



**PROFESSIONAL SERVICES AGREEMENT BETWEEN THE LOS ALTOS HILLS
COUNTY FIRE DISTRICT AND SANTA CLARA COUNTY FIRESAFE COUNCIL
FOR PROGRAM SERVICES**

This Agreement (“Agreement”) is made this ___ day of October 2019, by and between the Los Altos Hill County Fire District (“District”) and Santa Clara County FireSafe Council, a nonprofit organization (“FireSafe Council” or “Consultant”) jointly known as “Parties”.

RECITALS

The following recitals are a substantive part of this Agreement:

- A. The District wishes to contract for assistance with increasing community awareness and education, and readiness and resiliency in the event of a wildfire through programs that assist in protecting lives, property and the environment; and
- B. FireSafe Council has experience in providing programs and projects focused on protecting the Santa Clara County communities at risk for wildfire through the reduction of built-up hazardous fire-prone vegetation, and the creating of informed communities with respect to defensible space, general wildfire safety, and fire’s effect and role in our environment; and
- C. The District now desires enter into an agreement with FireSafe Council to render certain professional services as set forth herein and described in the Scope of Services attached as Exhibit A for the purpose of providing the District with a platform to attain the goals set forth in the District’s Community Wildfire Protection Plan (“CWPP”).

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, conditions and promises identified herein, the Parties mutually agree as follows:

1. SCOPE OF AGREEMENT. FireSafe Council shall provide professional services to the District as specified in the Scope of Services attached as Exhibit A (“Services”) to provide the District with a platform to attain the goals set forth in the District’s Community Wildfire Protection Plan (“CWPP”).
2. PERFORMANCE BY CONSULTANT.
 - 2.1. Consultant Representatives. Eugenia Rendler, Community Outreach and Education Program Manager is FireSafe Council’s representative (“Consultant Representative”). Consultant Representative shall be available to DISTRICT at all reasonable times. FireSafe Council may appoint another person as Consultant Representative subject to prior written authorization from the District, for the purposes of carrying out this Agreement. Consultant Representative

shall have authority to act on behalf of FireSafe Council for all purposes under this Agreement.

- 2.2. Standard of Care; Licenses. FireSafe Council represents and maintains that it is skilled in the technical calling necessary to perform Services, duties and obligations required by this Agreement and to fully, timely, and adequately complete the Services. FireSafe Council shall perform the Services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. FireSafe Council further represents and warrants to the District that it has all licenses, permits, qualifications and approvals of whatever nature that are legally required to practice its profession. FireSafe Council further represents that it shall keep all such licenses and approvals in effect and in good standing during the term of this Agreement.
- 2.3. Conformance with Applicable Requirements. All work prepared by FireSafe Council shall be subject to the approval of District Representative. FireSafe Council shall allow District Representative to inspect or review FireSafe Council's work in progress upon request.
- 2.4. Appearance at Hearings. If requested by District, FireSafe Council shall render assistance at public hearings or other meetings related to the Services performed by FireSafe Council or necessary to the performance of Services.
- 2.5. Equal Opportunity Employment. FireSafe Council represents that it is an equal opportunity employer and shall not discriminate against an employee or applicant for employment and shall not discriminate against an employee or applicant for employment with FireSafe Council on the basis of race, color, religion, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation.
3. DISTRICT REPRESENTATIVE. The District's President or its designee ("District Representative") shall have the authority to act on behalf of the District for all purposes under this Agreement. District shall provide written notice to FireSafe Council of any change in the District Representative.
4. TERM OF AGREEMENT. This Agreement shall be effective until December 31, 2020, unless terminated earlier as set forth in Paragraph 6 below.
5. COMPENSATION. The Services performed by FireSafe Council pursuant to this Agreement shall be compensated as set forth below:
 - 5.1. Payment Schedule. District shall compensate FireSafe Council as set forth in Exhibit A, but in no instance shall fee for all Services exceed Thirty-Five Thousand Dollars (\$35,000.00) without prior written authorization from the District.
 - 5.2. Payment. For all Services performed by FireSafe Council under this Agreement, payment shall be made by District in accordance with Santa Clara County Payroll Department schedule upon submittal by District of invoice for services. FireSafe Council shall submit invoices for Services to the District's General Manager on the 15th day of each month.
 - 5.3. Invoices. All invoices shall be sent directly to the following address:

