

FIRE SAFETY SOLUTIONS, INC

Professional Services Agreement

THIS AGREEMENT is made and entered into this 1st day of March 2021, by and between Fresno County Fire Protection District, hereinafter referred to as "AGENCY", and Fire Safety Solutions INC., hereafter referred to as "Consultant".

IN CONSIDERATION of the covenants hereinafter set forth, the parties hereto mutually agree as follows:

ARTICLE 1 SCOPE OF SERVICES

1.1 Project Description

Refer to scope of services in Exhibit "A".

1.2 Description of Services

CONSULTANT shall perform Services described in Exhibit "A", Scope of Work, attached hereto and incorporated herein by this reference. CONSULTANT shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work since these are solely the construction contractor's responsibility. CONSULTANT shall not be responsible for the construction contractor's schedules or failure to carry out the work in accordance with the contract documents. CONSULTANT shall not have control over or charge of acts or omissions of the construction contractor, subcontractors, or their agents or employees, or of any other persons performing portions of the work.

1.3 Responsibilities of Agency

The Responsibilities of the AGENCY are described in Exhibit "B" attached hereto and incorporated herein by this reference.

1.4 Schedule of Work

Upon receipt of written Notice to Proceed from the AGENCY, CONSULTANT shall perform Services in the Scope of Work with diligence. CONSULTANT shall not be responsible for delay, nor shall CONSULTANT be responsible for damages or be in default or deemed to be in default by reason of strikes, lockouts, accidents, or acts of God, or the failure of AGENCY to furnish timely information or to approve or disapprove CONSULTANT'S work promptly, or delay or faulty performance by AGENCY, other contractors, or governmental agencies, or any other delays beyond CONSULTANT'S control or without CONSULTANT'S fault.

ARTICLE 2 COMPENSATION

2.1 Fee

AGENCY agrees to compensate CONSULTANT for time and materials, in accordance with the hourly rates in effect at the time the services are performed. AGENCY will compensate CONSULTANT for the cost of materials plus 15% and the cost of mileage in accordance with Exhibit "B". The hourly rates and estimated amount are subject to annual revision, effective January 1st of each year.

CONSULTANT will submit invoices monthly for the work completed.

2.2 Payment Address

All payments due CONSULTANT shall be paid to:

Fire Safety Solutions
1405 E. Omaha
Fresno, CA 93720

2.3 Terms of Compensation

CONSULTANT will submit invoices monthly for the percentage of work completed in the previous month. AGENCY agrees to pay all undisputed invoice amounts within thirty (30) days of the invoice date. AGENCY agrees to notify CONSULTANT of any disputed invoice amounts within ten (10) days of the invoice date. Delinquent invoices will be subject to a late payment carrying charge computed at a periodic rate of 1.5% per month, which is an annual percentage rate of 18%, which will be applied to any unpaid balance commencing forty-five (45) days after date of the original invoice.

Additionally, in the event AGENCY fails to pay any undisputed amounts due CONSULTANT within forty-five (45) days after invoices are rendered, then AGENCY agrees that CONSULTANT shall have the right to consider said default a total breach of this Agreement and the duties of CONSULTANT under this Agreement may be terminated by CONSULTANT without liability to CONSULTANT upon ten (10) working days advance written Notice. Upon receipt of any such notice of termination, Agency shall have the right to cure by making payment of any undisputed amounts due prior to the effective date of the termination.

2.4 Additional Services

AGENCY may request CONSULTANT to perform additional services not covered by the specific Scope of Work set forth in this Agreement, and CONSULTANT shall perform such services and will be paid for such additional services when they are mutually agreed to and made part of this Agreement by written amendment.

ARTICLE 3
INDEMNIFICATION, LIMITATION OF LIABILITY AND INSURANCE

3.1 Indemnification

CONSULTANT agrees to indemnify and hold harmless AGENCY, its elected and appointed officials, officers, agents, attorneys, and employees from and against liability, damages, costs, losses, claims and expenses, including reasonable attorneys' fees, arising out of the negligent acts, errors, or omissions of CONSULTANT in the performance of this Agreement.

In the event AGENCY obtains indemnification for itself from another party performing work on the Project, AGENCY shall require that party to indemnify CONSULTANT to the same extent that party indemnifies AGENCY.

3.2 Limitation of Liability

AGENCY and CONSULTANT have discussed their risks, rewards and benefits of the Project and the CONSULTANT fee for services. The risks have been allocated such that AGENCY agrees that to the fullest extent permitted by law, CONSULTANT's total liability to AGENCY under this Agreement shall not exceed the amount of \$50,000.00. Such limitation shall not apply to, or limit in any way, CONSULTANT's insurance coverage or proceeds or liability relating to such coverage. Further, the limitations in this paragraph shall not apply to claims arising out of or in connection with this Agreement that relate to personal injury, mental or emotional harm, or death, resulting in whole or in part from CONSULTANT's negligence or willful misconduct.

