



El Dorado County Fire Safe Council

P.O. Box 1011

Diamond Springs, CA 95619

Phone: (530) 647-1700

Email: board@edcfiresafe.org

Website: edcfiresafe.org

"Public and Private Partners Working Together to Protect People, Homes, and Natural Resources"

DEFENSIBLE SPACE MAINTENANCE CONTRACTOR AGREEMENT

This Independent Contractor Agreement (the "Agreement") is made and entered between, _____, an independent contractor hereafter referred to as "Contractor", the El Dorado County Fire Safe Council, hereafter referred to as the "EDCFSC."

Whereas, EDCFSC has agreed to provide such fiscal sponsorship to the extent grant or donated funds are available;

Whereas, EDCFSC desire to enter into this agreement with Contractor; and

In consideration of the covenants and conditions hereinafter set forth, EDCFSC and Contractor agree as follows:

1. THE PROJECT/SCOPE OF WORK

Contractor shall perform Defensible Space Development and/or Maintenance Service for the EDCFSC as more particularly set forth in the Responsibilities/Scope of Work, marked Exhibit A, attached hereto and incorporated herein by reference. Assigned jobs will be performed according to the terms of this agreement and any exhibits made a part of this agreement. Further, Contractor shall abide by the following, where applicable.

1. Contractor will work with the EDCFSC Defensible Space Program Coordinator to insure compliance with the guidelines, conditions and criterions of the grant or donated funds.
2. Contractor will include enough supervision time to assure public safety and compliance with the Right of Entry Agreement, if any.
3. Contractor will be sensitive to and responsive to Defensible Space Program Coordinator requirements within the objectives of funds and this Agreement.
4. Contractor will be responsible for crew's safety and sanitation needs.
5. Contractor shall comply with all established administrative invoice processes of the EDCFSC.
6. Contractor will be responsible for ensuring damage avoidance of and protection of structures, property improvements, power lines and other utilities.

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7. Residual trees and ornamental shrubs will be protected from damage.

2. RESPONSIBILITIES OF DEFENSIBLE SPACE PROGRAM COORDINATOR

The EDCFSC Defensible Space Program Coordinator shall cooperate with the Contractor in the performance of this agreement. Defensible Space Program Coordinator shall be responsible for overseeing and supervising Contractor's performance under the terms of this agreement. The Defensible Space Program Coordinator shall be responsible for the timely preparation and submitting all defensible space documents as required by EDCFSC and funding sources.

3. REPORTING

Contractor shall report to the Defensible Space Program Coordinator. Contractor shall provide invoices and photographs to the Defensible Space Program Coordinator by the 1st of each month. Invoices and photographs shall be submitted by email. The Defensible Space Program Coordinator shall provide a copy of the invoice to EDCFSC upon receipt from the Contractor. The Contractor shall report to the Defensible Space Program Coordinator as soon as possible any problems or delays in the performance of the required services.

4. TERM

This Agreement shall commence on April 18, 2019 and shall expire on December 30, 2020. Contractor agrees to complete all assigned jobs on or before the expiration of the term set forth above. Contractor shall commence work on the job upon receipt of written (email) job notice from the Defensible Space Program Coordinator and shall have fourteen (14) working days to complete the assigned job. Contractor shall promptly report to Defensible Space Program Coordinator any problems or delays in the performance of the job or matters that may affect the completion of the assigned job. Contractor shall be excused for any delay in completion of the assigned job caused by acts of God, Acts of EDCFSC, or the Defensible Space Program Coordinator, fire season conditions preventing work, acts of a public utility, or public agency.

The EDCFSC may terminate the use of Contractor's services at any time without cause and without further obligation to Contractor except for payment due for services prior to date of such termination. Termination of this Agreement or termination of services shall not affect the provisions under Sections 13 and 14, hereof, which shall survive any termination.

5. PAYMENT

Contractor will be paid for services performed under this Agreement as follows:

- A. Contractor shall not be paid more than their bid burden labor hourly rate of \$_____ to a maximum sum of \$600.00 per job including travel time and any green waste dump fees unless this agreement is amended in writing by all parties hereto.

