 29. HEADINGS AND CONSTRUCTION.** Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the Parties and are not a part of the Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather

as if both Parties had prepared the same. Unless otherwise indicated, all references to paragraphs, sections, subparagraphs, and subsections are to this Agreement.

- 30. COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, together, when signed by all of the Parties hereto, shall constitute one and the same instrument. A facsimile or electronic signature shall be as valid as an original.
- 31. DEBARMENT.** Contractor 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 as required by Executive Order 12549
- 32. FEDERAL AUDIT.** Contractor shall provide CONFIRE, any person granting funds to CONFIRE to fund this Contract, any Federal grantor agency when funds are granted to CONFIRE to fund this contract, the Comptroller General of the United States, or any of their duly authorized representatives with access to its books, documents, papers, and records of Contractor which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcriptions. All such records shall be retained for no less than three (3) years after final payment is made under this Agreement.
- 33. Federal Grant Specific Requirements**
- Must conform with applicable contract provisions contained in 2 CFR 200, Appendix II - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards (Exhibit E).
 - The award will not be made to any party debarred, suspended, or otherwise excluded from participation in federal assistance programs. Vendor must be registered and will be checked against the Federal Debarment List (www.sam.gov). Please note a UEI number is required to register on the SAM web site.
 - Local preference does not apply.

**EXHIBIT D
to AGREEMENT FOR SERVICES**

INSURANCE

- 1. Contractor shall procure and maintain at all times it performs any portion of the Services the following insurances with minimum limits equal to the amounts indicated below.
 - 1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the Contractor, CONFIRE, and the contracting agencies and member agencies of CONFIRE from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Services. (Form CG 0001 and CA 0001)
 - 1.2. **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Contractor shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services. Contractor shall sign and file with CONFIRE the following certification prior to performing the work of the contract: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."
 - 1.3. **Professional Liability (Errors and Omissions).** Professional Liability (Errors and Omissions) Insurance as appropriate to the Contractor's profession.

Type of Coverage	Minimum Coverage
Commercial General Liability Insurance , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments Each Occurrence General Aggregate	\$1,000,000 \$1,000,000
Automobile Liability Insurance - Any Auto Each Occurrence General Aggregate	\$1,000,000 \$1,000,000
Professional Liability	\$1,000,000
Workers Compensation	Statutory Limits
Employer's Liability	\$1,000,000

- 2. The Contractor shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage's have been delivered in duplicate to CONFIRE and approved by CONFIRE. Certificates and insurance policies shall include the following:
 - 2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to CONFIRE, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."
 - 2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.
 - 2.3. An endorsement stating that CONFIRE and contracting agencies and member agencies of CONFIRE, and their representatives, employees, trustees, officers, consultants, and volunteers are named additional insureds under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that Contractor's

- 2.4. insurance policies shall be primary to any insurance or self-insurance maintained by CONFIRE.
All policies shall be written on an occurrence form, except for Professional Liability which shall be on a claims-made form.

**CONFIRE****STAFF REPORT****DATE: June 27, 2023****FROM: Nathan Cooke
Interim Director****TO: CONFIRE Admin Committee**

SUBJECT: Interim Director Agreement

Recommendation

It is recommended that the CONFIRE Administrative Committee Approve the Interim Director agreement with Chino Valley Fire District.

Background Information

The CONFIRE Administrative Committee previously approved an agreement with the Chino Valley Fire District to provide an Interim Director to CONFIRE. The agreement was extended for 6-months and is set to expire on 06/30/23.

Due to the County ambulance RFP being delayed several times, CONFIRE was not able to recruit and hire a permanent director. CONFIRE is still in need of an Interim Director and is recommending that Nathan Cooke continue to serve in that capacity until a permanent replacement is found.

Fiscal Impact

The agreement with Chino Valley Fire will cost \$200,674.50. This amount will be covered with a transfer of funds from salary savings (from the Director and other personnel vacancies) from Fund 5008 into Fund 5010 (Contracts). No increase in costs to agencies will result from this action.

INDEPENDENT CONTRACTOR AGREEMENT BETWEEN CONFIRE AND CHINO VALLEY INDEPENDENT FIRE DISTRICT

This agreement (“Agreement”) is by and between the Consolidated Fire Agencies (“CONFIRE”), a California joint powers authority existing pursuant to Gov. Code, § 6500 et seq., and Chino Valley Independent Fire District (“Contractor”), a fire protection district organized pursuant to the Fire Protection District Law (Health & Safety Code §13800, et seq.) (together, they are referred to as “Parties,” and individually, as a “Party”).

RECITALS

1. CONFIRE is authorized by Section 53060 of the California Government Code to contract with and employ any persons to furnish special services and advice in financial, economic, accounting, engineering, legal or administrative matters, if those persons are specially trained and experienced and competent to perform the special services that are required.
2. CONFIRE is in need of such services and advice and the Contractor warrants that it is specially trained, licensed and experienced and competent to perform the services required by CONFIRE.
3. CONFIRE wishes to engage Contractor to provide the services described herein, on a limited term basis due to an unforeseen need, using Contractor’s existing employee.

AGREEMENT

1. EXHIBITS

This Agreement has multiple Exhibits. Any Exhibit that is specified in this Agreement is by this reference made a part of it.

Exhibits include:

- Exhibit A: Scope of Services
- Exhibit B: Payment
- Exhibit C: General Terms and Conditions
- Exhibit D: Insurance
- Exhibit E: Business Associate Agreement

2. EFFECTIVE DATE AND TERM

- a. This Agreement is effective on the date immediately following approval by the CONFIRE Administrative Committee approval and approval by the Consultant’s designated representative (“Effective Date”).

- b. Unless terminated or otherwise cancelled in accordance with a provision of this Agreement, the term of this Agreement shall be: (i) from the Effective Date to (ii) 12/31/2023 (“Initial Term”).
- c. This Agreement may be extended for an additional six months until 06/30/2024 with CONFIRE Administrative Committee approval and approval by the Contractor’s designated representative.

3. INDEPENDENT CONTRACTOR

Contractor, in the performance of this Agreement, is and shall act as an independent contractor. Contractor understands and agrees that Contractor and all of Contractor’s employees shall not be considered officers, employees, agents, partner, or joint venture of CONFIRE, and are not entitled to benefits of any kind or nature normally provided employees of CONFIRE and/or to which CONFIRE’s employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker’s Compensation. Contractor shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Contractor’s employees.

4. SCOPE OF SERVICES

Contractor shall furnish to CONFIRE the services described in Exhibit A (“Services”). Services shall be provided by Nathan Cooke. Substitution by Contractor of another of its employees to provide Services will only occur with the concurrence of CONFIRE.

5. PAYMENT

Contractor shall receive payment, for Services satisfactorily rendered pursuant to this Agreement, as specified in Exhibit B (“Payment”). In no event shall the total amount paid for the Services under this Agreement during the Initial Term of the Agreement exceed \$200,674.50, without the written approval of the Parties in advance. Periodic payment shall be made within 15 days of a monthly invoice.

6. GENERAL TERMS AND CONDITIONS

The General Terms and Conditions are set forth in Exhibit C.

7. INSURANCE

Exhibit D, entitled Insurance, is attached, and incorporated by reference.

8. HIPAA BUSINESS ASSOCIATE AGREEMENT

The "Business Associate Agreement" is set forth in Exhibit E.

9. NOTICE

Any notice required by this Agreement may be given either by personal service or by deposit (postage prepaid) in the U.S. mail addressed as follows:

To CONFIRE:

Consolidated Fire Agencies
Attn: Nathan Cooke, Interim Director
1743 Miro Way
Rialto, CA 92376

To Contractor:

Chino Valley Independent Fire District
Attn: Dave Williams, Fire Chief
14011 City Center Drive
Chino Hills, CA 91709

10. LIMITATION OF LIABILITY

Other than as provided in this Agreement, CONFIRE’s financial obligations under this Agreement shall be limited to the payment provided for in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall CONFIRE be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.

The Parties have executed this Agreement on the dates indicated below.

CONSOLIDATED FIRE AGENCIES

CHINO VALLEY INDEPENDENT FIRE DISTRICT

Date: _____, 20__

Date: _____, 20__

By: _____

By: _____

Print Name: Nathan Cooke

Print Name: Dave Williams

Its: Interim Director

Its: Fire Chief

EXHIBIT A
to AGREEMENT FOR SERVICES

SCOPE OF SERVICES

Contractor to provide services using its existing employee related to the following actions items and deliverables:

1. Perform interim role of the CONFIRE Director per CONFIRE Admin Chief's direction.
 - a. Work with CONFIRE Board of Directors and the CONFIRE Administrative Committee to ensure priorities are addressed. These include but are not limited to:
 - i. Oversight of CONFIRE
 1. Support Communications Manager, MIS Manager, and Chief Financial Officer
 2. Implementation of Strategic Plan Objective (Culture Enhancement)
 - ii. ECNS Program needs
 1. Recruitment of Nursing staff
 2. Work w/ consultants (Harris, Fratus)
 3. EMD accreditation improvements
 - iii. EMS Division effort
 - iv. Manage current HR matters
 1. Labor MOU
 2. Manage personnel issues
 3. Recruitments
 - v. Monitor Valley Communications Center progress
 - vi. Daily Ops
 1. Admin Chiefs Meetings
 2. Ops Committee
 3. Leadership Meeting
 4. County Executive Team Meeting

**EXHIBIT B
to AGREEMENT FOR SERVICES**

PAYMENT

A. Payment

Not to exceed the sum of \$200,674.50 for the Initial Term through December 31, 2023, or \$401,349 annually.

B. Payment

a. Schedule

- (1) To be billed in monthly installments
- (2) The Contractor will invoice CONFIRE in the amount that reflects actual costs incurred to provide the service. Contractor shall provide applicable time sheets or other records used to develop the invoice available upon request.
- (3) Billing will specifically exclude any time or costs associated with the Chino Valley Fire employee if he were to be assigned to active fire incidents locally or as part of an Incident Management Team (IMT).

b. Process

Payment shall be made within thirty (30) calendar days after the Contractor submits an invoice to CONFIRE for Services actually completed.