Los Altos Hills County Fire District
Attn: General Manager
P.O. Box 1766
Los Altos, CA 94023

5.4. Records of Expense. FireSafe Council shall keep accurate records of work performed and expenses incurred. These records shall be made available to District upon request. FireSafe Council shall keep all such records for at least four (4) years after the date of the services performed. FireSafe Council understands that the Public Records Act may apply to documents created under this Agreement. This section shall survive the Termination of this Agreement.

5.5. Extra Work. Extra work beyond the scope of this Agreement may be authorized, and if authorized, shall be compensated based on prior written agreed upon amounts. However, no compensation for extra work shall be paid without prior written authorization by the District Representative. Without such written authorization, FireSafe Council shall not provide extra work.

6. TERMINATION.

6.1. Termination. Notwithstanding any other provision of this Agreement, the District may terminate this Agreement without cause at any time upon giving ten days written notice to FireSafe Council. In the event the Agreement is terminated, FireSafe Council shall be paid for any Services properly performed to the last working day the Agreement is in effect. FireSafe Council shall substantiate the final cost of Services by an itemized, written statement submitted to the District. The District's right of termination shall be in addition to all other remedies available under law to the District.

6.2. Effect of Termination. For purposes of this Agreement, Termination means either the expiration of the term of the Agreement or termination by the District as described in Paragraph 6.1 above. In the event of Termination, FireSafe Council shall deliver to the District copies of all reports, documents, computer disks, and other work prepared by FireSafe Council under this Agreement, if any. If FireSafe Council's written work is in electronic form, FireSafe Council shall, in addition to providing a written copy of the information, shall also provide it immediately in electronic form to District. District shall not pay FireSafe Council for services performed by FireSafe Council through the last working day the Agreement is in effect unless and until FireSafe Council has delivered the above-described items to the District.

7. INDEMNIFICATION.

7.1. To the fullest extent permitted by law, CONSULTANT shall defend (with counsel reasonably approved by DISTRICT), indemnify and hold DISTRICT, the DISTRICT Board of Commissioners, members of the DISTRICT Board of Commissioners, its employees, representatives, agents and volunteers harmless from any and all suits, damages, costs, fees, claims, demands, causes of action, liabilities, losses expenses, damage or injury of any kind, in law or equity, to property or persons, including wrongful death and financial losses (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of CONSULTANT or CONSULTANT'S officers, assistants, subcontractors, employees or agents in connection with the performance of CONSULTANT'S services or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses.

7.2. Notwithstanding the foregoing, to the extent CONSULTANT's services are subject to Civil Code Section 2782.8, (Design Professionals) the above indemnity shall be limited, to the

extent required by Civil Code Section 2782.8, to Claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT.

