

**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN FIRESTATS CONSULTING, LLC., AND MARYSVILLE FIRE
PROTECTION DISTRICT**

THIS AGREEMENT is made and entered into as of the 16th day of March, 2022, by and between the **MARYSVILLE FIRE PROTECTION DISTRICT** ("District"), and FireStats Consulting, LLC, a limited liability company, ("Contractor").

RECITALS

- A. District requires the professional services of a fire services operations analyst and that is experienced in analyzing fire service operations.
- B. Contractor has the necessary experience in providing professional services and advice related to statistical and geospatial analysis of municipal fire service and EMS operations.
- C. Selection of Contractor is expected to achieve the desired results in an expedited fashion.
- D. Contractor has submitted a proposal to District and has affirmed its willingness and ability to perform such work.

NOW, THEREFORE, in consideration of these recitals and the mutual covenants contained herein, District and Contractor agree as follows:

1. SCOPE OF WORK

District retains Contractor to perform, and Contractor agrees to render, those services (the "Services") that are defined in attached Exhibit "A", which is incorporated by this reference in accordance with this Agreement's terms and conditions.

2. STANDARD OF PERFORMANCE

While performing the Services, Contractor will exercise the reasonable professional care and skill customarily exercised by reputable members of Contractor's profession practicing in the metropolitan areas of the Western States, and will use reasonable diligence and best judgment while exercising its professional skill and expertise.

3. TERM

The term of this Agreement will be effective for the duration of the scope of work but not exceed 24 months from the date first above written unless extended by mutual agreement of the District and Contractor..

4. TIME IS OF THE ESSENCE

Time is of the essence for each and every provision of this Agreement.

5. COMPENSATION

The total fee payable for the Services to be performed for the scope of work in Exhibit A will not exceed thirteen thousand dollars (\$13,000). No other compensation for the Services will be allowed except for items covered by subsequent amendments to this Agreement. The District reserves the right to withhold a ten percent (10%) retention until District has accepted the work and/or Services specified in Exhibit "A".

Incremental payments, if applicable, should be made as outlined in attached Exhibit "A".

6. STATUS OF CONTRACTOR

Contractor will perform the Services in Contractor's own way as an independent contractor and in pursuit of Contractor's independent calling, and not as an employee of District. Contractor will be under control of district only as to the result to be accomplished, but will consult with District as necessary. The persons used by Contractor to provide services under this Agreement will not be considered employees of District for any purposes.

The payment made to Contractor pursuant to the Agreement will be the full and complete compensation to which Contractor is entitled. District will not make any federal or state tax withholdings on behalf of Contractor or its agents, employees or subcontractors. District will not be required to pay any workers' compensation insurance or unemployment contributions on behalf of Contractor or its employees or subcontractors. Contractor agrees to indemnify District within thirty (30) days for any tax, retirement contribution, social security, overtime payment, unemployment payment or workers' compensation payment which District may be required to make on behalf of Contractor or any agent, employee, or subcontractor of Contractor for work done under this Agreement. At the District's election, District may deduct the indemnification amount from any balance owing to Contractor.

7. SUBCONTRACTING

Contractor will not subcontract any material portion of the Services without prior written approval of District. Contractor will be fully responsible to District for the acts and omissions of Contractor's subcontractors and of the persons either directly or indirectly employed by the subcontractor, as Contractor is for the acts and omissions of persons directly employed by Contractor. Nothing contained in this Agreement will create any contractual relationship between any subcontractor of Contractor and District. Contractor will be responsible for payment of subcontractors. Contractor will bind every subcontractor and every subcontractor of a subcontractor by the terms of this Agreement applicable to Contractor's work unless specifically noted to the contrary in the subcontract and approved in writing by District.

The subcontractors designated for material work on this project include Pablo Gomez and Elise Fisher, both long-term professional associates of FireStats Consulting, LLC., and its affiliated companies.

8. OTHER CONTRACTORS

The District reserves the right to employ other Contractors in connection with the Services.

