

**AGREEMENT WITH \_\_\_\_\_  
FOR PROFESSIONAL CONSULTANT SERVICES  
FOR**

**\_\_\_\_\_** *[insert project name/description]*

This Agreement, made and entered into this day of \_\_\_\_\_, by and between the San Mateo Consolidated Fire Department, a California Joint Powers Authority (“Department”), and \_\_\_\_\_, a \_\_\_\_\_ *[insert legal status of consultant here, e.g., individual, corporation, limited partnership, etc.]*, (“Consultant”), whose address is \_\_\_\_\_.

**RECITALS:**

**WHEREAS**, Department desires to have certain services provided as set forth in Exhibit A, attached and incorporated by this reference; and,

**WHEREAS**, Consultant represents that it is qualified and able to perform services; and,

**WHEREAS**, Consultant is agreeable to providing the services on the terms and conditions hereinafter set forth.

**NOW THEREFORE**, the parties agree as follows:

**AGREEMENT**

1. **Term of Agreement**: The Term of this Agreement shall extend from \_\_\_\_\_ (“Commencement Date”) to \_\_\_\_\_ (the “Termination Date”).
2. **Consultant’s Services**. Consultant shall perform the services describe in Exhibit A (“Scope of Work” and/or “Services”) to the full satisfaction of Department.
3. **Time of Performance**. Consultant shall perform the Services on or by the Termination Date set forth in Agreement section 1, unless extended in writing by the parties pursuant to the terms of this Agreement.
4. **Compensation**. Department agrees to compensate Consultant, and Consultant agrees to accept in full satisfaction for the Services required by this Agreement the consideration set forth in Exhibit B, attached and incorporated by this reference (“Payment”).
5. **Independent Contractor**. Consultant is and shall at all times remain, as to Department, a wholly independent contractor. Neither Department nor any of its agents shall have control over the conduct of Consultant or any of Consultant’s employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of Department.

6. **Assignment.** Consultant shall not assign or attempt to assign any portion of this Agreement without prior written approval by Department.
  
7. **Responsibility of Consultant.**
  - a. Consultant represents that it is qualified to furnish the services described under this Agreement and that Department relies upon the skill of Consultant to do and perform the work in the most skillful manner consistent with industry standards, and Consultant agrees to thus perform the work. The acceptance of Consultant's work by DEPARTMENT does not operate as a release of Consultant from said obligation. Consultant shall be responsible for the professional quality, technical accuracy and coordination of all work furnished by Consultant under this Agreement. Consultant shall, without additional compensation, correct or revise any errors or deficiencies in its work. Consultant shall be responsible for employing or engaging all persons necessary to perform the services of Consultant.
  
  - b. Consultant shall take all responsibility for the work, shall bear all losses and damages directly or indirectly resulting to Consultant or any sub-consultant or subcontractor, to the Department, its elected and appointed officials, officers, attorneys, agents, and employees and each of them from any and all loss or damage on account of the performance or character of the work, unforeseen difficulties, accidents, occurrences or other causes predicated on active or passive negligence of the Consultant or of any sub-consultants or subcontractors.
  
8. **Personnel.** Consultant represents that it has, or shall secure at its own expense, all personnel required to perform Consultant's services under this Agreement. Consultant shall assign only competent personnel.
  - a. **Employment Eligibility.** Consultant shall ensure that all employees of Consultant and any sub-consultant or subcontractor retained by Consultant in connection with this Agreement have provided the necessary documentation to establish identity and employment eligibility as required by the Immigration Reform and Control Act of 1986, any amendments thereto and all applicable labor laws in effect at the time of this Agreement. Failure to provide the necessary documentation will result in the termination of the Agreement as required by the Immigration Reform and Control Act of 1986.
  
9. **Changes to Scope of Work.** Department may, by written notice, initiate any change to the Scope of Work. A corresponding equitable change in the Payment of this Agreement will be made for each change ordered as mutually agreed upon by the parties in writing.

10. **Insurance.** Consultant agrees to have and maintain the policies set forth in Exhibit C entitled "INSURANCE REQUIREMENTS," which is attached and incorporated by this reference. All policies, endorsements, certificates, and/or binders shall be subject to approval by the Department as to form and content. These requirements are subject to amendment or waiver only if so approved in writing by the Department. A lapse in any required insurance coverage during this Agreement shall be a breach of this Agreement. The cost of such insurance shall be included in the Consultant's bid.

