

**CITY OF ONTARIO  
CONFIRE EMS PROGRAM  
LOAN AGREEMENT**

This CITY OF ONTARIO CONFIRE EMS PROGRAM LOAN AGREEMENT (the “Agreement”) is made as of \_\_\_\_\_ 20\_\_, by and between **CONSOLIDATED FIRE AGENCIES (“Borrower”)**, a joint powers agency, acting on behalf of its **CONFIRE EMS**, a division of the Borrower (“**EMS**”) and the **CITY OF ONTARIO**, a California municipal corporation (“**Lender**”).

R E C I T A L S

A. Borrower is a joint powers agency, was created to provide services relating to the operation of a regional public safety communication system and cooperative program of fire protection, rescue and emergency medical services system.

B. EMS is a subsidiary division of Borrower, which provides emergency medical services to Borrower’s member agencies (the “Member Agencies”).

C. Borrower has requested that the Lender extend credit to Borrower in the form of a revolving line of credit with a maximum credit limit of Twenty Million Dollars (\$20,000,000) for the purpose of providing emergency medical services and ambulance transportation services, and to fund the administrative support to commence operations, billings and collection services (the “Program”).

D. The Lender has agreed to extend credit to Borrower, subject to and in accordance with the terms and conditions of this Agreement and the other “Loan Documents” as that term is defined below.

NOW, THEREFORE, for good and valuable consideration the parties agree as follows:

**1. DEFINITIONS AND CONSTRUCTION.**

**1.1 Definitions.** Capitalized terms in this Agreement that are not defined when first used shall have the meanings set forth below:

- (a) **Advances.** The term “Advances” shall mean all funds advanced to the Borrower under the terms of this Agreement.
- (b) **Administrative Statements.** Borrower’s statements regarding administration of billing to insurance providers and federal and State agency reimbursement applications related to the Program.
- (c) **Agreement.** The term “Agreement” shall mean this Agreement, any schedules hereto, any promissory notes, and assignments required hereunder (whether executed concurrently with or prior or subsequent to the date hereof), and any concurrent or subsequent amendments,

modifications, supplements, chattel paper, extensions, or schedules to any of the foregoing.

- (d) **Authorized Officer.** The term “Authorized Officer” shall mean Executive Director of the Borrower.
- (e) **Borrower’s Books.** The term “Borrower’s Books” shall mean: (a) all of Borrower’s books and records including ledgers, records indicating, summarizing, or evidencing Borrower’s assets or liabilities related to the Program; (b) all information relating to Borrower’s business operations or financial condition related to the Program; and (c) all computer programs, disk or tape files, printouts, runs, or other computer prepared information, and the equipment containing such information related to the Program.
- (f) **Business Day.** The term “Business Day” shall mean any day which is not a Saturday, Sunday, or other day on which banks in the State of California are authorized or required to close.
- (g) **Event of Default.** The term “Event of Default” shall mean the occurrence of an event described in Section 6.1 below.
- (h) **Financial Statement(s).** The term “Financial Statement(s)” shall mean all income statements, balance sheets, statements of retained earnings or other related statements which reflect the financial worth of Borrower related to the Program.
- (i) **Loan.** The term “Loan” shall mean the aggregate of all Advances made by Lender to Borrower hereunder.
- (j) **Loan Documents.** The term “Loan Documents” shall mean, collectively, this Agreement, the Note, any other note or notes executed by Borrower to the order of Lender, and any other document, instrument and agreement executed by Borrower in connection with this Agreement.
- (k) **Maximum Credit Limit.** The term “Maximum Credit Limit” has the meaning provided in Section 2.1 below.
- (l) **Members of the Borrower.** The term “Members of the Borrower” shall mean the “Parties” as described in the Joint Powers Agreement (Third Amended and Restated) and dated March 23, 2021, by and among the Members.
- (m) **Note.** The term “Note” shall mean a promissory note delivered in connection with each draw hereunder, each in a minimum principal amount of One Million Dollars (\$1,000,000), up to the maximum

aggregate amount of Twenty Million Dollars (\$20,000,000), each executed by Borrower to the order of Lender, which will evidence Advances made to Borrower hereunder. The form of such note is attached hereto as Exhibit A.

- (n) **Obligations**. The term “Obligations” shall mean all Advances together with interest thereon, Lender’s expenses, and all other amounts payable by Borrower under the Loan Documents, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and including any debt, liability, or obligation owing from Borrower to others which Lender may have obtained by assignment or otherwise, and further including all interest not paid when due and all Lender’s expenses which Borrower is required to pay or reimburse by the Loan Documents, by law or otherwise.
- (o) **Revenues**. The term “Revenues” means all billings for transport services and GMS services, which includes State and Federal reimbursement or supplemental reimbursement funds.

**1.2 Construction.** Unless the context of this Agreement clearly requires otherwise, references to the plural include the singular, to the singular include the plural, to the part include the whole, and “including” is not limiting, and “or” has the inclusive meaning represented by the phrase “and/or.” The words “hereof,” “herein,” “hereby,” “hereunder” and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. Section, subsection, clause, and exhibit references are to this Agreement unless otherwise specified.

