

**THIRD 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 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").

**RECITALS**

**WHEREAS**, the COUNTY is a political subdivision of the State;

**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 BY COUNTY**

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

## A. Auditor &amp; 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 accounting and other fiscal services in a timely manner to the DISTRICT in the areas identified below, including, but not limited to research, preparation and distribution of reports on fiscal and accounting matters; the processing and payment of properly approved claims; and the coordination of retirement rates and issues.
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); travel; research and advice regarding fiscal and accounting matters when requested by the DISTRICT; calculation of Workers' Compensation and Unemployment insurance rates; accounting services including chart of accounts maintenance; fixed assets and capital accounting; recording of deposits; DART transfer approval; warrant reconciliation; 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. The Auditor and Controller shall also provide the timekeeping and payroll services listed below:
  - i. Provide support to work order system time transactions imported into County's Timekeeping System on a weekly basis;
  - ii. Review and audit time records and process corrections, as necessary;
  - iii. Provide communication on payroll related updates, assist with biweekly pay period close reconciling and auditing, and inquiries related to timekeeping and labor entries in the timecard;
  - iv. Calculate and process biweekly on-cycle and off-cycle payroll, executive auto allowance, special payments (e.g. wellness incentive, one-time lump sum, and employee recognition awards); and other benefits allowed by the Compensation Ordinance, Memorandum of Agreements (MOAs), Human Resources Policies and Procedures Manual, Administrative Code, etc);
  - v. Prepare and distribute biweekly paycheck advices and warrants.

- vi. Prepare biweekly Budget Unit Labor Costing (BULC), Final Claim, and payroll journals;
  - vii. Provide accurate online access to paycheck advices and W-2/W-2c Forms;
  - viii. Process and remit biweekly payroll taxes, garnishments, union dues, long-term disability payments, other voluntary/involuntary deductions, deferred compensation, retirement, benefit deductions and any related employer costs;
  - ix. Process Direct Deposit Authorizations, W-4/DE 4 Tax Withholding Certificates, Catastrophic Leave and Benefit Integration/Buyback;
  - x. Process taxable and non-taxable reimbursements and fringe benefits (e.g. same day meal reimbursement, mileage, parking);
  - xi. Prepare and file quarterly and annual Federal & State payroll tax reports, including W-2, and filing subsequent adjustments, as needed;
  - xii. Prepare and distribute annual W-2s and Federal & State Earned Income Tax Credit (EITC) notices;
  - xiii. Prepare the annual State Controller's Government Compensation in California (GCC) Report;
  - xiv. Prepare responses to Public Records Act (PRA) requests for payroll related inquiries to be reviewed for release or transmission by the DISTRICT;
  - xv. Assist with annual financial statements and audits, including preparation of reports in accordance with GASBs related to payroll that includes transaction details for payroll expenditures by employees, pension, and Other Post-Employment Benefits OPEB calculations, short and long term compensated absence balances, payroll register files, Workers' Compensation Insurance and Unemployment Insurance, and quarterly tax returns for Federal (IRS) & State (EDD).
4. DISTRICT is not considered a blended component unit of the County. DISTRICT's funds will be included as fiduciary funds in the Annual Comprehensive Financial Report (ACFR); and the federal awards received by the DISTRICT are not included in the County's Schedule of Expenditures of Federal Awards (SEFA). Therefore, the independent audits of the County's ACFR and the Single Audit will not fulfill the DISTRICT's requirement for independent audits. Instead, the DISTRICT will hire an independent auditor to conduct these audits for the DISTRICT.

5. 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.
6. The DISTRICT agrees to pay its share of costs associated with supporting changes, modifications, and updates in systems and applications that both benefit the DISTRICT and utilize COUNTY ERP system enterprise infrastructure.
7. Except as otherwise provided, charges for the services to the DISTRICT in Section II.A. 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.

#### B. County Technology Office

1. The County shall provide the Information Technology (IT) services available through the County's Information Technology Outsourcing (ITO) Contractor, including shared systems (including but not limited to Timekeeping, Financials, Case/Record Management, Public Service Management, Document Management systems, 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 ITO billing system or through quarterly billing by the County Group office possessing authority for IT services. The DISTRICT shall follow all current and future County IT policies, governance, and policies and processes as set forth by the County, as applicable. These services will remain in place until final termination of the County/ITO contract unless and until the DISTRICT opts out of such services.

