

**AMENDED AGREEMENT BETWEEN
THE SAN DIEGO COUNTY AIR POLLUTION CONTROL DISTRICT AND
THE COUNTY OF SAN DIEGO
REGARDING THE PROVISION OF SERVICES AND PAYMENT OF COSTS**

This Amended Agreement (“Agreement”) is made and entered into effective as of the date of the last signature on the signature page by and between the County of San Diego, a political subdivision of the State of California (“COUNTY”) and the San Diego County Air Pollution Control District, a local air pollution control district (“DISTRICT”), with reference to the following facts:

RECITALS

WHEREAS, the DISTRICT is an independent local air pollution control district continued in existence pursuant to California Health and Safety Code section 40002 which has been staffed by COUNTY employees;

WHEREAS, the DISTRICT is a body corporate and politic and a public agency of the state pursuant to California Health and Safety Code section 40700;

WHEREAS, the DISTRICT has functioned as a special district within the organizational structure of the COUNTY, and received services from COUNTY officers and employees;

WHEREAS, California Assembly Bill 423 (Gloria, 2019), amended the California Health and Safety Code to require the composition of the DISTRICT Board to include County, City and public members as of March 1, 2021;

WHEREAS, the DISTRICT desires to memorialize the current arrangement for services and continue to utilize miscellaneous services and employees historically provided by the COUNTY to the DISTRICT;

NOW, THEREFORE, the DISTRICT and the COUNTY agree as follows:

I. PURPOSE

This Agreement is entered into by the DISTRICT and the COUNTY to establish the provision of services and payment of costs of services and related matters as provided in California Health and Safety Code (“HSC”) section (“§”) 40101(b).

II. SERVICES PROVIDED

All COUNTY officers and employees, when acting for the benefit of the DISTRICT shall be ex officio officers and employees of the DISTRICT.

A. Land Use and Environment Group

1. The COUNTY Land Use and Environment Group Executive Office (LUEG) shall provide the following services to the DISTRICT:

- Board Letter drafting and docketing assistance;
 - Media training and press inquiry assistance;
 - Policy direction and support;
 - Human Resources support; and
 - Support and consult on budget and fiscal matters.
2. On March 1, 2021, LUEG will cease to perform these services for the DISTRICT.
- B. Auditor and Controller, Office of Financial Planning and Treasurer-Tax Collector
1. The COUNTY Auditor and Controller, Office of Financial Planning and Treasurer-Tax Collector shall provide budget, accounting, and other fiscal services in a timely manner to the DISTRICT in the areas identified below, including, but not limited to preparation of the budget in accordance with the County Budget Act, the research, preparation and distribution of reports on fiscal and accounting matters; the processing and payment of properly approved claims; the coordination of retirement rates and issues; and the preparation and distribution of payroll advices, warrants and W-2 forms.
 2. These services include, but are not limited to, calculation and accounting for the DISTRICT's share of unemployment insurance; calculation of and accounting for retirement system contributions and the DISTRICT's share of pension obligation bond payments and any payments made by COUNTY to the retirement system to pay down the unfunded liability; administration of and trustee services for the Excess Benefit Pension Plan (IRC 415m); services related to executive auto allowances; travel; mileage and parking; research and advice regarding fiscal and accounting matters when requested by the DISTRICT; calculation of self-insurance program rates; Cost Plan analysis and reporting; accounting services including chart of accounts maintenance; fixed assets and capital accounting; recording of deposits; DART transfer approval; warrant reconciliation; CAFR and Single Audit reporting; compilation of the annual Special Districts Financial Transactions Report (Report); audit services that may be requested of or required by the DISTRICT; and general ledger reports. Services may also include the set-up, configuration, testing and maintenance of ERP systems related to payroll for the DISTRICT.
 3. As of March 1, 2021, the Office of Financial Planning will no longer include the DISTRICT budget in the COUNTY'S Operational Plan and the DISTRICT will prepare its own budget.
 4. As of March 1, 2021 the DISTRICT will no longer be considered a blended component unit of the County, the DISTRICT's funds will no longer meet the requirement to be included as a Special Revenue Fund in the County's Comprehensive Annual Financial Report (CAFR), but will be included as fiduciary funds in the CAFR; and the federal awards received by the DISTRICT will not be included in the County's Schedule of Expenditures of Federal Awards (SEFA). Therefore, the independent audits of the County's CAFR and the Single Audit will no longer fulfill the DISTRICT's requirement for independent audits. Instead, the