- a. Consultant shall maintain at all times workers' compensation insurance as required by law during the performance of work under this Agreement.
- b. Consultant agrees to include with all subcontractors in their subcontract the same requirements and provisions of this Agreement including the indemnity and insurance requirements to the extent they apply to the scope of the subcontractor's work. Subcontractors hired by Contractor agree to be bound to Consultant and Department in the same manner and to the same extent as Consultant is bound to Department under this Agreement and any other applicable contract documents. Subcontractor further agrees to include these same provisions with any sub-subcontractor. A copy of the Indemnity and Insurance provisions in this Agreement will be furnished to the subcontractor upon request. The Consultant shall require all subcontractors to provide a valid certificate of insurance and the required endorsements included in the Agreement prior to commencement of any work and will provide proof of compliance to the Department.
- c. Consultant shall require each of its sub-consultants or subcontractors to maintain insurance coverage which meets all of the requirements of this Agreement.
- d. The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California.
- e. At all times during the term of this Agreement, Consultant shall maintain on file with the Department a certificate or certificates of the required insurance as set forth in Exhibit C showing that the required insurance policies are in effect in the required amounts. Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, Department may terminate this Agreement.
- f. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and

maximum limits of coverage of an insurance policy or proceeds available to the named Insured; whichever is greater.

11. **Indemnification.** To the maximum extent authorized by law (and consistent with Civil Code section 2782.8 if Consultant is providing design professional services), Consultant shall defend (with legal counsel selected by the Department), and indemnify Department, its elected and appointed officials, officers, directors, attorneys, agents, and employees and each of them from and against any and all claims, demands, costs or liability to the proportional extent that they arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant and its employees or agents arising out of Consultant's performance of any task or service for or on behalf of Department under this Agreement. Consultant acknowledges that Department would not enter into this Agreement in the absence of the commitment of Consultant to indemnify and protect Department as set forth in this section. This indemnity does not apply to liability for damages arising from the sole negligence, active negligence, or willful misconduct of the Department.

- a. **General.** This obligation to indemnify and defend Department as set forth herein is binding on the successors, assigns, or heirs of Consultant and shall survive the termination or completion of this Agreement. By execution of this Agreement, Consultant acknowledges and agrees that it has read and understands the provisions hereof and that this section is a material element of consideration. The parties agree that if any part of this Indemnification is found to conflict with applicable laws, such part shall be unenforceable only insofar as it conflicts with said laws, and that this indemnification shall be judicially interpreted and rewritten to provide the broadest possible indemnification legally allowed and shall be legally binding upon Consultant.
- b. **Survival.** Consultant and any subcontractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law.
- c. **No Limitation by Insurance Obligations.** The defense and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement.

12. **Termination.**

- a. In addition to any other rights of termination and suspension set forth in this Agreement or at law, either party may terminate this Agreement with or without cause by providing ten (10) days' notice in writing to the other party.

- b. The Department may terminate this Agreement at any time without prior notice in the event that Consultant commits a material breach of the terms of this Agreement.
- c. In the event of termination of this Agreement by Department, due to no fault or failure of performance by Consultant, Consultant shall be paid full compensation for all services performed by Consultant, in an amount to be determined as follows: For work done in accordance with the terms and provisions of this Agreement, Consultant shall be paid an amount equal to the amount of services performed prior to the effective date of termination or cancellation; provided, in no event shall the amount of money paid under the foregoing provisions of this paragraph exceed the amount which would be paid to Consultant for the full performance of the Scope of Work under this Agreement.
- d. Upon termination, this Agreement shall become of no further force or effect and all parties shall be discharged from their duties and obligations under this Agreement. Notwithstanding, the provisions of this Agreement concerning retention of records, Department's rights to material produced, confidential information, Consultant's responsibility, indemnification, insurance, dispute resolution, litigation, and jurisdiction and severability shall survive termination of this Agreement.

13. **Notice.** All notices shall be deemed to have been given if delivered personally or if enclosed in a properly addressed envelope and deposited in a United States Post Office for delivery by registered or certified mail or overnight express carrier. Unless and until formally notified otherwise, all notices shall be addressed to the parties at their addresses as follows:

To Department: San Mateo Consolidate Fire Department  
 Attn:   
*<address>*  
*<City, State, Zip>*

To CONSULTANT: *<insert Consultant Business Name>*  
 Attn:   
*<address>*  
*<City, State, Zip>*

14. **Prevailing Wages.** Consultant acknowledges that if the Scope of Work involves a public works project, then in accordance with the provisions of section 1770 *et seq.* of the California Labor Code, general prevailing rate of wages will be applicable to the work to be done. Consultant will be required to pay all persons employed on the project by the Consultant's sums not less than the sums set forth in the documents entitled "General

Prevailing Wage Determination made by the Director of Industrial Relations pursuant to California Labor Code, part 7, Chapter 1, Article 2, sections 1770, 1773, 1773.1.” These documents may be obtained from the State of California.

