

## PROFESSIONAL SERVICES AGREEMENT FOR

This Agreement is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between Central County Fire Department, "DEPARTMENT" and \_\_\_\_\_ hereinafter called "CONSULTANT". DEPARTMENT AND CONSULTANT are collectively referred to as the PARTIES.

### RECITALS

This Agreement is entered into with reference to the following facts and circumstances:

- A. That DEPARTMENT desires to engage CONSULTANT to provide professional services;
- B. That CONSULTANT is qualified to provide such services to the DEPARTMENT and;
- C. That the DEPARTMENT has elected to engage the services of CONSULTANT upon the terms and conditions as hereinafter set forth.

- 1. Services. The services to be performed by CONSULTANT under this Agreement shall include those services set forth in Exhibit A, which is, by this reference, incorporated herein and made a part hereof as though it were fully set forth herein.

Performance of the work specified in said Exhibit A is hereby made an obligation of CONSULTANT under this Agreement, subject to any changes that may be made subsequently hereto upon the mutual written agreement of the said parties.

Where in conflict, the terms of this Agreement supersede and prevail over any terms set forth in Exhibit A.

- 2. Term; Termination. (a) The term of this Agreement shall commence upon the date hereinabove written and shall expire upon completion of performance of services hereunder by CONSULTANT. (b) Notwithstanding the provisions of (a) above, either PARTY may terminate this Agreement without cause by giving written notice not less than ten (10) days prior to the effective date of termination, which date shall be included in said notice. In the event of such termination, DEPARTMENT shall compensate CONSULTANT for services rendered, and reimbursed for costs and expenses incurred, to the date of termination, calculated in accordance with the provisions of paragraph 3. In ascertaining the services actually rendered to the date of termination, consideration shall be given both to completed work and work in process of completion. Nothing herein contained shall be deemed a limitation upon the right of DEPARTMENT to terminate this

Agreement for cause, or otherwise to exercise such rights or pursue such remedies as may accrue to DEPARTMENT hereunder.

3. Compensation; Expenses; Payment. DEPARTMENT shall compensate CONSULTANT for all services performed by CONSULTANT hereunder in an amount based upon CONSULTANT's hourly rates during the time of the performance of said services. A copy of CONSULTANT's hourly rates for which services hereunder shall be performed are set forth in CONSULTANT's fee schedule marked Exhibit "B" hereof, attached hereto and by this reference incorporated herein.

Notwithstanding the foregoing, the combined total of compensation and reimbursement of costs payable hereunder shall not exceed the sum (\$ ). Invoices for amounts in excess of (\$ ) shall not be paid unless the performance of services and/or reimbursement of costs and expenses in excess of said amounts have been approved in advance of performing such services or incurring such costs and expenses by DEPARTMENT and a written contract amendment having been executed.

Compensation and reimbursement of costs and expenses hereunder shall be payable upon monthly billing therefore by CONSULTANT to DEPARTMENT, which billing shall include an itemized statement, briefly describing by task and labor category or cost/expense items billed.

4. Additional Services. In the event DEPARTMENT desires the performance of additional services not otherwise included within the services described in Exhibit A, such services shall be authorized in advance of the performance thereof by the DEPARTMENT by amendment of this Agreement. Such amendment to this Agreement shall include a description of the services to be performed thereunder, the maximum compensation and reimbursement of costs and expenses payable therefor, the time of performance thereof, and such other matters as the PARTIES deem appropriate for the accomplishment of such services. Except to the extent modified by written amendment, all other terms and conditions of this Agreement shall be deemed incorporated in each such amendment.
5. Records. CONSULTANT shall keep and maintain accurate records of all time expended and costs and expenses incurred relating to services to be performed by CONSULTANT hereunder. Said records shall be available to DEPARTMENT for review and copying during regular business hours at CONSULTANT's place of business or as otherwise agreed upon by the parties.
6. Authorization. This Agreement becomes effective when endorsed by both parties in the space provided below.
7. Reliance on Professional Skill of CONSULTANT. CONSULTANT represents that it has the necessary professional skills to perform the

services required and the DEPARTMENT shall rely on such skills of the CONSULTANT to do and perform the work. In performing services hereunder CONSULTANT shall adhere to the standards generally prevailing for the performance of expert consulting services similar to those to be performed by CONSULTANT hereunder.

8. Documents. All documents, plans, drawings, renderings, and other papers, or copies thereof, as finally rendered, prepared by CONSULTANT pursuant to the terms of this Agreement, shall, upon preparation and delivery to DEPARTMENT, become the property of DEPARTMENT.
9. Relationship of Parties. It is understood that the relationship of CONSULTANT to the DEPARTMENT is that of an independent contractor and all persons working for or under the direction of CONSULTANT are its agents or employees and not agents or employees of the DEPARTMENT.
10. Schedule. CONSULTANT shall adhere to the schedule set forth in Exhibit A; provided, that DEPARTMENT shall grant reasonable extensions of time for the performance of such services occasioned by governmental reviews of CONSULTANT's work product or other unavoidable delays; provided, further, that such unavoidable delay shall not include strikes, lockouts, work stoppages, or other labor disturbances conducted by, or on behalf of, CONSULTANT's officers or employees.