- DISTRICT will hire an independent auditor to conduct these audits for the DISTRICT.
5. As of March 1, 2021, the DISTRICT will no longer be considered a blended component unit of the County. The Auditor and Controller will no longer compile the annual Special Districts Financial Transactions Report (Report) for the DISTRICT. The DISTRICT will be required to compile the Report or hire an independent accountant to compile the Report.
 6. As of March 1, 2021, the Auditor and Controller will no longer provide the following services: calculation of self-insurance program rates; Cost Plan analysis and reporting, and audit services.
 7. As of March 1, 2021 the COUNTY will provide on a limited basis the following services in the COUNTY's Oracle financial system: travel reimbursement; mileage and parking; research and advice regarding fiscal and accounting matters when requested by the DISTRICT; accounting services including chart of accounts maintenance; fixed assets and capital accounting; DART transfers and approval; requisition and invoice processing, warrant reconciliation, and general ledger reports. Services may also include the set-up, configuration, testing and maintenance of ERP systems related to payroll for the DISTRICT and applicable data conversion requests. As of July 1, 2022 the COUNTY will no longer provide these services.
 8. Except as otherwise provided, charges for the services to the DISTRICT in Section II.B. will be billed monthly and shall include estimated annual services billed based on the Cost Allocation Plan or Cost Allocation Plan methodology, as applicable, including the roll forward computation as set forth in the annual Cost Allocation Billing spreadsheet. Services provided that are not allocated via the Cost Allocation Plan or methodology will be directly billed, as applicable.
- C. The County shall provide the Information Technology (IT) services available through the County's Information Technology Outsourcing Contractor, including shared systems (BCMS, AEM, Documentum, Kronos, TellUsNowApp, ACA, etc.), as authorized by County staff possessing approval authority for IT services. The cost for these services, including all overhead costs shared by all participating County departments, will be charged to the DISTRICT via the iTrack billing system. The DISTRICT shall follow all current and future County IT policies, governance, and policies and processes as set forth by the County. These services will remain in place until final termination of the County/ITO contract unless and until the DISTRICT opts out of such services.
- D. For DISTRICT STAFF, the Department of Human Resources (DHR) shall provide Human Resources services, as stated in Article XII-D of the San Diego County Administrative Code.
- DHR shall also provide the services listed below:
1. Risk Management Division for DISTRICT STAFF:
 - i. Administer the Workers' Compensation Program;

- ii. Administer the Unemployment Insurance Program;
 - iii. Administer the Medical Standards Program;
 - iv. Administer the Background Program;
 - v. Administer the Employee Wellness Program;
 - vi. Provide Risk/Threat Assessment support as requested by the DISTRICT, not to include providers;
 - vii. Administer Risk Management Insurance Services (Worker's Compensation, Government Crime, Property, General Liability and Cyber Liability);
 - a. Provide programs to protect against liability risk;
 - b. Provide risk analysis of loss exposure as requested by the DISTRICT; and
 - c. Review applicable insurance programs to ensure adequately protected from risk as requested by the DISTRICT.
2. As of March 1, 2021, all Risk Management Insurance services will cease except for the following for DISTRICT STAFF:
- i. Workers' Compensation;
 - ii. Excess Workers' Compensation; and
3. Employee Benefits Division for DISTRICT STAFF shall:
- i. Administer Employee Benefits Program including Health (medical), Life, Dental, Vision, Accidental Death and Dismemberment, Spending Reimbursement Accounts and Welfare Benefits; and
 - ii. Provide and administer the Employee Assistance Program (EAP).

In the event the DISTRICT appoints employees who are not DISTRICT STAFF, as defined herein, the COUNTY will not provide the services provided in this section for those non-COUNTY employees.

E. Office of County Counsel

The Office of County Counsel may, upon request of designated DISTRICT staff, provide:

- 1. ongoing legal consultation, e.g., review and approval of Governing Body memos and resolutions, contracts;
- 2. initial and on-going consultation with DISTRICT staff regarding DISTRICT functions;
- 3. claims and administration services including settlement of claims in appropriate circumstances with the concurrence of the Air Pollution Control Officer;
- 4. representation and defense of the DISTRICT in claims and any legal actions, including but not limited to administrative and court actions, filed against the DISTRICT;
- 5. representation in enforcement actions on behalf of the DISTRICT;
- 6. ongoing legal consultation to the APCD Hearing Board;
- 7. consultation regarding personnel issues;
- 8. review of documents and procedures; and
- 9. provide any other legal services that may otherwise be requested.

- F. Department of General Services (DGS) shall, upon request of designated DISTRICT staff, in accordance with COUNTY policies, provide various facilities and fleet management services, to be charged in accordance with section IV, General Terms and Conditions, unless otherwise noted.