**1.3 Accounting Terms.** All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles (“GAAP”) as in effect from time to time. When used herein, the term “financial statements” shall include the notes and schedules thereto.

## **2. ADVANCES AND TERMS OF PAYMENT.**

**2.1 Extension of Credit.** Subject to the full satisfaction of each and all of the conditions set forth in this Article II, and subject to the all other terms and conditions of this Agreement, Lender shall, upon the request of Borrower made from time to time but no later than two (2) years from \_\_\_\_\_, 2023, the effective date of this Agreement, and so long as no Event of Default has occurred and is continuing, or so long as this Agreement has not been terminated, and subject to the full satisfaction of each and all of the conditions set forth in this Agreement, make Advances to Borrower in an aggregate amount not to exceed, at any one time, the sum of the following (the “Maximum Credit Limit”): Twenty Million Dollars (\$20,000,000.00), provided through the Lender’s unrestricted funds other than the General Fund of the Lender.

**2.2 Request for Advance.** The Loan extended hereunder is a revolving line of credit, which means Borrower may borrow up to the maximum amounts hereunder. Borrower may take Advances in a minimum amount of One Million Dollars (\$1,000,000). Total draws cannot exceed Twenty Million (\$20,000,000). Advances, as well as directions for payment from Borrower’s

deposit accounts maintained with Lender, must be requested in writing on behalf of Borrower by any Authorized Officer. Borrower agrees to be liable for all sums advanced in accordance with Borrower's or Borrower's authorized representative's instructions. The unpaid Advances owing hereunder, at any time, will be evidenced by a separate repayment schedule and Note to be added to this Agreement. All requests for Advances shall be received by Lender five (5) Business Days prior to the proposed date the requested Advance is to be made. Each request made to Lender for an Advance shall contain the following: (a) the aggregate principal amount of the Advance; (b) the Business Day the Borrower is requesting Lender to make the Advance, and (c) satisfaction of conditions of Section 2.13 hereof.

**2.3 Authorization to Make Advances.** Lender is hereby authorized to make Advances, solely from its unrestricted funds, other than the Lender's General Fund, based on a written request to Lender made by anyone purporting to be an Authorized Officer. Borrower hereby holds Lender harmless against any loss, claim, liability, cause of action, and damages arising out of Lender's reliance on such request in making an Advance hereunder.

**2.4 Maturity Dates.** Each Advance shall have two (2) years from the date of the effective Advance payment date (the "Closing Date") to repay the loan (the "Maturity Date"). The Final Maturity Date shall be the date which is four (4) years from \_\_\_\_\_, 2023, the effective date of this Agreement.

**2.5 Security.** The Loan and all other payment obligations under this Agreement and the Loan Documents will be payable from and secured by the Revenues of the Borrower.

**2.6 Repayment of Note.** For each Note, Borrower will pay scheduled principal and interest as follows:

- (a) the first payment due for each Advance shall be the date one year from the date of such Advance (for example, if the first draw is January 1, 2024, then the first payment shall be made on December 31, 2024); and
- (b) thereafter, on the first day of each calendar month or on the first date of each calendar quarter (January 1st, April 1st, July 1st, October 1st), as selected by the Borrower in each Advance request.

The entire Loan shall be paid in full by the Maturity Date.

**2.7 Interest.** Interest rate shall be determined by using the Local Agency Investment Fund (LAIF) daily effective yield rate, on each effective Closing Date. Interest on each Advance shall not exceed 4.00%.

**2.8 Default Interest Rate.** The interest rate after the occurrence of any Event of Default shall be calculated at the rate of 7.98% (the "Default Rate") on a monthly basis.

**2.9 Insurance.**

- (a) Coverage. For the duration of this Agreement, Borrower shall maintain insurance against claims for injuries to persons or damages to property

which may arise from or in connection with the Program. Coverage shall be at least as broad as:

(1) **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$5,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

(2) **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Borrower has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

(3) **Workers’ Compensation:** as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

(4) **Fidelity & Crime:** Fidelity & Crime coverage with a limit no less than \$1,000,000 including coverage for employee dishonesty and theft, disappearance and destruction of money and securities.

If the Borrower maintains broader coverage and/or higher limits than the minimums shown above, the Lender requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Borrower. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Lender.

(b) **Policies.** The insurance policies shall contain, or be endorsed to contain, the following provisions:

(1) **Additional Insured Status.** The Lender, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Borrower including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Borrower’s insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

(2) **Primary Coverage.** For any claims related to this contract, the Borrower’s insurance coverage shall be primary and non-contributory and at least as broad as ISO CG 20 01 04 13 as respects the Lender, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Lender, its officers, officials, employees, or volunteers shall be excess of the Borrower’s insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies.

(3) **Umbrella or Excess Policy.** The Borrower may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (“SIRs”), indemnity, and defense requirements. The Umbrella or Excess policies shall be provided on a true “following form” or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the additional insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Borrower’s primary and excess liability policies are exhausted.