CONSULTANT acknowledges the importance to DEPARTMENT of the work schedule and agrees to put forth his best professional efforts to perform its services under this Agreement in a manner consistent with that schedule.

11. Indemnity. To the fullest extent allowed by law, CONSULTANT hereby agrees to defend, indemnify, and save harmless DEPARTMENT, from and against any and all claims, suits, actions liability, loss, damage, expense, cost (including, without limitation, costs and fees of litigation) of every nature, kind or description, which may be brought against, or suffered or sustained by, DEPARTMENT caused by, or alleged to have been caused by, the negligence, intentional tortuous act or omission, or willful misconduct of CONSULTANT, its officers, employees, subcontractors or agents in the performance of any services or work pursuant to this Agreement.

The duty of CONSULTANT to indemnify and save harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code; provided, however, that nothing herein contained shall be construed to require CONSULTANT to indemnify DEPARTMENT against any responsibility or liability in contravention of Section 2782 of the California Civil Code.

CONSULTANT'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.

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 within this Agreement.

12. Insurance. CONSULTANT shall acquire and maintain Workers' Compensation, employer's liability, commercial general liability, owned and non-owned and hired automobile liability, and professional liability insurance coverage relating to CONSULTANT's services to be performed hereunder covering DEPARTMENT's risks. The minimum amounts of coverage corresponding to the aforesaid categories of insurance per insurable event, shall be as follows:

<u>Insurance Category</u>	<u>Minimum Limits</u>
Workers' Compensation	Statutory minimum
Employer's Liability	\$1,000,000 per accident for bodily injury or disease
Commercial General Liability	\$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, personal injury and property damage
Automobile Liability	\$1,000,000 per accident for bodily injury and property damage (coverage required to the extent applicable to CONSULTANT's vehicle usage in performing services hereunder)
<sup>1</sup> Professional Liability	\$1,000,000 per claim and aggregate

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 DEPARTMENT as Additional Insureds. Furthermore, the requirements for coverage and limits shall be the greater of either (1) the minimum coverage and limits specified in this Agreement or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named Insured.

CONSULTANT agrees to include with all subcontractors in their subcontracts 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 CONSULTANT shall 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 its accompanying documents. Subcontractors shall further agree to include these same provisions with any sub-subcontractors. A copy of the indemnity and insurance provisions of this Agreement will be furnished to the Subcontractor upon request. CONSULTANT shall require all subcontractors to provide a valid certificate of insurance and the required endorsements included in the subcontract's agreement and will provide proof of compliance to the DEPARTMENT prior to commencement of any work by the subcontractor.

Concurrently with the execution of this Agreement, CONSULTANT shall furnish DEPARTMENT, on the form included as Exhibit D or similar form, with certificates and copies of information or declaration pages of the insurance required hereunder to be included as Exhibit C hereto. With respect to evidence of commercial general liability and automobile liability insurance coverage, CONSULTANT must also include in Exhibit C the following original endorsements:

- (a) Precluding cancellation or reduction in per occurrence limits before the expiration of thirty (30) days (10 days for nonpayment) after DEPARTMENT shall have received written notification of cancellation in coverage or reduction in per occurrence limits by first class mail;
- (b) Naming DEPARTMENT, as additional insured; and
- (c) Providing that CONSULTANT's insurance coverage shall be primary insurance with respect to DEPARTMENT, and any insurance or self-insurance maintained by DEPARTMENT shall be in excess of CONSULTANT's insurance and not contributory with it. CONSULTANT and its insurer may not seek contribution from DEPARTMENT's insurance.

The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of DEPARTMENT, to the extent required by this Agreement, before the DEPARTMENT's insurance may be called upon to protect DEPARTMENT as a named Insured.

All self-insured retentions (SIR) must be disclosed to DEPARTMENT for approval and shall not reduce the limits of liability coverage. Policies containing and SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named CONSULTANT/Named Insured or DEPARTMENT.

DEPARTMENT reserves the right to obtain a full certified copy of any insurance policy and endorsements required by this Agreement. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Any and all Subcontractors shall 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. Subcontractors shall further agree to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, in any agreement with sub-subcontractors to the extent that they apply to the scope of the sub-subcontractor's work. A copy of the indemnity and insurance provisions of this Agreement shall be furnished to any subcontractor upon request.

CONSULTANT shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five (5) years following completion of the work or service called for by this Agreement. In the event CONSULTANT fails to obtain or maintain coverage as required by this Agreement, the DEPARTMENT at its sole discretion may purchase the coverage required and the cost will be paid by CONSULTANT.

13. WORKERS' COMPENSATION. CONSULTANT certifies that it is aware of the provisions of the Labor Code of the State of California which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and CONSULTANT certifies that it will comply with such provisions before commencing the performance of the work of this Agreement.
14. NOTICES. All notices required by this Agreement shall be given by email addressed as follows

DEPARTMENT

CONSULTANT

15. Non-Assignment. This Agreement is not assignable either in whole or in part.
16. Amendments. This Agreement may be amended or modified only by written agreement signed by both PARTIES.
17. Validity. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
18. Governing Law. This Agreement shall be governed by the laws of the State of California and any suit or action initiated by either party shall be brought

in the County of San Mateo, California. In the event of litigation between the PARTIES hereto to enforce any provision of the Agreement, the unsuccessful PARTY will pay the reasonable attorney's fees and expenses of litigation of the successful PARTY.