1. These services include, but are not limited to:
 - i. providing real estate services;
 - ii. providing construction, renovation, repair, operations, and maintenance of facilities, including access to buildings and mail services; and
 - iii. providing fleet management, including vehicle procurement and disposal, vehicle accident repairs, commercial repairs, vehicle repairs and preventative maintenance, and fueling.
 2. In accordance with COUNTY Board of Supervisors Minute Order [*insert Minute Order identifying information*], DGS shall be authorized to provide fleet management services to DISTRICT as described in Section F.1.iii, including service of vehicles that are not County-owned, provided that the vehicles are insured by the DISTRICT and the COUNTY is named as an additional insured on the DISTRICT's vehicle insurance policies.
 3. With written notice to and approval from the DISTRICT, DGS may contract these services out. DISTRICT agrees to pay the actual cost for performance of the approved services that are contracted out.
- G. Department of Public Works and Planning & Development Services shall provide GIS and mapping services. These services will also include the production of facilities signs of various types (identification, directional, etc.) and GIS data and hardcopy maps, as requested by the DISTRICT. These services will be organized, divided, and delivered so that:
1. Planning & Development Services (PDS) shall provide GIS services through the PDS Enterprise Service Unit called LUEG-GIS. These GIS services will include data creation, updating, and editing, web mapping applications, application support, processing GIS data, creation of field data or applications, geospatial analysis, and hardcopy maps, as requested by DISTRICT.
 2. Except as expressly provided, LUEG-GIS services performed pursuant to this Agreement will be performed pursuant to and in compliance with all County of San Diego rules and policies governing the use of GIS, including but not limited to San Diego County Administrative Code, San Diego County Regulatory Code, San Diego County Board Policies, and the CAO Administrative Manual.
 3. The DISTRICT agrees that its employees' access to the COUNTY's ArcGIS Portal will be governed by the End User License Agreement (EULA) governing the ArcGIS Portal
 4. The DISTRICT agrees to pay the assigned standard annual software and access fees required to retain both use of the DISTRICT desktop GIS software and the annual access fees to retain access to data sourced from the COUNTY's regional data warehouse relationship with the SanGIS JPA.

5. The DISTRICT agrees to pay its share of costs associated with supporting changes, modifications, and updates in GIS services, data, and applications that both benefit the DISTRICT and utilize COUNTY enterprise GIS infrastructure, servers, and storage.
 6. The DISTRICT agrees that these fees for GIS software and access will be equitable and shall be determined in the same manner that is used to determine costs for all other COUNTY departments that also utilize GIS software, services, and supplies, including overhead costs for non-General Fund departments.
 7. Department of Public Works shall provide graphic design, photo and A/V services, as well as production of photo prints, posters, banner and signage, as needed through their Creative Services Business unit.
- H. Department of Environmental Health (DEH) Occupational Health Program (OHP) shall provide pre-work asbestos and/or lead-based paint surveys of DISTRICT facilities, as requested by the DISTRICT. The work will include initial site visits, follow-up surveys, project consultations, collection and analysis of all necessary samples, database input, final report and distribution. DEH-OHP shall also provide respirator fit tests and worker health and safety consultation and training as requested for DISTRICT staff. DEH shall also continue to comply with the Agreement with the DISTRICT which provides for after-hours coverage of the District's complaint line by the Hazardous Materials Incident Team (HIRT).
- I. Department of Purchasing and Contracting shall, upon request of designated DISTRICT staff:
1. Act as the Purchasing Agent for the DISTRICT upon request and make any purchases of requested goods and services in accordance with current COUNTY ordinances and Board policies;
 2. Execute expenditure contracts, other than those for DISTRICT grant programs, when authorized by the DISTRICT;
 3. Provide assistance and consultation regarding DISTRICT records management;
 4. Provide assistance and consultation regarding DISTRICT administration of expenditure contracts executed by Purchasing Agent;
 5. Provide for the manner of disposition of personal property determined by DISTRICT to be surplus; and
 6. Assist with procurement activities as needed.
- J. Clerk of the Board of Supervisors shall:
1. Accept Petitions for variances and post legally required notices for variances;
 2. Schedule and conduct meetings of the Governing Body and the APCD Hearing Board;
 3. Post minutes/agendas of the Governing Body and the APCD Hearing Board on the County web-site, and provide legally required meeting notices, including publication of notices as required;
 4. Forward finalized Minute Orders to the DISTRICT;
 5. Accept applications for DISTRICT Hearing Board Member vacancies and process

- nominations; and
6. Conduct on-boarding processes for new DISTRICT Hearing Board Members.