EXHIBIT C to AGREEMENT FOR SERVICES

GENERAL TERMS AND CONDITIONS

1. **STANDARD OF CARE.** Contractor's Services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of his/her profession for services to California public agencies.
2. **ORIGINALITY OF SERVICES.** Contractor agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to CONFIRE and/or used in connection with this Agreement, shall be wholly original to Contractor and shall not be copied in whole or in part from any other source, except those submitted to Contractor by CONFIRE as a basis for such services.
3. **PRODUCT.** Contractor understands and agrees that all matters produced under this Agreement shall become the property of CONFIRE and cannot be used without CONFIRE's express written permission. CONFIRE shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of CONFIRE. Contractor consents to use of Contractor's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.
4. **TERMINATION.**
 - a. **Without Cause by CONFIRE or Contractor.** CONFIRE and Contractor may, at any time, with or without reason, terminate this Agreement and CONFIRE shall compensate Contractor only for services satisfactorily rendered to the date of termination. Written notice by CONFIRE or Contractor shall be sufficient to stop further performance of services by Contractor. Notice shall be deemed given when received by the Contractor or CONFIRE or no later than three (3) days after the day of mailing by the terminating party, whichever is sooner.
 - b. **With Cause by CONFIRE or Contractor.** CONFIRE or Contractor may terminate this Agreement upon giving written notice of intent to terminate for cause. Cause shall include:
 - (1) material violation of this Agreement by either Party; or
 - (2) any act by Contractor or CONFIRE exposing the other party to liability to others for personal injury or property damage; or
 - (3) A party is adjudged bankrupt, makes a general assignment for the benefit of creditors, or a receiver is appointed on account of party's insolvency.
5. **INDEMNIFICATION/ DEFENSE /HOLD HARMLESS.**
 - a. **Generally.** To the furthest extent permitted by California law, Contractor shall indemnify, defend, and hold free and harmless the Indemnified Parties from any Claim to the extent that the Claim:
 - (1) arises out of, pertains to, or relates to the negligent errors or omissions (active or passive, ordinary or gross), recklessness (ordinary or gross), or willful misconduct of Contractor, its directors, officials, officers, employees, contractors, subcontractors, consultants, or subconsultants; or
 - (2) arises out of, pertains to, or relates to the performance of this Agreement
 - b. **Indemnified Parties, Defined.** The "Indemnified Parties" are CONFIRE, its officers, consultants, employees, and trustees.
 - c. **Claim, Defined.** A "Claim" consists of actions, assessments, counts, citations, claims, costs, damages, demands, judgments, liabilities (legal, administrative or otherwise), losses, notices, expenses, fines, penalties, proceedings, responsibilities, violations, reasonable attorney's and consultants' fees and causes of action to property or persons, including personal injury and/or death, except that:
 - (1) If the Contract is a contract for design professional services under Civ. Code, § 2782.8, a "Claim" shall be limited to those that arise out of, pertain to, or relate to the negligence, recklessness, or willful

- misconduct of the Contractor; and
- (2) If the Contract is a construction contract with a public agency under Civ. Code, § 2782, a “Claim” shall exclude any loss to the extent that such loss arises from the active negligence, sole negligence, or willful misconduct of the Indemnified Parties or defects in design furnished by those persons.
- d. CONFIRE may accept or reject legal counsel Contractor proposes to defend CONFIRE with, in its sole and absolute discretion, and may thereafter appoint, legal counsel to defend CONFIRE at Contractor’s expense against a Claim set forth in Section 5.a, supra, of this Exhibit C.
- 6. INSURANCE.** The Contractor shall procure and maintain at all times it performs any portion of the Services the insurances specified in Exhibit D to the Agreement.
- 7. CONFIDENTIALITY.** The Contractor and the Contractor’s agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services (“Confidential Information”), and shall not disclose Confidential Information, including information derived from Confidential Information, to any person not a party to this Agreement without the express prior written consent of CONFIRE, except as required by law or as necessary for Contractor’s agents, personnel, employee(s), and/or subcontractor(s) to perform the Services. If Contractor or any of Contractor’s agents, personnel, employee(s), and/or subcontractor(s) is served with any subpoena, court order, or other legal process seeking disclosure of any Confidential Information, both Contractor and the person served shall each promptly send to CONFIRE notice(s) of the legal process”, but in no event shall do so any later than forty-eight (48) hours or such shorter time frame as necessary so that CONFIRE may exercise any applicable legal rights and remedies. Contractor shall require its agents, personnel, employee(s), and/or subcontractor(s), as a condition of their retention, appointment, employment, or contract, to agree to comply with the provisions of this Section, and shall not permit its agents, personnel, employee(s), and/or subcontractor(s) access to Confidential Information in the absence of such agreement being effective. The obligations imposed in this Section shall survive the termination of this Agreement.
- 8. CONFLICT OF INTEREST.** Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provisions of Gov. Code, § 1090 et seq. and Chapter 7 of the Political Reform Act of 1974 (Gov. Code, § 87100 et seq.), and certifies that it does not know of any facts that constitute a violation of those provisions. In the event Contractor receives any information subsequent to execution of this Agreement that might constitute a violation of these provisions, Contractor agrees it shall immediately notify CONFIRE of this information.
- 9. APPROVAL OF LEGISLATIVE BODY.** This Agreement shall not be binding upon CONFIRE until CONFIRE’s legislative body has approved all the terms and conditions contained herein.
- 10. DISPUTES.** In the event of a dispute between the parties as to performance of Services, Agreement interpretation, or payment, the Parties shall attempt to resolve the dispute by negotiation and/or mediation, if agreed to by the Parties. Pending resolution of the dispute, Contractor shall neither rescind the Agreement nor stop performing the Services.
- 11. COMPLIANCE WITH LAWS.** Contractor shall observe and comply with all rules and regulations of the governing board of CONFIRE and all federal, state, and local laws, ordinances and regulations. Contractor shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Services as indicated or specified. If Contractor observes that any of the Services required by this Agreement is at variance with any such laws, ordinance, rules or regulations, Contractor shall notify CONFIRE, in writing, and, at the sole option of CONFIRE, any necessary changes to the scope of the Services shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon Contractor’s receipt of a written termination notice from CONFIRE. If Contractor performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying CONFIRE of the violation, Contractor shall bear all costs arising therefrom.
- 12. PERMITS/LICENSES.** Contractor and all Contractor’s employees or agents shall secure and maintain in force all permits and licenses that are required by law in connection with the furnishing of Services pursuant to this Agreement.
- 13. SAFETY AND SECURITY:** Contractor is responsible for maintaining safety in the performance of this Agreement. Contractor shall be responsible to ascertain from CONFIRE the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.
- 14. ANTI-DISCRIMINATION.** It is the policy of CONFIRE that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work 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, age, sexual orientation, or military and veteran status, or any other class or status protected by applicable law, and therefore the Contractor agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the Contractor agrees to require like compliance by all its subcontractor(s).

- 15. AUDIT.** Contractor shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Contractor transacted under this Agreement. Contractor shall retain these books, records, and systems of account during the Term of this Agreement and for three (3) years thereafter. Contractor shall permit CONFIRE, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that CONFIRE shall give reasonable prior notice to Contractor and shall conduct audit(s) during Contractor's normal business hours, unless Contractor otherwise consents.
- 16. TIME IS OF THE ESSENCE.** Time is of the essence in the performance of Services and the timing requirements agreed upon by the Parties, if any, shall be strictly adhered to unless otherwise modified in writing in accordance with Section 28 of this Agreement. Contractor shall commence performance and shall complete all required Services no later than the dates agreed upon by the Parties. Any Services for which times for performance are not specified shall be commenced and completed by Contractor in a reasonably prompt and timely manner based upon the circumstances and direction communicated to Contractor by CONFIRE.
- 17. PROVISIONS REQUIRED BY LAW DEEMED INSERTED.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted and this Agreement shall be read and enforced as though it were included. If through mistake or otherwise, any provision is not inserted or is not correctly inserted, then upon application of either Party, the Agreement shall be amended to make the insertion or correction. All references to statutes and regulations shall include all amendments, replacements, and enactments in the subject which are in effect as of the date of this Agreement, and any later changes which do not materially and substantially alter the positions of the Parties.
- 18. ASSIGNMENT AND SUCCESSORS.** Neither CONFIRE nor Contractor shall, without the prior written consent of the other Party, assign the benefit or in any way transfer their respective obligations under this Agreement. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and, except as otherwise provided herein, upon their executors, administrators, successors, and assigns.
- 19. SEVERABILITY.** In the event that any provision of this Agreement shall be construed to be illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions hereof, but such illegal or invalid provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal or invalid provision had never been included herein, unless to do so would frustrate the intent and purpose of this Agreement.
- 20. FORCE MAJEURE.** No Party shall be liable to any other Party for any loss or damage of any kind or for any default or delay in the performance of its obligations under this Agreement (except for payment obligations) if and to the extent that the same is caused, directly or indirectly, by fire, flood, earthquake, elements of nature, epidemics, pandemics, quarantines, acts of God, acts of war, terrorism, civil unrest or political, religious, civil or economic strife, or any other cause beyond a Party's reasonable control.
- 21. VENUE/GOVERNING LAWS.** This Agreement shall be governed by the laws of the State of California and venue shall be in the County and/or federal judicial district in which CONFIRE's principal administrative office is located.
- 22. ATTORNEY'S FEES.** If suit is brought by either Party to enforce any of the terms of this Agreement, each Party shall bear its own attorney's fees and costs.
- 23. EXHIBITS.** All Exhibits referred to in this Agreement are incorporated in this Agreement and made a part of this Agreement as if fully set forth herein.
- 24. ENTIRE AGREEMENT.** This Agreement represents the entire agreement between CONFIRE and Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended or modified only by an agreement in writing, signed by both CONFIRE and Contractor.
- 25. MODIFICATION.** This Agreement may be amended at any time by the written agreement of CONFIRE and Contractor.
- 26. WAIVER.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver

of a subsequent breach of the same or any other provision under this Agreement.

- 27. AUTHORITY.** The individual executing this Agreement on behalf of Contractor warrants that he/she is authorized to execute the Agreement on behalf of Contractor and that Contractor will be bound by the terms and conditions contained herein.
- 28. HEADINGS AND CONSTRUCTION.** Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the Parties and are not a part of the Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared the same. Unless otherwise indicated, all references to paragraphs, sections, subparagraphs, and subsections are to this Agreement.
- 29. COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, together, when signed by all of the Parties hereto, shall constitute one and the same instrument. A facsimile or electronic signature shall be as valid as an original.

**EXHIBIT D
to AGREEMENT FOR SERVICES**

INSURANCE

- 1. Contractor shall procure and maintain at all times it performs any portion of the Services the following insurances with minimum limits equal to the amounts indicated below.
 - 1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the Contractor, CONFIRE, and the contracting agencies and member agencies of CONFIRE from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Services. (Form CG 0001 and CA 0001)
 - 1.2. **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Contractor shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services. Contractor shall sign and file with CONFIRE the following certification prior to performing the work of the contract: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."
 - 1.3. **Professional Liability (Errors and Omissions).** Professional Liability (Errors and Omissions) Insurance as appropriate to the Contractor's profession.

Type of Coverage	Minimum Coverage
Commercial General Liability Insurance , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments Each Occurrence General Aggregate	\$1,000,000 \$1,000,000
Automobile Liability Insurance - Any Auto Each Occurrence General Aggregate	\$1,000,000 \$1,000,000
Professional Liability	\$1,000,000
Workers Compensation	Statutory Limits
Employer's Liability	\$1,000,000

- 2. The Contractor shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage's have been delivered in duplicate to CONFIRE and approved by CONFIRE. Certificates and insurance policies shall include the following:
 - 2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to CONFIRE, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."
 - 2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.
 - 2.3. An endorsement stating that CONFIRE and contracting agencies and member agencies of CONFIRE, and their representatives, employees, trustees, officers, consultants, and volunteers are named additional insureds under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that Contractor's insurance policies shall be primary to any insurance or self-insurance maintained by CONFIRE.
 - 2.4. All policies shall be written on an occurrence form, except for Professional Liability which shall be on a claims-made form.

