



William S. Hart Union High School District

April 20, 2022

Fire Ace, Inc.
Sharon Vollrath
P.O. Box 298
Lancaster, CA 93584

This is your **NOTICE TO PROCEED** in connection with:

Project: Fire Alarm Testing – District Wide
Contract Duration: 30 days

The period for completion of the subject work, is as follows **in accordance with the construction schedule.**

Please find attached your executed Public Project Contract. Please contact Tammy Smith at ext 321 regarding your purchase order, invoicing, and payment questions.

Before you accept the site for construction, you are required to make a survey of the site with the assigned Project Manager. Damages and irregularities existing on the site, not noted during the preconstruction survey, will be assumed to be caused by your operation.

The Authorized District Representative for this project is Mr. Carle Manley, at (661)259-0033 ext. 324, cmanley@hartdistrict.org and he will be the focal point for all formal communication on this project from this date on.

Sincerely,

Collyn Nielsen
Chief Administrative Officer

AGREEMENT FOR CONSULTANT SERVICES

This Agreement for Consultant Services ("Agreement") is made effective as of April 18, 2022 ("Effective Date"), by and between the William S. Hart Union High School District ("District"), a public school district organized and existing under State of California ("State") law, and Fire Ace Inc. ("Consultant"), a Corporation. The District and the Consultant may be referred to herein individually as "Party" and collectively as the "Parties."

RECITALS

A. The District desires to obtain the services of a consultant for purposes of the project or other activity(ies) described in Exhibit "A" attached to this Agreement ("Project").

B. The Consultant represents and warrants that it has all licenses, certifications, approvals, resources, qualifications, skills, experience and other things as are necessary to fully and satisfactorily provide the below-listed services to the District as required by this Agreement.

C. The Parties have entered into this Agreement for purposes of setting forth the terms and conditions for the Consultant to perform the below-listed services for the District.

Now, in consideration of the foregoing and of the respective rights and obligations of the Parties set forth herein, the Parties agree as follows:

AGREEMENT

PART 1: SCOPE, TIMING, AND COMPENSATION FOR CONSULTANT SERVICES

Section 1.1 Scope of Services. The scope of the services to be performed by the Consultant under this Agreement ("Scope of Services") is set forth in Exhibit "B" attached to this Agreement.

Section 1.2 Time for Completion. Time is of the essence with respect to this Agreement and the performance by the Consultant of each of its obligations under this Agreement. The Consultant shall complete the Scope of Services required under this Agreement not later than the final completion date and, if any, the applicable milestone dates specified in the "Services Schedule" set forth in Exhibit "C" attached to this Agreement. However, if, for any reason, the Project has not been (or likely will not be) completed before the final completion date or an applicable milestone date, with the result that the District continues to require services in connection with the Project, the District may request an extension of the term of this Agreement, and the Consultant shall not unreasonably refuse, condition or delay its consent to such request. Upon receipt of any such request, the Parties shall amend this Agreement in writing to extend the term of this Agreement on substantially the same terms as set forth herein, except that the written amendment shall specify such adjustments to the Consultant's compensation as agreed by the Parties. In the event the Scope of Services is modified per Section 1.5 herein, the written amendment to this Agreement providing for such modification shall specify any applicable modification to the time(s) for completion of the Scope of Services.

Section 1.3 Compensation. The District shall pay to the Consultant, in exchange for satisfactory performance by the Consultant of the Scope of Services required under this Agreement such all-inclusive compensation as is specified in Exhibit "D" attached to this Agreement. Such compensation shall be payable by monthly invoicing submitted to the District by the Consultant. The District shall pay undisputed invoices within thirty (30) days of receipt from the Consultant. The District may, within fifteen (15) days of receipt of a payment request from Consultant, reasonably request additional information and supporting documentation, in which case the District's time to pay the pending invoice shall be extended by an amount of time equal to the time in which it takes the Consultant to submit such information and/or documentation.

Section 1.4 Reimbursement of Expenses. The Consultant shall be entitled to reimbursement of expenses, if any, that it incurs in connection with performance of the Scope of Services, exclusively as provided in this Section and in Exhibit "D" attached to this Agreement. Any reimbursement under this Section shall be for the reasonable, actual costs incurred by the Consultant, without markup for profit, overhead or other purposes. The District shall reimburse the Consultant only for expenses incurred in connection with the performance of the Scope of Services as the District in its sole discretion may agree, but only if the reimbursement is approved in writing by the District before the Consultant incurs the expense. Without limiting the foregoing, because the compensation payable to the Consultant is intended to be all-inclusive, in no event shall the District reimburse the Consultant for any of the following: (i) home-office overhead or personnel costs; (ii) postage or cost of private delivery services less than \$25 for any one delivery; (iii) travel, lodging or meal expenses; (iv) expenses of overtime work requiring higher than regular rates; or (v) costs of any additional insurance coverage or limits in excess of that normally carried by the Consultant or any of its sub-consultants providing professional services in connection with this Agreement per Section 2.2 of this Agreement (each a "Sub-Consultant").