- 7.3. With regard to CONSULTANT's professional services, CONSULTANT agrees to use that degree of care and skill ordinarily exercised under similar circumstances by members of CONSULTANT's profession, including without limitation adherence to all applicable safety standards. To the fullest extent permitted by law, CONSULTANT shall defend (with counsel reasonably approved by DISTRICT), indemnify and hold DISTRICT, the DISTRICT Board of Commissioners, members of the DISTRICT Board of Commissioners, its employees, representatives, agents and volunteers harmless from any and all indemnify, defend (with independent counsel approved by the DISTRICT) and hold harmless the DISTRICT, and its elective or appointive boards, officers, and employees from and against all liabilities, including without limitation all Claims that arise out of, pertain to, or relate to the negligence, reckless, or willful misconduct of CONSULTANT or CONSULTANT's officers, assistants, subcontractors, employees or agents in connection with the performance of CONSULTANT'S services or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. The acceptance of said services and duties by DISTRICT shall not operate as a waiver of such right of indemnification.
- 7.4. The DISTRICT does not and shall not waive any rights that they may possess against CONSULTANT because of the acceptance by the DISTRICT or the deposit with the DISTRICT of any insurance policy or certificate required pursuant to this Agreement. These hold harmless and indemnification provisions shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.
- 7.5. CONSULTANT's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by DISTRICT, the DISTRICT Board of Commissioners, members of the DISTRICT Board of Commissioners, its employees, or authorized volunteers.
- 7.6. CONSULTANT's obligations to indemnify set forth in Paragraphs 7.1-7.5 shall survive Termination of the Agreement.
8. INSURANCE REQUIREMENTS. FireSafe Council shall procure, maintain and provide appropriate types and amounts of insurance for the Services performed under this Agreement, as required by DISTRICT's Insurance Requirement, as set forth in Exhibit B, against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by FireSafe Council, its agents, representatives, employees, contractors or subcontractors. FireSafe Council shall name the DISTRICT as an additional indemnified party and an additional Insured. FireSafe Council shall provide the DISTRICT with documentation evidencing the above. This paragraph shall survive Termination of the Agreement.
9. INDEPENDENT CONTRACTOR. CONSULTANT is, and shall at all times remain as to the DISTRICT, a wholly independent contractor and not an agent or employee of DISTRICT. CONSULTANT shall receive no premium or enhanced pay for work normally understood as overtime, nor shall CONSULTANT receive holiday pay, sick leave, administrative leave, or pay for any other time not actually worked. The intention of the Parties is that CONSULTANT shall not be eligible for benefits and shall receive no compensation from the DISTRICT except as expressly set forth in this Agreement. CONSULTANT shall have no power to incur any

debt, obligation, or liability on behalf of the DISTRICT or otherwise act on behalf of the DISTRICT as an agent. Neither the DISTRICT, 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 at no time, or in any manner, represent that it or any of its agents or employees are in any manner employees of the DISTRICT. CONSULTANT agrees to pay all required taxes on amounts paid to CONSULTANT under this Agreement, and to indemnify and hold the DISTRICT harmless from any and all taxes, assessments, penalties, and interest asserted against the DISTRICT by reason of the independent contractor relationship created by this Agreement. CONSULTANT shall fully comply with the worker's compensation law regarding CONSULTANT and CONSULTANT's employees. CONSULTANT further agrees to indemnify and hold the DISTRICT harmless from any failure of CONSULTANT to comply with applicable worker's compensation laws.

10. COMPLIANCE WITH LAW. FireSafe Council shall comply with all applicable laws, ordinances, codes, and regulations of federal, state, and local governments.
11. CONSULTANT'S BOOKS & RECORDS. CONSULTANT shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, supplies, materials, or equipment provided to DISTRICT for a minimum period of four (4) years, or for any longer period required by law, from the date of final payment to CONSULTANT pursuant to this Agreement. CONSULTANT shall maintain complete and accurate records with respect to costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. CONSULTANT shall allow an authorized representative of DISTRICT, during normal business hours, to examine, audit, and make transcripts or copies of such records and any other such evidence or information they may require with respect to any expense or disbursement charged by the CONSULTANT. CONSULTANT shall allow inspection by DISTRICT of all work, data, documents, proceedings, and activities related to the Agreement for a period of four (4) years from the date of final payment under this Agreement. CONSULTANT understands that the Public Records Act may apply to documents created under this Agreement and CONSULTANT covenants and agrees to assist DISTRICT in responding to Public Record Act Requests at no additional cost to DISTRICT. CONSULTANT agrees that the CONSULTANT's covenants under this Section shall survive the Termination of this Agreement.
12. OWNERSHIP OF WORK PRODUCT. All reports, documents or other materials developed, discovered, or received by FireSafe Council shall be and remain the property of DISTRICT without restriction or limitation on their use. FireSafe Council shall provide DISTRICT with the originals (or copies, if no originals exist) of these items upon demand or upon Termination of this Agreement.
13. CONFIDENTIALITY. All ideas, memoranda, specifications, plans, manufacturing procedures, drawings, descriptions, written information, and other materials described in Paragraph 12 (Ownership of Work Product), above, submitted to CONSULTANT in connection with the performance of the Agreement shall be held confidential by CONSULTANT. Such materials shall not, without the prior written consent of DISTRICT, be used by CONSULTANT for any purposes other than the performance of the Services. Nor shall such material be disclosed to any person or entity not connected with the performance of the Services. Nothing furnished to CONSULTANT which is otherwise known to CONSULTANT or is generally known, or becomes known, to the related industry shall be deemed confidential. CONSULTANT shall not

use DISTRICT's name or insignia, photographs in any magazine, trade paper, newspaper, television or radio production or other similar medium without DISTRICT's prior written consent. This paragraph shall survive Termination of the Agreement.