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- B. On or before the 1st day of each month, Contractor shall submit an invoice to the Defensible Space Program Coordinator for the services performed pursuant to the assigned job description. Invoices shall show invoice number, DS coordinator assigned job number, date worked, time worked per crew member, and description of work performed together with three (3) pre-photos of the job and three (3) post-photos of the job (depicting the same locations as in pre-photos). The Defensible Space Program Coordinator shall review invoices and certify them through site visits if appropriate. The certified invoice shall be provided to EDCFSC by the 5th day of each month. Invoices certified as to accuracy shall be paid by the EDCFSC by the 20th day of the following month or within 30 days of receipt whichever occurs later.
- C. It is mutually understood between the parties that an assigned job has available funds prior to job being assigned.
- D. This Agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or the City's governing board that may affect the provisions, terms, or funding of this Agreement in any manner.

6. DONATIONS

Contractor shall not accept donations from the public. If the public wishes to make a donation they should be advised to do it directly to the EDCFSC.

7. USE OF CONTRACTOR'S VEHICLES

The use of Contractor's vehicles shall be limited to Contractor's employees and agents only.

8. ASSIGNMENT AND SUBCONTRACTING

Contractor understands and agrees that it has contracted with EDCFSC to perform assigned job services as set forth in this Agreement and specific job descriptions. Contractor may use subcontractor to perform services under this Agreement only if EDFSC is notified of such subcontractor in advance. Contractor understands that the real property upon which the defensible space job is to be performed is not owned by EDCFSC. As part of the consideration for EDCFSC agreeing to the use of any subcontractor, Contractor agrees to obtain from any such an agreement waiving and releasing any and all lien rights to such real property. If Contractor is not available to perform all the terms of this Agreement, the EDCFSC may terminate by giving notice as set forth herein.

9. LICENSES, PERMITS, TAXES, ETC.

Contractor represents and warrants to EDCFSC that it has or will obtain all licenses, permits, qualifications and approvals that are legally required for Contractor to provide the services required by this Agreement. Contractor represents and warrants to EDCFSC that Contractor shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this

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Agreement any licenses, permits, and approvals which are legally required for Contractor to provide the services required by this Agreement. Contractor shall comply with all Federal, State and local laws relating to Contractor's performance of this Agreement.

10. PERSONNEL

Contractor shall assign only competent personnel to perform services pursuant to this Agreement. Contractor shall provide all staff necessary for completion of the services under this Agreement. In the event that EDCFSC, at its sole discretion, at any time during the term of this Agreement, desire the removal of any person or persons assigned by Contractor to perform services pursuant to this Agreement because of their incompetence, Contractor shall remove any such person immediately upon receiving notice from EDCFSC of the desire of EDCFSC for the removal of such person or persons.

11. WARRANTIES

Contractor warrants that:

- A. Contractor's agreement to perform the services pursuant to this Agreement does not violate any agreement or obligation between Contractor and a third party;
- B. The services as delivered to the EDCFSC will not infringe any copyright, patent, trade secret, or other proprietary right held by any third party; and
- C. The services provided by Contractor shall be performed in a professional manner, and shall be of a high grade, nature, and quality. The services shall be performed in a timely manner and shall meet deadlines agreed between Contractor and the EDCFSC Defensible Space Program Coordinator.

12. HEALTH, SAFETY, FIRE AND ENVIRONMENTAL PROTECTION

- A. The Contractor and any subcontractor or agent shall comply with federal, state and local requirements pertaining to safety, health, fire and environmental protection.
- B. In the event standards conflict, the standard providing the highest degree of protection and not in violation of any other applicable standard or law shall prevail.
- C. Contractor shall follow all fire restrictions each day they are conducting services for EDCFSC. This shall be shown for each day they are conducting service.

13. MAINTENANCE OF RECORDS/AUDIT RIGHTS

- A. Contractor shall keep such true and accurate accounts and data pertinent to the performance of this Agreement. Contractor shall maintain all records related to this Agreement and make such records available to EDFSC upon its request for inspection or audit throughout the term of this Agreement and for a period of five (5) years after

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expiration or termination of this Agreement. This section shall survive expiration or termination of this Agreement.