**EXHIBIT E
to AGREEMENT FOR SERVICES**

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("BAA") is entered into by and between Chino Valley Independent Fire Agency ("Business Associate"), a fire protection district organized pursuant to the Fire Protection District Law (Health & Safety Code §13800, et seq.) and the Consolidated Fire Agencies ("Covered Entity"), a California joint powers authority existing pursuant to Gov. Code, § 6500 et seq.

Business Associate and Covered Entity may be collectively referred to as the "Parties" or individually as a "Party."

RECITALS

Covered Entity is contracting with Business Associate for the performance of certain services ("Services"), as set forth in the Agreement to which this BAA is attached as Exhibit E;

Covered Entity is a business associate of a covered entity as defined in 45 C.F.R. § 160.103;

Business Associate is a business associate, as defined in 45 C.F.R. § 160.103, of Covered Entity;

45 C.F.R. § 164.504 requires that covered entities enter into agreements with their business associates that satisfy the requirements of 45 C.F.R. § 164.504(e)(2); and

Business Associate and Covered Entity are both governmental entities for the purposes of 45 C.F.R. § 164.504 (e)(3)(i).

AGREEMENT

1. General Terms and Conditions

The General Terms and Conditions to this BAA are set forth in Appendix 1.

The Parties have executed this Agreement on the dates indicated below. The last of the two dates shall be the "Effective Date" of this BAA.

CONSOLIDATED FIRE AGENCIES

Date: _____, 20__

By: _____

Print Name: Nathan Cooke

Its: Interim Director

CHINO VALLEY INDEPENDENT FIRE DISTRICT

Date: _____, 20__

By: _____

Print Name: Dave Williams

Its: Fire Chief_____

APPENDIX 1 TO EXHIBIT E to CONTRACTING AGENCY AGREEMENT

General Terms and Conditions to Business Associate Agreement

I. DEFINITIONS.

- a. **Generally.** Capitalized terms used within the BAA without definition, including within this Appendix 1, shall have the meanings ascribed to them in the Health Insurance Portability and Accountability Act and 45
- b. C.F.R. Part 160 and 164 ("HIPAA and HIPAA Regulations"), and the Health Information Technology for Economic and Clinical Health Act and 45 C.F.R. Part 170 ("HITECH Act and Regulations"), as applicable, unless otherwise defined herein. HIPAA and HIPAA Regulations and I-ITECH Act and Regulations are collectively referred to herein as "Applicable Law"
- c. Catch-all Definition. The following terms used in this BAA shall have the same meaning as those terms in the HIPAA and HIPAA Regulations: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE.

Business Associate agrees to:

- a. Not use or disclose Protected Health Information other than as permitted or required by this BAA, the Agreement, or as required by law;
- b. Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information, to prevent Use or Disclosure of Protected Health Information other than as provided for by this BAA;
- c. Report to Covered Entity any Use or Disclosure of Protected Health Information not provided for by this BAA of which it becomes aware, including breaches of Unsecured Protected Health Information as required at 45 CFR 164.410, and any Security Incident of which it becomes aware;
- d. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any Subcontractors that create, receive,
 - e. maintain, or transmit Protected Health Information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information;
 - f. Make available Protected Health Information in a Designated Record Set to Covered Entity or to an individual whose Protected Health Information is maintained by Business Associate, or the individual's designee, and document and retain the documentation required by 45 CFR 164.5300, as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524;
 - g. Make any amendment(s) to Protected Health Information in a Designated Record Set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526;
 - h. Maintain and make available the information required to provide an accounting of Disclosures to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528;
 - i. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s); and
 - j. Make its internal practices, books, and
 - k. records available to the Secretary for purposes of determining Business Associate's or Covered Entity's compliance with HIPAA and HIPAA Regulations.

III. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE.

- a. Business Associate may only Use or Disclose Protected Health Information as necessary to perform the Agreement(s).
- b. Business Associate may Use or Disclose Protected Health Information as required by law.
- c. Business Associate agrees to make Uses and Disclosures and requests for Protected Health Information consistent with Covered Entity's Minimum Necessary policies and procedures.
- d. Business Associate may not Use or Disclose Protected Health Information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity.

IV. PERMISSIBLE REQUESTS BY COVERED ENTITY.

- a. Covered Entity shall not request Business Associate to Use or Disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity.

V. TERM AND TERMINATION.

- a. **Term.** This BAA is effective as of the Effective Date and will continue in force until terminated,
- b. **Termination for Convenience.** Either Party may terminate this BAA at any time, for any reason or for no reason, by giving the other Party at least thirty (30) days' prior written notice.
- c. **Obligations of Business Associate Upon Termination.** Upon termination of this BAA for any reason, Business Associate shall return to Covered Entity or, if agreed to by Covered Entity, destroy all Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that the Business Associate still maintains in any form. Business Associate shall retain no copies of the Protected Health Information. Upon termination of this BAA for any reason, Business Associate, with respect to Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:
 - i. Retain only that Protected Health Information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
 - ii. Return to Covered Entity or, if agreed to by Covered Entity, destroy the remaining Protected Health Information that the Business Associate still maintains in any form;
 - iii. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information to prevent use or disclosure of the Protected Health Information, other than as provided for in this Section, for as long as Business Associate retains the Protected Health Information;

- iv. Not use or disclose the Protected Health Information retained by Business Associate other than for the purposes for which such Protected Health Information was retained and subject to the same conditions which applied prior to termination; and
- v. Return to Covered Entity or, if agreed to by Covered Entity, destroy the Protected Health Information retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.
- d. **Survival.** The obligations of Business Associate under this Section shall survive the termination of this BAA.

VI. MISCELLANEOUS.

- a. **Governmental Access to Records.** Business Associate shall make its internal practices, books and records relating to the Use and Disclosure of PHI available to the Secretary for purposes of determining Covered Entity's compliance with the Applicable Law. Except to the extent prohibited by law, Business Associate agrees to notify Covered Entity of all requests served upon Business Associate for information or documentation by or on behalf of the Secretary. Business Associate shall provide to Covered Entity a copy of any PHI that Business Associate provides to the Secretary concurrently with providing such PHI to the Secretary.
- b. **Public Access and Ownership of Records.** Covered Entity is a local agency subject to the Public Records Act, Government Code § 6250 et seq. ("PRA"). In the event that Business Associate receives a request for records prepared, owned, used, or retained by Covered Entity or for records prepared, owned, used, or retained by Business Associate in the course and scope of providing the services for Covered Entity described in the Agreement as amended from time to time ("PRA Request"), Business Associate shall promptly forward a copy of the PRA Request to Covered Entity for fulfillment by the Covered Entity. Business Associate understands and agrees that all records produced under the Agreement as amended from time to time are hereby the property of Covered Entity and cannot be used without Covered Entity's express written permission. Covered Entity shall have all right, title and interest in said

- records, including the right to secure and maintain the copyright, trademark and/or patent of said records in the name of the Covered Entity.
- c. **Minimum Necessary.** To the extent required by the HITECH Act and Regulations, Business Associate shall limit its Use, Disclosure or request of PHI to the Limited Data Set or, if needed, to the minimum necessary to accomplish the intended Use, Disclosure or request, respectively. Effective on the date the Secretary issues guidance on what constitutes "minimum necessary" for purposes of the Applicable Law, Business Associate shall limit its Use, Disclosure or request of PHI to only the minimum necessary as set forth in such guidance.
- d. **State Privacy Laws.** Business Associate shall comply with California laws to the extent that such state privacy laws are not preempted by Applicable Law.
- e. **No Third-Party Beneficiaries.** Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- f. **Effect on Underlying Arrangement.** In the event of any conflict between this BAA and any underlying arrangement between Covered Entity and Business Associate, including the Agreements as amended from time to time, the terms of the BAA shall control with respect to Protected Health Information.
- g. **Interpretation.** This BAA shall be interpreted as broadly as necessary to implement and comply with Applicable Law. The Parties agree that any ambiguity in the BAA shall be resolved in favor of a meaning that complies and is consistent with the Applicable Law.
- h. **Governing Law.** This BAA shall be construed in accordance with the laws of the State of California.
- i. **Provisions Required by Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this BAA shall be deemed to be inserted herein and this BAA shall be read and enforced as though it were included therein.
- j. **Severability.** In the event that any provision of this BAA shall be construed to be illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions hereof, but such illegal or invalid provision shall be fully severable and this BAA shall be construed and enforced as if such illegal or invalid provision had never been included herein, unless to do so would frustrate the intent and purpose of this BA.

**CONFIRE****STAFF REPORT****DATE: June 27, 2023****FROM: Nathan Cooke
Interim Director****TO: CONFIRE Administrative Committee**

SUBJECT: XBO ECC Chief Agreement

Recommendation

It is recommended that the CONFIRE Administrative Committee approve the XBO ECC Chief agreement with the City of Colton.

Background Information

The CONFIRE Administrative Committee and the Board of Directors previously adopted the FY-23/24 annual budget which authorized the Director to fill the XBO ECC Chief position for a year.

During the May Administrative Committee meeting, the Committee determined that the City of Colton would be best suited to fill the XBO ECC Chief position with Battalion Chief Henry Perez.

The agreement between CONFIRE and the City of Colton memorializes the services and payments that will be provided between the two parties.

Fiscal Impact

The agreement with the City of Colton will cost \$230,210. This amount was authorized during the FY-23/24 annual budget adoption on May 30, 2023.

INDEPENDENT CONTRACTOR AGREEMENT BETWEEN CONFIRE AND CITY OF COLTON

This agreement (“Agreement”) is by and between the Consolidated Fire Agencies (“CONFIRE”), a California joint powers authority existing pursuant to Gov. Code, § 6500 et seq., and Colton Fire Department (“Contractor”), a fire department duly authorized and existing under Health & Safety Code §13800, et seq. (together, they are referred to as “Parties,” and individually, as a “Party”).

RECITALS

1. CONFIRE is authorized by Section 53060 of the California Government Code to contract with and employ any persons to furnish special services and advice in financial, economic, accounting, engineering, legal or administrative matters, if those persons are specially trained and experienced and competent to perform the special services that are required.
2. CONFIRE is in need of such services and advice and the Contractor warrants that it is specially trained, licensed and experienced and competent to perform the services required by CONFIRE.
3. CONFIRE wishes to engage Contractor to provide the services described herein, on a limited term basis due to an unforeseen need, using Contractor’s existing employee.

AGREEMENT

1. EXHIBITS

This Agreement has multiple Exhibits. Any Exhibit that is specified in this Agreement is by this reference made a part of it.

Exhibits include:

- Exhibit A: Scope of Services
- Exhibit B: Payment
- Exhibit C: General Terms and Conditions
- Exhibit D: Insurance
- Exhibit E: Business Associate Agreement

2. EFFECTIVE DATE AND TERM

- a. This Agreement is effective on the date immediately following approval by the CONFIRE Administrative Committee approval and approval by the Consultant’s designated representative (“Effective Date”).