14. PUBLICATION. Except as necessary for the performance of the Services, no copies, sketches or graphs of materials, including graphic artwork, which are prepared pursuant to this Agreement shall be released by CONSULTANT to any other person or agency without prior written approval of DISTRICT. All press releases, including graphic display information to be published in newspapers or magazines, shall be approved and distributed solely by DISTRICT, unless otherwise provided by written agreement between the Parties.
15. CONFLICT OF INTEREST AND REPORTING. FireSafe Council covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the services to be performed by FireSafe Council under this Agreement, or which would conflict in any manner with the performance of its services hereunder. FireSafe Council further covenants that, in performance of this Agreement, no person having any such interest shall be employed by it. Furthermore, FireSafe Council shall avoid the appearance of having any interest which would conflict in any manner with the performance of its services pursuant to this Agreement. FireSafe Council agrees not to accept any employment or representation during the term of this Agreement which is or may make FireSafe Council "financially interested" (as provided in California Government Code Sections 1090 and 87100) in any decision made by the DISTRICT on any matter in connection with which FireSafe Council has been retained pursuant to this Agreement. Nothing in this section shall, however, preclude FireSafe Council from accepting other engagements with the DISTRICT.
16. NOTICES. All notices shall be in writing and delivered personally, or by U.S. mail, postage prepaid, via first class mail to the addresses listed below.

If to FireSafe Council: Santa Clara County FireSafe Council
14380 Saratoga Ave.
Saratoga, CA 95070-5953

If to DISTRICT: General Manager
Los Altos Hills County Fire District
P.O. Box 1766
Los Altos Hills, CA 94023

Notice shall be deemed communicated on the earlier of actual receipt or forty-eight (48) hours after deposit in the U.S. mail.

17. NO ASSIGNMENT. The Parties agree that the experience of FireSafe Council is a material consideration for this Agreement. FireSafe Council shall not assign, transfer, or subcontract any interest in this Agreement, nor the performance of any of FireSafe Council's obligations hereunder, without the prior written consent of DISTRICT, and any attempt by FireSafe Council hereunder, without the prior written consent of DISTRICT, to do so shall be void and of no effect and a breach of this Agreement.
18. COOPERATION. In the event any claim or action is brought against the DISTRICT relating to FireSafe Council's performance or Services under this Agreement, FireSafe Council shall render

any reasonable assistance and cooperation which DISTRICT might require. This paragraph shall survive Termination of the Agreement.

19. INTEGRATION. This Agreement supersedes any and all agreements, either oral or written, between the Parties hereto with respect to the rendering of Services by CONSULTANT for DISTRICT and contains all the covenants and agreements between the Parties with respect to the rendering of such Services in any manner whatsoever. Each Party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any Party or anyone acting on behalf of any Party, which is not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement shall be effective only by mutual written agreement. If there is any conflict in the terms of this Agreement with the exhibits or attachments, then the provisions of this Agreement shall control.
20. CALIFORNIA LAW. This Agreement shall be construed in accordance with the laws of the State of California. Venue shall be Santa Clara County Superior Court.
21. WAIVER. The waiver by either Party of any breach or violation of any provision of this Agreement by the other Party shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of this Agreement.
22. SUCCESSORS. This Agreement is binding on successors, legal representatives, and assigns and shall not be assigned by CONSULTANT without the prior written consent of the DISTRICT.
23. ATTORNEYS' FEES. In any legal action or proceeding brought for enforcement of this Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees and other costs incurred in addition to any other relief to which the successfully may be entitled.
24. RIGHT TO USE OTHER CONSULTANTS. DISTRICT reserves the right to use other consultants in connection with DISTRICT assist in implementation of the CWPP.
25. EXHIBITS, PRECEDENCE. All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. To the extent that any provision of this Agreement conflicts with any provision of the Exhibits to this Agreement, the provisions within the Agreement shall prevail.
26. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single agreement. This Agreement may be executed by way of facsimile or electronic signature.