- B. EDCFSC shall have the right to inspect and audit Contractor's accounting documents during normal working hours.

14. INDEMNITY

To the extent permitted by law, Contractor does hereby assume liability for, and agrees to defend, indemnify, protect, save and keep harmless EDCFSC and its directors, officers, employees and independent contractors of the EDCFSC, including but not limited to Chairperson or a designated Board of Directors officer, and its successors and assigns and each and every one of them from and against any and all liabilities, obligations, losses, damages, penalties, fines, claims, actions, suits, costs and expenses and disbursements (including legal fees and expenses) of any kind and nature imposed, asserted against, incurred or suffered by EDCFSC or its directors, officers or employees and independent contractors of the EDCFSC, including but not limited to Chairperson or a designated Board of Directors officer, or its successors and assigns by reason of damage, loss or injury (including death) of any kind or nature whatsoever to persons or property caused by or in any way relating to or arising out of:

- A. Any willful wrongful act or any negligent act or action, or any neglect, omission or failure to act when under a duty to act on the part of Contractor or any of its officers, agents, servants, employees, in its or their performance hereunder, except to the extent caused by the negligence or willful wrongful act of EDCFSC, its directors, officers, employees and independent contractors of the EDCFSC, including but not limited to Chairperson or a designated Board of Directors officer, successors and assigns;
- B. Any claim of patent or copyright infringement or publication of defamatory material including EDCFSC's failure to request removal of such material in connection with the services performed and/or work products provided under this Agreement by Contractor or any of its officers, agents, servants, and employees; and
- C. A release by Contractor or any of its officers, agents, servants, and employees, in its or their performance hereunder of any substance or material defined or designated as a hazardous or toxic substance, material or waste by any federal, state or local law or environmental statute, regulation or ordinance presently in effect, or as amended or promulgated in the future, but only to the extent that such release is not proximately contributed to or caused by EDCFSC, or its directors, officers or employees and independent contractors of the EDCFSC, including but not limited to Chairperson or a designated Board of Directors officer.

The parties shall establish procedures to notify the other party where appropriate of any claims, administrative actions or legal actions with respect to any of the matters described in this indemnification provision. The parties shall cooperate in the defense of such actions brought by others with respect to the matters covered in this indemnity. Nothing set forth in this Agreement shall establish a standard of care for, or create any legal rights in, any person

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not a party to this Agreement. The provisions of this section shall survive any termination or expiration of this Agreement.

15. CONFLICT OF INTEREST

- A. Contractor covenants that Contractor presently has no interest and shall not acquire any interest, direct or indirect, which would conflict with the performance of services required to be performed under this Agreement.
- B. Contractor shall not employ any EDCFSC director or employee in the work performed pursuant to this Agreement. No officer or employee of EDCFSC shall have any financial interest in this Agreement in violation of the applicable provisions of the California Government Code. Contractor warrants and covenants that no official or employee of the EDCFSC, nor any business entity in which an official or employee of EDCFSC is interested, (1) has been employed or retained to solicit or aid in the procuring of this Agreement; or (2) will be employed in the performance of this Agreement without the immediate divulgence of such fact to EDCFSC.
- C. Upon breach of this covenant by Contractor, EDCFSC may cancel this Agreement without any liability if Contractor fails to remedy such conflict within thirty (30) days of notice to Contractor. In its discretion, EDCFSC may also recover the full amount of any such compensation paid to such official, employee or business entity

16. INSURANCE

Contractor shall provide a certificate of a policy of insurance evidencing that Contractor maintains insurance that meets the following requirements:

- A. Workers Compensation coverage: Contractor shall maintain workers' compensation insurance for all of its employees.
- B. Commercial General Liability Insurance of not less than One Million dollars (\$1,000,000) combined single limit per occurrence for personal injury liability, bodily injury and property damage. Two million dollars (\$2,000,000) aggregate.
- C. Automobile Liability Insurance of not less than \$500,000 is required in the event motor vehicles are used by the Contractor in the performance of the agreement. One million dollars (\$1,000,000) per accident for bodily injury and property damage combine single limit.
- D. For the purpose of this agreement there is no requirement for professional liability coverage.
- E. Contractor shall furnish a certificate of insurance satisfactory to the EDCFSC as evidence that the insurance required above is being maintained.