On March 1, 2021, when the Board of Supervisors no longer serves as the DISTRICT Board, the Clerk of the Board of Supervisors will cease providing these services.

- K. Office of Ethics and Compliance (“OEC”): OEC shall receive and investigate complaints alleging improper government activity and unlawful discrimination including sexual harassment, perform the ethics and compliance functions set forth in San Diego County Code of Administrative Ordinance Section 125.2, and investigate Ethics Hotline complaints regarding DISTRICT. On March 1, 2021, OEC will cease to perform these services for the DISTRICT but will forward to the DISTRICT any complaints received regarding DISTRICT.
- L. Office of Strategy and Intergovernmental Affairs (OSIA) assists the DISTRICT in reviewing legislative proposals that may impact the DISTRICT. On March 1, 2021, OSIA will cease to perform this service for the DISTRICT.
- M. County Communications Office (CCO) provides communication and media services to the DISTRICT. On March 1, 2021, CCO will cease to perform these services for the DISTRICT.
- N. Except for the policies cited in Exhibit A, COUNTY services performed pursuant to this Agreement shall be performed pursuant to and in compliance with all COUNTY rules and policies, including but not limited to San Diego County Administrative Code, San Diego County Regulatory Code, San Diego County Board Policies, and trainings. Exhibit A may be updated from time to time by written consent of both the Chief Administrative Officer and Air Pollution Control Officer.

III. DISTRICT STAFF

DISTRICT STAFF will be defined as County of San Diego employees working for the DISTRICT as ex officio employees and officers.

- A. As to DISTRICT business, DISTRICT STAFF (other than the Air Pollution Control Officer (“APCO”)) receives direction from and reports to the DISTRICT BOARD through the APCO. As to the terms and conditions of employment, including employee rights, benefits, privileges, and responsibilities, DISTRICT shall adhere to County Code, County policies and County labor agreements and shall have access on these issues to appropriate COUNTY designated individuals or entities. Nothing herein is intended to deprive DISTRICT STAFF of the rights and protections of their existing County labor agreement or to reassign their classification to a different bargaining unit.
- B. The DISTRICT understands and consents to the appropriate representatives of the COUNTY to continue to collectively bargain on its behalf with respect to the setting of wages and benefits for DISTRICT STAFF. The DISTRICT understands and consents to the COUNTY acting on its own behalf with respect to reaching agreements as part of the

collective bargaining process on these issues. The DISTRICT will accept the salary, wage, and benefits agreed to for DISTRICT STAFF by the COUNTY as part of the collective bargaining process. Upon completion of negotiations, applicable agreements will be submitted to the DISTRICT.

- C. For unrepresented DISTRICT STAFF, the APCO may determine appropriate compensation within the salary ranges established by the COUNTY, and consistent with the DISTRICT budget.
- D. The DISTRICT currently provides the number of positions through the COUNTY and DISTRICT annual budget process. As of March 1, 2021, the number of positions for each classification assigned to the DISTRICT shall be set forth in the DISTRICT annual budget approved by the DISTRICT each year. Any changes to the number or classification of DISTRICT positions outside of the annual budget shall require approval of the COUNTY.

The COUNTY currently provides the classifications for DISTRICT positions through the COUNTY's compensation ordinance. As of March 1, 2021, if the DISTRICT wishes to add, delete or change a classification, it may be requested by the DISTRICT Board. However, any changes made to a classification or number of position must first have been processed through the COUNTY process for the applicable change.

- E. This Agreement is intended only to memorialize the particulars of the relationship between the DISTRICT and the COUNTY. It is not intended, nor should it be construed, to affect the relationship between any employee and the DISTRICT or between any employee and the COUNTY. This Agreement does not create any beneficial right or interest for any employee.
- F. State law provides that the DISTRICT Air Pollution Control Officer is the appointing authority for officers and employees of the DISTRICT, subject to the direction of the DISTRICT Board. Notwithstanding, the COUNTY Board does not delegate its authority or purview over the COUNTY Code, personnel allocation, civil service procedures, and salary and compensation to any other body, except as expressly described above.

IV. GENERAL TERMS AND CONDITIONS

- A. The COUNTY's responsibilities shall be as follows:

- 1. Except as otherwise expressly provided, charges for services to the DISTRICT shall include the following:
 - i. A-87 Cost Allocation Plan
Computation under the methodology known as "A-87 Actuals" (i.e., the cost methodology contained in the Federal Office of Management and Budget (OMB) Circular A-87 – Cost Principles for State and Local Indian Tribe Governments) for the applicable year of claiming, and adjusted positively and/or negatively upon mutual agreement of the parties by any known additional or reduced services levels; and other cost anomalies that may be identified or negotiated.