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27. SEVERABILITY. If any part of this Agreement or any amendment or modification of this Agreement is found to be legally void or unenforceable by a court of law, the remainder of the Agreement will remain in full force and effect.

IN WITNESS WHERETO, the Parties hereto have executed this Agreement on the date and year shown below.

ATTEST:

LOS ALTOS HILLS COUNTY
FIRE DISTRICT:

District Secretary

By: _____
President

FIRESAFE COUNCIL:

By: _____
Eugenia Rendler, Communications, Outreach and
Education Program Manager

Attachments:

Exhibit A- Scope of Services

Exhibit B- Insurance Requirements

EXHIBIT A

SANTA CLARA COUNTY FIRESAFE COUNCIL SCOPE OF SERVICES

The Los Altos Hills County Fire District, referred to as the District here after, wishes to support the work of the Santa Clara County FireSafe Council, referred to as SCCFSC here after, as set forth below.

Los Altos Hills is one of 14 communities in Santa Clara County that has been identified as being at risk for wildfires by the California Fire Alliance. The District's territory is susceptible to wildfire due to an abundance of fuel load, the steep topography of the District's hillside areas, and the local climate conditions.

SCCFSC is a non-profit 501(c)(3) organization seeking to provide a significant increase in community awareness and education, and readiness and resiliency in the event of a wildfire by providing programs to assist in protecting lives, property, and the environment by bringing together individuals, public and private agencies and companies that share a common, vested interest in preventing and reducing losses from wildfires. The SCCFSC programs and projects are focused on protecting the Santa Clara County communities at risk for wildfire through the reduction of built-up hazardous fire-prone vegetation and the creation of informed communities with respect to defensible space, general wildfire safety, and fire's effect and role in our environment.

A complete list of available SCCFSC services is available upon request. The specific scope of work for this agreement is to advance the shared objectives of the District and the SCCFSC as follows:

1. Communications, Outreach and Education (COE)
 - a. A lump sum payment of \$15,000 (fifteen thousand dollars) for the 12 (twelve) months beginning 11/1/19 will be paid in advance for the following COE projects to be arranged by SCCFSC and coordinated with District. One progress report will be provided on 4/15/20, with the final report due on 11/15/20.
 - i. The SCCFSC will conduct 4 (four) education workshops;
 - ii. The SCCFSC will identify, administer processes and support up to 4 (four) Firewise communities with the goal of Recognition approval by Firewise USA.
 - iii. The SCCFSC will supply up to 60 (sixty) Home Ignition Zone (HIZ) Assessments as resident requests are filled, averaging 5 (five) per month over the next 12 (twelve) months.
2. Hazardous Fuel Reduction
 - a. A lump sum payment of \$5,000, paid in advance, will be utilized for initial hours for SCCFSC employee and SCCFSC contractor costs. Once the lump sum payment is exhausted, monthly billing by the hour, will commence per terms in 2.b.

A SCCFSC Project Manager will be available to work on inspection and planning for the hazardous tree removal and brush chipping projects as determined by the District for up to 5-8 hours per week. SCCFSC Employee and SCCFSC contractor costs will be billed to the District monthly at the rate of \$56.00 per hour and will be due according to the terms of the Santa Clara County Payroll Department schedule for the following projects.

- i. Inspect assigned residences and access roads for hazardous tree removal, write up the scope of work in alignment with LAHCFD-CWPP guidelines and fire science principles
 - ii. Utilize 2 SNAP Programs (Supplemental Nutrition Assistance Program) for qualified elderly or disabled residents
 - iii. Additional project scoping and planning for larger fuel management projects.
 - iv. Cost for SCCFSC Project Manager, employee and contract costs will be capped at \$20,000 per year
3. Administrative and overhead costs. The SCCFSC charges 25% overhead cost for hourly Project Manager and SCCFSC Employee costs.