- b. Unless terminated or otherwise cancelled in accordance with a provision of this Agreement, the term of this Agreement shall be: (i) from the Effective Date to (ii) 06/30/2024 (“Initial Term”).
- c. This Agreement may be extended for an additional six months until 12/31/2024 with CONFIRE Administrative Committee approval and approval by the Contractor’s designated representative.

3. INDEPENDENT CONTRACTOR

Contractor, in the performance of this Agreement, is and shall act as an independent contractor. Contractor understands and agrees that Contractor and all of Contractor’s employees shall not be considered officers, employees, agents, partner, or joint venture of CONFIRE, and are not entitled to benefits of any kind or nature normally provided employees of CONFIRE and/or to which CONFIRE’s employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker’s Compensation. Contractor shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Contractor’s employees.

4. SCOPE OF SERVICES

Contractor shall furnish to CONFIRE the services described in Exhibit A (“Services”). Services shall be provided by Henry Perez. Substitution by Contractor of another of its employees to provide Services will only occur with the concurrence of CONFIRE.

5. PAYMENT

Contractor shall receive payment, for Services satisfactorily rendered pursuant to this Agreement, as specified in Exhibit B (“Payment”). In no event shall the total amount paid for the Services under this Agreement during the Initial Term of the Agreement exceed \$230,210, without the written approval of the Parties in advance. Periodic payment shall be made within 15 days of a monthly invoice.

6. GENERAL TERMS AND CONDITIONS

The General Terms and Conditions are set forth in Exhibit C.

7. INSURANCE

Exhibit D, entitled Insurance, is attached, and incorporated by reference.

8. HIPAA BUSINESS ASSOCIATE AGREEMENT

The "Business Associate Agreement" is set forth in Exhibit E.

9. NOTICE

Any notice required by this Agreement may be given either by personal service or by deposit (postage prepaid) in the U.S. mail addressed as follows:

To CONFIRE:

Consolidated Fire Agencies
Attn: Nathan Cooke, Interim Director
1743 Miro Way
Rialto, CA 92376

To Contractor:

City of Colton
Attn: Bill Smith, City Manager
650 N. La Cadena
Colton, CA 92324

10. LIMITATION OF LIABILITY

Other than as provided in this Agreement, CONFIRE’s financial obligations under this Agreement shall be limited to the payment provided for in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall CONFIRE be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect, or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.

The Parties have executed this Agreement on the dates indicated below.

CONSOLIDATED FIRE AGENCIES

CITY OF COLTON

Date: _____, 20____

Date: _____, 20____

By: _____

By: _____

Print Name: Nathan Cooke

Print Name: Bill Smith

Its: Interim Director

Its: City Manager

EXHIBIT A
to AGREEMENT FOR SERVICES

SCOPE OF SERVICES

Contractor to provide services using its existing employee related to the following actions items and deliverables:

CONFIRE recognizes the need for chief officers to be embedded into the dispatch center(s) to provide additional operational oversight of dispatch staff and equipment, which will in-turn assist with additional firefighter safety, provide increased resource availability, allocation, and accountability, leading to the increased protection of life, property, environment, and critical infrastructure of CONFIRE agency jurisdictions.

As a result of this need, CONFIRE has established the Emergency Command Center (ECC) Chief position. The ECC Chief position has been broken up into two jurisdictional roles; San Bernadino County Fire (BDC) ECC Chief and the XBO ECC Chief, which covers all other jurisdictions in CONFIRE, other than BDC.

The ECC Chiefs have been granted operational authority and responsibility of the dispatch center(s), in conjunction with the CONFIRE Communications Manager, by the CONFIRE Administrative Committee. The XBO ECC Chief will serve as a peer with the BDC ECC Chief and will represent the XBO agencies. The XBO ECC Chief should spend much of his/her time on the “floor” of the Valley dispatch center to maintain a real-time situational awareness of the overall situation and status of XBO emergency incidents and resources. The XBO ECC Chief will also serve as a back-up ECC Chief for BDC in the event the BDC ECC Chief is overwhelmed or not available.

The XBO ECC Chief will report directly to the Communications Director or the Assistant Director and will serve as a peer to the Communications Manager and BDC ECC Chief. The XBO ECC Chief will have the authority to provide direction and orders to dispatch supervisors, dispatchers, call-takers, and or emergency communications nurses. The XBO ECC Chief will not have the authority to issue discipline to a CONFIRE employee and will work with the Communications Manager and or an Assistant Manager when an employee issue arises that may result in discipline, related to the operations of the dispatch center(s).

The XBO ECC Chief position is considered a manager level position at CONFIRE and will be expected to participate as an integral member of the Leadership Team. The XBO ECC Chief may also be assigned other duties not listed in this scope of service, as deemed necessary by the CONFIRE Director or designee. In the event the CONFIRE Director deems it necessary, he/she may return the current XBO ECC Chief to the Contracting Agency and no longer allow that person to serve as the ECC Chief.

**EXHIBIT B
to AGREEMENT FOR SERVICES**

PAYMENT

A. Payment

Not to exceed the sum of \$230,210 for the Initial Term through June 30, 2024.

B. Payment

a. Schedule

- (1) To be billed in monthly installments
- (2) The Contractor will invoice CONFIRE in the amount that reflects actual costs incurred to provide the service. Contractor shall provide applicable time sheets or other records used to develop the invoice available upon request.
- (3) Billing will specifically exclude any time or costs associated with the Colton Fire employee if he were to be assigned to active fire incidents locally or as part of an Incident Management Team (IMT).

b. Process

Payment shall be made within thirty (30) calendar days after the Contractor submits an invoice to CONFIRE for Services actually completed.

EXHIBIT C to AGREEMENT FOR SERVICES

GENERAL TERMS AND CONDITIONS

1. **STANDARD OF CARE.** Contractor's Services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of his/her profession for services to California public agencies.
 2. **ORIGINALITY OF SERVICES.** Contractor agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to CONFIRE and/or used in connection with this Agreement, shall be wholly original to Contractor and shall not be copied in whole or in part from any other source, except those submitted to Contractor by CONFIRE as a basis for such services.
 3. **PRODUCT.** Contractor understands and agrees that all matters produced under this Agreement shall become the property of CONFIRE and cannot be used without CONFIRE's express written permission. CONFIRE shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of CONFIRE. Contractor consents to use of Contractor's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.
 4. **TERMINATION.**
 - a. **Without Cause by CONFIRE or Contractor.** CONFIRE and Contractor may, at any time, with or without reason, terminate this Agreement and CONFIRE shall compensate Contractor only for services satisfactorily rendered to the date of termination. Written notice by CONFIRE or Contractor shall be sufficient to stop further performance of services by Contractor. Notice shall be deemed given when received by the Contractor or CONFIRE or no later than three (3) days after the day of mailing by the terminating party, whichever is sooner.
 - b. **With Cause by CONFIRE or Contractor.** CONFIRE or Contractor may terminate this Agreement upon giving written notice of intent to terminate for cause. Cause shall include:
 - (1) material violation of this Agreement by either Party; or
 - (2) any act by Contractor or CONFIRE exposing the other party to liability to others for personal injury or property damage; or
 - (3) A party is adjudged bankrupt, makes a general assignment for the benefit of creditors, or a receiver is appointed on account of party's insolvency.
- Written notice by CONFIRE or Contractor shall contain the reasons for such intent to terminate and unless within three (3) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, CONFIRE may secure the required services from another Contractor and CONFIRE shall compensate Contractor only for services satisfactorily rendered to the date of termination. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to CONFIRE.
5. **INDEMNIFICATION/ DEFENSE /HOLD HARMLESS.**
 - a. **Generally.** To the furthest extent permitted by California law, Contractor shall indemnify, defend, and hold free and harmless the Indemnified Parties from any Claim to the extent that the Claim:
 - (1) arises out of, pertains to, or relates to the negligent errors or omissions (active or passive, ordinary or gross), recklessness (ordinary or gross), or willful misconduct of Contractor, its directors, officials, officers, employees, contractors, subcontractors, consultants, or subconsultants; or
 - (2) arises out of, pertains to, or relates to the performance of this Agreement
 - b. **Indemnified Parties, Defined.** The "Indemnified Parties" are CONFIRE, its officers, consultants, employees, and trustees.
 - c. **Claim, Defined.** A "Claim" consists of actions, assessments, counts, citations, claims, costs, damages, demands, judgments, liabilities (legal, administrative or otherwise), losses, notices, expenses, fines, penalties, proceedings, responsibilities, violations, reasonable attorney's and consultants' fees and causes of action to property or persons, including personal injury and/or death, except that:
 - (1) If the Contract is a contract for design professional services under Civ. Code, § 2782.8, a "Claim" shall be limited to those that arise out of, pertain to, or relate to the negligence, recklessness, or willful

- misconduct of the Contractor; and
- (2) If the Contract is a construction contract with a public agency under Civ. Code, § 2782, a “Claim” shall exclude any loss to the extent that such loss arises from the active negligence, sole negligence, or willful misconduct of the Indemnified Parties or defects in design furnished by those persons.
- d. CONFIRE may accept or reject legal counsel Contractor proposes to defend CONFIRE with, in its sole and absolute discretion, and may thereafter appoint, legal counsel to defend CONFIRE at Contractor’s expense against a Claim set forth in Section 5.a, supra, of this Exhibit C.
6. **INSURANCE.** The Contractor shall procure and maintain at all times it performs any portion of the Services the insurances specified in Exhibit D to the Agreement.
7. **CONFIDENTIALITY.** The Contractor and the Contractor’s agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services (“Confidential Information”), and shall not disclose Confidential Information, including information derived from Confidential Information, to any person not a party to this Agreement without the express prior written consent of CONFIRE, except as required by law or as necessary for Contractor’s agents, personnel, employee(s), and/or subcontractor(s) to perform the Services. If Contractor or any of Contractor’s agents, personnel, employee(s), and/or subcontractor(s) is served with any subpoena, court order, or other legal process seeking disclosure of any Confidential Information, both Contractor and the person served shall each promptly send to CONFIRE notice(s) of the legal process”, but in no event shall do so any later than forty-eight (48) hours or such shorter time frame as necessary so that CONFIRE may exercise any applicable legal rights and remedies. Contractor shall require its agents, personnel, employee(s), and/or subcontractor(s), as a condition of their retention, appointment, employment, or contract, to agree to comply with the provisions of this Section, and shall not permit its agents, personnel, employee(s), and/or subcontractor(s) access to Confidential Information in the absence of such agreement being effective. The obligations imposed in this Section shall survive the termination of this Agreement.
8. **CONFLICT OF INTEREST.** Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provisions of Gov. Code, § 1090 et seq. and Chapter 7 of the Political Reform Act of 1974 (Gov. Code, § 87100 et seq.), and certifies that it does not know of any facts that constitute a violation of those provisions. In the event Contractor receives any information subsequent to execution of this Agreement that might constitute a violation of these provisions, Contractor agrees it shall immediately notify CONFIRE of this information.
9. **APPROVAL OF LEGISLATIVE BODY.** This Agreement shall not be binding upon CONFIRE until CONFIRE’s legislative body has approved all the terms and conditions contained herein.
10. **DISPUTES.** In the event of a dispute between the parties as to performance of Services, Agreement interpretation, or payment, the Parties shall attempt to resolve the dispute by negotiation and/or mediation, if agreed to by the Parties. Pending resolution of the dispute, Contractor shall neither rescind the Agreement nor stop performing the Services.
11. **COMPLIANCE WITH LAWS.** Contractor shall observe and comply with all rules and regulations of the governing board of CONFIRE and all federal, state, and local laws, ordinances and regulations. Contractor shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Services as indicated or specified. If Contractor observes that any of the Services required by this Agreement is at variance with any such laws, ordinance, rules or regulations, Contractor shall notify CONFIRE, in writing, and, at the sole option of CONFIRE, any necessary changes to the scope of the Services shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon Contractor’s receipt of a written termination notice from CONFIRE. If Contractor performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying CONFIRE of the violation, Contractor shall bear all costs arising therefrom.
12. **PERMITS/LICENSES.** Contractor and all Contractor’s employees or agents shall secure and maintain in force all permits and licenses that are required by law in connection with the furnishing of Services pursuant to this Agreement.
13. **SAFETY AND SECURITY:** Contractor is responsible for maintaining safety in the performance of this Agreement. Contractor shall be responsible to ascertain from CONFIRE the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.
14. **ANTI-DISCRIMINATION.** It is the policy of CONFIRE that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work 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, age, sexual orientation, or military and veteran status, or any other class or status protected by applicable law, and therefore the Contractor agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the Contractor agrees to require like compliance by all its subcontractor(s).