Or

Estimated annual services billed based on the A-87 Cost Allocation Plan methodology including the roll forward computation as set forth in the A-87 Cost Allocation Billing spreadsheet and estimated annual costs as set forth in the attached Matrix, incorporated herein by reference.

ii. Internal Service Funds

The DISTRICT will pay the COUNTY for its services from COUNTY Internal Service Fund Departments at the normal and customary rate which is the sum total of the DISTRICT's payment obligation.

iii. SDCERA

If applicable, administrative costs charged by the San Diego County Employees Retirement Association ("SDCERA") will be apportioned to the DISTRICT based on the number of employees assigned to the DISTRICT.

iv. County Counsel

DISTRICT agrees to pay for one full-time equivalent employee specifically assigned to DISTRICT business. DISTRICT agrees to pay for other County Counsel services as services are rendered. DISTRICT agrees to pay actual costs of any outside counsel services rendered specifically for DISTRICT business.

v. Workers' Compensation

The DISTRICT shall pay all claims costs attributable to DISTRICT STAFF at the Cost Commission approved rate for the administration of those claims.

B. The DISTRICT's responsibilities shall be as follows:

1. The DISTRICT and the COUNTY agree that the foundation of this Agreement is that the DISTRICT will pay a fair and equitable amount for the services provided by the COUNTY to the DISTRICT: The parties agree that payment arrangements which support this foundation include direct billing, agreements based on set amounts for services, or billing through A-87 methodologies. The DISTRICT and the COUNTY agree that all costs for services provided to the DISTRICT by the COUNTY shall be fairly and equitably determined in a manner consistent with this Agreement.
2. The DISTRICT shall be responsible for the DISTRICT's share of pension obligation bond (POB) payments, the DISTRICT's share of retirement system contributions, the DISTRICT's share of the annual required contribution (ARC) (pursuant to GASB 45), 415(m) plan and to the SDCERA 401(h) account to fund post-employment healthcare. The DISTRICT's share of retirement system contributions shall be based on the DISTRICT's "retirement gross" payroll, the retirement system contribution rates adopted on an annual basis by the Board of Supervisors, and employee contribution offset rates as established in the COUNTY's compensation ordinance for

DISTRICT employees. The DISTRICT's share of the post-employment health care ARC shall be a function of the DISTRICT's permanent employees' salary costs and a post-employment health care payroll charge rate set by the Auditor and Controller on an annual basis for non-safety COUNTY employees. Such charge rate may be adjusted during the year to ensure that the ARC is met. The DISTRICT's share of the 415(m) plan shall be based on the actual cost of the benefit paid for employees that retired assigned to the DISTRICT.

3. Pension Obligation Bonds: The DISTRICT shall continue to be responsible for the DISTRICT's share of existing pension obligation bond (POB) payments. The COUNTY shall provide the POB charge rate to the DISTRICT ten (10) business days prior to the payday in which it will be effective. If there is a proposed change to the methodology used to determine the DISTRICT's share of pension obligation bond payments (described in the POB Payroll Rate Methodology section below), the COUNTY will work reasonably with the DISTRICT to determine its share of the obligation payments.
 - i. The DISTRICT shall make the POB payment for each payroll cycle on DISTRICT paydays.
 - ii. If the DISTRICT provides a third party payroll, the third party payroll shall report in Microsoft Excel format for all permanent employees including all employee names, employee ID, paid actual hours worked, paid time off, premium pay, overtime pay, retirement compensable earnings, and POB contribution. This report shall be provided to the DISTRICT for each payroll cycle no later than two (2) business days after DISTRICT paydays. Except as required by law, all information contained in this report is to be kept confidential. Except as required by law, COUNTY agrees to maintain the confidentiality of information received from the DISTRICT or its designated third party during and after the performance of this Agreement, including but not limited to personal information, such as social security numbers. Except as required by law, COUNTY and its employees and representatives shall not disclose, disseminate, transmit, publish, distribute, make available, or otherwise convey confidential information contained in these reports without the DISTRICT's prior written consent, for any purpose other than the performance of this Agreement. Except as required by law means the COUNTY is required to disclose records or portions thereof due to federal or state laws, regulations, judicial, or administrative process, including subpoenas. COUNTY will give DISTRICT notice of any requests for disclosure prior to releasing any confidential information to a third party.
 - iii. The COUNTY reserves the right to make reasonably necessary changes to the required file format and the information requested in the payroll report until POB obligation has been paid off.
 - iv. POB PAYROLL RATE METHODOLOGY
 - a. The DISTRICT's share of pension obligation bond payments shall be a function of the DISTRICT's permanent employees' salary costs and the POB

payroll charge rate set by the Office of Financial Planning on an annual basis for non-safety COUNTY employees. There is no separate rate established for the DISTRICT only, the rate to the DISTRICT is the same as the rate charged for non-safety COUNTY employees. The objective of the payroll charge rate is to collect amounts required to fund annual debt service payments.