Section 1.5 Change in Scope of Services. The District may at any time request any decrease, reasonable increase, or reasonable other change in the Scope of Services. In response to any such request, the Consultant shall provide to the District a written proposal describing in reasonable detail: (i) the change; (ii) the impact of the change on the time required for performance of the Consultant's obligations under this Agreement; and (iii) the impact of the change on the cost to the District under this Agreement. Each proposal shall include proposed adjustments to the compensation payable to the Consultant using such basis (fixed fee, time & materials, etc.) as requested by the District. No proposal shall be valid or binding on the Parties unless incorporated into a written amendment to this Agreement that has been duly-approved, signed and delivered by both Parties. However, regardless of whether the District's Governing Board ("District Board") has approved any proposal, if the District requests deletions from the Scope of Services in writing or otherwise, under no circumstances shall the Consultant thereafter perform such Scope of Services unless the District further directs such performance in writing. The District may use the Services Schedule specified in Exhibit C and the Payment Schedule in Exhibit D hereto, or pro-rata adjustments thereof, to determine the adjustments attributable to any deletion from the Scope of Services. Otherwise, if the Parties cannot agree on or document the terms for any such deletion, the time for performance of the modified Scope of Services and the compensation to the Consultant for such modified performance shall be equitably adjusted through any dispute resolution method authorized by this Agreement. However, the Consultant shall not be entitled to any profit, overhead, or other amounts whatsoever related to the deleted portion of the Scope of Services.

PART 2: CONSULTANT STATUS AND ADMINISTRATION OF AGREEMENT

Section 2.1 Independent Contractor. The Consultant is, for all purposes related to this Agreement, an independent contractor to the District. Neither the Consultant nor any of its Sub-Consultants, or any officer, employee, or agent of either, be deemed or construed to be an officer, employee, or agent of the District because of this Agreement. The Consultant shall at all times conduct its activities in a manner consistent with its independent contractor status, and, except as provided in this Agreement, the Consultant shall have the right to determine the methods, means, and mechanisms by which it shall perform the Scope of Services. The Consultant shall not allow or permit any third-party person or entity to continue in any apparent belief that the Consultant or any Sub-Consultants, or any officer, employee, or agent of either, is a District officer, employee, or agent. The Consultant shall be responsible for ensuring compliance with all laws related to its employees and the employees of any Sub-Consultant, including, without limitation, workers' compensation and, if applicable, payment of prevailing wages. The Consultant's compensation under this Agreement shall not be increased because of any costs incurred by Consultant that are attributable to such compliance hereunder.

Section 2.2 Consent Required to Use Sub-Consultants. The Consultant may use a Sub-Consultant to perform a portion of the Scope of Services under this Agreement only upon the District's prior written consent before the Consultant contracts with such Sub-Consultant. The District has sole discretion to deny, delay, or condition its approval of any proposed Sub-Consultants.

Section 2.3 Authorized Representatives. The Consultant shall designate in writing one person from its staff ("Consultant Representative") and one person from the staff of each of its Sub-Consultants (each a "Sub-Consultant Representative"), each of whom (except as provided in Section 6.3 herein if a different person is designated in Part 6) shall be: (i) the District's sole contact person for his/her entity; and (ii) responsible for and conduct all communications and other interactions between his/her entity and the District. The Consultant Representative and Sub-Consultant Representative must have the authority to make any and all decisions on the Consultant/Sub-Consultant's behalf involving the administration of this Agreement and the Scope of Services. The Consultant Representative and each Sub-Consultant Representative shall provide to the District their respective names, titles, telephone numbers, and other contact information. The Consultant Representative and Sub-Consultant Representatives shall be reasonably available to District, by telephone, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, and at such other times as they and the District may agree.

Section 2.4 Criminal-History Background Checks. Education Code section 45125.1, subdivision (a), requires that entities under contract with the District shall ensure that each employee who interacts with a student outside the immediate supervision and control of the student's parent or guardian, or of a District employee, shall have a valid criminal records summary as described in Education Code section 44237. Education Code section 45125.1, subdivision (c), authorizes the District to require compliance with the foregoing requirements with respect to employees in addition to those within the scope of Education Code section 45125.1, subdivision (a). Therefore, the Consultant and its Sub-Consultants shall comply in all respects with the requirements of Education Code section 45125.1. To the greatest extent permitted by law, the District may impose other requirement designed to protect students in connection with the performance of the Scope of Services. Any Consultant that is a sole proprietor shall have an immediate and affirmative duty to inform the District of such status so as to allow the District to comply with Education Code section 45125.1.

Section 2.5 Prohibited Interests. Consultant agrees to sign the Noncollusion Declaration attached hereto as Exhibit "E" before or concurrent with the Effective Date.

Section 2.6 Consultant and Sub-Consultant Capability. The Consultant and all Sub-Consultants represent and warrant that: (i) it has all the licenses required by law to enter into this Agreement and perform the Scope of Services; (ii) it shall be sufficiently skilled and qualified to perform the tasks, duties and responsibilities assigned to them by this Agreement or the Consultant; (iii) any and all persons performing the Scope of Services, including, without limitation, all Sub-Consultant employees, shall have the technical expertise and experience required to perform the Scope of Services in an efficient and timely manner; and (iv) it has sufficient financial, personnel, and other resources to adequately and timely perform the Scope of Services. Upon the District's request, the Consultant shall remove from the Project site, and prevent from performing any of the Scope of Services, any person whom the District determines is not performing the Scope of Services in a reasonable manner or is a threat to the safety of any person(s) or property. The Consultant shall not thereafter allow such person to perform any of the Scope of Services.