- 15. AUDIT.** Contractor shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Contractor transacted under this Agreement. Contractor shall retain these books, records, and systems of account during the Term of this Agreement and for three (3) years thereafter. Contractor shall permit CONFIRE, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that CONFIRE shall give reasonable prior notice to Contractor and shall conduct audit(s) during Contractor's normal business hours, unless Contractor otherwise consents.
- 16. TIME IS OF THE ESSENCE.** Time is of the essence in the performance of Services and the timing requirements agreed upon by the Parties, if any, shall be strictly adhered to unless otherwise modified in writing in accordance with Section 28 of this Agreement. Contractor shall commence performance and shall complete all required Services no later than the dates agreed upon by the Parties. Any Services for which times for performance are not specified shall be commenced and completed by Contractor in a reasonably prompt and timely manner based upon the circumstances and direction communicated to Contractor by CONFIRE.
- 17. PROVISIONS REQUIRED BY LAW DEEMED INSERTED.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted and this Agreement shall be read and enforced as though it were included. If through mistake or otherwise, any provision is not inserted or is not correctly inserted, then upon application of either Party, the Agreement shall be amended to make the insertion or correction. All references to statutes and regulations shall include all amendments, replacements, and enactments in the subject which
- are in effect as of the date of this Agreement, and any later changes which do not materially and substantially alter the positions of the Parties.
- 18. ASSIGNMENT AND SUCCESSORS.** Neither CONFIRE nor Contractor shall, without the prior written consent of the other Party, assign the benefit or in any way transfer their respective obligations under this Agreement. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and, except as otherwise provided herein, upon their executors, administrators, successors, and assigns.
- 19. SEVERABILITY.** In the event that any provision of this Agreement shall be construed to be illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions hereof, but such illegal or invalid provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal or invalid provision had never been included herein, unless to do so would frustrate the intent and purpose of this Agreement.
- 20. FORCE MAJEURE.** No Party shall be liable to any other Party for any loss or damage of any kind or for any default or delay in the performance of its obligations under this Agreement (except for payment obligations) if and to the extent that the same is caused, directly or indirectly, by fire, flood, earthquake, elements of nature, epidemics, pandemics, quarantines, acts of God, acts of war, terrorism, civil unrest or political, religious, civil or economic strife, or any other cause beyond a Party's reasonable control.
- 21. VENUE/GOVERNING LAWS.** This Agreement shall be governed by the laws of the State of California and venue shall be in the County and/or federal judicial district in which CONFIRE's principal administrative office is located.
- 22. ATTORNEY'S FEES.** If suit is brought by either Party to enforce any of the terms of this Agreement, each Party shall bear its own attorney's fees and costs.
- 23. EXHIBITS.** All Exhibits referred to in this Agreement are incorporated in this Agreement and made a part of this Agreement as if fully set forth herein.
- 24. ENTIRE AGREEMENT.** This Agreement represents the entire agreement between CONFIRE and Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended or modified only by an agreement in writing, signed by both CONFIRE and Contractor.
- 25. MODIFICATION.** This Agreement may be amended at any time by the written agreement of CONFIRE and Contractor.
- 26. WAIVER.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver

of a subsequent breach of the same or any other provision under this Agreement.

- 27. AUTHORITY.** The individual executing this Agreement on behalf of Contractor warrants that he/she is authorized to execute the Agreement on behalf of Contractor and that Contractor will be bound by the terms and conditions contained herein.
- 28. HEADINGS AND CONSTRUCTION.** Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the Parties and are not a part of the Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared the same. Unless otherwise indicated, all references to paragraphs, sections, subparagraphs, and subsections are to this Agreement.
- 29. COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, together, when signed by all of the Parties hereto, shall constitute one and the same instrument. A facsimile or electronic signature shall be as valid as an original.

**EXHIBIT D
to AGREEMENT FOR SERVICES**

INSURANCE

- 1. Contractor shall procure and maintain at all times it performs any portion of the Services the following insurances with minimum limits equal to the amounts indicated below.
 - 1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the Contractor, CONFIRE, and the contracting agencies and member agencies of CONFIRE from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Services. (Form CG 0001 and CA 0001)
 - 1.2. **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Contractor shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services. Contractor shall sign and file with CONFIRE the following certification prior to performing the work of the contract: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."
 - 1.3. **Professional Liability (Errors and Omissions).** Professional Liability (Errors and Omissions) Insurance as appropriate to the Contractor's profession.

Type of Coverage	Minimum Coverage
Commercial General Liability Insurance , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments Each Occurrence General Aggregate	\$1,000,000 \$1,000,000
Automobile Liability Insurance - Any Auto Each Occurrence General Aggregate	\$1,000,000 \$1,000,000
Professional Liability	\$1,000,000
Workers Compensation	Statutory Limits
Employer's Liability	\$1,000,000

- 2. The Contractor shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage's have been delivered in duplicate to CONFIRE and approved by CONFIRE. Certificates and insurance policies shall include the following:
 - 2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to CONFIRE, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."
 - 2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.
 - 2.3. An endorsement stating that CONFIRE and contracting agencies and member agencies of CONFIRE, and their representatives, employees, trustees, officers, consultants, and volunteers are named additional insureds under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that Contractor's insurance policies shall be primary to any insurance or self-insurance maintained by CONFIRE.
 - 2.4. All policies shall be written on an occurrence form, except for Professional Liability which shall be on a claims-made form.

**EXHIBIT E
to AGREEMENT FOR SERVICES**

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("BAA") is entered into by and between City of Colton ("Business Associate"), a fire department duly authorized and existing under Health & Safety Code §13800, et seq. and the Consolidated Fire Agencies ("Covered Entity"), a California joint powers authority existing pursuant to Gov. Code, § 6500 et seq.

Business Associate and Covered Entity may be collectively referred to as the "Parties" or individually as a "Party."

RECITALS

Covered Entity is contracting with Business Associate for the performance of certain services ("Services"), as set forth in the Agreement to which this BAA is attached as Exhibit E;

Covered Entity is a business associate of a covered entity as defined in 45 C.F.R. § 160.103;

Business Associate is a business associate, as defined in 45 C.F.R. § 160.103, of Covered Entity;

45 C.F.R. § 164.504 requires that covered entities enter into agreements with their business associates that satisfy the requirements of 45 C.F.R. § 164.504(e)(2); and

Business Associate and Covered Entity are both governmental entities for the purposes of 45 C.F.R. § 164.504 (e)(3)(i).

AGREEMENT

1. General Terms and Conditions

The General Terms and Conditions to this BAA are set forth in Appendix 1.

The Parties have executed this Agreement on the dates indicated below. The last of the two dates shall be the "Effective Date" of this BAA.

CONSOLIDATED FIRE AGENCIES

CITY OF COLTON

Date: _____, 20__

Date: _____, 20__

By: _____

By: _____

Print Name: Nathan Cooke

Print Name: Bill Smith

Its: Interim Director

Its: City Manager

APPENDIX 1 TO EXHIBIT E to CONTRACTING AGENCY AGREEMENT

General Terms and Conditions to Business Associate Agreement

I. DEFINITIONS.

- a. **Generally.** Capitalized terms used within the BAA without definition, including within this Appendix 1, shall have the meanings ascribed to them in the Health Insurance Portability and Accountability Act and 45
- b. C.F.R. Part 160 and 164 ("HIPAA and HIPAA Regulations"), and the Health Information Technology for Economic and Clinical Health Act and 45 C.F.R. Part 170 ("HITECH Act and Regulations"), as applicable, unless otherwise defined herein. HIPAA and HIPAA Regulations and I-ITECH Act and Regulations are collectively referred to herein as "Applicable Law"
- c. Catch-all Definition. The following terms used in this BAA shall have the same meaning as those terms in the HIPAA and HIPAA Regulations: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE.

Business Associate agrees to:

- a. Not use or disclose Protected Health Information other than as permitted or required by this BAA, the Agreement, or as required by law;
- b. Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information, to prevent Use or Disclosure of Protected Health Information other than as provided for by this BAA;
- c. Report to Covered Entity any Use or Disclosure of Protected Health Information not provided for by this BAA of which it becomes aware, including breaches of Unsecured Protected Health Information as required at 45 CFR 164.410, and any Security Incident of which it becomes aware;
- d. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any Subcontractors that create, receive,
 - e. maintain, or transmit Protected Health Information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information;
 - f. Make available Protected Health Information in a Designated Record Set to Covered Entity or to an individual whose Protected Health Information is maintained by Business Associate, or the individual's designee, and document and retain the documentation required by 45 CFR 164.5300, as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524;
 - g. Make any amendment(s) to Protected Health Information in a Designated Record Set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526;
 - h. Maintain and make available the information required to provide an accounting of Disclosures to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528;
 - i. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s); and
 - j. Make its internal practices, books, and
 - k. records available to the Secretary for purposes of determining Business Associate's or Covered Entity's compliance with HIPAA and HIPAA Regulations.

III. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE.

- a. Business Associate may only Use or Disclose Protected Health Information as necessary to perform the Agreement(s).
- b. Business Associate may Use or Disclose Protected Health Information as required by law.
- c. Business Associate agrees to make Uses and Disclosures and requests for Protected Health Information consistent with Covered Entity's Minimum Necessary policies and procedures.
- d. Business Associate may not Use or Disclose Protected Health Information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity.

IV. PERMISSIBLE REQUESTS BY COVERED ENTITY.

- a. Covered Entity shall not request Business Associate to Use or Disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity.