(4) **Notice of Cancellation.** Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Lender.

(5) **Waiver of Subrogation.** Borrower hereby grants to Lender a waiver of any right to subrogation which any insurer of said Borrower may acquire against the Lender by virtue of the payment of any loss under such insurance. Borrower agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Lender has received a waiver of subrogation endorsement from the insurer.

(6) **Self-Insured Retentions.** Self-insured retentions must be declared to and approved by the Lender. The Lender may require the Borrower to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Lender. The CGL and any policies, including Excess liability policies, may not be subject to a SIR or deductible that exceeds \$25,000 unless approved in writing by Lender. Any and all deductibles and SIRs shall be the sole responsibility of Borrower or subcontractor who procured such insurance and shall not apply to the indemnified additional insured parties. The Lender may deduct from any amounts otherwise due Borrower to fund the SIR/deductible. Policies shall not contain any SIR provision that limits the satisfaction of the SIR to the named insured. The policy must also provide that Defense costs, including the allocated loss adjustment expenses, will satisfy the SIR or deductible. The Lender reserves the right to obtain a copy of any policies and endorsements for verification.

(7) **Acceptability of Insurers.** Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best’s rating of no less than A:VII, unless otherwise acceptable to the Lender.

(8) **Verification of Coverage.** Borrower shall furnish the Lender with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause and a copy of the Declarations and Endorsements Pages of the CGL and any Excess policies listing all policy endorsements. All certificates and endorsements and copies of the Declarations and Endorsements pages are to be received and approved by the Lender before the Program commences. However, failure to obtain Loan Agreement

the required documents prior to the work beginning shall not waive the Borrower's obligation to provide them. The Lender reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. The Lender reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

**2.10 Accounting System.** Borrower at all times hereafter shall maintain a standard and modern system of accounting in accordance with GAAP, with ledger and account cards or computer tapes, disks, printouts, and records pertaining to the Program which contain information as may from time to time be requested by Lender.

**2.11 Records.** Borrower shall keep full and accurate accounts and records of its operations according to GAAP.

**2.12 Audit.** Borrower shall permit Lender, its employees or agents upon request to inspect and test Borrower's books and records for the purpose of verifying the accuracy of all information required under the terms of this Agreement or submitted pursuant to this Agreement. Pursuant to this Section, Borrower shall grant Lender complete access (including computer access) to all records in whatever form, including accounts, bank statements, delinquency reports, collection reports and litigation reports, whether in hard form or on software.

**2.13 Conditions to Each Advance.** Lender shall not be obligated to disburse all or any portion of the first Advance and each subsequent Advance, unless and until Borrower has fully satisfied each and all of the following conditions:

- (a) The outstanding principal balance owed on the Loan as evidenced by the Note does not at any time exceed the Maximum Credit Limit;
- (b) Borrower shall have executed and delivered to Lender an original counterpart of this Agreement and a schedule of repayment for such draw;
- (c) Borrower shall have executed and delivered to Lender an original Note for such draw;
- (d) A duly executed resolution to borrow authorizing the loan transactions and authorizing specific officers to act on behalf of the Borrower in connection with this Agreement; and
- (e) Borrower has delivered all approvals and incumbency certificates of officers of the Borrower executing any Loan Documents;
- (f) Borrower's Counsel has delivered legal opinions addressed to Lender in form and substance satisfactory to the Lender and Lender's Counsel;
- (g) Lender shall have received any and all additional documents, instruments and certificates required pursuant to this Agreement, or otherwise deemed necessary and requested by Lender.

- (h) Borrower has delivered a certificate to Lender evidencing that (i) no Event of Default has occurred, (ii) all representations, warranties, and covenants are true and correct and (iii) no material adverse change has occurred with respect to the Borrower, since the date of the most recent audited financial statements delivered to the Lender.
- (i) Borrower has paid all closing fees and expenses.

### 3. CONTINUING REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Lender as follows, each such representation and warranty to continue so long as any Obligations remain unpaid:

**3.1 Organization; Authority as to Loan Documents.** The Borrower is in good standing under the laws of the State, has full legal right, power and authority to enter into the Loan Documents, and to carry out and consummate all transactions contemplated by the Loan Documents, and by proper action of its legislative body has duly authorized the execution, delivery and performance of the Loan Documents. The person(s) of the Borrower executing the Loan Documents to which the Borrower is a party are fully authorized to execute the same. The Loan Documents have been duly authorized, executed and delivered by the Borrower.

**3.2 Proceedings; Enforceability.** Assuming due execution and delivery by the other parties thereto, the Loan Documents to which the Borrower is a party will constitute the legal, valid and binding agreements of the Borrower enforceable against the Borrower in accordance with their terms; except in each case as enforcement may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights against public entities in the State of California, by the application of equitable principles regardless of whether enforcement is sought in a proceeding at law or in equity and by public policy.

