

FUNDING AGREEMENT BY AND BETWEEN THE VENTURA COUNTY FIRE PROTECTION DISTRICT AND SOUTHERN CALIFORNIA EDISON COMPANY

This FUNDING AGREEMENT BY AND BETWEEN THE VENTURA COUNTY FIRE PROTECTION DISTRICT AND SOUTHERN CALIFORNIA EDISON COMPANY (this “Agreement”) is by and between the VENTURA COUNTY FIRE PROTECTION DISTRICT, a California fire protection district (“VCFPD”), and SOUTHERN CALIFORNIA EDISON COMPANY, a California corporation (“SCE”), and is effective on the last date when both Parties sign this Agreement (the “Effective Date”). VCFPD and SCE may be referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, the southern California region has experienced longer and more severe wildfire seasons due to, among other things, extreme weather variability associated with climate change;

WHEREAS, to increase the effectiveness of aerial response to wildfires, VCFPD wishes to enter into a one hundred and fifty (150) day Lease and Services Agreement (with the option to extend such agreement for an additional thirty (30) days) with Coulson Aviation, Inc. (“Coulson”) for the lease and operation of either a Sikorsky S-61 1,000 gallon helitanker or a Sikorsky UH-60 Helicopter, and equipment related to the operations and maintenance of such aircraft (together, the “Fire Suppression Assets”);

WHEREAS, SCE has offered to provide VCFPD funding of that part of the Lease and Services Agreement between VCFPD and Coulson (“VCFPD-Coulson Contract”) for the fixed lease costs relating to stand-by time for the Fire Suppression Assets (with VCFPD funding that part of the VCFPD-Coulson Contract relating to flight time), and SCE has determined that the use of the Fire Suppression Assets offers significant benefits for wildfire suppression, protecting lives and property, including mitigating against damage to SCE’s transmission and distribution system, and increasing firefighter safety;

WHEREAS, the Parties intend that in operating the Fire Suppression Assets pursuant to the VCFPD-Coulson Contract, VCFPD will prioritize fire suppression activities in and throughout SCE’s service territory, unless in the sole and absolute professional judgment of VCFPD to do so in any specific instance would not maximize the benefits described above or as otherwise directed by the appropriate governmental authorities; and

WHEREAS, the Parties desire to enter into this Agreement to set forth the terms and conditions pursuant to which SCE will contribute funds to VCFPD for only that portion of the VCFPD-Coulson Contract related to the fixed lease costs for the stand-by time for the Fire Suppression Assets.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. Funding.

Within seven (7) business days of the Effective Date, SCE will electronically transfer a payment in the amount of THREE MILLION ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$3,150,000.00) (the "Funding Amount") to VCFPD. VCFPD will use this payment exclusively to fund the stand-by time portion of the VCFPD-Coulson Contract, which must begin on June 15, 2021 and last for 150 days (the "Contract Period"), unless SCE exercises its option to extend the Contract Period to 180 days pursuant to Section 2, or a different contract period is agreed to by the Parties in writing. Under this Agreement, VCFPD shall fund the "flight time" portion of the VCFPD-Coulson Contract, which includes any and all costs required to operate the Fire Suppression Assets. The Parties acknowledge that time is of the essence in performing their obligations under this Agreement. If, for any reason, VCFPD does not enter into the VCFPD-Coulson Contract by June 15, 2021, or such other date agreed to by the Parties in writing, then VCFPD shall return the entire payment to SCE.

2. Option to Extend the Lease Period.

SCE shall have the option, in SCE's sole discretion, to extend the Contract Period by thirty (30) days to a total of 180 days ("Extension Option") by providing notice to VCFPD on or before the one hundred and twentieth (120th) day of the Contract Period indicating that SCE will exercise the Extension Option. Within seven (7) business days of the notice exercising the Extension Option, SCE will electronically transfer a payment in the amount of SIX HUNDRED THIRTY THOUSAND AND NO/100 DOLLARS (\$630,000.00) (the "Extension Amount") to VCFPD. VCFPD will use the Extension Amount exclusively to fund the stand-by time portion of the VCFPD-Coulson Contract for the operation of the Fire Suppression Assets during the extended Contract Period.

3. Roles and Responsibilities.

SCE's sole responsibility under this Agreement shall be to provide the Funding Amount, and if applicable the Extension Amount, to defray, in part, the amounts payable by VCFPD to Coulson under the VCFPD-Coulson Contract (including any extension thereof) for the Fire Suppression Assets. SCE shall have no authority whatsoever to direct VCFPD's operation or use of the Fire Suppression Assets and shall not be a party to the VCFPD-Coulson Contract. As between SCE and VCFPD, VCFPD shall at all times be solely responsible for the safe and lawful operation and use of the Fire Suppression Assets, including mission operations, deployment, maintenance, basing and positioning, pilot readiness, and ground support, and VCFPD shall be solely responsible for compliance with the terms and conditions of the VCFPD-Coulson Contract and all payments thereunder.

SCE may communicate with VCFPD concerning fire weather forecasts and share information in SCE's possession relevant to the prepositioning or tasking of the Fire Suppression Assets; provided, SCE makes no representation or warranty as to the accuracy or completeness of such forecasts and information in connection with this Agreement.