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- F. The insurance will be issued by an insurance company acceptable to the EDCFSC or be provided through partial or total self-insurance likewise acceptable.
- G. Contractor agrees that the insurance required above shall be in effect at all times during the term of this agreement. In the event said insurance coverage expires at any time or times during the term of this agreement, Contractor agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the agreement there, or for a period of not less than one (1) year. New certificates of insurance are subject to approval of the EDCFSC and Contractor agrees that no services shall be performed prior to such approval. In the event Contractor fails to keep in effect at all times insurance coverage as herein provided, EDCFSC may, in addition to any other remedies it may have, terminate this agreement.
- H. The certificate of insurance must include the following provisions which state that: 1. the insurer will not cancel the insured's coverage without thirty (30) days prior written notice to EDCFSC, and; 2. the EDCFSC, its directors, officers, employees, agents and volunteers, and independent contractors, including but not limited to Chairperson or a designated Board of Directors officer are included as additional named insured for all operations under this agreement. The coverage shall contain no special limitations on the scope of protection afforded to the EDCFSC its directors, officers, employees or volunteers and independent contractors, including but not limited to Chairperson or a designated Board of Directors officer.
- I. Contractor's insurance shall be primary in respect to the EDCFSC. Any insurance maintained by EDCFSC shall be excess of Contractor's and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared and approved by EDCFSC. At EDCFSC's option, either: Insurer shall reduce or eliminate such deductibles or self-insured retentions; or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the EDCFSC.
- L. The insurance companies shall have no recourse against the payment of any premiums or assessments under any policy issued by any insurance company.
- M. Contractor's obligations shall not be limited by the foregoing requirements and shall survive expiration of this agreement.
- N. In the event Contractor cannot provide an occurrence policy, Contractor shall provide insurance covering claims made as a result of performance of this agreement for not less than three (3) years following completion of this agreement.

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- O. Certificate of insurance shall meet such additional standards as may be determined by EDCFSC as essential for protection of the EDCFSC.

17. RELATIONSHIP OF PARTIES

Contractor is an independent contractor. Nothing in this Agreement shall be construed as creating an employer-employee relationship, a guarantee of future employment or engagement or as a limitation upon the EDCFSC's sole discretion to terminate this Agreement at any time without cause. Contractor further agrees to be responsible for all of Contractor's federal and state taxes, withholding, social security, insurance, and other benefits.

18. OTHER ACTIVITIES

Contractor is free to engage in other independent contracting activities, provided that Contractor does not engage in any such activities that are inconsistent with or in conflict with any provisions hereof, or that so occupy Contractor's attention as to interfere with the proper and efficient performance of Contractor's services as stated in Section 1. Contractor agrees not to induce or attempt to influence, directly or indirectly, any employee at the EDCFSC to terminate his/her employment and work for Contractor or any other person.

19. NONDISCRIMINATION

During the performance of this Agreement, contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex (gender), sexual orientation, race, color, ancestry, religion, creed, national origin (including language use restriction), pregnancy, physical disability (including HIV and AIDS), mental disability, medical condition (cancer/genetic characteristics), age (over 40), marital status, and denial of medial and family care leave or pregnancy disability leave. Contractor and its subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) *et seq.*) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 *et seq.*). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

20. DOCUMENTATION OF RIGHT TO WORK

Contractor agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of Contractor performing services under this

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Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. Contractor shall make the required documentation available upon request to the Defensible Space Program Coordinator and EDCFSC for inspection

21. WAIVER OF CLAIMS AGAINST FIRE SAFE COUNCIL

Contractor hereby waives any claim against EDCFSC officers, employees or agents for damage or loss caused by any suit or proceeding directly or indirectly attacking the validity of this Agreement, or any part thereof or by any judgment or award in any suit or proceeding declaring this Agreement null, void or voidable or delaying the same or any part thereof from being carried out, or for breach or nonperformance of this Agreement.