**3.3 No Conflicts.** The execution and delivery of the Loan Documents, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof and thereof, will not, in any material respect, conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under the Joint Powers Agreement for the Borrower entered into on September 21, 1990, as subsequently amended ("JPA Agreement"), its bylaws or to the best knowledge of the Borrower, any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, to which Borrower is subject, or any mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Borrower is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower, which conflict, violation, breach, default, lien, charge or encumbrance might have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Loan Documents or the financial condition, assets, properties or operations of the Borrower.

**3.4 Litigation; Adverse Facts.** Except as disclosed to Lender in writing prior to the date hereof, there is no legal action, nor is there a basis known to Borrower for any legal action, before or by any court or federal, state, municipal or other governmental authority, pending, or to the

Loan Agreement



knowledge of the Borrower, after reasonable investigation, threatened, against or affecting the Borrower, or its assets, properties or operations which, if determined adversely to the Borrower or its interests, would have a material adverse effect upon the consummation of the transactions contemplated by, or the validity of, the Loan Documents, upon the ability of Borrower to perform its obligations under the Loan Documents, or upon the financial condition, assets, properties or operations of the Borrower. Borrower is not in default (and no event has occurred and is continuing which with the giving of notice or the passage of time or both could constitute a default) with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Loan Documents, the ability of Borrower to perform its obligations under the Loan Documents, or the financial condition, assets, properties or operations of the Borrower. Borrower is not (a) in violation of any applicable law, which violation materially and adversely affects or may materially and adversely affect the business, operations, assets condition (financial or otherwise) or prospects of Borrower; (b) subject to, or in default with respect to, any other legal requirements that would have a material adverse effect on the business, operations, assets, condition (financial or otherwise) or prospects of Borrower; or (c) in default with respect to any agreement to which Borrower is a party or by which it is bound, which default would have a material adverse effect on the business, operations, assets, condition (financial or otherwise) or prospects of Borrower; and (d) there is no legal action pending or, to the knowledge of Borrower, threatened against or affecting Borrower questioning the validity or the enforceability of this Agreement.

**3.5 Agreements; Consents; Approvals.** Except as contemplated by the Loan Documents, the Borrower is not a party to any agreement or instrument or subject to any restriction that would materially adversely affect the Borrower. The Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any other agreement or instrument to which it is a party or by which it is bound.

No consent or approval of any trustee or holder of any indebtedness of the Borrower, and to the best knowledge of the Borrower and only with respect to the Borrower, no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority (except no representation is made with respect to any state securities or “blue sky” laws) is necessary in connection with the execution and delivery of the Loan Documents or the consummation of any transaction herein or therein contemplated, or the fulfillment of or compliance with the terms and conditions hereof or thereof, except as have been obtained or made and as are in full force and effect.

**3.6 No Bankruptcy Filing.** The Borrower is not contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency law or the liquidation of all or a major portion of its property, and the Borrower has no knowledge of any person contemplating the filing of any such petition against it. As of the Closing Date, the Borrower has the ability to pay its debts as they become due.

**3.7 Full and Accurate Disclosure.** No statement of fact made by the Borrower in any Loan Document contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained therein in light of the circumstances in which they were  
Loan Agreement

made, not misleading. There is no material fact or circumstance presently known to the Borrower that has not been disclosed to the Lender which materially and adversely affects the Program or the business, operations or financial condition or business prospects of the Borrower or the Borrower's ability to meet its obligations under this Agreement in a timely manner.

**3.8 Compliance.** The Borrower will comply, to the extent required, in all material respects with all applicable legal requirements. The Borrower is not in default or violation of any order, writ, injunction, decree or demand of any governmental authority, the violation of which would materially adversely affect the financial condition or business prospects or the business of the Borrower.

**3.9 Contracts.** All service, maintenance or repair contracts affecting the Projects have been entered into at arm's length (except for such contracts between the Borrower and the Lender) in the ordinary course of the Borrower's business and provide for the payment of fees in amounts and upon terms comparable to existing market rates.

**3.10 Financial Information.** All financial data, including any statements of cash flow and income and operating expense, that have been delivered to the Lender in respect of the Program by or on behalf of the Borrower, to the best knowledge of the Borrower, (a) are accurate and complete in all material respects, (b) accurately represent the financial condition of the Program as of the date of such reports, and (c) to the extent prepared by an independent certified public accounting firm, have been prepared in accordance with GAAP consistently applied throughout the periods covered, except as disclosed therein. Other than pursuant to or permitted by the Loan Documents or the Borrower organizational documents, the Borrower has no contingent liabilities, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments. Since the date of such financial statements, there has been no materially adverse change in the financial condition, operations or business of the Borrower from that set forth in said financial statements.

**3.11 Federal Reserve Regulations.** No part of the proceeds of the Borrower Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose that would be inconsistent with such Regulation U or any other regulation of such Board of Governors, or for any purpose prohibited by law or any Loan Document.

**3.12 Not a Foreign Person.** The Borrower is not a "foreign person" within the meaning of §1445(0)(3) of the Code.

**3.13 Enforceability.** The Loan Documents are not subject to, and the Borrower has not asserted, any right of rescission, set-off, counterclaim or defense, including the defense of usury.