15. **Compliance with Laws.**

- a. **In General.** Consultant shall observe and comply with all applicable federal, state, municipal, and local laws, policies, and regulations applicable to the performance of the Scope of Work hereunder, including, but not limited to, all provisions of the Occupational Safety and Health Act of 1979 as amended.
- b. **Drug-free Workplace.** Neither Consultant nor Consultant 's employees and/or subcontractors shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code section 812.
- c. **Discrimination Prohibited.** During the performance of this Agreement, Consultant and its sub-consultants or subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, religious creed, marital status, denial of family and medical care leave, ancestry, national origin, medical condition (cancer/genetic characteristics), age (40 and above), disability (mental and physical) including HIV and AIDS, denial of pregnancy disability leave or reasonable accommodation. Consultant and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- d. **Licenses and Permits.** Consultant represents and warrants to Department that it has, and shall maintain for the duration of this Agreement, all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Consultant to practice its profession.

16. **Facilities, Equipment, and Personnel:** Unless otherwise agreed in writing, Consultant shall, at its sole cost and expense, furnish all facilities, equipment, and personnel which may be required for completing the Scope of Work pursuant to this Agreement.

17. **Exhibits.** All exhibits referred to in this Agreement are attached and incorporated by this reference.

18. **Benefits and Taxes.** Consultant shall not have any claim under this Agreement or otherwise against Department for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance, medical care, hospital care, insurance benefits, social security, disability, unemployment, workers compensation or employee benefits of any kind. Consultant shall be solely liable for and obligated to pay directly all applicable taxes.

Department shall have no obligation whatsoever to pay or withhold any taxes on behalf of Consultant.

19. **Dispute Resolution.** Should any dispute arise concerning any provisions of this Agreement, or the parties' rights and obligations hereunder, the parties shall meet and confer in an attempt to resolve the dispute. Prior to commencing any legal action, the complaining party shall provide to the other party thirty (30) days' written notice of the intent to take such action, provided that such notice shall not be required where a delay in commencing an action would prejudice the interests of the party that intends to file suit. During the thirty (30) day notice period, the parties shall meet and confer in an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to waive or abridge any right or remedy that either party may have.

20. **Default and Remedies.**

- a. **Events of Default.** Each of the following shall constitute an event of default hereunder:
  - i. Failure to perform any obligation under this Agreement and failure to cure such breach immediately upon receiving notice of such breach, if the breach is such that the Department determines the health, welfare, or safety of the public is immediately endangered; or
  - ii. Failure to perform any obligation under this Agreement and failure to cure such breach within fifteen (15) days of receiving notice of such breach, if the breach is such that the Department determines that the health, welfare, or safety of the public is not immediately endangered, provided that if the nature of the breach is such that the Department determines it will reasonably require more than fifteen (15) days to cure, Consultant shall not be in default if Consultant promptly commences the cure and diligently proceeds to completion of the cure.
- b. **Remedies upon Default.** Upon any Consultant default, Department shall have the right to immediately suspend or terminate the Agreement, seek specific performance, contract with another party to perform this Agreement and/or seek damages including incidental, consequential and/or special damages to the full extent allowed by law.

21. **Attorneys' Fees.** In the event any legal action is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.

22. **Documents and Records.**

- a. **Property of Department.** All reports, data, maps, models, charts, studies, surveys,

photographs, memoranda or other written documents or materials prepared by Consultant pursuant to this Agreement shall become the property of Department upon completion of the work to be performed hereunder or upon termination of this Agreement.

- b. **Retention of Records.** Until the expiration of five (5) years after the furnishing of any services pursuant to this Agreement, Consultant shall retain and, upon written request by Department, make available to the Department or any party designated by the Department this Agreement, and such books, documents and records of Consultant and subcontractor that are necessary or convenient for audit purposes to certify the nature and extent of the reasonable cost of services to Department.
  - c. **Professional Seal.** Where applicable in the determination of the contract administrator, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
  - d. **Confidentiality.** All reports and documents prepared by Consultant in connection with the performance of this Agreement are confidential until released by DEPARTMENT to the public. Consultant shall not make any such documents or information available to any individual or organization not employed by Consultant or DEPARTMENT without the written consent of DEPARTMENT before any such release.
23. **Inspection of Books and Records.** During regular office hours, each of the parties hereto shall have the right to inspect and make copies of any books, records, or reports of the other party pertaining to this Agreement or matters related hereto. Each of the parties hereto shall maintain and make available for such inspection accurate records of all of its costs, disbursements and receipts with respect to its activities under this Agreement.
24. **Successors and Assigns.** This Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties hereto.
25. **Waiver.** Any waiver at any time by either party hereto of its rights with respect to a default or any other matter arising in connection with this Agreement shall not be deemed to be a waiver with respect to any other default or matter.
26. **Modifications.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
27. **Agreement Interpretation.** Each party to this Agreement has had an opportunity to review the Agreement, confer with legal counsel regarding the meaning of the Agreement, and negotiate revisions to the Agreement. Accordingly, neither party shall rely upon Civil Code section 1654 in order to interpret any uncertainty in the meaning of the Agreement.