9. INDEMNIFICATION

The parties expressly agree that any payment, attorney's fee, costs or expense District incurs or makes to or on behalf of an injured employee under the District's self-administered workers' compensation is included as a loss, expense or cost for the purposes of this section, and that this section will survive the expiration or early termination of this Agreement.

District acknowledges that Consultant makes its best professional efforts at understanding and interpreting the data available, that not all data may necessarily be available, that not all possible analyses are likely to be performed in the pursuit of understanding District's resource deployment and performance, and that alternative interpretations of the data and analyses may exist. District further acknowledges that any deployment decisions made by District with information provided through, Contractor's work are made with multiple considerations and not solely with Contractor's tools or consulting. District further acknowledges that the data being used by Contractor is provided by a third party over whom neither Contractor nor District has control and neither District nor Contractor can guaranty the accuracy of that data. It is further acknowledged by District that tools and methods used by Contractor represent one of but many possible approaches to the work identified in Exhibit A, Proposal. District therefore shall indemnify, defend and hold Consultant harmless from any and all suits, claims or liabilities, including attorneys' fees, costs or expenses incurred or arising under this Agreement and not arising from any illegal act by Consultant in the performance of this Agreement.

Each party hereby, to the extent and limit permitted by State law, but without obligation to provide insurance of any nature of the other party, shall hold harmless and indemnify the other party from and against any and all liability, assertions, loss, claims, damages, costs, attorney's fees, judgments and expenses of whatsoever kind or nature which the other party may sustain, suffer or incur or be required to pay by reason of a loss resulting from the negligent acts or omissions of the party. To the extent and limit permitted by State law, in the event that any action, suit or proceeding is brought against a party upon any alleged liability arising out of this Agreement asserted to have resulted from the negligence of the other party, the party against whom the action, suit or proceeding is brought shall promptly provide notice in writing thereof to the other party by registered or certified mail addressed to the party against whom the action, suit or proceeding is brought at the address herein provided. Upon receiving such notice, the party receiving notice, at its own expense, shall diligently defend the party against whom the action, suit or proceeding is brought against such assertions, actions, lawsuits, or proceedings and take any and all appropriate actions to prevent the obtaining of a judgment against the party against whom the action, suit or proceeding is brought and to otherwise protect the interests of the party against whom the action, suit or proceeding is brought.

10. INSURANCE

Contractor will obtain and maintain for the duration of the Agreement and any and all amendments, insurance against claims for injuries to persons or damage to property which may arise out of or in connection with performance of the services by Contractor or Contractor's agents, representatives, employees or subcontractors. The insurance will be obtained from an insurance carrier admitted and authorized to do business in the State of California. The insurance carrier is required to have a current Best's Key Rating of not less than "A-:VII". **OR** with a surplus line insurer on the State of California's List of Eligible Surplus Line Insurers (LESLI) with a rating in the latest Best's Key Rating Guide of at least "A:X".

10.1 Coverages and Limits.

Contractor will maintain the types of coverages and minimum limits indicated below, unless District approves a lower amount. These minimum amounts of coverage will not constitute any limitations or cap on Contractor's indemnification obligations under this Agreement. District, its officers, agents and employees make no representation that the limits of the insurance specified to be carried by Contractor pursuant to this Agreement are adequate to protect Contractor. If Contractor believes that any required insurance coverage is inadequate, Contractor will obtain such additional insurance coverage, as Contractor deems adequate, at Contractor's sole expense.

10.1.1 Commercial General Liability Insurance. \$1,000,000 combined single-limit per occurrence for bodily injury, personal injury and property damage. If the submitted policies contain aggregate limits, general aggregate limits will apply separately to the work under this Agreement or the general aggregate will be twice the required per occurrence limit.

10.1.2 Automobile Liability (if the use of an automobile is involved for Contractor's work for District). \$1,000,000 combined single-limit per accident for bodily injury and property damage. Note that no commercial automobile liability policy will be required. The extent to which Contractor may drive is limited to incidental travel covered under Contractor's personal auto liability policy.