**3.14 Insurance.** The Borrower has obtained the insurance required by Section 2.9 hereof and has delivered to the Lender copies of insurance policies or certificates of insurance reflecting the insurance coverages, amounts and other requirements set forth in this Agreement.

**3.15 State Law Requirements.** The Borrower hereby represents, covenants and agrees to comply with the provisions of all applicable state laws relating to the Loan Documents.

**3.16 Fraudulent Transfer.** The Borrower has not accepted the Loan or entered into any Loan Document with the actual intent to hinder, delay or defraud any creditor, and the Borrower has received reasonably equivalent value in exchange for its obligations under the Loan Documents. The Borrower does not intend to, and does not believe that it will, incur debts and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debts as they mature (taking into account the timing and amounts to be payable on or in respect of obligations of the Borrower).

**3.17 Filing of Taxes.** The Borrower has filed (or has obtained effective extensions for filing) all federal, state and local tax returns required to be filed, if any, and has paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments, if any, payable by the Borrower.

**3.18 Approval of the Loan Documents.** By its execution and delivery of this Agreement, the Borrower approves the form and substance of the Loan Documents, and agrees to carry out the responsibilities and duties specified in the Loan Documents to be carried out by the Borrower. The Borrower acknowledges that (a) it understands the nature and structure of the Program, (b) it is familiar with the provisions of all of the Loan Documents and other documents and instruments relating to the financing, and (c) it has not relied on the Lender for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by the Loan Documents or otherwise relied on the Lender in any manner.

**3.19 Other Documents.** Each of the representations and warranties of Borrower contained in any of the other Loan Documents is true and correct in all material respects (or, in the case of representations or warranties contained in any of the other Loan Documents that speak as of a particular date, were true and correct in all material respects as of such date). All of such representations and warranties are incorporated herein for the benefit of Lender.

**3.20 Survival of Representations and Covenants.** All of the representations and warranties in the Loan Documents (i) shall survive for so long as any portion of the Obligations remains due and owing and (ii) shall be deemed to have been relied upon by the Lender notwithstanding any investigation heretofore or hereafter made by the Lender or on its or their behalf.

**3.21 Reliance by Lender; Cumulative.** Each warranty, representation, and agreement contained in this Agreement shall be automatically deemed repeated with each Advance and shall be conclusively presumed to have been relied on by Lender regardless of any investigation made or information possessed by Lender. The warranties, representations, and agreements set forth in this Agreement shall be cumulative and in addition to any and all other warranties, representations, and agreements which Borrower shall now or hereafter give, or cause to be given, to Lender.

**3.22 No Advisory or Fiduciary Role.** The Borrower acknowledges and agrees that:

- (a) the Lender has not assumed any advisory or fiduciary responsibility to the Borrower with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto;

- (b) the only obligations the Lender has to the Borrower is with respect to this Agreement and the Loan Documents; and
- (c) the Borrower has consulted its own legal, accounting, tax, financial and other advisors, as applicable, to the extent it has deemed appropriate.

#### 4. AFFIRMATIVE COVENANTS

During the term of this Agreement, the Borrower hereby covenants and agrees with the Lender that:

**4.1 Existence.** The Borrower shall (i) do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence and its material rights, (ii) continue to engage in the business presently conducted by it, and (iii) qualify to do business and remain in good standing under the laws of the State.

**4.2 Litigation.** The Borrower shall give prompt written notice to the Lender of any litigation, governmental proceedings or claims or investigations regarding an alleged actual violation of a state or federal law pending or, to the Borrower's knowledge, threatened against the Borrower which might materially adversely affect the Borrower's condition (financial or otherwise) or business.

**4.3 Performance of Other Agreements.** The Borrower shall observe and perform in all material respects each and every term to be observed or perforated by it pursuant to the terms of any agreement or instrument affecting or pertaining to the Program.

**4.4 Notices.** The Borrower shall promptly advise the Lender in writing of (a) any material adverse changes in the Borrower's financial condition, assets, or properties or operations, (b) any fact or circumstance affecting the Borrower or the Program that materially and adversely affects the Borrower's ability to meet its obligations hereunder or under any of the other Loan Document to which it is a party in a timely manner, or (c) the occurrence of any Event of Default of which the Borrower has knowledge.

**4.5 Lender's Fees.** The Borrower covenants to pay the reasonable fees and expenses of the Lender or any agents, attorneys, accountants, consultants selected by the Lender to act on its behalf in connection with this Agreement and the other Loan Documents, including, without limitation, any and all reasonable expenses incurred in connection with the making of the Loan or in connection with any litigation which may at any time be instituted involving the Loan, this Agreement, the other Loan Documents, or any of the other documents contemplated thereby, or in connection with the reasonable supervision or inspection of the Borrower, its properties, assets or operations or otherwise in connection with the administration of the foregoing. This obligation shall remain valid and in effect notwithstanding repayment of the Loan hereunder or termination of this Agreement.