Section 2.7 Required Standard of Care. The Consultant shall perform or cause to be performed all Scope of Services using a level of care that is not less than the reasonable level of care employed by other consultants providing similar services within the State in similar circumstances, and considering the District's goals and any facilities, financial, or other constraints or parameters described to the Consultant either before or after the Effective Date.

Section 2.8 Compliance with Law. The Consultant shall perform the Scope of Services in compliance with all applicable federal, State and local laws, regulations, ordinances and other governmental requirements.

Section 2.9 Reliance on District Information. The Consultant shall be entitled to rely on the accuracy and completeness of any and all information that the District provides to the Consultant, subject to any qualifications or limitations as the District may describe, and provided that the Consultant may so rely only if it would be reasonable to do so.

Section 2.10 Consultant Records. The Consultant shall prepare and maintain, using generally-accepted accounting principles, all financial and other records involving this Agreement and the Scope of Services, as appropriate or required by law ("Consultant Records"). Under Government Code Section 8546.7, the State Auditor may, for a period of three years following final payment hereunder, review, audit and/or copy the records of the Parties regarding each contract expending public funds in excess of \$10,000. The District and governmental entities with competent jurisdiction also shall have an independent right under this Agreement, for a period of five years after final payment hereunder, to review, audit, and/or copy the Consultant Records. The Consultant Records shall be available for inspection by the District, the State, and any governmental entity with competent jurisdiction, at all reasonable times during the five-year period after the final payment under this Agreement. Despite the foregoing, if the District or any governmental entity commences, but does not complete, an audit within such five-year period, the Consultant shall maintain the Consultant Records until the completion of such audit.

Section 2.11 District Ownership and Use of Documents. Any and all conceptual, preliminary, working, and final documents (originals and copies), presentations, computations, analyses, and other documents relevant to this Agreement, in whatever format or storage medium, obtained or prepared by the Consultant or any Sub-Consultant (each a "Project Document") shall become and remain the District's property. Except under this Agreement, and except for Project Documents submitted to a State agency or made for inclusion as part of the Consultant Records, the Consultant shall not permit any Project Document to be reproduced without the advance written approval of the District, regardless

of whether the Consultant or any Sub-Consultant possesses the Project Document(s). The District may use the Project Documents as the District deems appropriate, with no additional compensation due to Consultant except as provided in this Agreement. The District shall have the unconditional right to use the Project Documents, for their intended purposes and, at District's sole discretion, for any other purpose, with no additional compensation due to Consultant. Except as expressly agreed in writing, the District shall not be required to employ the Consultant in connection with any future use of the Project Documents. Notwithstanding anything to the contrary, the Consultant acknowledges and agrees that the District will rely on the accuracy and completeness of the Project Documents when used for their intended purposes. The District shall indemnify and hold the Consultant harmless with respect to any liabilities caused by District use of the Project Documents for other than their intended purposes.

PART 3: CONSULTANT INSURANCE

Section 3.1 Required Insurance. Before commencing any of the Scope of Services, the Consultant shall procure at its sole cost and expense, and, during all periods as required by this Agreement, shall maintain in effect, the following insurance policies:

- (i) General Liability Insurance. A commercial general liability insurance policy, written on an "occurrence" basis, providing coverage of at least \$1,000,000 per occurrence for bodily injury, personal injury & property damage ("General Liability Policy"). The General Liability Policy shall include a separate endorsement naming the District, its officers, agents and employees as additional insureds. The General Liability Policy shall include coverage for the contractual liability assumed by the Consultant under this Agreement.
- (ii) Vehicle Liability Insurance. A business vehicle liability insurance policy, written on an "occurrence" basis, with a combined single limit of at least \$1,000,000 per accident for bodily injury and property damage ("Vehicle Liability Policy"). The Vehicle Liability Policy shall include coverage for owned, hired, and non-owned automobiles.
- (iii) Workers' Compensation Insurance. Workers' compensation insurance as required by State law and employer's liability insurance with coverage of at least \$1,000,000. Notwithstanding the insurer rating standards in this Agreement, coverage provided by the State Compensation Insurance Fund satisfies such insurer rating standards.
- (iv) Professional Liability Insurance. Professional liability insurance with coverage of at least \$1,000,000 ("Professional Liability Policy"), which shall be written on a "claims made" basis.
- (v) Valuable Document Insurance. Insurance covering all Project Documents as is sufficient to protect the District in the amount of its full equity in those documents.

Section 3.2 Duration of Insurance. Except as provided in this Agreement regarding insurance written on a "claims made" basis, the Consultant shall keep the required insurance policies in effect until the date that is one year following final payment to the Consultant under this Agreement.

Section 3.3 Professional Liability Insurance. The Professional Liability Policy shall provide coverage for claims arising out of the performance of the Scope of Services. If an aggregate limit applies, the aggregate limit in the Professional Liability Policy shall be at least \$2,000,000. Before commencing the Scope of Services, and, if applicable, upon replacing the original Professional Liability Policy, the Consultant shall give the District a copy of any applicable claims-reporting requirements.

