

Exhibit A



El Dorado County Fire Safe Council

P.O. Box 1011

Diamond Springs, CA 95619

Phone: (530) 647-1700

Website: edcfiresafe.org

Email: board@edcfiresafe.org

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

INDEPENDENT CONTRACTOR AGREEMENT

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

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

1. SERVICES

Contractor shall perform the following services for the Fire Safe Council:

- A. Residential chipping per the specifications in the RFP (Attachment A) and the proposal submitted by the Contractor (Attachment B).
- B. All work will be performed according to a schedule agreed upon by the Contractor and the Fire Safe Council to the best of the Contractor's ability. The contractor is responsible for scheduling chipping services with the residential clients and maintaining required data sheets on progress and accomplishments.
- C. All work shall have photos before and after each job.

2. REPORTING

Contractor shall report to the Program Manager. Contractor shall provide invoices, reports and required data sheets to the Fire Safe Council by the 5th of each month on progress and accomplishments in the previous month. This report may be submitted by mail or email. Email is preferred. The contractor shall also report to the Program Manager as soon as possible any problems or delays in the performance of the required services.

3. TERM

This Agreement shall commence on **enter date** and shall expire on July 31, 2019. Contractor agrees to perform services for the Fire Safe Council on or before the expiration of the term set forth above. The Fire Safe Council 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

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prior to date of such termination. Termination of this Agreement or termination of services shall not affect the provisions under Sections 14-a, hereof, which shall survive any termination.

This contract may be extended by mutual agreement of the parties.

4. PAYMENT

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

- A. Contractor will be paid for all chipping and clearing services at a rate of \$xxx.xx per hour.
- B. Contractor shall submit an invoice for the services by the fifth business day of each month for services performed in the previous month. Invoices shall show as a minimum, Job Number, Client Last Name, Date Completed, Travel Time Chipping Time, and cost being billed for the job. Invoices shall be paid by the Fire Safe Council within 30 business days of receipt.
- C. The Contractor understands that payment depends upon the Fire Safe Council receiving reimbursement from the funder in a timely basis. If the Fire Safe Council does not receive payments on the expected date, some payments to Contractor may be delayed. The Contractor will receive written notification if this situation does occur.
- D. The contractor will be paid by the hour. The Fire Safe Council only pays for the time worked which includes but is not limited to: chipping and driving to and from assigned jobs. Driving time will only be paid for travel within El Dorado County. The Fire Safe Council will not pay for time spent working on or repairing any and all other mechanical equipment used by Contractor to perform this contract.
- E. The maximum amount of funds available for the chipper contractor service in this program is \$ 182,743 to be divided by two contractors based on assigned jobs.
- F. It is mutually understood between the parties that this contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid delays that would occur if the contract were executed after that determination was made.
- G. This contract is valid and enforceable only, if sufficient funds are made available to the EDCFSC for the purpose of this contract. In addition, this contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or the EDCFSC's governing board that may affect the provisions, terms, or funding of this contract in any manner.
- H. It is mutually agreed that if sufficient funds are not appropriated, this contract may be amended to reflect any reduction in funds.

5. DONATIONS

Contract Services Agreement Between EDCFSC and name of contractor. Contract Period xxx 2017 to July 31, 2019 or end of funding. Contract Number # insert

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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 Fire Safe Council to help support this program.

6. USE OF CONTRACTOR'S VEHICLES

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

7. NO BURNING

Contractor is absolutely forbidden from burning any debris on or at the sites where Contractor is performing chipping services. Contractor is only to provide chipping services as agreed up herein.

8. NO SUBCONTRACTING

Contractor understands and agrees that it has contracted with Fire Safe Council to perform Services as set forth in this Contract and the specified Attachments. The Services provided pursuant to this Contract may not be assigned by Contractor to a subcontractor. If Contractor is not available to perform the terms of this Contract, the Fire Safe Council may terminate by giving notice as set forth herein.

9. LICENSES, PERMITS, TAXES, ETC.

Contractor represents and warrants to Fire Safe Council 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 Contract. Contractor represents and warrants to Fire Safe Council that Contractor shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Contract any licenses, permits, and approvals which are legally required for Contractor to provide the services required by this Contract. Contractor shall comply with all Federal, State and local laws relating to Contractor's performance of this Contract.

10. PERSONNEL

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

11. WARRANTIES

Contract Services Agreement Between EDCFSC and **name of contractor**. Contract Period **xxx** 2017 to July 31, 2019 or end of funding. Contract Number # **insert**

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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 Fire Safe Council 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 Fire Safe Council.