**4.6 Expenses.** The Borrower shall pay all reasonable expenses incurred by the Lender in connection with the Loan, including reasonable fees and expenses of the Lender's attorneys and other consultants. The Borrower shall, upon request, promptly reimburse the Lender for all

reasonable amounts expended, advanced or incurred by the Lender to collect the Note, or to enforce the rights of the Lender under this Agreement or any other Loan Document, or to defend or assert the rights and claims of the Lender under the Loan Documents arising out of an Event of Default or with respect to the Program (by litigation or other proceedings) arising out of an Event of Default, which amounts will include all court costs, attorneys' fees and expenses, fees of auditors and accountants, and investigation expenses as may be reasonably incurred by the Lender in connection with any such matters (whether or not litigation is instituted), together with interest at the Default Rate.

**4.7 Indemnity.** In addition to its other obligations hereunder, and in addition to any and all rights of reimbursement, indemnification, subrogation and other rights of Lender pursuant hereto and under law or equity, to the fullest extent permitted by law, the Borrower agrees to indemnify, hold harmless and defend the Lender, and each of its respective officers, directors, employees, attorneys and agents (each an "Indemnified Party"), against any and all losses, damages, claims, actions, liabilities, reasonable costs and expenses of any nature, kind or character (including, without limitation, reasonable attorneys' fees, litigation and court costs, amounts paid in settlement (to the extent that the Borrower has consented to such settlement) and amounts paid to discharge judgments) (hereinafter, the "Liabilities") to which the Indemnified Parties, or any of them, may become subject under federal or state securities laws or any other statutory law or at common law or otherwise, to the extent arising out of or based upon or in any way relating to this Agreement and the Loan Documents in all cases except where the Lender is proven to have been guilty of gross negligence or willful misconduct. The rights of any persons to indemnity hereunder shall survive the final payment or defeasance of the Loan. The provisions of this Section shall survive the termination of this Agreement.

**4.8 Notice of Default.** The Borrower will advise the Lender promptly in writing of the occurrence of any Event of Default hereunder, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto.

**4.9 Information; Financial Statements and Reports; Debt Service Coverage.**

(a) Borrower shall furnish or cause to be furnished to Lender:

(1) Notice of Default. As soon as possible, and in any event not later than five (5) Business Days after the occurrence of any Event of Default, a statement of an Authorized Representative of Borrower describing the details of such Event of Default and any curative action Borrower proposes to take;

(2) Financial and Administrative Statements. The Borrower shall provide to Lender monthly Financial Statements and Administrative Statements for the Lender to review, and prior to December 1, 2024, such reports shall include the Borrower's monthly report of Administrative Activities, with a separate statement of EMS activity, and after October 1, 2024, the Borrower shall include in its monthly report the number of service calls received in the previous month;

(3) Audit Reports. Promptly upon receipt thereof, copies of all reports, if any, submitted to Borrower by independent public accountants in connection with each

annual, interim or special audit of the financial statements of Borrower made by such accountants, including the comment letter submitted by such accountants to management in connection with their annual audit;

(4) Certification of Non-Foreign Status. Promptly upon request of Lender from time to time, a Certification of Non-Foreign Status, executed on or after the date of such request by Lender;

(5) Compliance Certificates. Borrower provides a compliance certificate, in form and substance satisfactory to Lender and certified by an Authorized Borrower Representative, to the effect that Borrower is in compliance with all covenants, terms and conditions applicable to Borrower, under or pursuant to the Loan Documents and under or pursuant to any other debt owing by Borrower, and disclosing any noncompliance therewith, and any Event of Default, and describing the status of Borrower's actions to correct such noncompliance or Event of Default, as applicable; and

(6) Other Items and Information. Such other information concerning the assets, business, financial condition, operations, property, prospects and results of operations of Borrower, as Lender reasonably requests from time to time.

**4.10 Continued Existence of Borrower.** The Borrower shall take or cause to be taken all actions reasonably necessary to continue the Borrower's existence during the term of this Agreement, including but not limited to the addition or substitution of one or more members of the Borrower and execution of an amendment to the Borrower's JPA Agreement, to provide for the addition or substitution of such members.

## **5. NEGATIVE COVENANTS.**

Borrower hereby covenants and agrees as follows, which covenants shall remain in effect so long as any Obligation or other obligation of Borrower under any of the other Loan Documents remains outstanding or unperformed. Borrower covenants and agrees that it will not, directly or indirectly:

**5.1 Assignment of Rights.** Borrower shall not attempt to assign Borrower's rights under the Loan Document without the Lender's prior written consent.

**5.2 Principal Place of Business.** Borrower shall not change its principal place of business without providing 30 days' prior written notice of the change to the Lender.

**5.3 Fiscal Year.** Borrower shall not change the times of commencement or termination of its fiscal year or other accounting periods, or change its methods of accounting, other than to conform to GAAP, without written notice to the Lender.