28. **Entire Agreement.** This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the subject matter described herein.
29. **Jurisdiction and Severability.** This Agreement shall be governed and construed in accordance with California law. The venue for any legal action in State court filed by a party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of San Mateo. The venue for any legal action in Federal court filed by a party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement within the jurisdiction of the Federal courts shall be the Northern District of California. If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected.
30. **Signatures.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Consultant and Department.

[Signatures on Following Page]

IN WITNESS WHEREOF, the San Mateo Consolidated Fire Department and Consultant do hereby agree to the full performance of the terms set forth herein.

**SAN MATEO CONSOLIDATED FIRE  
DEPARTMENT**

**CONSULTANT**

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<Insert Name>  
<Insert Title>

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<Insert Name>  
<Insert Title>

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM

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William D. Ross  
General Counsel

Date: \_\_\_\_\_

**Attachments:**

Exhibit A – Scope of Work

Exhibit B – Fee Rates

Exhibit C – Insurance Requirements

**EXHIBIT A**  
**SCOPE OF WORK**

Consultant shall complete the attached Scope of Work.

[If Exhibit A is NOT *Scope of Services*, make sure to update the rest of the Contract which references Exhibit A]

**EXHIBIT B**  
**PAYMENT AND SCHEDULE OF PAYMENTS**

[If Exhibit B is NOT *Fee Rates*, make sure to update the rest of the Contract which references Exhibit B]

**1. TOTAL COMPENSATION**

Department shall compensate Consultant for the satisfactory performance of the work described in this Agreement to not exceed the amount of \_\_\_\_\_ dollars (\$\_\_\_\_\_).

2. Consultant shall submit an itemized statement to Department on a Department approved form for its services performed, which shall include documentation setting forth in detail a description of the services rendered, and the hours of service, if appropriate. Department shall compensate Consultant the amount of such billing within thirty (30) days receipt of same.

3. There shall be no right to reimbursement of expenses incurred by Consultant except as specified in Exhibit A to this Agreement.

## EXHIBIT C

### INSURANCE REQUIREMENTS

#### MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an “occurrence” basis, including products-completed operations, personal & advertising injury, with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location 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 Consultant 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. **Professional Liability (Errors and Omissions):** Insurance appropriate to the Consultant’s profession, with limit no less than **\$1,000,000** per occurrence or claim, **\$2,000,000** aggregate

If the Consultant maintains higher limits than the minimums shown above, the Department requires and shall be entitled to coverage for the higher limits maintained by the Consultant.

#### Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

#### *Additional Insured Status*

**The Department, its elected and appointed officials, employees, and agents are to be covered as insureds** on the auto policy for liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Consultant; and on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant 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 Consultant’s insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

### ***Primary Coverage***

For any claims related to this contract, the **Consultant's insurance coverage shall be primary** insurance as respects the Department, its elected and appointed officials, employees, and agents. Any insurance or self-insurance maintained by the Department, its elected and appointed officials, employees, or agents shall be excess of the Consultant's insurance and shall not contribute with it.

### ***Notice of Cancellation***

Each insurance policy required above shall provide that **coverage shall not be canceled, except after thirty (30) days' prior written notice** (10 days for non-payment) has been given to the Department.

### ***Waiver of Subrogation***

Consultant hereby grants to Department a waiver of any right to subrogation which any insurer of said Consultant may acquire against the Department by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the Department has received a waiver of subrogation endorsement from the insurer.

### ***Deductibles and Self-Insured Retentions***

Any deductibles or self-insured retentions must be declared to and approved by the Department. The Department may require the Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

### ***Acceptability of Insurers***

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Department.

### ***Verification of Coverage***

Consultant shall furnish the Department with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the Department before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The Department reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

### ***Special Risks or Circumstances***

Department reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.

***Subcontractors:***

Contractor or Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that Department is an additional insured on insurance required from subcontractors.

Subcontractor agrees to be bound to Consultant and Department in the same manner and to the same extent as Consultant is bound to Department under this Agreement and any other contract documents. Subcontractor further agrees to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor's work. A copy of the Department indemnity and insurance provisions will be furnished to the subcontractor upon request.