Therefore, the payroll charge rate may be adjusted during the year based on actual payroll trends to ensure that the budgeted contribution is met and not exceeded.

- b. Due to the potential for changes in payroll each pay-period; there is an inherent possibility that there will be a balance remaining or due to the POB fund at year end. The balance in the POB fund from all sources shall be appropriated in the following fiscal year's POB obligation budget. Remaining balances or amounts due to the POB fund shall be incorporated to either discount or increase the subsequent fiscal year payroll charge rate. The amount to be credited in the event of an over-collection or collected in the event of an under-collection will be calculated based on the weighted average of the required contribution from each entity and shall be applied to the POB fund as a whole and not separately. In addition, in order to account for the overlapping payroll periods at COUNTY's fiscal year-end, an accrual basis accounting shall be used. When the POBs have completely matured, any balances remaining or due to the POB fund shall be either returned to or due from contributing entities based on the weighted average of the required contribution of each entity.

4. State Unemployment Insurance (SUI)

i. Claims

- a. Claims for SUI submitted by DISTRICT employees that are accepted and paid by the Employment Development Department ("EDD") will be applied to the COUNTY'S account. The COUNTY will then be obligated to make the payments as these employees' payroll information was submitted under the COUNTY'S EDD/SUI account number.
- b. The DISTRICT shall reimburse the COUNTY for the actual amount and A-87 costs billed to the COUNTY by EDD for each DISTRICT employee.

ii. Reimbursement

- a. The DISTRICT shall pay all claims attributable to DISTRICT STAFF at the Cost Commission approved rate for administration of those claims.
- b. Reimbursement of A-87 costs shall not be duplicative of A-87 costs already being charged to the DISTRICT by the COUNTY.

- C. Billings from both parties shall be accompanied by sufficient expenditure detail to confirm the validity of the cost charges, and each party shall cooperate in clarifying any billing issues. Both parties shall provide with each billing an invoice for the billing

amount. Unless otherwise specified, the services set forth in this Agreement shall be billed quarterly and paid for on or before the 10th business day following the billing.

- D. In the event that either party disputes charges billed, the disputing party shall provide written notice to the coordinator designated in section IX of this Agreement within fifteen (15) business days of the receipt of the bill. The disputing party shall pay the undisputed portion of the bill in accordance with the payment terms described in the attached appendices.
- E. Fiscal year-end overpayment refunds due to a party shall be credited during the first quarter payment for the succeeding fiscal year, if any, or otherwise refunded by a party no later than August 15 of the subsequent fiscal year. Any underpayment balance due to a party shall be paid no later than August 15 of the subsequent fiscal year.
- F. Both parties shall be in conformity with all applicable federal, state, county, district, and local laws, rules, and regulations, current and hereinafter enacted.

V. INDEMNIFICATION

A. Claims Arising From the Sole Acts or Omissions of DISTRICT Parties

The DISTRICT hereby agrees to defend and indemnify the COUNTY, its agents, officers, and employees (hereinafter collectively referred to as "COUNTY Parties"), from any claim, action or proceeding against COUNTY Parties, including but not limited to insurance subrogation claims, arising solely out of the acts or omissions of the DISTRICT, its agents, officers, employees and DISTRICT STAFF (hereafter collectively referred to as "DISTRICT Parties") in the performance of this Agreement. As used in section V, the term COUNTY Parties excludes DISTRICT STAFF, as defined herein. At its sole discretion, the COUNTY may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve the DISTRICT of any obligation imposed by this Agreement. The COUNTY shall notify the DISTRICT promptly of any claim, action, or proceeding and cooperate fully in the defense.

B. Claims Arising from the Sole Acts or Omissions of COUNTY Parties

The COUNTY hereby agrees to defend and indemnify DISTRICT Parties from any claim, action, or proceeding against DISTRICT Parties, arising solely out of the acts or omissions of COUNTY Parties in the performance of this Agreement. At its sole discretion, the DISTRICT may participate at its own expense in the defense of any such claim, action, or proceeding, but such participation shall not relieve the COUNTY of any obligation imposed by this Agreement. The DISTRICT shall notify the COUNTY promptly of any claim, action, or proceeding and cooperate fully in the defense.