Notwithstanding anything to the contrary: (i) the Consultant shall have the Professional Liability Policy in full force and effect before commencing the Scope of Services; (ii) each renewal or replacement of the Professional Liability Policy shall have a retroactive date that is before the date the Consultant commenced the Scope of Services; and (iii) as a condition to final payment to the Consultant under this Agreement, the Consultant shall maintain the Professional Liability Policy in full force and effect and applicable to claims arising from the Scope of Services, without any gaps in coverage, for a period of at least two years following final payment to the Consultant under this Agreement.

If the claims reporting period, as specified in the Professional Liability Policy, terminates before the end of the two-year period following final payment to the Consultant, then the Consultant, at its cost, shall obtain and provide satisfactory evidence to the District of: (i) an endorsement extending the claims reporting period to include whatever remains of such two-year period; or (ii) a supplemental extended reporting period (tail) applicable to the Professional Liability Policy as required to provide coverage until the end of such two-year period. Such tail coverage shall be required, for example: (i) if the Consultant intends to switch insurance carriers, and the prospective new carrier will not agree to cover claims arising from the Scope of Services submitted at any time before the end of the two-year period following final payment to the Consultant; (ii) if the Consultant's business is to be wound-up or otherwise terminated, whether voluntarily or involuntarily; or (iii) when necessary for any reason to ensure that professional liability insurance applicable to the Scope of Services is in effect at all times required by this Agreement.

Section 3.4 Insurer Rating Standards. Except as the District, in its sole discretion, may approve via an advance writing, the insurance policies required by this Agreement shall be issued by one or more insurers licensed to do business in the State and having an A.M. Best Company rating of not less than "A-" and a financial size category of at least "X." If any insurance policy is proposed to be issued from an entity, company, or program that is not rated by A.M. Best Company, the use of such insurance policy must be approved in advance, in writing, by the District before starting the Scope of Services.

Section 3.5 Additional Insureds. The District, the District Board and each individual member thereof, and the District's other officers, employees, and agents, shall all be named as additional insureds, to the extent of the Consultant's acts and omissions in connection with this Agreement, on all insurance policies required by this Agreement, excepting the workers' compensation insurance and the Professional Liability Policy. For this Section, the District's architect, if any, shall not be deemed or construed to be a District agent.

Section 3.6 Waiver of Subrogation. The Consultant hereby waives, on behalf of its insurers, any and all rights to subrogation that any such insurer may acquire by virtue of the payment of any loss. Each of the General Liability Policy and the Vehicle Liability Policy shall be endorsed with a cross-liability endorsement and a waiver of the insurer's rights of subrogation against the District. The policy of workers' compensation insurance shall be endorsed with a waiver of the insurer's rights of subrogation against the District.

Section 3.7 Consultant Insurance is Primary. To the extent permitted by law, the Consultant's insurance policies under this Agreement shall be primary and non-contributing with respect to any insurance or self-insurance programs covering the District, the District Board or individual members thereof, or the District's other officers, employees, or agents. The General Liability Policy and the Vehicle Liability Policy shall be endorsed to provide that they are so primary and non-contributory.

Section 3.8 Deductibles and Self-Insured Retentions. Before commencing the Scope of Services, the Consultant shall disclose in writing to the District any deductibles or self-insured retentions applicable to any of the insurance that the Consultant shall have in effect under this Agreement. Any such deductibles or self-insured retentions are subject to discretionary approval by the District. At the District's option, the Consultant either: (i) shall cause the insurer to reduce or eliminate such deductibles or self-insured retentions with respect to claims arising in connection with this Agreement; or (ii) shall provide a financial guarantee satisfactory to the District that guarantees payment of losses and related investigations, claim administration, and defense expenses.

Section 3.9 Evidence of Coverage. Before commencing the Scope of Services, the Consultant shall provide to the District duly-authorized and executed certificates of insurance for the insurance policies required under this Agreement (each a "Certificate of Insurance"), together with a copy of each required endorsement. As applicable, the Certificates of Insurance shall identify all required additional insureds. Not less than thirty (30) days before the expiration of any required insurance policy, the Consultant shall provide updated Certificates of Insurance to the District evidencing the renewal of such policy.

Section 3.10 Notice of Change in Policies. Each Certificate of Insurance and corresponding required insurance policy shall expressly require, or be endorsed to require, that the insurer notify the District not less than thirty (30) days before any cancellation, termination, reduction in coverage, or expiration without renewal of any such insurance policy, except for cancellation due to non-payment of premium, in which case the insurer shall provide such notice not less than ten (10) days before cancellation. Certificates of Insurance or any insurance policy with language to the effect that the insurer shall "endeavor" to provide such notice shall not be acceptable.

Section 3.11 Review of Coverage. The District may request at any time that the Consultant provide a complete copy of any insurance policy required under this Agreement. The Consultant shall provide a copy of such policy to the District within ten days of the District's request. The District may review the insurance policies, Certificates of Insurance, and any endorsements to determine compliance under this Agreement. No failure by the District to conduct such review, to properly or completely conduct such review, or to identify any non-compliance with the requirements of this Part 3, however, shall relieve the Consultant from any of its obligations regarding the insurance-related requirements under this Agreement. Notwithstanding anything to the contrary, any failure by the Consultant to comply with insurance-related requirements shall be a material breach by the Consultant under this Agreement.