#### C. Department of Human Resources

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 services for DISTRICT STAFF:
  - i. Administer the Worker's Compensation Program;
  - ii. Administer Excess Worker's Compensation Program.
  - iii. Administer the Medical Standards Program
  - iv. Administer the Employee Wellness Program
  - v. Provide Risk/Threat Assessment support as requested by the DISTRICT
2. Employee Benefits Division services for DISTRICT STAFF:
  - i. Administer Employee Benefits Program including Health (medical), Life, Dental, Vision, Accidental Death and Dismemberment, Spending Reimbursement Accounts and Health and Welfare Benefits;
  - ii. Provide and administer the Employee Assistance Program (EAP)
3. The Budget Division services for DISTRICT STAFF
  - i. Administer the Unemployment Insurance Program
  - ii. Administer the background program

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.

**D. Office of Ethics and Compliance**

The Office of Ethics and Compliance may receive and refer complaints to the DISTRICT for investigation, including Ethics Hotline complaints, alleging improper government activity and unlawful discrimination including sexual harassment complaints. The DISTRICT may request OEC investigate a complaint that was referred to the DISTRICT. If OEC agrees to investigate a complaint at the request of the DISTRICT, OEC will perform the ethics and compliance functions set forth in Section 125.2 of the San Diego County Administrative Code. 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 legal services including but not limited to the following:

1. Ongoing legal consultation to the Air Pollution Control Officer and APCD staff, e.g., review and approval of Governing Body memoranda, resolutions, and contracts;
2. Attend meetings of the APCD Governing Body, Policy Committee, APCD Hearing Board, and any other related to the services provided in this section;
3. Initial and ongoing consultation with DISTRICT staff regarding DISTRICT functions;
4. Claims and administration services including settlement of claims in appropriate circumstances with the concurrence of the Air Pollution Control Officer;
5. 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;
6. Representation in enforcement actions on behalf of DISTRICT; and
7. Ongoing legal consultation to the APCD Governing Board, Committees of the Governing Board, and APCD Hearing Board.
8. Consultation regarding personnel services;
9. Reviewing of documents and procedures; and
10. Provide any other legal services that may otherwise be requested.

F. Department of General Services

The 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. DGS 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;
  - 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 April 6, 2021 (29), DGS shall be authorized to provide fleet management services to DISTRICT as described in this section, 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 policy.
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

The Department of Public Works (DPW) and Planning & Development Services (PDS) shall provide GIS and mapping services to DISTRICT. 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. 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 rules and policies governing the use of GIS, including, but not limited to, the San Diego County Administrative Code, the San Diego County Regulatory Code, San Diego County Board Policies, and the CAO Admin 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 COUNTY departments that also utilize GIS software, services, and supplies, including overhead costs for non-General Fund departments.
7. DPW shall provide graphic design, photo and A/V services, as well as production of photo prints, posters, banner and signage, as needed through the DPW Creative Services Business unit.

#### H. Department of Environmental Health & Quality

1. The Department of Environment Health & Quality (DEHQ), 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. DEHQ-OHP shall also provide respirator fit tests and worker health and safety consultation and training as requested for DISTRICT staff. DEHQ 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

The Department of Purchasing and Contracting (DPC) 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, as applicable;
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 the Purchasing Agent;



5. Provide for the manner of disposition of personal property determined by DISTRICT to be surplus;
  6. Assist with procurement activities as needed.
- J. 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 applicable 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 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 DISTRICT Board may request to add, delete, or change a classification. Any changes made to a classification or number of positions must first be 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

- a. DISTRICT agrees to pay for one full-time equivalent employee specifically assigned to DISTRICT business; COUNTY determines the salary for the assigned employee based on the current County Counsel salary chart.
- b. DISTRICT agrees to pay for other County Counsel services as services are rendered.
- c. COUNTY has authority to select and hire any outside counsel needed for DISTRICT legal services after discussion with DISTRICT. 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.

vi. Office of Ethics and Compliance

The DISTRICT shall pay for all Services provided by the Office of Ethics and Compliance at the hourly rate in effect as of the date services are rendered.

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 COUNTY 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, Finance and General Government 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  
                             Finance and General Government Group

1600 Pacific Highway, Suite 298  
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 Agreement on this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

COUNTY OF SAN DIEGO

By \_\_\_\_\_

Ebony N. Shelton

Chief Administrative Officer

Date \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY

Claudia G. Silva, County Counsel By:

\_\_\_\_\_  
Inga Lintvedt, Chief Deputy

SAN DIEGO COUNTY AIR POLLUTION CONTROL DISTRICT

By \_\_\_\_\_

PAULA FORBIS

Air Pollution Control Officer

Date \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY

Claudia G. Silva, County Counsel By:

\_\_\_\_\_  
Heidi Gabriel-Pack, 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.J.