C. Claims Arising from Concurrent Acts or Omissions

The DISTRICT hereby agrees to defend itself, and the COUNTY hereby agrees to defend itself, from any claim, action, or proceeding arising out of the concurrent acts or omissions of DISTRICT Parties and COUNTY Parties. In such cases, the DISTRICT and the COUNTY agree to retain their own legal counsel, bear their own defense costs, and waive

their right to seek reimbursement of such costs, except as provided in paragraph V(D) below.

D. Joint Defense

Notwithstanding paragraph V(C) above, in cases where the DISTRICT and the COUNTY agree in writing to a joint defense, the DISTRICT and the COUNTY may appoint joint defense counsel to defend the claim, action, or proceeding arising out of the concurrent acts or omissions of COUNTY Parties and DISTRICT Parties. Joint defense counsel shall be selected by mutual agreement of the DISTRICT and the COUNTY. The DISTRICT and the COUNTY agree to share the costs of such joint defense and any agreed settlement in equal amounts, except as provided in the paragraph titled Reimbursement and/or Reallocation below. The DISTRICT and the COUNTY further agree that neither party may bind the other to a settlement agreement without the written consent of both the DISTRICT and the COUNTY.

a. Reimbursement and/or Reallocation

Where a trial verdict or arbitration award allocates or determines the comparative fault of the parties, the DISTRICT and the COUNTY may seek reimbursement and/or reallocation of defense costs, settlement payments, judgments and awards, consistent with such comparative fault.

- E. The duty of the DISTRICT and COUNTY to defend and indemnify as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.
- F. This Section V shall survive termination of this Agreement as to all claims arising from acts or omissions occurring during the term of this Agreement.

VI. TERM

This Agreement shall be effective on the date on which the last of the Parties sign it, and shall remain in effect until amended by the parties, in writing, or terminated by either party subject to the following notice provisions:

- A. This Agreement may be terminated by the COUNTY with a one-year written notice provided to the DISTRICT.
- B. This Agreement may be terminated by the DISTRICT with a one-year written notice provided to the County.
- C. In the event that notice to terminate this Agreement is served, both parties agree to work in good faith to disentangle. Termination of the Agreement cannot occur without a successor agreement being approved by both parties to address issues, if any, which survive termination. If a successor agreement is required, the current agreement will remain in effect until a successor agreement is reached.

VII. SEVERABILITY.

Should any part of this Agreement be held to be invalid by a court of competent jurisdiction,

the remainder of the Agreement shall be considered as the whole Agreement and shall be binding on the parties to the Agreement.

VIII. AMENDMENTS

Amendments to the Agreement may be made at any time only upon written approval of all parties.

IX. DESIGNATION OF CONTRACT REPRESENTATIVES

The COUNTY hereby designates its Deputy Chief Administrative Officer, Land Use and Environment Group, as Contract Representative for the COUNTY under this Agreement. The DISTRICT hereby designates the Air Pollution Control Officer as the Contract Representative for the DISTRICT under this Agreement.

X. NOTICES

Unless specifically stated to the contrary, any notices required or permitted hereunder shall be in writing and may be personally delivered; or by mail by depositing such notice in the United States mail, first-class postage prepaid; or by reputable overnight delivery service (such as Federal Express, UPS or DHL); addressed as follows or to such other place as each party may designate by subsequent written notice to each other.

To the DISTRICT: Air Pollution Control Officer
San Diego County Air Pollution Control District
10124 Old Grove Road
San Diego, California 92131

To the COUNTY: Deputy Chief Administrative Officer
Land Use and Environment Group
1600 Pacific Highway, Suite 212
San Diego, California 92101

A notice shall be effective on the date of personal delivery, if personally delivered before 5:00 p.m. on a business day, or otherwise on the business day following personal delivery; or two (2) business days following the date the notice is postmarked, if mailed; or on the day following delivery to the applicable overnight courier, if sent by overnight courier for next business day delivery; and otherwise when received.

XI. TIME OF PERFORMANCE

Unless specifically stated to the contrary, all references to days herein shall be deemed to refer to calendar days. If the final date for payment of any amount or performance of any act falls on a Saturday, Sunday or holiday, such payment shall be made or act performed on the next succeeding business day. Unless specifically stated to the contrary, all references to business days herein do not include DISTRICT or COUNTY holidays.

XII. COMPLETE AGREEMENT AND WAIVER

This Agreement contains all the terms and conditions agreed upon by the COUNTY and the DISTRICT and no other understanding, oral or otherwise, regarding this Agreement shall be deemed to exist or to bind any of the parties of this Agreement.