19. Mediation. Should any dispute arise out of this Agreement, the PARTIES shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. Neither PARTY shall be permitted to file legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution. The costs of the mediator, if any, shall be paid equally by the PARTIES. If a mediated settlement is reached neither PARTY shall be deemed the prevailing PARTY for purposes of the settlement and each PARTY shall bear its own legal costs.

20. Entire Agreement. This Agreement, including Exhibits A, B C, and D, comprises the entire Agreement.

IN WITNESS WHEREOF, the PARTIES hereto have caused this Agreement to be executed on the date first above written..

DEPARTMENT

Dated: \_\_\_\_\_

\_\_\_\_\_

CONSULTANT

Dated: \_\_\_\_\_

\_\_\_\_\_  
Type Name & Title of CONSULTANT  
Authorized to Sign

EXHIBIT A

SCOPE OF WORK AND SCHEDULE  
FOR



EXHIBIT B

CONSULTANT'S FEE SCHEDULE

## EXHIBIT C

### INSURANCE FORMS

CONSULTANT shall provide, in addition to the Certificates of Insurance, original Endorsement affecting the coverages specified in Section 12 - INSURANCE of the Agreement on the attached form. No substitute form will be accepted.

#### **ATTACHED**

1. Insurance Coverage Form

**EXHIBIT D**

This **INSURANCE COVERAGE FORM** modifies or documents insurance provided under the following:

Named Insured: \_\_\_\_\_ Effective Work Date(s): \_\_\_\_\_

Description of Work/Locations/Vehicles: \_\_\_\_\_

**ADDITIONAL INSURED:** **Central County Fire Department**

**Attention:** \_\_\_\_\_

**Contract Administrator**

<b>Endorsement and Certificates of Insurance Required</b> The Additional Insured, its elected or appointed officers, officials, employees and volunteers are included as insureds with regard to damages and defense of claims arising from: (Check all that apply)		<b>Insurer</b>	<b>Policy No.</b>
<input type="checkbox"/>	<b>General Liability:</b> (a) activities performed by or on behalf of the Named Insured, (b) products and completed operations of the Named Insured, (c) premises owned, leased occupied or used by the Named Insured, and/or (d) permits issued for operations performed by the Named Insured. {Note: MEETS OR EXCEEDS ISO Form # CG 20 10 11 85}		
<input type="checkbox"/>	<b>Auto Liability:</b> the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Named Insured, regardless of whether liability is attributable to the Named Insured or a combination of the Named Insured and the Additional Insured, its elected or appointed officers, officials, employees or volunteers.		
<input type="checkbox"/>	<b>Other:</b>		
<b>Certificates of Insurance Required (no endorsement needed) (Check all that apply)</b>		<b>Insurer</b>	<b>Policy No.</b>
<input type="checkbox"/>	<b>Workers Compensation:</b> work performed by employees of the Named Insured while those employees are engaged in work under the simultaneous directions and control of the Named Insured and the Additional Insured.		
<input type="checkbox"/>	<b>Professional Liability:</b>		

**PRIMARY/NON-CONTRIBUTORY:** This insurance is primary and is not additional to or contributing with any other insurance carried by or for the benefit of Additional Insureds.

**SEVERABILITY OF INTEREST:** The insurance afforded by this policy applies separately to each insured who is seeking coverage or against whom a claim is made or a suit is brought, except with respect to the insurer's limit of liability.

**PROVISIONS REGARDING THE INSURED'S DUTIES AFTER ACCIDENT OR LOSS:** Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the Additional Insured, its elected or appointed officers, officials, employees, or volunteers.

**CANCELLATION NOTICE:** The insurance afforded by this policy shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice (ten (10) days if canceled due to non-payment) by regular mail return receipt requested has been given to the Additional Insured. Such notice shall be addressed as shown above.

**WAIVER OF SUBROGATION:** The insurer(s) named above agree to waive all rights of subrogation against the CITY, its elected or appointed officers, officials, agents, volunteers and employees for losses paid under the terms of this policy which arise from work performed by the Named Insured for the CITY.

**Nothing herein contained shall vary, alter or extend any provision or condition of the Policy other than as above stated.**

**SIGNATURE OF INSURER OR AUTHORIZED REPRESENTATIVE OF THE INSURER**

I, \_\_\_\_\_ (print/type name), warrant that I have authority to bind the above-named insurance company and by my signature hereon do so bind this company.

\_\_\_\_\_  
**SIGNATURE OF AUTHORIZED REPRESENTATIVE (original signature required)**

**ORGANIZATION:** \_\_\_\_\_ **TITLE:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**TELEPHONE:** ( ) \_\_\_\_\_ **DATE ISSUED:** \_\_\_\_\_