Section 3.12 Sub-Consultant Insurance. The Consultant shall require that its Sub-Consultants independently comply with all insurance requirements of this Part 3, excepting valuable document insurance, unless the District approves in writing some different standards or requirements that shall be applicable to any particular Sub-Consultant. The Consultant shall require compliance with this Part 3 in its agreements with its Sub-Consultants, except to the extent the District has approved any different standards or requirements.

PART 4: INDEMNIFICATION BY CONSULTANT

Section 4.1 General Requirement. To the maximum extent authorized by law, the Consultant shall defend, indemnify and hold-harmless the District, the Governing Board and each member thereof, and the District's other officers, employees, consultants and agents (collectively, not including the District, the "District Agents"), and each of them, from and against any and all claims,

demands, actions, other proceedings, liens, judgments, damages, losses, costs, reasonable attorney's fees, expenses, and other liabilities of any nature arising from or directly or indirectly relating to: (1) the performance of the Scope of Services by Consultant, any Sub-Consultant, or anyone working under or for the Consultant or any Sub-Consultant; (2) actual or alleged negligence, recklessness, or willful misconduct by Consultant, any Sub-Consultant, or anyone working under or for the Consultant or any Sub-Consultant; and/or (3) the performance of this Agreement by Consultant, any Sub-Consultant, or anyone working under or for the Consultant or any Sub-Consultant. Any defense of the District and/or District Agents shall be by qualified and appropriately experienced legal counsel reasonably acceptable to the District, but selected and retained by the Consultant at its sole cost. The foregoing provisions of this Section are intended to be, and shall be interpreted in a manner that is, consistent with Civil Code Section 2782.8, if applicable, as it exists as of the Effective Date. The Consultant's obligations under this Section shall survive the expiration or termination of this Agreement.

Section 4.2 *Limitation on Consultant Obligations.* The Consultant shall not be obligated under this Part 4 to the extent any claim, demand, action, judgment, damage, loss, cost or expense, or other liability results from the active negligence, sole negligence, or willful misconduct of the District or any District Agent. In each such event, the Parties shall be responsible and liable on a comparative basis.

Section 4.3 *District Settlement of Disputes.* Without jeopardizing or compromising any of its rights under this Agreement, or as are available under the law, the District may settle any claim, demand, action, or other legal proceeding brought against the District or District Agents on terms the District Board reasonably determines to be in the District's best interests. The District shall not have any right to settle any claim, demand, action, or other legal proceeding brought against the Consultant or any Sub-Consultant. Before settling, the District shall attempt to obtain the Consultant's consent to each such settlement, and the Consultant shall not unreasonably deny, delay, or condition its approval. If the Parties cannot agree on the terms for settlement of any dispute, with the result that the Consultant does not consent to the settlement, the District may nonetheless settle the dispute.

Section 4.4 *Payment of Costs.* The Consultant shall reimburse the District for, or upon the District's request Consultant shall directly pay, any costs, expenses, attorney's fees, penalties, judgments, settlements, and other amounts paid or owed by the District that are payable by the Consultant under the indemnity provisions of this Agreement. The Consultant shall pay each such amount when such amount is due or within thirty days of receipt of a written invoice from the District. Any late payments by the Consultant shall accrue interest at the maximum legal rate.

Section 4.5 *Insurance Not a Limitation.* The Consultant's obligations under this Part 4 shall not be deemed to be: (i) conditioned upon, or in any manner limited by, the any insurance coverage maintained by a Party or other person or entity; or (ii) conditioned upon the receipt by any person or entity of, or limited to the amount of, any insurance proceeds.

Section 4.6 *Survival of Obligations.* For all acts, omissions, or incidents occurring before termination of this Agreement, the Consultant's obligations under this Part 4 shall survive termination of this Agreement, regardless of whether the Consultant has then completed the Scope of Services.

Section 4.7 *Sub-Consultant Indemnity.* The Consultant shall require in its agreements with its Sub-Consultants that each Sub-Consultant independently comply with all requirements of this Part 4 related to indemnifying, holding-harmless, and defending the District, unless and only to the extent the District specifically provides otherwise in writing. The Consultant shall be responsible for ensuring that

its agreements with Sub-Consultants comply with this Part 4.

Section 4.8 Attorney's Fees. Notwithstanding anything to the contrary, no person, entity, or party, including but not limited to the District and the Consultant, shall be allowed to recover attorney's fees that are incurred to enforce or defend this Contract.

PART 5: TERMINATION OF AGREEMENT AND CONSULTANT SERVICES

Section 5.1 Termination Due to Expiration or Completion. Unless earlier terminated per this Part 5, this Agreement shall terminate upon: (i) expiration of the period in Section 1.2 for completion of the Scope of Services or, if the Consultant has not then completed all of the Scope of Services, upon such later date as agreed in writing by the Parties; or (ii) upon completion of the Scope of Services and final payment by the District to the Consultant.

Section 5.2 District Termination for Convenience. The District, without need for cause, may terminate this Agreement with respect to some or all of the Scope of Services by providing written notice of termination to the Consultant. Such termination shall be effective immediately upon receipt of the notice by the Consultant.