V. TERM AND TERMINATION.

- a. **Term.** This BAA is effective as of the Effective Date and will continue in force until terminated,
- b. Termination for Convenience. Either Party may terminate this BAA at any time, for any reason or for no reason, by giving the other Party at least thirty (30) days' prior written notice.
- c. Obligations of Business Associate Upon Termination. Upon termination of this BAA for any reason, Business Associate shall return to Covered Entity or, if agreed to by Covered Entity, destroy all Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that the Business Associate still maintains in any form. Business Associate shall retain no copies of the Protected Health Information. Upon termination of this BAA for any reason, Business Associate, with respect to Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:
 - i. Retain only that Protected Health Information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
 - ii. Return to Covered Entity or, if agreed to by Covered Entity, destroy the remaining Protected Health Information that the Business Associate still maintains in any form;
 - iii. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information to prevent use or disclosure of the Protected Health Information, other than as provided for in this Section, for as long as Business Associate retains the Protected Health Information;

- iv. Not use or disclose the Protected Health Information retained by Business Associate other than for the purposes for which such Protected Health Information was retained and subject to the same conditions which applied prior to termination; and
- v. Return to Covered Entity or, if agreed to by Covered Entity, destroy the Protected Health Information retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.
- d. **Survival.** The obligations of Business Associate under this Section shall survive the termination of this BAA.

VI. MISCELLANEOUS.

- a. Governmental Access to Records. Business Associate shall make its internal practices, books and records relating to the Use and Disclosure of PHI available to the Secretary for purposes of determining Covered Entity's compliance with the Applicable Law. Except to the extent prohibited by law, Business Associate agrees to notify Covered Entity of all requests served upon Business Associate for information or documentation by or on behalf of the Secretary. Business Associate shall provide to Covered Entity a copy of any PHI that Business Associate provides to the Secretary concurrently with providing such PHI to the Secretary.
- b. **Public Access and Ownership of Records.** Covered Entity is a local agency subject to the Public Records Act, Government Code § 6250 et seq. ("PRA"). In the event that Business Associate receives a request for records prepared, owned, used, or retained by Covered Entity or for records prepared, owned, used, or retained by Business Associate in the course and scope of providing the services for Covered Entity described in the Agreement as amended from time to time ("PRA Request"), Business Associate shall promptly forward a copy of the PRA Request to Covered Entity for fulfillment by the Covered Entity. Business Associate understands and agrees that all records produced under the Agreement as amended from time to time are hereby the property of Covered Entity and cannot be used without Covered Entity's express written permission. Covered Entity shall have all right, title and interest in said

- records, including the right to secure and maintain the copyright, trademark and/or patent of said records in the name of the Covered Entity.
- c. **Minimum Necessary.** To the extent required by the HITECH Act and Regulations, Business Associate shall limit its Use, Disclosure or request of PHI to the Limited Data Set or, if needed, to the minimum necessary to accomplish the intended Use, Disclosure or request, respectively. Effective on the date the Secretary issues guidance on what constitutes "minimum necessary" for purposes of the Applicable Law, Business Associate shall limit its Use, Disclosure or request of PHI to only the minimum necessary as set forth in such guidance.
- d. **State Privacy Laws.** Business Associate shall comply with California laws to the extent that such state privacy laws are not preempted by Applicable Law.
- e. **No Third-Party Beneficiaries.** Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- f. **Effect on Underlying Arrangement.** In the event of any conflict between this BAA and any underlying arrangement between Covered Entity and Business Associate, including the Agreements as amended from time to time, the terms of the BAA shall control with respect to Protected Health Information.
- g. **Interpretation.** This BAA shall be interpreted as broadly as necessary to implement and comply with Applicable Law. The Parties agree that any ambiguity in the BAA shall be resolved in favor of a meaning that complies and is consistent with the Applicable Law.
- h. **Governing Law.** This BAA shall be construed in accordance with the laws of the State of California.
- i. **Provisions Required by Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this BAA shall be deemed to be inserted herein and this BAA shall be read and enforced as though it were included therein.
- j. **Severability.** In the event that any provision of this BAA shall be construed to be illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions hereof, but such illegal or invalid provision shall be fully severable and this BAA shall be construed and enforced as if such illegal or invalid provision had never been included herein, unless to do so would frustrate the intent and purpose of this BA.

**CONFIRE****STAFF REPORT****DATE: June 27, 2023****FROM: Nathan Cooke
Interim Director****TO: CONFIRE Administrative Committee**

SUBJECT: Interim Chief Financial Officer Agreement

Recommendation

It is recommended that the CONFIRE Administrative Committee approve the Interim Chief Financial Officer (CFO) agreement with the Rancho Cucamonga Fire District.

Background Information

The current CONFIRE Interim CFO is unexpectedly leaving her position and has created an immediate vacancy as of July 1, 2023. The CFO position is a critical management position that should be filled as quickly as possible. It is anticipated that the recruitment and hiring process via the County of San Bernardino will take 4-6 months to complete.

Due to the County ambulance RFP being delayed several times, CONFIRE has not been able to recruit and hire a permanent CFO. CONFIRE is still in need of an Interim CFO and is recommending that Quang Leba to serve in that capacity until a permanent replacement is found due to his previous experience and background in finances.

The agreement between CONFIRE and the Rancho Cucamonga Fire Protection District memorializes the services and payments that will be provided between the two parties.

Fiscal Impact

The agreement with the Rancho Cucamonga Fire Protection District total cost is still being calculated. The amount is not to exceed \$125,000. CONFIRE will only pay the fire district the exact cost associated with providing the service. This amount will be covered with a transfer of funds from salary savings (from the CFO and other personnel vacancies) from Fund 5008 into Fund 5010 (Contracts). There should be no increase in costs to agencies as a result from this action.

INDEPENDENT CONTRACTOR AGREEMENT BETWEEN CONFIRE AND RANCHO CUCAMONGA FIRE PROTECTION DISTRICT

This agreement (“Agreement”) is by and between the Consolidated Fire Agencies (“CONFIRE”), a California joint powers authority existing pursuant to Gov. Code, § 6500 et seq., and Rancho Cucamonga Fire Protection District (“Contractor”), a fire district duly authorized and existing under Health & Safety Code §13800, et seq. (together, they are referred to as “Parties,” and individually, as a “Party”).

RECITALS

1. CONFIRE is authorized by Section 53060 of the California Government Code to contract with and employ any persons to furnish special services and advice in financial, economic, accounting, engineering, legal or administrative matters, if those persons are specially trained and experienced and competent to perform the special services that are required.
2. CONFIRE is in need of such services and advice and the Contractor warrants that it is specially trained, licensed and experienced and competent to perform the services required by CONFIRE.
3. CONFIRE wishes to engage Contractor to provide the services described herein, on a limited term basis due to an unforeseen need, using Contractor’s existing employee.

AGREEMENT

1. EXHIBITS

This Agreement has multiple Exhibits. Any Exhibit that is specified in this Agreement is by this reference made a part of it.

Exhibits include:

- Exhibit A: Scope of Services
- Exhibit B: Payment
- Exhibit C: General Terms and Conditions
- Exhibit D: Insurance
- Exhibit E: Business Associate Agreement

2. EFFECTIVE DATE AND TERM

- a. This Agreement is effective on the date immediately following approval by the CONFIRE Administrative Committee approval and approval by the Consultant’s designated representative (“Effective Date”).

- b. Unless terminated or otherwise cancelled in accordance with a provision of this Agreement, the term of this Agreement shall be: (i) from the Effective Date to (ii) 11/30/2024 (“Initial Term”).

3. INDEPENDENT CONTRACTOR

Contractor, in the performance of this Agreement, is and shall act as an independent contractor. Contractor understands and agrees that Contractor and all of Contractor’s employees shall not be considered officers, employees, agents, partner, or joint venture of CONFIRE, and are not entitled to benefits of any kind or nature normally provided employees of CONFIRE and/or to which CONFIRE’s employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker’s Compensation. Contractor shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Contractor’s employees.

4. SCOPE OF SERVICES

Contractor shall furnish to CONFIRE the services described in Exhibit A (“Services”). Services shall be provided by Quang Leba. Substitution by Contractor of another of its employees to provide Services will only occur with the concurrence of CONFIRE.

5. PAYMENT

Contractor shall receive payment, for Services satisfactorily rendered pursuant to this Agreement, as specified in Exhibit B (“Payment”). In no event shall the total amount paid for the Services under this Agreement during the Initial Term of the Agreement exceed \$125,000.00 without the written approval of the Parties in advance. Periodic payment shall be made within 15 days of a monthly invoice.

6. GENERAL TERMS AND CONDITIONS

The General Terms and Conditions are set forth in Exhibit C.

7. INSURANCE

Exhibit D, entitled Insurance, is attached, and incorporated by reference.

8. HIPAA BUSINESS ASSOCIATE AGREEMENT

The "Business Associate Agreement" is set forth in Exhibit E.

9. NOTICE

Any notice required by this Agreement may be given either by personal service or by deposit (postage prepaid) in the U.S. mail addressed as follows:

To CONFIRE:

Consolidated Fire Agencies
Attn: Nathan Cooke, Interim Director
1743 Miro Way
Rialto, CA 92376

To Contractor:

Rancho Cucamonga Fire District
Attn: Mike McCliman, Fire Chief
10500 Civic Center Drive
City Hall Lower Level
Rancho Cucamonga, CA 91730

10. LIMITATION OF LIABILITY

Other than as provided in this Agreement, CONFIRE’s financial obligations under this Agreement shall be limited to the payment provided for in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall CONFIRE be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect, or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.

The Parties have executed this Agreement on the dates indicated below.

CONSOLIDATED FIRE AGENCIES

RANCHO CUCAMONGA FIRE PROTECTION DISTRICT

Date: _____, 20____

Date: _____, 20____

By: _____

By: _____

Print Name: Nathan Cooke

Print Name: Mike McCliman

Its: Interim Director

Its: Fire Chief

EXHIBIT A
to AGREEMENT FOR SERVICES

SCOPE OF SERVICES

Contractor to provide services using its existing employee related to the following actions items and deliverables:

CONFIRE needs an Interim Chief Financial Officer (CFO) due to an unexpected vacancy in this position.

The Interim CFO will report directly to the Interim CONFIRE Director.

Definition

Under general administrative direction, manages and coordinates the fiscal operations and activities of CONFIRE; directs general accounting, budget and cost control, accounts payable, and billing through subordinates; performs related duties as required.

Distinguishing Characteristics

This single position class is characterized by the responsibility to develop, manage, and coordinate the financial operations and fiscal policies and procedures of the CONFIRE. The position reports directly to the Director of CONFIRE.