3.3 Workers' Compensation

CONSULTANT maintains Workers' Compensation and Employer's Liability Insurance of a form and in an amount as required by state law.

3.4 General Liability

CONSULTANT maintains Comprehensive General Bodily Injury and Property Damage Liability, including Automobile (owned, non-owned, or hired), in the amount of Five Hundred Thousand Dollars (\$500,000), combined single limits per occurrence and annual aggregate. CONSULTANT shall also maintain Professional Liability (Error and Omissions) insurance in the amount of Five Hundred Thousand Dollars (\$500,000).

3.5 Notice of Cancellation

CONSULTANT agrees to provide ten (10) days written Notice to AGENCY prior to cancellation of any policy.

3.6 Agency Provided Information

AGENCY agrees to indemnify and hold harmless CONSULTANT, its officers and employees, from and against any and all liability, damages, costs, losses, claims and expenses, including reasonable attorneys' fees, due to incorrect data or information provided by the AGENCY including, but not limited to utility location data, as-built drawings, topographic survey, geotechnical reports, etc.

In the event AGENCY fails to provide a soils or geotechnical report for the services to be performed in this Agreement, CONSULTANT will bear no responsibility for and CLIENT will indemnify and hold harmless CONSULTANT, its officers and employees from and against any and all liability, damages, costs, losses, claims and expenses of any nature arising out of or related to soils or geotechnical requirements needed for the subject Agreement.

ARTICLE 4 TERMINATION

4.1 Termination of Contract

This Agreement may be terminated by either party at any time with or without cause upon thirty (30) days prior written Notice. In the event of termination by AGENCY, CONSULTANT shall be paid at the hourly rates then in effect within thirty (30) days of submittal of invoice for all services performed to the date of termination and for all expenses directly attributable to the termination, including, but not limited to, any cancellation charges by subconsultants and/or contractors.

ARTICLE 5 OWNERSHIP OF DOCUMENTS

5.1 Ownership of Documents

All plans, specifications, reports and other design documents prepared by CONSULTANT pursuant to this Agreement are instruments of service which shall be deemed the property of the AGENCY. AGENCY acknowledges and agrees that all plans, specifications, reports and other design documents prepared by CONSULTANT pursuant to this Agreement shall be used exclusively on this Project and shall not be used for any other work without the written consent of CONSULTANT. In the event AGENCY and CONSULTANT permit the reuse or other use of the plans, specifications, reports or other design documents, AGENCY shall require the party using them to indemnify and hold harmless AGENCY and CONSULTANT regarding such reuse or other use, and AGENCY shall require the party using them to eliminate any and all references to CONSULTANT from the plans, specifications, reports and other design documents. CONSULTANT may apply for copyrights or patents on all or any part of the work performed under this Agreement.

ARTICLE 6 GENERAL PROVISIONS

6.1 Representation

An AGENCY representative shall be designated by the AGENCY and a CONSULTANT representative shall be designated by CONSULTANT as the primary contact person for each party regarding performance of this Agreement.

AGENCY Representative:

Fresno County Fire Protection District
c/o Protection/ Planning Chief
210 S. Academy Ave.
Sanger, CA 93657
(559) 493-4300

CONSULTANT Representative:

Matthew S. Tarr
1405 E. Omaha
Fresno, CA 93720
(559) 274-3925

6.2 Non-Discrimination

In the performance of the terms of this Agreement, CONSULTANT shall not engage in discrimination in the employment of persons because of race, creed, color, religion, national origin, age, physical handicap, marital status or sex.

6.3 Legal Action

Should either party to this Agreement bring legal action against the other, the case shall be handled in Fresno County, California, and the party prevailing in such action shall be entitled to reasonable attorneys' fee which shall be fixed by the judge hearing the case and such fee shall be included in the judgment.

6.4 Assignment

This Agreement shall not be assignable by either party without the prior written consent of the other party.

Notwithstanding the above, CONSULTANT may use the services of persons and entities not in their employ, when it is appropriate and customary to do so. Such persons and entities include, but are not necessarily limited to, surveyors, specialized consultants, and testing laboratories. CONSULTANT's use of others for additional services shall not be unreasonably restricted by the AGENCY provided CONSULTANT notifies the AGENCY in advance.

6.5 Hazardous Materials

Unless otherwise provided in this Agreement, CONSULTANT and its sub-consultants and/or contractors shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to hazardous materials in any form at the site of the Project.

6.6 Titles

The titles used in this Agreement are for general reference only and are not part of the Agreement.

6.7 Extent of Agreement

This Agreement represents the entire and integrated Agreement between AGENCY and CONSULTANT and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified or amended only by a subsequent written agreement signed by both parties.

6.8 No Third Party Beneficiaries

The Parties agree that there are no third-party beneficiaries to this Agreement.

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

Fresno County Fire Protection District

Fire Safety Solutions, INC

BY: _____

BY: _____

Date: _____ TITLE: _____

Date: _____ TITLE: _____