EXHIBIT B

INSURANCE REQUIREMENTS

CONSULTANT shall provide its insurance broker(s)/agent(s) with a copy of these requirements and request that they provide Certificates of Insurance complete with copies of all required endorsements to: **General Manager, Los Altos Hills County Fire District (DISTRICT), P.O. Box 1766, Los Altos, CA 94023.**

Minimum Scope of Insurance

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, with limits no less than **\$2,000,000 or \$4,000,000 aggregate 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. CGL insurance must include coverage for the following:
 - a. Bodily Injury and Property Damage
 - b. Personal Injury/Advertising Injury
 - c. Premises/Operations Liability
 - d. Products/Completed Operations Liability
 - e. Aggregate Limits that Apply per Project
 - f. Explosion, Collapse and Underground (UCX) exclusion deleted
 - g. Contractual Liability with respect to this Agreement
 - h. Broad Form Property Damage
 - i. Independent CONSULTANT Coverage

The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

2. **Automobile Liability:** Insurance Services Office Form Number CA 00 01 covering, Code 1 (any auto), or if CONSULTANT has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers’ Compensation/Employer’s Liability:** CONSULTANT certifies that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and it will comply with such provisions before commencing work under this Agreement. To the extent CONSULTANT has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement CONSULTANT shall maintain insurance 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. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the CONSULTANT. "Covered Professional Services" as designed in the policy must specifically include work performed under this Agreement.
5. **Umbrella or Excess Liability: Umbrella or Excess Insurance.** If umbrella or an excess liability insurance policy is used to satisfy the minimum requirements for CGL or Automobile Liability insurance coverage listed above, the umbrella or excess liability policies shall provide coverage at least as broad as specified for the underlying coverages and covering those insured in the underlying policies. Coverage shall be "pay on behalf," with defense costs payable in addition to policy limits. CONSULTANT shall provide a "follow form" endorsement or schedule of underlying coverage satisfactory to DISTRICT indicating that such coverage is subject to the same terms and conditions as the underlying liability policy.
6. DISTRICT, its officers, officials, employees, and volunteers are to be covered as additional insureds on the umbrella or excess 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. If CONSULTANT maintains broader coverage, umbrella or excess coverage and/or higher limits than the minimums shown above, DISTRICT requires and shall be entitled to the broader coverage, umbrella or excess coverage and/or the higher limits maintained by CONSULTANT. Any available insurance proceeds in excess of the specified minimum limits of insurance and any other coverages shall be available to DISTRICT.

Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status. DISTRICT, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy and the Automobile Liability policy, with endorsements under CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage, 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.

Primary Coverage. For any claims related to this Agreement, the CONSULTANT's insurance coverage shall be primary insurance as respects DISTRICT, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by DISTRICT, its officers, officials, employees, or volunteers shall be excess of the CONSULTANT's insurance and shall not contribute with it.

Notice of Cancellation. Each insurance policy required above shall be endorsed to state that coverage shall not be canceled except after thirty (30) days' prior written notice (10 days for non-payment) has been given to DISTRICT.

Waiver of Subrogation. CONSULTANT hereby grants to DISTRICT a waiver of any right to subrogation which any insurer of said CONSULTANT may acquire against DISTRICT by virtue of

the payment of any loss under such insurance. CONSULTANT agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not FIRE DISTRICT 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 DISTRICT. DISTRICT may require the CONSULTANT to 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 DISTRICT.

Claims Made Policies. If any of the required policies provide claims-made coverage:

7. The Retroactive Date must be shown, and must be before the date of the Agreement or the beginning of Services.
8. Insurance must be maintained and evidence of insurance must be provided ***for at least three (3) years after completion of the Services.***
9. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, the CONSULTANT must purchase "extended reporting" coverage for a minimum of ***three (3)*** years after completion of Services.

Verification of Coverage. CONSULTANT shall furnish DISTRICT with original certificates and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by DISTRICT 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. DISTRICT 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. DISTRICT reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.