Examples of Duties

Duties may include, but are not limited to, the following:

1. Directs the preparation of the Department budget, including review, revision and consolidation of division budgets; reviews requests for budget deviations; defends department and division budgets to the CONFIRE Director and various officials.
2. Plans, organizes, and directs the CONFIRE's administrative and MIS division, including accounting, revenue claiming, cost reporting, billing, and procurement.
3. Directs fiscal activities through subordinates; supervises, trains, evaluates, and disciplines staff directly and through subordinates; develops, modifies, and interprets the fiscal policies and procedures and makes recommendations for appropriate changes.
4. Directs the monitoring and control of all expenses and receipts, including payroll, billing for services rendered, preparation of reimbursement claims; coordinates audits and resolves resulting issues appropriately.
5. Resolve complex financial issues; work collaboratively with other governmental agencies and CONFIRE agencies; represent management and the Department as needed; makes presentations as needed.
6. Reviews Board Agenda items for compliance with CONFIRE policies and procedures.
7. Provide vacation and temporary relief as required.

**EXHIBIT B
to AGREEMENT FOR SERVICES**

PAYMENT

A. Payment

Not to exceed the sum of \$125,000.00 for the Initial Term through November 30, 2024.

B. Payment

a. Schedule

- (1) To be billed in monthly installments
- (2) The Contractor will invoice CONFIRE in the amount that reflects actual costs incurred to provide the service. Contractor shall provide applicable time sheets or other records used to develop the invoice available upon request.
- (3) Billing will specifically exclude any time or costs associated with the Rancho Cucamonga Fire Protection District employee if he were to be assigned to active fire incidents locally or as part of an Incident Management Team (IMT).

b. Process

Payment shall be made within thirty (30) calendar days after the Contractor submits an invoice to CONFIRE for Services actually completed.

EXHIBIT C to AGREEMENT FOR SERVICES

GENERAL TERMS AND CONDITIONS

1. **STANDARD OF CARE.** Contractor's Services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of his/her profession for services to California public agencies.
 2. **ORIGINALITY OF SERVICES.** Contractor agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to CONFIRE and/or used in connection with this Agreement, shall be wholly original to Contractor and shall not be copied in whole or in part from any other source, except those submitted to Contractor by CONFIRE as a basis for such services.
 3. **PRODUCT.** Contractor understands and agrees that all matters produced under this Agreement shall become the property of CONFIRE and cannot be used without CONFIRE's express written permission. CONFIRE shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of CONFIRE. Contractor consents to use of Contractor's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.
 4. **TERMINATION.**
 - a. **Without Cause by CONFIRE or Contractor.** CONFIRE and Contractor may, at any time, with or without reason, terminate this Agreement and CONFIRE shall compensate Contractor only for services satisfactorily rendered to the date of termination. Written notice by CONFIRE or Contractor shall be sufficient to stop further performance of services by Contractor. Notice shall be deemed given when received by the Contractor or CONFIRE or no later than three (3) days after the day of mailing by the terminating party, whichever is sooner.
 - b. **With Cause by CONFIRE or Contractor.** CONFIRE or Contractor may terminate this Agreement upon giving written notice of intent to terminate for cause. Cause shall include:
 - (1) material violation of this Agreement by either Party; or
 - (2) any act by Contractor or CONFIRE exposing the other party to liability to others for personal injury or property damage; or
 - (3) A party is adjudged bankrupt, makes a general assignment for the benefit of creditors, or a receiver is appointed on account of party's insolvency.
- Written notice by CONFIRE or Contractor shall contain the reasons for such intent to terminate and unless within three (3) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, CONFIRE may secure the required services from another Contractor and CONFIRE shall compensate Contractor only for services satisfactorily rendered to the date of termination. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to CONFIRE.
5. **INDEMNIFICATION/ DEFENSE /HOLD HARMLESS.**
 - a. **Generally.** To the furthest extent permitted by California law, Contractor shall indemnify, defend, and hold free and harmless the Indemnified Parties from any Claim to the extent that the Claim:
 - (1) arises out of, pertains to, or relates to the negligent errors or omissions (active or passive, ordinary or gross), recklessness (ordinary or gross), or willful misconduct of Contractor, its directors, officials, officers, employees, contractors, subcontractors, consultants, or subconsultants; or
 - (2) arises out of, pertains to, or relates to the performance of this Agreement
 - b. **Indemnified Parties, Defined.** The "Indemnified Parties" are CONFIRE, its officers, consultants, employees, and trustees.
 - c. **Claim, Defined.** A "Claim" consists of actions, assessments, counts, citations, claims, costs, damages, demands, judgments, liabilities (legal, administrative or otherwise), losses, notices, expenses, fines, penalties, proceedings, responsibilities, violations, reasonable attorney's and consultants' fees and causes of action to property or persons, including personal injury and/or death, except that:
 - (1) If the Contract is a contract for design professional services under Civ. Code, § 2782.8, a "Claim" shall be limited to those that arise out of, pertain to, or relate to the negligence, recklessness, or willful

- misconduct of the Contractor; and
- (2) If the Contract is a construction contract with a public agency under Civ. Code, § 2782, a “Claim” shall exclude any loss to the extent that such loss arises from the active negligence, sole negligence, or willful misconduct of the Indemnified Parties or defects in design furnished by those persons.
- d. CONFIRE may accept or reject legal counsel Contractor proposes to defend CONFIRE with, in its sole and absolute discretion, and may thereafter appoint, legal counsel to defend CONFIRE at Contractor’s expense against a Claim set forth in Section 5.a, supra, of this Exhibit C.
6. **INSURANCE.** The Contractor shall procure and maintain at all times it performs any portion of the Services the insurances specified in Exhibit D to the Agreement.
7. **CONFIDENTIALITY.** The Contractor and the Contractor’s agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services (“Confidential Information”), and shall not disclose Confidential Information, including information derived from Confidential Information, to any person not a party to this Agreement without the express prior written consent of CONFIRE, except as required by law or as necessary for Contractor’s agents, personnel, employee(s), and/or subcontractor(s) to perform the Services. If Contractor or any of Contractor’s agents, personnel, employee(s), and/or subcontractor(s) is served with any subpoena, court order, or other legal process seeking disclosure of any Confidential Information, both Contractor and the person served shall each promptly send to CONFIRE notice(s) of the legal process”, but in no event shall do so any later than forty-eight (48) hours or such shorter time frame as necessary so that CONFIRE may exercise any applicable legal rights and remedies. Contractor shall require its agents, personnel, employee(s), and/or subcontractor(s), as a condition of their retention, appointment, employment, or contract, to agree to comply with the provisions of this Section, and shall not permit its agents, personnel, employee(s), and/or subcontractor(s) access to Confidential Information in the absence of such agreement being effective. The obligations imposed in this Section shall survive the termination of this Agreement.
8. **CONFLICT OF INTEREST.** Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provisions of Gov. Code, § 1090 et seq. and Chapter 7 of the Political Reform Act of 1974 (Gov. Code, § 87100 et seq.), and certifies that it does not know of any facts that constitute a violation of those provisions. In the event Contractor receives any information subsequent to execution of this Agreement that might constitute a violation of these provisions, Contractor agrees it shall immediately notify CONFIRE of this information.
9. **APPROVAL OF LEGISLATIVE BODY.** This Agreement shall not be binding upon CONFIRE until CONFIRE’s legislative body has approved all the terms and conditions contained herein.
10. **DISPUTES.** In the event of a dispute between the parties as to performance of Services, Agreement interpretation, or payment, the Parties shall attempt to resolve the dispute by negotiation and/or mediation, if agreed to by the Parties. Pending resolution of the dispute, Contractor shall neither rescind the Agreement nor stop performing the Services.
11. **COMPLIANCE WITH LAWS.** Contractor shall observe and comply with all rules and regulations of the governing board of CONFIRE and all federal, state, and local laws, ordinances and regulations. Contractor shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Services as indicated or specified. If Contractor observes that any of the Services required by this Agreement is at variance with any such laws, ordinance, rules or regulations, Contractor shall notify CONFIRE, in writing, and, at the sole option of CONFIRE, any necessary changes to the scope of the Services shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon Contractor’s receipt of a written termination notice from CONFIRE. If Contractor performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying CONFIRE of the violation, Contractor shall bear all costs arising therefrom.
12. **PERMITS/LICENSES.** Contractor and all Contractor’s employees or agents shall secure and maintain in force all permits and licenses that are required by law in connection with the furnishing of Services pursuant to this Agreement.
13. **SAFETY AND SECURITY:** Contractor is responsible for maintaining safety in the performance of this Agreement. Contractor shall be responsible to ascertain from CONFIRE the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.
14. **ANTI-DISCRIMINATION.** It is the policy of CONFIRE that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work 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, age, sexual orientation, or military and veteran status, or any other class or status protected by applicable law, and therefore the Contractor agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the Contractor agrees to require like compliance by all its subcontractor(s).

- 15. AUDIT.** Contractor shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Contractor transacted under this Agreement. Contractor shall retain these books, records, and systems of account during the Term of this Agreement and for three (3) years thereafter. Contractor shall permit CONFIRE, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that CONFIRE shall give reasonable prior notice to Contractor and shall conduct audit(s) during Contractor's normal business hours, unless Contractor otherwise consents.
- 16. TIME IS OF THE ESSENCE.** Time is of the essence in the performance of Services and the timing requirements agreed upon by the Parties, if any, shall be strictly adhered to unless otherwise modified in writing in accordance with Section 28 of this Agreement. Contractor shall commence performance and shall complete all required Services no later than the dates agreed upon by the Parties. Any Services for which times for performance are not specified shall be commenced and completed by Contractor in a reasonably prompt and timely manner based upon the circumstances and direction communicated to Contractor by CONFIRE.
- 17. PROVISIONS REQUIRED BY LAW DEEMED INSERTED.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted and this Agreement shall be read and enforced as though it were included. If through mistake or otherwise, any provision is not inserted or is not correctly inserted, then upon application of either Party, the Agreement shall be amended to make the insertion or correction. All references to statutes and regulations shall include all amendments, replacements, and enactments in the subject which
- are in effect as of the date of this Agreement, and any later changes which do not materially and substantially alter the positions of the Parties.
- 18. ASSIGNMENT AND SUCCESSORS.** Neither CONFIRE nor Contractor shall, without the prior written consent of the other Party, assign the benefit or in any way transfer their respective obligations under this Agreement. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and, except as otherwise provided herein, upon their executors, administrators, successors, and assigns.
- 19. SEVERABILITY.** In the event that any provision of this Agreement shall be construed to be illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions hereof, but such illegal or invalid provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal or invalid provision had never been included herein, unless to do so would frustrate the intent and purpose of this Agreement.
- 20. FORCE MAJEURE.** No Party shall be liable to any other Party for any loss or damage of any kind or for any default or delay in the performance of its obligations under this Agreement (except for payment obligations) if and to the extent that the same is caused, directly or indirectly, by fire, flood, earthquake, elements of nature, epidemics, pandemics, quarantines, acts of God, acts of war, terrorism, civil unrest or political, religious, civil or economic strife, or any other cause beyond a Party's reasonable control.
- 21. VENUE/GOVERNING LAWS.** This Agreement shall be governed by the laws of the State of California and venue shall be in the County and/or federal judicial district in which CONFIRE's principal administrative office is located.
- 22. ATTORNEY'S FEES.** If suit is brought by either Party to enforce any of the terms of this Agreement, each Party shall bear its own attorney's fees and costs.
- 23. EXHIBITS.** All Exhibits referred to in this Agreement are incorporated in this Agreement and made a part of this Agreement as if fully set forth herein.
- 24. ENTIRE AGREEMENT.** This Agreement represents the entire agreement between CONFIRE and Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended or modified only by an agreement in writing, signed by both CONFIRE and Contractor.
- 25. MODIFICATION.** This Agreement may be amended at any time by the written agreement of CONFIRE and Contractor.
- 26. WAIVER.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver

of a subsequent breach of the same or any other provision under this Agreement.