**5.4 Publicity.** Borrower shall not issue any publicity release or other communication to any print, broadcast or on-line media, post any sign or in any other way identify Lender as the source of the financing provided for herein, without the prior written approval of Lender in each instance (provided that nothing herein shall prevent Borrower from identifying Lender as the source of such

financing to the extent that Borrower is required to do so by disclosure requirements applicable to public entities within the State of California).

## **6. DEFAULT AND REMEDIES.**

**6.1 Events of Default.** Any one or more of the following events shall constitute an “Event of Default” by Borrower under this Agreement:

- (a) Borrower fails to pay the regularly scheduled principal or interest on the Loan when due.
- (b) Borrower fails to pay when due and payable, or when declared due and payable, any amounts payable under the Note or other Loan Documents and such amount is not paid within five (5) days after such amount is due and payable;
- (c) Borrower fails or neglects to perform, or observe when due, any term, provision, condition, covenant, warranty or representation contained in this Agreement or in any Loan Documents, or in any other present or future agreement or arrangement between Borrower and Lender, and such default shall not have been cured within fifteen (15) business days after notice thereof is given to Borrower by Lender;
- (d) Any material portion of Borrower’s assets are attached, seized, subjected to a writ or distress warrant, or are levied upon, or come into the possession of any judicial officer, or any lien is filed or recorded against the assets of the Borrower by a governmental agency, or any judgment against the Borrower becomes a lien against any of the Borrower’s assets;
- (e) A voluntary or involuntary petition in bankruptcy or for reorganization or for an arrangement or any composition, readjustment, liquidation, dissolution or similar relief pursuant to the federal bankruptcy law or under similar present or future federal or state bankruptcy or insolvency law, is filed by or against Borrower, and such petition is not dismissed within sixty (60) days thereafter;
- (f) Borrower makes an assignment of all or any portion of its assets for the benefit of creditors;
- (g) Borrower is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any material part of its business affairs;
- (h) There is a default in any material agreement to which Borrower is a party with third parties resulting in a right by such third parties to accelerate the maturity of Borrower’s indebtedness;

- (i) Any government agency files a lien or commences an action or any third party files a claim or lawsuit against Borrower in connection with a violation of state or federal environmental statutes, which claim may result in a substantial fine or penalty or the payment of damages;
- (j) Borrower suspends its business or ceases doing business as a going concern;
- (k) Failure by the Borrower to pay, when due, a final, non-appealable judgment or order over \$500,000 which shall be rendered against the Borrower and such judgment has not been vacated, discharged, satisfied or stayed by the Borrower within a period of 30 days; and
- (l) Any representation or warranty in the Loan or Loan Documents is not true when made.

**6.2 Lender's Rights and Remedies.** Upon the occurrence of an Event of Default, Lender may, at its election, without notice of its election and without demand, do any one or more of the following, all of which are authorized by Borrower:

- (a) Terminate Lender's obligation to make Advances to Borrower hereunder;
- (b) Declare all of Borrower's obligations to Lender immediately due and payable, whether evidenced by the Note, by any of the other (collectively "Loan Documents") or otherwise;
- (c) Exercise such remedies against the Members of the Borrower pursuant to Section 7(d) of the Joint Powers Agreement (Third Amended and Restated) dated March 23, 2021, by and among such Members of the Borrower, up to the maximum pro rata liability described therein for each of the Members of the Borrower; and
- (d) Exercise all other rights and remedies available to Lender under the Loan Documents, at law or in equity.

**6.3 Default Interest.** From and after the occurrence of any Event of Default, interest shall accrue daily at the Default Interest Rate on all amounts outstanding under the Loan and shall be payable on demand.

**6.4 Remedies Cumulative.** Lender's rights and remedies under this Agreement, the Note, the Loan Documents, and all other agreements shall be cumulative. No exercise by Lender of one right or remedy shall be deemed an election, and no waiver by Lender of any Event of Default on Borrower's part shall be deemed a continuing waiver. No delay by Lender shall constitute a waiver, election, or acquiescence by it.



## 7. MISCELLANEOUS.

**7.1 Further Assurances.** Borrower shall execute and acknowledge (if appropriate) any further documents consistent with the terms of this Agreement, including documents in recordable form, as the Lender shall from time to time find necessary or appropriate to effectuate its purposes in entering into this Agreement.

**7.2 Entire Agreement, Waivers, and Amendments.** This Agreement incorporates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations and previous agreements between the parties with respect to all or part of the subject matter of this Agreement. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the party to be charged. A waiver of the breach of the covenants, conditions or obligations under this Agreement by either party shall not be construed as a waiver of any succeeding breach of the same or other covenants, conditions or obligations of this Agreement. Any amendment or modification to this Agreement must be in writing and executed by the appropriate authorities of Lender and Borrower.

**7.3 Waiver of Jury Trial.** The Lender and the Borrower shall waive their right to trial by jury; provided, however, that in the event that the waiver of jury trial is unenforceable for any reason, the parties shall be submit to judicial reference.

**7.4 Governing Law; Venue.** This Agreement shall be governed in accordance with the laws of the State of California. Any legal action brought under this Agreement must be instituted in the Superior Court of the County of San Bernardino, State of California, in an appropriate municipal court in that county, or in the Federal District Court in the Central District of California.