Section 5.3 District Termination for Breach of Warranties. If the District determines at any time that any of the Consultant's representations and/or warranties in this Agreement are untrue or incorrect, the District shall have the right to terminate this Agreement immediately and without liability (including, without limitation, any liability for paying any further compensation to the Consultant), and the Consultant shall be liable to the District for all costs, expenses and damages arising therefrom. The Consultant's representations and warranties under this Agreement shall survive termination of this Agreement.

Section 5.4 District Termination for Cause. In addition to other termination rights under this Agreement, the District may give the Consultant written notice of the District's intent to terminate this Agreement for cause if the District determines that the Consultant has failed to perform some or all of the Scope of Services in a satisfactory and timely manner, or if the Consultant has otherwise breached this Agreement. The Consultant shall have ten (10) days following receipt of the notice of intent to terminate to cure its failure or breach, or to make arrangements satisfactory to the District for cure of its failure or breach. If the Consultant fails within such ten-day period to cure or make satisfactory arrangements, the District may terminate this Agreement by giving written notice of termination to the Consultant, and such termination shall be effective immediately upon Consultant's receipt of the notice of termination. Nothing in this Agreement shall be deemed as a waiver by the Consultant of any rights it may have regarding a wrongful termination by the District.

Section 5.5 Consultant Termination for Cause. The Consultant may give the District written notice of the Consultant's intent to terminate this Agreement for cause if the Consultant reasonably determines that the District has breached any of its material obligations under this Agreement. The District shall have: (i) fourteen (14) days following receipt of the notice of intent to terminate to cure (or to make arrangements satisfactory to the Consultant for cure of) a breach arising from any failure by the District to pay any undisputed amount owed to the Consultant; and (ii) thirty (30) days following receipt of such notice of intent to terminate to cure (or to make arrangements satisfactory to the Consultant for cure of) a breach of any other nature. If the District fails within the applicable period to cure a breach or to make satisfactory arrangements, the Consultant may terminate this Agreement by giving written notice of termination to the District. Such termination shall be effective immediately upon the District's

receipt of the notice of termination. Nothing in this Agreement shall be deemed as a waiver by the District of any rights it may have regarding a wrongful termination by the Consultant.

Section 5.6 Compensation to Consultant upon Termination. Subject to all other provisions of this Agreement, in the event of any termination of this Agreement, in whole or in part, under Section 5.2, 5.4 or 5.5 of this Agreement, the District shall, with respect to the terminated portion of the Scope of Services, compensate the Consultant for the Scope of Services that the Consultant satisfactorily performed before termination, consistent with the Payment Schedule set forth in Exhibit D hereto, plus reimbursement for expenses authorized under Section 1.4. Nothing in the foregoing shall be deemed to constitute a waiver or release of any damages that a Party incurs as a result of a breach by the other Party, and each Party shall be entitled to offset any and all such damages from amounts otherwise payable to the other Party under this Agreement.

Section 5.7 Consultant to Provide Copies of Project Documents. If for any reason this Agreement is terminated, in whole or in part, the Consultant shall, not later than seven (7) days following the effective date of the termination, provide to the District copies of all Project Documents. Satisfaction of the Consultant's obligations under this Section shall be a condition precedent to the District's obligation to pay any compensation or reimbursement to the Consultant under this Agreement.

PART 6: GIVING OF NOTICE

Section 6.1 General Requirements. Any and all demands and notices required or permitted under this Agreement (each a "Notice") shall be in writing and shall be served per this Part 6.

Section 6.2 Methods of Delivery. Each Notice shall be sent via: (i) personal delivery (with name and signature of recipient obtained on delivery receipt); (ii) registered or certified United States mail (postage pre-paid and return receipt requested); (iii) FedEx, U.P.S. or other reliable, private delivery service (with name and signature of recipient obtained on electronic or other delivery receipt); or (iv) email (with printed confirmation of transmission from the sender's machine or device to be provided to recipient upon request, and with original of the Notice overnighted within 12 hours after transmission). Neither Party may unreasonably refuse to accept delivery of any Notice and any unreasonable refusal by a Party shall be deemed a material breach under this Agreement.

Section 6.3 Persons to Whom Notices Must be Sent. Notices sent to a Party shall be addressed and delivered to that Party's representative listed in Exhibit "F" to this Agreement. A Party shall give Notice of any change in the Party's address, person to whom attention should be directed, or email address, by giving notice under this Part 6. If any information applicable to a Party or its representative changes, and the Party does not give notice of such change per this Part 6, any subsequent Notices addressed and delivered to the Party's old contact information shall be deemed to have been served per Section 6.4, regardless of whether "actual receipt" has occurred.

Section 6.4 Effect of Receipt. A Notice shall be deemed served only upon actual receipt by the addressee. For email, "actual receipt" shall mean delivery to the recipient's email inbox. However, any Notice (including email Notices) delivered after 4:00 p.m. on any weekday, at any time on a weekend (Saturday or Sunday), at any time on a federal or State holiday, or at any time on a District furlough day mandated by the State or the District Board, the Notice shall be deemed to have been served as of 9:00 a.m. on the next business day.