4. Data Collection.

VCFPD will provide the data and information that SCE requires to allow SCE to (1) evaluate the effectiveness of the Fire Suppression Assets in suppressing wildfires, protecting lives and property, and increasing firefighter safety, and (2) respond to information requests from, or make regulatory filings and reports to, the California Public Utilities Commission (“CPUC”) and other regulators or governmental departments or agencies. Such data shall include, but not be limited to, the following: (a) aircraft utilization rate (flight time conducting suppression missions vs. standby hours), (b) gallons of water or retardant dropped and number of drops per fire, (c) number and location of wildfires attacked, and (d) whether and to what extent the Fire Suppression Assets is utilized outside of SCE’s service territory. VCFPD shall submit the foregoing data in a GIS shapefile to SCE on a monthly basis on the fifteenth (15th) day of each calendar month beginning on July 15, 2021 through November 15, 2021 and within five (5) days of SCE’s written request therefore at any other time during the Contract Period.

5. Indemnification.

To the maximum extent permitted by law, VCFPD shall indemnify, defend, and hold harmless SCE, and its respective successors, assigns, affiliates, subsidiaries, parent companies, officers, directors, agents, and employees (“Indemnified Parties”), from and against any and all expenses, claims, losses, damages, liabilities or actions in respect thereof (including reasonable attorneys’ fees and reasonably allocated cost of in-house counsel) to the extent arising from or related to the VCFPD-Coulson Contract, or prepositioning, tasking, operation or use of the Fire Suppression Assets. This indemnity shall not apply to any expense, claim, loss, damage, liability or action to the extent such expense, claim, loss, damage, liability or action results from the fraud, gross negligence, or willful misconduct of SCE or the Indemnified Parties.

6. Authority to Contract.

Each Party represents and warrants that it has the authority to contract or otherwise commit to perform the obligations herein.

7. Relationship of the Parties.

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute any Party to be the agent of another Party, nor authorize any Party to make or enter into any commitments for or on behalf of another Party.

8. Public Announcements.

Neither Party may issue any press release regarding this Agreement unless (1) the press release is issued jointly by the Parties; or (2) prior to the release, the Party proposing to make the announcement furnishes to the other Party a copy of the press release and obtains the other Party’s written approval; provided, however, that if such press release is required to comply with applicable laws, including the California Public Records Act and the Ralph M. Brown Act, legal

proceedings, or the rules and regulations of any court or stock exchange having jurisdiction over a Party, then the Parties shall work in good faith to develop a mutually acceptable announcement.

Notwithstanding the foregoing, SCE acknowledges that VCFPD is a public agency subject to the requirements of the Ralph M. Brown Act (California Government Code section 6250 et seq.) and the California Public Records Act (California Government Code section 54950 et seq.) and therefore agrees that VCFPD may enter into this Agreement only after the Ventura County Board of Supervisors, acting as the Ventura County Fire Protection District Board of Directors, approves this Agreement at a public meeting and that this Agreement is a public record subject to disclosure under the California Public Records Act.

9. Term and Survival.

This Agreement shall be effective as of the Effective Date through the date that all obligations of the Parties with respect to this Agreement have been satisfied (the "Term"), except that the Parties shall continue to be bound by the provisions of this Agreement which by their nature survive such completion or termination, including Section 5 ("Indemnification").

10. Written Notices.

All notices, requests, demands, and determinations under this Agreement (other than routine operational communications), shall be in writing and shall be deemed duly given: (1) when delivered by hand; (2) one day after being given to an express courier with a reliable system for tracking delivery; (3) when sent by confirmed facsimile or electronic mail with a copy sent by another means specified in this Section; or (4) three days after the day of mailing, when mailed by United States mail, registered or certified mail, return receipt requested, postage prepaid, and as addressed as specified below:

If to VCFPD, addressed to:

Ventura County Fire Protection District
Attn: Gary Monday, Division Chief, West
County Operations
165 Durley Avenue
Camarillo, CA 93010-8586
Email: Gary.Monday@ventura.org

If to SCE, address to:

Don Daigler
Southern California Edison Company
2244 Walnut Grove Ave.
Rosemead, CA 91770
Email: Donald.Daigler@sce.com

With Copy To:

Ventura County Fire Protection District
Attn: Tom Kasper, Business Services Manager
165 Durley Avenue
Camarillo, CA 93010-8586
Email: Tom.Kasper@ventura.org

With Copy To:

County of Ventura
Attn: Office of the County Counsel
800 South Victoria Avenue, L#1830
Ventura, CA 93009

11. Assignment.

No Party shall assign this Agreement or any part or interest thereof without the prior written consent of the other Party, and any assignment without such consent shall be void and of no effect.

12. Governing Law.

This Agreement shall be interpreted, governed, and construed under the laws of the State of California as if executed and to be performed wholly within the State of California.

13. Entire Agreement.

This Agreement contains the entire agreement and understanding between and among the Parties and merges and supersedes all prior agreements, representations and discussions pertaining to the subject matter of this Agreement. This Agreement is intended to be a final expression of the agreement of the Parties and except to the extent expressly referenced herein, is an integrated agreement within the meaning of Section 1856 of the California Code of Civil Procedure (the Parole Evidence Rule). There are no contemporaneous separate written or oral agreements between the Parties in any way related to the subject matter of this Agreement. No subsequent agreement, waiver, modification, representation or promise with respect to the subject matter of the Agreement made by the Parties, or by or to any employee, officer, agent or representative of any Party, shall be of any effect unless it is in writing and executed by the Parties.

14. Counterparts and Electronic Signatures.

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall be deemed to be one and the same instrument. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Agreement and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

[Signatures on Following Page]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives.

VENTURA COUNTY FIRE PROTECTION DISTRICT

By: 

Name: Mark Lorenzen

Title: County of Ventura Fire Chief

Date: 5/20/21

SOUTHERN CALIFORNIA EDISON COMPANY

By: 

Name: Steven D. Powell

Title: Executive Vice President, Operations

Date: 5/28/21