12. HEALTH, SAFETY, FIRE AND ENVIRONMENTAL PROTECTION

- A. The Contractor 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 restriction each day they are conducting services for El County Fire Safe Council. 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, records, books, and data pertinent to the performance of this contract. Contractor shall maintain all records related to this Contract and make such records available to Fire Safe Council upon its request for inspection or audit throughout the Term of this Contract and for a period of five (5) years after expiration or termination of this Contract. This section shall survive expiration or termination of this Contract.
- B. Fire Safe Council shall have the right to inspect and audit Contractor's accounting books, records and 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 Fire Safe Council and its directors, officers, employees and independent contractors of the Fire Safe Council, including but not limited to Chairperson or a designated Board of Directors officer, and its successors and assigns and each and every one of

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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 Fire Safe Council or its directors, officers or employees and independent contractors of the Fire Safe Council, 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 Fire Safe Council, its directors, officers, employees and independent contractors of the Fire Safe Council, 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 Fire Safe Council's failure to request removal of such material in connection with the services performed and/or work products provided under this Contract 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 Fire Safe Council, or its directors, officers or employees and independent contractors of the Fire Safe Council, 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 Contract shall establish a standard of care for, or create any legal rights in, any person not a party to this Contract. The provisions of this section shall survive any termination or expiration of this Contract.

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 Contract.

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- B. Contractor shall not employ any Fire Safe Council official or employee in the work performed pursuant to this Contract. No officer or employee of Fire Safe Council shall have any financial interest in this Contract in violation of the applicable provisions of the California Government Code. Contractor warrants and covenants that no official or employee of Fire Safe Council, nor any business entity in which an official or employee of Fire Safe Council is interested, (1) has been employed or retained to solicit or aid in the procuring of this Contract; or (2) will be employed in the performance of this Contract without the immediate divulgence of such fact to Fire Safe Council.
- C. Upon breach of this covenant by Contractor, Fire Safe Council may cancel this Contract without any liability if Contractor fails to remedy such conflict within thirty (30) days of notice to Contractor. At its discretion, Fire Safe Council 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 Fire Safe Council as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to the Fire Safe Council 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

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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 Fire Safe Council 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, Fire Safe Council 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 Fire Safe Council, and; 2. The Fire Safe Council, 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 Fire Safe Council 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 Fire Safe Council. Any insurance maintained by Fire Safe Council 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 Fire Safe Council. At Fire Safe Council'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 Fire Safe Council.
- L. The insurance companies shall have no recourse against the Fire Safe Council for 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 Fire Safe Council as essential for protection of the Fire Safe Council.

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 Fire Safe Council'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. Contractor shall provide the Fire Safe Council with satisfactory proof of independent contractor status.

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 Fire Safe Council 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.

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20. WAIVER OF CLAIMS AGAINST FIRE SAFE COUNCIL

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

21. 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 Fire Safe Council, 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. 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.
- 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.
- 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 Fire Safe Council.
- 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),

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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 the Fire Safe Council, by an officer of the Fire Safe Council or other person duly authorized by the Fire Safe Council.
- 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 Fire Safe Council'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 Fire Safe Council 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 Fire Safe Council 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 Fire Safe Council's principal office, as the case may be.
- K. Assistance. Contractor shall, during and after termination of services rendered, upon reasonable notice, furnish such information and proper assistance to the Fire Safe Council as may reasonably be required by the Fire Safe Council in connection with work performed by Contractor; provided, however, that such assistance following termination shall be furnished at the same level of compensation as provided in Section 4.
- L. Disputes. Any controversy, claim or dispute arising out of or relating to this Agreement or the relationship, either during the existence of the relationship or afterwards, between the parties hereto, their assignees, their affiliates, their attorneys, or agents, shall be litigated solely in a court of competent jurisdiction in El Dorado County, California. Each party:
- (1) Submits to the jurisdiction of such court;
 - (2) Waives the defense of an inconvenient forum;
 - (3) Agrees that valid consent to service may be made by mailing or delivery of such service to the California Secretary of State (the "Agent") or to the party at the party's last known address, if personal service delivery cannot be easily affected; and
 - (4) Authorizes and directs the Agent to accept such service in the event that personal service delivery cannot easily be affected.

Contract Services Agreement Between EDCFSC and **name of contractor**. Contract Period **xxx** 2017 to July 31, 2019 or end of funding. Contract Number # **insert**

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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.

Fire Safe Council:

Contractor:

By: _____
(Signature)

By: _____
(Signature)

Name: _____
(Print)

Name: _____
(Print)

Title: _____

Social Security # (or EIN if applicable)

Date: _____

Address: _____