XIII. APPROVALS AND AUTHORITY

This Agreement must be approved by the Board of Supervisors of the COUNTY and by the DISTRICT Board to be effective. The COUNTY and DISTRICT each has all requisite power and authority to conduct its respective obligations and to execute, deliver and perform under this Agreement. Each party warrants that these individuals who sign this Agreement on behalf of each party have the legal power, right and authority to make this Agreement and to bind each respective party.

XIV. MISCELLANEOUS PROVISIONS

- A. Obligations: This Agreement shall be binding upon the successor of the Members of the DISTRICT's Board, and the Members of the COUNTY's Board of Supervisors.
- B. Review: The parties hereto, by their due execution of this Agreement, represent to the other party that they have reviewed each term of this Agreement with their counsel, or have had the opportunity for such review with their counsel, and that hereinafter no party shall deny the validity of this Agreement on the ground that the party did not have the advice of counsel generally or advice of their counsel in the aforementioned dispute. Each party has had the opportunity to receive legal advice with respect to the advisability of this Agreement.
- C. Construction: Each party has had the opportunity to participate in drafting and preparing this Agreement. The headings and captions used in this Agreement are for convenience and ease of reference only, and shall not be used to construe, interpret or limit the terms of this Agreement and shall not be construed against any one party.
- D. Invalid Material Term: In the event that any material term, covenant, condition, or provision of this Agreement shall be held by a court of competent jurisdiction to be invalid or against public policy, the parties shall use their best efforts and good faith to negotiate and implement amendments to the Agreement that are necessary to and consistent with the purpose of this Agreement and the intent of the parties. In the event the parties are not able to reach agreement on a material provision after good faith efforts to negotiate and implement such amendments within ninety (90) days following the final judgment of the court's ruling, this Agreement shall terminate by operation of this provision at close of business on the ninetieth (90th) day.
- E. Governing Law: This Agreement is made, executed and delivered within the State of California and the rights and obligations of the parties hereto shall be construed, interpreted and enforced in accordance with, and governed by the laws of the State of California.

- F. Force Majeure: Neither party will be liable for a delay or failure in its performance caused by Force Majeure. The term “Force Majeure” as employed herein means any cause not reasonably within the control of the party that delays or fails to perform under this Agreement. Force Majeure shall include, but not be limited to, the following: acts of God, threats or acts of terrorism or similar acts, natural disasters, global pandemic, war, strikes, civil disorder, or any other cause not reasonably within the control of such party.
- G. Good Faith: COUNTY and DISTRICT will cooperate in good faith to implement this Agreement.
- H. Legislative Changes: If any changes are made to the California Government Code sections or California Health and Safety Code sections referenced herein, or to any successor legislation or regulations regarding the provision of services or payment of costs covered by this Agreement, or if the State imposes any budget requirements or limitations applicable to such, then (1) to the extent any of the changes are of mandatory application, such change(s) shall apply to the parties and this Agreement, and this Agreement shall be deemed to be amended to be consistent with such change(s) except to the extent that such change(s) alter(s) a material provision of this Agreement in which case such material provision shall be voidable and the parties will use their best efforts and negotiate in good faith to amend the Agreement as necessary; and (2) to the extent any of the changes are not of mandatory application, such change(s) shall not affect this Agreement or the rights or obligations of the parties under this Agreement unless the parties mutually agree to subject themselves to such change(s) pursuant to section VIII of this Agreement.
- I. Confidentiality: Both parties agree to maintain the confidentiality of any information from DISTRICT or COUNTY records that COUNTY or DISTRICT, its officers, employees or agents may have contact with in the context of providing services to the DISTRICT or COUNTY under this Agreement that is privileged or confidential under all applicable federal, state, county, DISTRICT, and local laws, rules, and regulations, current and hereinafter enacted.

IN WITNESS THEREOF, the signatory parties hereby approve and agree to the terms of this Amended Agreement on this _____ day of _____, 2020.

COUNTY OF SAN DIEGO

By _____
HELEN ROBBINS-MEYER
Chief Administrative Officer

Date: _____

Approved as to form and legality
David J. Smith, Acting County Counsel By:

Aurelia M. Razo, Senior Deputy

SAN DIEGO COUNTY AIR POLLUTION CONTROL DISTRICT

By _____
ROBERT REIDER
Interim Air Pollution Control Officer

Date: _____

Approved as to form and legality
David J. Smith, Acting County Counsel By:

Paula A. Forbis, Senior Deputy

Exhibit A

The DISTRICT shall not be subject to and the COUNTY shall not administer services under the Agreement pursuant to the following rules and policies:

1. None identified.

Exhibit A may be updated pursuant to this Agreement, section II.N.