10.1.3 Workers' Compensation and Employer's Liability. Workers' Compensation limits as required by the California Labor Code. Workers' Compensation will not be required if Contractor has no employees and provides, to District 's satisfaction, if requested, a declaration stating this.

10.1.4 Professional Liability. Errors and omissions liability appropriate to Contractor's profession with limits of not less than \$1,000,000 per claim.

10.2. Additional Provisions. Contractor will ensure that the policies of insurance required under this Agreement contain, or are endorsed to contain, the following provisions:

10.2.1 The District will be named as an additional insured on General Liability.

10.2.2 Contractor will obtain occurrence coverage, excluding Professional Liability, which will be written as claims-made coverage.

10.2.3 This insurance will be in force during the life of the Agreement and any extensions of it and will not be canceled without thirty (30) days prior written notice to District sent by certified mail pursuant to the Notice provisions of this Agreement.

10.3 Providing Certificates of Insurance and Endorsements. Prior to District's execution of this Agreement, Contractor will furnish certificates of insurance and endorsements to District if the District so requires.

10.4 Failure to Maintain Coverage. If Contractor fails to maintain any of these insurance coverages, then District will have the option to declare Contractor in breach, or may purchase replacement insurance or pay the premiums that are due on existing policies in order to maintain the required coverages. Contractor is responsible for any payments made by District to obtain or maintain insurance and District may collect these payments from Contractor or deduct the amount paid from any sums due Contractor under this Agreement.

10.5 Submission of Insurance Policies. District reserves the right to require, at any time, complete and certified copies of any or all required insurance policies and endorsements.

12. ACCOUNTING RECORDS

Contractor will maintain complete and accurate records with respect to costs incurred under this Agreement. All records will be clearly identifiable. Contractor will allow a representative of District during normal business hours to examine, audit, and make transcripts or copies of records and any other documents created pursuant to this Agreement. Contractor will allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

13. OWNERSHIP OF DOCUMENTS

All work product produced by Contractor or its agents, employees, and subcontractors pursuant to this Agreement is the property of District. In the event this Agreement is terminated, all work product produced by Contractor or its agents, employees and subcontractors pursuant to this Agreement will be delivered at once to District. Contractor will have the right to make one (1) copy of the work product for Contractor's records. Nothing herein shall be construed to establish any ownership by District over any of the programming used by Contractor and made available to District pursuant to this or any other agreement. All programming is entirely owned by Contractor as are all algorithms, calculations and methods.

14. COPYRIGHTS

No copyrightable materials are contemplated to be developed pursuant to this agreement. However, some documents and analyses will be developed through contractor's standard formats and software applications. These will be specific to District but substantially the same as those developed for other jurisdictions. District shall have no copyrights over any such works. Contractor and District agree to consider each written work created under this agreement and to vest with the District any copyrights not reserved by Contractor.

15. NOTICES

The name of the persons who are authorized to give written notices or to receive written notice on behalf of District and on behalf of Contractor under this Agreement.

For

District

For Contractor

Name Martin Mcfalls

Name Paul Rottenberg

Title Fire Chief

Title Owner

Department Marysville Fire Protection District

Address 578 Sutton Way, #353
Grass Valley, CA 95945

Address 1094 Cedar Ave
Marysville, WA 98270

Phone No. 530 478 0657

Phone No. 360-363-8500

Each party will notify the other immediately of any changes of address that would require any notice or delivery to be directed to another address.

16. CONFLICT OF INTEREST

District will evaluate Contractor's duties pursuant to this Agreement to determine whether disclosure under any laws or regulations of the State of Washington is required of Contractor or any of Contractor's employees, agents, or subcontractors. Should it be determined that disclosure is required, Contractor or Contractor's affected employees, agents, or subcontractors will complete and file with the appropriate entities those schedules specified by District and contained in any required statements of economic interests.

Contractor, for Contractor and on behalf of Contractor's agents, employees, subcontractors and consultants warrants that by execution of this Agreement, that they have no interest, present or contemplated, in the projects affected by this Agreement. Contractor further warrants that neither Contractor, nor Contractor's agents, employees, subcontractors and consultants have any ancillary real property, business interests or income that will be affected by this Agreement or, alternatively, that Contractor will file with the District an affidavit disclosing this interest.