**7.5 Non-Discrimination.** Borrower covenants by and for itself, its successors and assigns, and all persons claiming under or through them that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, sex, marital status, national origin or ancestry in the construction, use, or enjoyment of the Program, nor shall Borrower itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation. Borrower shall comply with all applicable non-discrimination laws.

**7.6 Assignment.** Lender may, at its option, assign this Agreement and/or its right to receive repayment of the Loan without the consent of Borrower. In no event shall Borrower assign or transfer any portion of this Agreement without the prior express written consent of Lender, which consent may be withheld in Lender's sole and absolute discretion. No assumption of the Loan shall be permitted at any time.

**7.7 Compliance With Laws.** Borrower shall comply with all federal and state laws, statutes and regulations affecting the ownership of its property and the conduct of its business

**7.8 Notices.** All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document shall be deemed to be given and made when delivered by hand, by recognized overnight delivery service, confirmed facsimile transmission (provided any telecopy or other electronic transmission received by any party after 4:00 p.m., local time, as

evidenced by the time shown on such transmission, shall be deemed to have been received the following Business Day), or five (5) calendar days after deposited in the United States mail, registered or certified, postage prepaid, with return receipt requested, addressed as follows:

If to the Borrower: Consolidated Fire Agencies  
1743 Miro Way  
Rialto, California 92376  
Attention: Executive Director  
Telephone: \_\_\_\_\_

with a copy to: Lindsay K. Moore  
(which shall not constitute Attorney at Law  
notice to Borrower) Kingsley Bogard LLP  
600 Coolidge Drive, Suite 160  
Folsom, California 95630  
Telephone: (916) 932-2500

If to the Lender: City of Ontario  
303 East B Street  
Ontario, California 91764  
Attention: City Manager  
Telephone: (909) 395-2000

and with a copy to: Best Best & Krieger LLP  
(which shall not constitute 3390 University Avenue, 5<sup>th</sup> Floor  
notice to Lender) Riverside, CA 92501  
Attention: Kim Byrens  
Telephone: (951) 826-8273

**7.9 Expenses.** Borrower shall pay all expenses incurred by Lender with respect to this Agreement and the Loan.

**7.10 Execution in Counterpart.** This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart.

*(Signature page follows)*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

CONSOLIDATED FIRE AGENCIES a joint powers agency, acting on behalf of its CONFIRE EMS

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

CITY OF ONTARIO

By: \_\_\_\_\_

Its: City Manager \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED: City Attorney

By: \_\_\_\_\_

*-Signature Page-  
City of Ontario  
Confire EMS Program  
Loan Agreement*

**EXHIBIT A**

**FORM OF NOTE**

\$ \_\_\_\_\_  
PROMISSORY NOTE  
CONFIRE

[Date]

For value received, CONSOLIDATED FIRE AGENCIES (“CONFIRE”), a joint exercise of powers authority existing pursuant to the Section 6500 et seq. of the California Government Code (the “Borrower”), promises to pay to the CITY OF ONTARIO, at 303 East B Street, Ontario, California, the principal sum of \$ \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), with interest from the date hereof on unpaid principal at the rate of \_\_\_\_\_ percent (\_\_\_\_%) per annum, according to the Schedule of Note Payments, an Exhibit 1 hereto, and payable in full on \_\_\_\_\_, \_\_\_\_.

Payment of this Promissory Note by Borrower shall be limited solely to the revenues which may lawfully be pledged of the Borrower pursuant to a CITY OF ONTARIO CONFIRE EMS PROGRAM LOAN AGREEMENT, dated as of \_\_\_\_\_, 2023, between the Borrower and the City of Ontario, as lender thereunder. Payment shall be credited first on interest then due; and the remainder on principal; and the interest shall thereupon cease upon the principal so credited. Should default be made in payment of principal and interest, the whole sum of principal and interest shall, at the option of the holder of this note, become immediately due. Principal and interest is payable in lawful money of the United States.

All or any portion of the principal portion of this Promissory Note may be paid on any date without premium or penalty at the option of the Authority, by presentment of this Promissory Note with the unpaid principal portion together with interest accrued thereon to the date set for prepayment.

In the event that at any time after the date of this Promissory Note either party shall institute any action or proceeding against the other relating to the provisions of this Promissory Note, or any default hereunder, the party not prevailing in the action or proceeding shall reimburse the prevailing party for its reasonable expenses of attorney’s fees, costs and disbursements incurred on any appeal from the action or proceeding. In addition, as a separate, severable item, the prevailing party shall recover all attorney’s fees, costs and disbursements incurred in enforcing any judgment, and this provision is intended to be severable from other provisions of this Promissory Note and to survive any judgment, and it is not to be deemed to be merged into such judgment.

CONSOLIDATED FIRE AGENCIES

\_\_\_\_\_  
Chairman of the Board of Directors of the  
Consolidated Fire Agencies

**EXHIBIT 1**

**SCHEDULE OF NOTE PAYMENTS**