22. WAIVER OF JURY TRIAL

EACH PARTY, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY AS TO ANY ISSUE RELATING HERETO IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER MATTER INVOLVING THE PARTIES HERETO.

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23. MISCELLANEOUS

- A. Attorneys' Fees. Should either party hereto, or any heir, personal representative, successor or assign of either party hereto, resort to legal proceedings in connection with this Agreement or Contractor's relationship with the EDCFSC, the party or parties prevailing in such legal proceedings shall be entitled, in addition to such other relief as may be granted, to recover its or their reasonable attorneys' fees and costs in such legal proceedings from the non-prevailing party or parties.
- B. Governing Law and Venue: This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to conflict of law principles. Venue for litigation involving this agreement shall be in the County of El Dorado, California.
- C. Entire Agreement. This Agreement contains the entire agreement and understanding between the parties hereto and supersedes any prior or contemporaneous written or oral agreements, representations and warranties between them respecting the subject matter hereof.

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- D. Amendment. This Agreement may be amended only by a written Amendment to the Agreement signed by Contractor and by a duly authorized representative of the EDCFSC.
- E. Severability. If any term, provision, covenant or condition of this Agreement, or the application thereof to any person, place or circumstance, shall be held to be invalid, unenforceable or void, the remainder of this Agreement and such term, provision, covenant or condition as applied to other persons, places and circumstances shall remain in full force and effect.
- F. Construction. The headings and captions of this Agreement are provided for convenience only and are intended to have no effect in construing or interpreting this Agreement. The language in all parts of this Agreement shall be in all cases construed according to its fair meaning and not strictly for or against either party.
- G. Rights Cumulative. The rights and remedies provided by this Agreement are cumulative, and the exercise of any right or remedy by either party hereto (or by its successor), whether pursuant to this Agreement, to any other agreement, or to law, shall not preclude or waive its right to exercise any or all other rights and remedies.
- H. Non-waiver. No failure or neglect of either party hereto in any instance to exercise any right, power or privilege hereunder or under law shall constitute a waiver of any other right, power or privilege or of the same right, power or privilege in any other instance. All waivers by either party hereto must be contained in a written instrument signed by the party to be charged and, in the case of either EDCFSC, by an officer of the EDCFSC or other person duly authorized by the EDCFSC.
- I. Remedy for Breach. The parties hereto agree that, in the event of breach or threatened breach of any covenants of Contractor, the damage or imminent damage to the value and the goodwill of the EDCFSC's business shall be inestimable, and that therefore any remedy at law or in damages shall be inadequate. Accordingly, the parties hereto agree that the EDCFSC shall be entitled to injunctive relief against Contractor in the event of any breach or threatened breach of any of such provisions by Contractor, in addition to any other relief (including damages) available to the EDCFSC under this Agreement or under law.
- J. Notices. Any notice, request, consent or approval required or permitted to be given under this Agreement or pursuant to law shall be sufficient if in writing, and if and when sent by certified or registered mail, with postage prepaid, to Contractor's address (as noted below), or to the EDCFSC's principal office, as the case may be.

Notices pursuant to this agreement shall be mailed to:

(1) EDCFSC at P.O. Box 1011, Diamond Springs, CA 95619

(2) Contractor at _____

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K. Assistance. Contractor shall, during and after termination of services rendered, upon reasonable notice, furnish such information and proper assistance to the EDCFSC as may reasonably be required by the EDCFSC in connection with work performed by Contractor; provided, however, that such assistance following termination shall be mutually agreed upon amongst the parties hereto.

EDCFSC:

Contractor:

By _____
(Signature)

By: _____
(Signature)

Name: _____
(Print)

Name: _____
(Print)

Title: _____

_____ Social Security # (or EIN if applicable)

Date: _____

Date: _____

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