17. GENERAL COMPLIANCE WITH LAWS

Contractor will keep fully informed of federal, state and local laws and ordinances and regulations which in any manner affect those employed by Contractor, or in any way affect the performance of the Services by Contractor. Contractor will at all times observe and comply with these laws, ordinances, and regulations and will be responsible for the compliance of Contractor's services with all applicable laws, ordinances and regulations.

Contractor will be aware of the requirements of the Immigration Reform and Control Act of 1986 and will comply with those requirements, including, but not limited to, verifying the eligibility for employment of all agents, employees, subcontractors and consultants that the services required by this Agreement.

18. DISCRIMINATION AND HARASSMENT PROHIBITED

Contractor will comply with all applicable local, state and federal laws and regulations prohibiting discrimination and harassment.

19. DISPUTE RESOLUTION

If a dispute should arise regarding the performance of the Services the following procedure will be used to resolve any questions of fact or interpretation not otherwise settled by agreement between the parties. Representatives of Contractor or District will reduce such questions, and their respective views, to writing. A copy of such documented dispute will be forwarded to both parties involved along with recommended methods of resolution, which would be of benefit to both parties. The representative receiving the letter will reply to the letter along with a recommended method of resolution within ten (10) business days. If the resolution thus obtained is unsatisfactory to the aggrieved party, a letter outlining the disputes will be forwarded to the Fire Chief. The Fire Chief will consider the facts and solutions recommended by each party and may then opt to direct a solution to the problem. In such cases, the action of the Fire Chief will be binding upon the parties involved, although nothing in this procedure will prohibit the parties from seeking remedies available to them at law. Any third party adjudication of disputes subsequent to the above-described process shall be through binding arbitration under the rules of the American Bar Association. The sum of all total value of any and all resolutions to any and all disputes shall not exceed the total amount due Contractor for completed work under this Agreement.

20. TERMINATION

Upon notification of termination, Contractor has thirty (30) business days to deliver any documents owned by District and all work in progress to District address contained in this Agreement. The parties shall work in good faith to determine what percentage of the outstanding work is compensable. Failure by the parties to reach an agreement shall be dealt with in accordance with Section 19, Dispute Resolution.

21. COVENANTS AGAINST CONTINGENT FEES

Contractor warrants that Contractor has not employed or retained any company or person to solicit or secure this Agreement, and that Contractor has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this Agreement. For breach or violation of this warranty, District will have the right to annul this Agreement without liability, or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of the fee, commission, percentage, brokerage fees, gift, or contingent fee.

22. CLAIMS AND LAWSUITS

By signing this Agreement, Contractor agrees that any Agreement claim submitted to District must be asserted as part of the Agreement process as set forth in this Agreement and not in anticipation of litigation or in conjunction with litigation. Contractor acknowledges that if a false claim is submitted to District, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that California Government Code sections 12650 *et seq.*, the False Claims Act applies to this Agreement and, provides for civil penalties where a person knowingly submits a false claim to a public entity. Any pertinent Washington State statutes shall be considered included in this reference. These provisions include false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of information. If District seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorney's fees. Contractor acknowledges that the filing of a false claim may subject Contractor to an administrative debarment proceeding as the result of which Contractor may be prevented to act as a Contractor on any public work or improvement for a period of up to five (5) years. Contractor acknowledges debarment by another jurisdiction is grounds for District to terminate this Agreement.

23. JURISDICTIONS AND VENUE

Any action at law or in equity brought by either of the parties for the purpose of enforcing a right or rights provided for by this Agreement will be tried in a court of competent jurisdiction in the County of Snohomish, State of Washington, and the parties waive all provisions of law providing for a change of venue in these proceedings to any other county or state.

24. SUCCESSORS AND ASSIGNS

It is mutually understood and agreed that this Agreement will be binding upon District and Contractor and their respective successors. Neither this Agreement or any part of it nor any monies due or to become due under it may be assigned by Contractor without the prior consent of District, which shall not be unreasonably withheld.