Section 6.5 *Applicability of Notice Requirements.* The requirements of this Part 6 shall not apply to: (i) communications between the Parties for the day-to-day administration of this Agreement or the performance of the Scope of Services; or (ii) service of process per any applicable law or court rule.

PART 7: *INTERPRETATION OF AGREEMENT*

Section 7.1 *Fair and Reasonable Interpretations.* Before execution and delivery of this Agreement, each Party has received, or had unqualified opportunities to receive, independent legal advice from its legal counsel with respect to the advisability of executing this Agreement and the meaning of the provisions herein. The provisions of this Agreement, therefore, shall be construed based on their fair and reasonable meaning, and not for or against any Party based on whether such Party or its legal counsel was responsible for drafting this Agreement or any particular provision herein.

Section 7.2 *Headings and Captions.* The headings and captions set forth in this Agreement are for the convenience of the reader only and shall not be deemed to establish, define, or limit the meaning of any Part, Section or other provision.

Section 7.3 *Recitals and Exhibits.* Each Recital contained herein and each Exhibit referenced herein and attached hereto is incorporated as an effective and operative provision of this Agreement.

Section 7.4 *Meaning of "Days."* Except as expressly otherwise provided in this Agreement, each reference in this Agreement to a specific number of days shall mean consecutive calendar days, not business days.

Section 7.5 *Entire Agreement.* This Agreement constitutes the entire understanding and agreement between the Parties regarding the Project and the Scope of Services, and all prior and contemporaneous agreements, representations, and understandings of the Parties relating to such subject matters, whether oral or written, are hereby superseded and replaced.

Section 7.6 *Modifications of Agreement.* This Agreement may be modified only by means of duly-approved written agreement executed and delivered by both Parties.

Section 7.7 *Waiver.* A waiver by a Party of any provision of this Agreement shall be binding only if the waiver is set forth in writing and has been duly approved and executed by the waiving Party. Unless so specified in the written waiver, a waiver by a Party of any provision of this Agreement shall not constitute a waiver of any other provision(s) herein, similar or not, and shall not be construed as a continuing waiver. Except as waived per this Section, neither the failure by a Party at any time to require performance of any requirement of this Agreement, nor any forbearance or indulgence of the Party regarding such requirement, shall in any manner affect the Party's right at a later time to enforce the same or any other provision of this Agreement.

Section 7.8 *Governing Law and Venue.* This Agreement shall be governed by and interpreted per the laws of the State. Any action, arbitration, or other proceeding arising from this Agreement shall be initiated and conducted only in the County of Orange, California.

Section 7.9 *Correct Legal Requirements Deemed Included.* Each and every provision required by any applicable law to be included in this Agreement is hereby deemed to be so included, and this Agreement shall be construed and enforced as if all such provisions are so included. If, for any reason, any provision required by any applicable law is not expressly included herein, or is not correctly

included herein, then, upon request of either Party, this Agreement shall be amended to include or incorporate, or to correctly include or incorporate, such provision.

Section 7.10 Severability. If a court of competent jurisdiction determines, for any reason, that any provision or requirement of this Agreement is invalid or unenforceable, such determination shall not invalidate or render unenforceable any other provision or requirement of this Agreement. In such event, the provisions and requirements that are not the subject of the court's determination shall be interpreted, to the extent permitted by law, in a manner that is consistent with the intent and purpose underlying the invalid or unenforceable provision or requirement.

Likewise, if a court of competent jurisdiction determines, for any reason, that any provision or requirement of this Agreement is invalid or unenforceable as applied to a specific person or entity, such determination shall not affect the applicability of such provision or requirement to other persons or entities. In such event, the provisions and requirements that are not the subject of the court's determination shall be interpreted, to the extent permitted by law, in a manner that is consistent with the intent and purpose underlying the inapplicable provision or requirement.

Section 7.11 Successors and Assigns. The Consultant may not assign this Agreement without the prior written consent of the District, and any attempt to do so shall be null and void. Subject to the foregoing, this Agreement shall inure to the benefit of, and be binding on, the Parties' authorized successors and assigns.

Section 7.12 No Third-Party Beneficiaries. The Parties have entered into this Agreement solely for their own purposes, and this Agreement shall not be deemed or construed to: (i) benefit any third party; (ii) create any right for any third party; or (iii) except as provided by law, provide a basis for any claim, demand, action, or other proceeding by any third party.

Section 7.13 Agreement is Public Record. Notwithstanding anything to the contrary: (i) nothing in this Agreement shall be deemed to constitute confidential information; and (ii) this Agreement is a public record which the District may disclose per State law or otherwise.

(The remainder of this page intentionally left blank.)

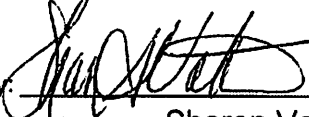
PART 8: EXECUTION OF AGREEMENT

Section 8.1 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which, taken together, shall constitute one and the same instrument. Signature pages may be detached from counterpart originals and combined to physically form one or more copies of this Agreement having original signatures of both Parties. Signature pages sent via email shall also constitute original signatures under this Agreement.

Section 8.2 Due Authority. Each person signing this Agreement on behalf of a Party represents and warrants that he or she has been duly authorized by such Party to sign, and thereby bind such Party to, this Agreement.