- 27. AUTHORITY.** The individual executing this Agreement on behalf of Contractor warrants that he/she is authorized to execute the Agreement on behalf of Contractor and that Contractor will be bound by the terms and conditions contained herein.
- 28. HEADINGS AND CONSTRUCTION.** Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the Parties and are not a part of the Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared the same. Unless otherwise indicated, all references to paragraphs, sections, subparagraphs, and subsections are to this Agreement.
- 29. COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, together, when signed by all of the Parties hereto, shall constitute one and the same instrument. A facsimile or electronic signature shall be as valid as an original.

EXHIBIT D
to AGREEMENT FOR SERVICES

INSURANCE

1. Contractor shall procure and maintain at all times it performs any portion of the Services the following insurances with minimum limits equal to the amounts indicated below.
- 1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the Contractor, CONFIRE, and the contracting agencies and member agencies of CONFIRE from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Services. (Form CG 0001 and CA 0001)
- 1.2. **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Contractor shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services. Contractor shall sign and file with CONFIRE the following certification prior to performing the work of the contract: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."
- 1.3. **Professional Liability (Errors and Omissions).** Professional Liability (Errors and Omissions) Insurance as appropriate to the Contractor's profession.

Type of Coverage	Minimum Coverage
Commercial General Liability Insurance , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments Each Occurrence General Aggregate	\$1,000,000 \$1,000,000
Automobile Liability Insurance - Any Auto Each Occurrence General Aggregate	\$1,000,000 \$1,000,000
Professional Liability	\$1,000,000
Workers Compensation	Statutory Limits
Employer's Liability	\$1,000,000

2. The Contractor shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage's have been delivered in duplicate to CONFIRE and approved by CONFIRE. Certificates and insurance policies shall include the following:
- 2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to CONFIRE, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."
- 2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.
- 2.3. An endorsement stating that CONFIRE and contracting agencies and member agencies of CONFIRE, and their representatives, employees, trustees, officers, consultants, and volunteers are named additional insureds under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that Contractor's insurance policies shall be primary to any insurance or self-insurance maintained by CONFIRE.
- 2.4. All policies shall be written on an occurrence form, except for Professional Liability which shall be on a claims-made form.

**EXHIBIT E
to AGREEMENT FOR SERVICES**

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("BAA") is entered into by and between Rancho Cucamonga Fire Protection District ("Business Associate"), a fire department duly authorized and existing under Health & Safety Code §13800, et seq. and the Consolidated Fire Agencies ("Covered Entity"), a California joint powers authority existing pursuant to Gov. Code, § 6500 et seq.

Business Associate and Covered Entity may be collectively referred to as the "Parties" or individually as a "Party."

RECITALS

Covered Entity is contracting with Business Associate for the performance of certain services ("Services"), as set forth in the Agreement to which this BAA is attached as Exhibit E;

Covered Entity is a business associate of a covered entity as defined in 45 C.F.R. § 160.103;

Business Associate is a business associate, as defined in 45 C.F.R. § 160.103, of Covered Entity;

45 C.F.R. § 164.504 requires that covered entities enter into agreements with their business associates that satisfy the requirements of 45 C.F.R. § 164.504(e)(2); and

Business Associate and Covered Entity are both governmental entities for the purposes of 45 C.F.R. § 164.504 (e)(3)(i).

AGREEMENT

1. General Terms and Conditions

The General Terms and Conditions to this BAA are set forth in Appendix 1.

The Parties have executed this Agreement on the dates indicated below. The last of the two dates shall be the "Effective Date" of this BAA.

CONSOLIDATED FIRE AGENCIES

Rancho Cucamonga Fire Protection District

Date: _____, 20__

Date: _____, 20__

By: _____

By: _____

Print Name: Nathan Cooke

Print Name: Mike McCliman

Its: Interim Director

Its: Fire Chief

APPENDIX 1 TO EXHIBIT E to CONTRACTING AGENCY AGREEMENT

General Terms and Conditions to Business Associate Agreement

I. DEFINITIONS.

- a. **Generally.** Capitalized terms used within the BAA without definition, including within this Appendix 1, shall have the meanings ascribed to them in the Health Insurance Portability and Accountability Act and 45
- b. C.F.R. Part 160 and 164 ("HIPAA and HIPAA Regulations"), and the Health Information Technology for Economic and Clinical Health Act and 45 C.F.R. Part 170 ("HITECH Act and Regulations"), as applicable, unless otherwise defined herein. HIPAA and HIPAA Regulations and I-ITECH Act and Regulations are collectively referred to herein as "Applicable Law"
- c. Catch-all Definition. The following terms used in this BAA shall have the same meaning as those terms in the HIPAA and HIPAA Regulations: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE.

Business Associate agrees to:

- a. Not use or disclose Protected Health Information other than as permitted or required by this BAA, the Agreement, or as required by law;
- b. Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information, to prevent Use or Disclosure of Protected Health Information other than as provided for by this BAA;
- c. Report to Covered Entity any Use or Disclosure of Protected Health Information not provided for by this BAA of which it becomes aware, including breaches of Unsecured Protected Health Information as required at 45 CFR 164.410, and any Security Incident of which it becomes aware;
- d. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any Subcontractors that create, receive,
 - e. maintain, or transmit Protected Health Information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information;
 - f. Make available Protected Health Information in a Designated Record Set to Covered Entity or to an individual whose Protected Health Information is maintained by Business Associate, or the individual's designee, and document and retain the documentation required by 45 CFR 164.5300, as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524;
 - g. Make any amendment(s) to Protected Health Information in a Designated Record Set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526;
 - h. Maintain and make available the information required to provide an accounting of Disclosures to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528;
 - i. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s); and
 - j. Make its internal practices, books, and
 - k. records available to the Secretary for purposes of determining Business Associate's or Covered Entity's compliance with HIPAA and HIPAA Regulations.

III. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE.

- a. Business Associate may only Use or Disclose Protected Health Information as necessary to perform the Agreement(s).
- b. Business Associate may Use or Disclose Protected Health Information as required by law.
- c. Business Associate agrees to make Uses and Disclosures and requests for Protected Health Information consistent with Covered Entity's Minimum Necessary policies and procedures.
- d. Business Associate may not Use or Disclose Protected Health Information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity.

IV. PERMISSIBLE REQUESTS BY COVERED ENTITY.

- a. Covered Entity shall not request Business Associate to Use or Disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity.

V. TERM AND TERMINATION.

- a. **Term.** This BAA is effective as of the Effective Date and will continue in force until terminated,
- b. Termination for Convenience. Either Party may terminate this BAA at any time, for any reason or for no reason, by giving the other Party at least thirty (30) days' prior written notice.
- c. Obligations of Business Associate Upon Termination. Upon termination of this BAA for any reason, Business Associate shall return to Covered Entity or, if agreed to by Covered Entity, destroy all Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that the Business Associate still maintains in any form. Business Associate shall retain no copies of the Protected Health Information. Upon termination of this BAA for any reason, Business Associate, with respect to Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:
 - i. Retain only that Protected Health Information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
 - ii. Return to Covered Entity or, if agreed to by Covered Entity, destroy the remaining Protected Health Information that the Business Associate still maintains in any form;
 - iii. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information to prevent use or disclosure of the Protected Health Information, other than as provided for in this Section, for as long as Business Associate retains the Protected Health Information;

- iv. Not use or disclose the Protected Health Information retained by Business Associate other than for the purposes for which such Protected Health Information was retained and subject to the same conditions which applied prior to termination; and
- v. Return to Covered Entity or, if agreed to by Covered Entity, destroy the Protected Health Information retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.
- d. **Survival.** The obligations of Business Associate under this Section shall survive the termination of this BAA.

VI. MISCELLANEOUS.

- a. Governmental Access to Records. Business Associate shall make its internal practices, books and records relating to the Use and Disclosure of PHI available to the Secretary for purposes of determining Covered Entity's compliance with the Applicable Law. Except to the extent prohibited by law, Business Associate agrees to notify Covered Entity of all requests served upon Business Associate for information or documentation by or on behalf of the Secretary. Business Associate shall provide to Covered Entity a copy of any PHI that Business Associate provides to the Secretary concurrently with providing such PHI to the Secretary.
- b. **Public Access and Ownership of Records.** Covered Entity is a local agency subject to the Public Records Act, Government Code § 6250 et seq. ("PRA"). In the event that Business Associate receives a request for records prepared, owned, used, or retained by Covered Entity or for records prepared, owned, used, or retained by Business Associate in the course and scope of providing the services for Covered Entity described in the Agreement as amended from time to time ("PRA Request"), Business Associate shall promptly forward a copy of the PRA Request to Covered Entity for fulfillment by the Covered Entity. Business Associate understands and agrees that all records produced under the Agreement as amended from time to time are hereby the property of Covered Entity and cannot be used without Covered Entity's express written permission. Covered Entity shall have all right, title and interest in said

- records, including the right to secure and maintain the copyright, trademark and/or patent of said records in the name of the Covered Entity.
- c. **Minimum Necessary.** To the extent required by the HITECH Act and Regulations, Business Associate shall limit its Use, Disclosure or request of PHI to the Limited Data Set or, if needed, to the minimum necessary to accomplish the intended Use, Disclosure or request, respectively. Effective on the date the Secretary issues guidance on what constitutes "minimum necessary" for purposes of the Applicable Law, Business Associate shall limit its Use, Disclosure or request of PHI to only the minimum necessary as set forth in such guidance.
- d. **State Privacy Laws.** Business Associate shall comply with California laws to the extent that such state privacy laws are not preempted by Applicable Law.
- e. **No Third-Party Beneficiaries.** Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- f. **Effect on Underlying Arrangement.** In the event of any conflict between this BAA and any underlying arrangement between Covered Entity and Business Associate, including the Agreements as amended from time to time, the terms of the BAA shall control with respect to Protected Health Information.
- g. **Interpretation.** This BAA shall be interpreted as broadly as necessary to implement and comply with Applicable Law. The Parties agree that any ambiguity in the BAA shall be resolved in favor of a meaning that complies and is consistent with the Applicable Law.
- h. **Governing Law.** This BAA shall be construed in accordance with the laws of the State of California.
- i. **Provisions Required by Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this BAA shall be deemed to be inserted herein and this BAA shall be read and enforced as though it were included therein.
- j. **Severability.** In the event that any provision of this BAA shall be construed to be illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining provisions hereof, but such illegal or invalid provision shall be fully severable and this BAA shall be construed and enforced as if such illegal or invalid provision had never been included herein, unless to do so would frustrate the intent and purpose of this BA.