25. ENTIRE AGREEMENT

This Agreement, together with any other written document referred to or contemplated by it, along with the purchase order for this Agreement and its provisions, embody the entire Agreement and understanding between the parties relating to the subject matter of it. In case of conflict, the terms of the Agreement supersede the purchase order. Neither this Agreement nor any of its provisions may be amended, modified, waived or discharged except in a writing signed by both parties.

26. AUTHORITY

The individuals executing this Agreement and the instruments referenced in it on behalf of Contractor each represent and warrant that they have the legal power, right and actual authority to bind Contractor to the terms and conditions of this Agreement.

CONTRACTOR

Marysville Fire Protection District ,

*By:  Digitally signed by Paul Rottenberg
DN: cn=Paul Rottenberg, o=FireStats, LLC, ou, email=Paul@FireStats.com, c=US
Date: 2022.03.16 07:08:37 -0700

(sign here)

By:  _____
Board Chair or Fire Chief

Paul Rottenberg, Owner

(print name/title)

ATTEST:

**By: _____
(sign here)

(print name/title)

APPROVED AS TO FORM:

, District's Counsel

By: _____

EXHIBIT "A"

SCOPE OF SERVICES

See attached Proposal



**Proposal to Provide Professional Consulting Services to
The Marysville Fire Protection District**

**By
FireStats, LLC.,
February 14, 2022**

FireStats, LLC. (FireStats,) is in the business of providing performance measurement-related consulting services to local government fire departments that are substantially similar to the Marysville Fire Protection District (Department.)

FireStats is led by Paul Rottenberg, an experienced fire service consultant who is assisted by several people, including Chief Mike Despain (ret.), Mr. Pablo Gomez, Ms. Elise Fisher, Dr. Mark Hensley, and Ms. Maura Power, all graduate degeed, highly experienced analysts, programmers, statisticians and managers with many years of fire service experience.

The Department desires to have FireStats provide analysis of response times and coverage in a geospatial information systems (GIS) context.

Proposed Scope of Work

FireStats will provide a series of geospatial analyses in the form of maps and supporting data tables consisting of spatial representations of:

- demand by incident type, hour day, month, day of week
- travel time for closest resource code 3
- travel time for concentration of specific levels of resources code 3
- coverage percentage associated with specific performance benchmarks to be established by the Department
- coverage percentage associated with resource types with specific performance benchmarks established by the Department

Methodology

FireStats will use a combination of historic data from the last five years of department operations blended with the inferential data generated from the arc GIS Network Analyst. The effect of blending these two data sets issue program impedances into the road network that represent real life experience of Marysville resources responding.

Phases

We expect this project to consist of three phases. In the first phase we will present our preliminary findings to the department, identifying areas that may be considered to represent gaps in service. The district will provide guidance on areas it believes should have the highest priority for coverage, if possible.

In the second phase FireStats will identify locations and possible changes in deployment, at the direction of the department, that demonstrate improvement in response times and coverage.

In the third phase FireStats will provide the maps from operations-related data for the Department's Community Risk Assessment / Standards of Response Coverage (SOC.) The work performed in the first two phases will be foundational for this phase.

Deliverables

We expect the final product to include approximately 80 distinct maps and 10-20 data tables containing summary data that helps explain the maps.

Costs -- Phases I and II

Elise Fisher -- \$6,000

Paul Rottenberg/Pablo Gomez -- \$1,500

Phase Total: Not to exceed \$7,500

Costs -- Phase III

Elise Fisher -- \$4,000

Paul Rottenberg/Pablo Gomez -- \$1,500

Phase Total: Not to exceed \$5,500

Project Total: Not to exceed \$13,000

Contingencies: This quotation relies on FireStats' ability to access a road network with street speeds and appropriate detail from the county or the Department. If FireStats has to acquire the road network to perform this work then we will notify the department of the costs and discuss how to address it. The worst-case scenario for acquisition of a network should not exceed \$2,000.