IN WITNESS WHEREOF, the authorized representatives of the Parties have executed this Agreement as evidenced by their signatures below.

[CONSULTANT] Fire Ace Inc.

By: 
Print Name: Sharon Vollrath
Title: Administrator
Fed. Tax ID No. _____
Email: sharon@fireaceinc.com

Date Signed: 4/12/2022

William S. Hart Union High School District

By: 
Print Name: Collyn Nielsen
Title: Chief Administrative Officer
Email: cnielsen@hartsdistrict.org

Date Signed: 4/20/22

EXHIBIT "A"
Description of Project

Fire Alarm testing at 16 sites per attached proposal dated April 1, 2022 (attached).

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

EXHIBIT "C"
Services Schedule

If not provided in the Proposal, the Consultant shall complete the following "tasks," which are included in the Scope of Services within the period allocated for such task in the following table:

<i>Task</i>	<i>Completion Timeline</i>
Testing of fire alarms at 16 sites per attached proposal dated April 1, 2022	June 30, 2022

EXHIBIT "D"
Consultant Compensation

(A) Consultant Fee (Check the boxes as applicable):

In exchange for satisfactory performance of the Scope of Services, the District shall pay to the Consultant the compensation set forth below, which shall be all-inclusive, full and final compensation to the Consultant for the Scope of Services provided, and shall include any and all overhead, profit, and other amounts potentially payable to Consultant for the specified Scope of Services:

- ☐ Lump sum of \$ 70,500.00 to be paid by ☐ task, allocated as set forth in the Payment Schedule below, or ☒ in a one-time payment made upon completion of the Scope of Work.
- ☐ "Not-to-exceed" amount of \$ _____ to be paid by ☐ task, allocated as set forth in the Payment Schedule below, or ☐ on a time-and-materials basis, allocated as set forth in the Hourly Rate Schedule below.
- ☐ Other: _____

- ☐ The District shall pay to the Contractor reimbursable expenses in an amount not to exceed \$ _____.

(A.1) Payment Schedule:

<i>Task</i>	<i>Portion of Total Fee Due</i>
Upon completion	Not to exceed \$ <u>70,500.00</u>
	Not to exceed \$ _____
	Not to exceed \$ _____
	Not to exceed \$ _____
	Not to exceed \$ _____
	Not to exceed \$ _____
	Not to exceed \$ _____
	Not to exceed \$ _____
	Not to exceed \$ _____
	Not to exceed \$ _____
	Not to exceed \$ _____
	Not to exceed \$ _____
	Not to exceed \$ _____

(A.2) Hourly Rate Schedule (Check the boxes as applicable):

The District shall compensate the Consultant for Scope of Services provided on a time-and-materials basis based on the hourly rates specified below.

☐

See attached hourly rate schedule; or

☐

Personnel Charges – Hourly Rates

[INSERT NAME/POSITION] _____	\$ _____ / hr.
_____	\$ _____ / hr.
_____	\$ _____ / hr.
_____	\$ _____ / hr.
_____	\$ _____ / hr.
_____	\$ _____ / hr.
_____	\$ _____ / hr.
_____	\$ _____ / hr.
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_____	\$ _____ / hr.
_____	\$ _____ / hr.
_____	\$ _____ / hr.
_____	\$ _____ / hr.
_____	\$ _____ / hr.

EXHIBIT "E"
Noncollusion Declaration

Project : Fire Alarm Testing at 16 District sites

Consultant: Fire Ace Inc.

The undersigned hereby declares:

I, Sharon Vollrath (insert name) am the Administrator
(insert position/title) for the Consultant.

I represent and warrant that: (i) Consultant has not employed or retained any company or person (excepting any bona fide employee working solely for Consultant) to solicit or otherwise cause the District to enter into the Agreement for Consultant Services ("Agreement"); (ii) Consultant has not paid, agreed to pay, or otherwise provided to, any company or person, including, but not limited to, any District officer, employee or agent (but excepting any bona fide employee working solely for Consultant), any fee, commission, percentage, brokerage fee, gift, favor, or other consideration contingent upon or resulting from the District entering into the Agreement; and (iii) to the Consultant's knowledge, the making of the Agreement shall not result in any person having any conflict of interests under Government Code Section 1090, the California Political Reform Act (Government Code Section 87100 et seq.), or other California law, including the common law.

I hereby represent that I have the full power to execute, and do execute, this declaration on behalf of the Consultant.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on April 18, 2022 [date], at Lancaster [city], CA [state].

Representative Printed Name: Sharon Vollrath

Representative Signature:  _____

Date Signed: 4/12/2022

EXHIBIT "F"
Parties' Representatives

Each Party's representative, address, and other contact information for purposes of Notices given under Part 6 of this Agreement are as follows:

District Contact Information:

William S. Hart Union High School District

Attn: Carle Manley, Director of M&O

21380 Centre Pointe Parkway

Santa Clarita, CA 91350

Phone: 661-259-0033 ext 324

E-mail: cmanley@hartdistrict.org

Consultant Contact Information:

Fire Ace Inc.

Attn: Sharon Vollrath

P.O. Box 298

Lancaster, CA 93584

Phone: 661-942-2231

E-mail: sharon@fireaceinc.com