



230 S. STERLING DRIVE, SUITE 100, MOUNTAIN HOUSE, CA 95391  
(209) 831-2300 • (209) 831-5610 FAX

## CONSULTANT AGREEMENT

**CONTRACT ID # 529**

DATE: September 11, 2019

PARTIES:	MHCSD:	Mountain House Community Services District 230 S. Sterling Dr, Ste 100 Mountain House, CA 95391
	CONSULTANT:	Cavanaugh & Associates, P.A. 530 North Trade Street, suite 302 Winston-Salem, NC 27101

The Parties agree as follows:

1. Priority of Documents:

Each of the items listed below is hereby incorporated into this Agreement by this reference. In the event of an inconsistency in this Agreement, the inconsistency shall be resolved by giving precedence in the following order:

- A. Applicable Federal and State of California statutes and regulations, this Agreement and its exhibits.
- B. CONSULTANT'S Proposal dated September 11, 2019

2. Scope of Professional Services:

CONSULTANT agrees to provide one Level 1 Validation review of the 2018 AWWA Water Audit and requisite supporting documentation, per attached Scope of Service ("Work").

3. Term of Agreement:

This Agreement shall commence on the date of execution by the MHCS D General Manager, and continue until June 30, 2020, unless said work is completed on a date prior thereto or unless terminated earlier as provided herein.

4. Compensation:

The compensation shall not exceed the amount of \$4,900 for services performed pursuant to this Agreement. Payments shall be made within 30 days of receipt of invoice from CONSULTANT.

5. Standard of Performance:

CONSULTANT shall perform all Work in a first-class manner in conformance with the standards of quality normally observed by a person practicing in CONSULTANT's profession.

6. Inspection:

All Work performed and materials (if any) provided by CONSULTANT shall be subject to inspection and approval by MHCS D.

7. Invoicing:

CONSULTANT shall submit one original and one copy of each invoice to: MHCS D, 230 S. Sterling Drive, Suite 100, Mountain House, CA 95391. All invoices must reference this Contract ID Number, the service performed and the Federal Tax Payer Identification Number. Each invoice shall also identify (1) total contract amount (\$), (2) expenses to date (\$), (3) remaining funds per contract (\$), and (4) total amount due per invoice (\$). Payments will be made against invoices as submitted.

8. Consultant's Status:

In the performance of work, duties and obligations imposed by this Agreement, the CONSULTANT is at all times acting as an Independent Contractor practicing his or her profession and not as an employee of the MHCS D. CONSULTANT shall perform the CONSULTANT's work in accordance with currently approved methods and standards of practice in the CONSULTANT's professional specialty. A copy of CONSULTANT's current business license shall be provided to MHCS D. The CONSULTANT shall not have any claim under this Agreement or otherwise against MHCS D for vacation, sick leave, retirement benefits, social security or worker's compensation benefits. The CONSULTANT shall be responsible for federal and state payroll taxes such as social security and unemployment. MHCS D will issue a form 1099 at year-end for fees earned.

9. Assignments:

Inasmuch as this Agreement is intended to secure the specialized services of the CONSULTANT, CONSULTANT may not assign, transfer, delegate or subcontract their obligation herein without the prior written consent of MHCSO. Any such assignment, transfer, delegation or subcontract without the prior written consent shall be considered null and void.

10. Non-Exclusive Rights:

This Agreement does not grant to CONSULTANT any exclusive privileges or rights to provide services to MHCSO. CONSULTANT may contract with other agencies, private companies or individuals for similar services.

11. Compliance:

CONSULTANT shall comply with all Federal, State and local laws, regulations and requirements necessary for the provision of contracted services. Furthermore, CONSULTANT shall comply with all laws applicable to wages and hours of employment, occupational safety, and to fire safety, health and sanitation.

CONSULTANT represents and warrants that CONSULTANT possesses all licenses, permits, and qualifications legally required for the performance of the Work. CONSULTANT shall, at CONSULTANT's sole cost and expense, maintain all such licenses, permits and qualifications in full force and effect throughout the term of this Agreement.

12. Indemnification, Hold Harmless and Defense:

To the fullest extent permitted by law, CONSULTANT shall indemnify, hold harmless and defend MHCSO, its directors, officers, employees, agents and authorized volunteers, and each of them, from and against any and all claims, demands, causes of action, damages, penalties, judgments, awards, decrees, costs, expenses, attorneys' fees, losses or liabilities, in law or in equity, of every kind or nature, including but not limited to personal injury, bodily injury, wrongful death, and property damage including any damage to MHCSO's property, arising out of CONSULTANT's alleged negligence, or wrongful acts related to or in connection with CONSULTANT'S performance of duties under the terms and conditions of this Agreement.

To the fullest extent permitted by law, MHCSO shall indemnify, hold harmless and defend the CONSULTANT, its directors, officers, employees, agents and each of them (collectively referred to as "CONSULTANT Indemnified Parties") from and against any and all claims, demands, causes of action, damages, penalties, judgments, awards, decrees, costs, expenses, attorneys' fees, losses or liabilities, in law or in equity, of every kind or nature, including but not limited to personal injury, bodily injury, wrongful death, and property damage including any damage to the CONSULTANT's property, arising out of MHCSO's alleged negligence, or wrongful acts related to or in connection with MHCSO's performance of duties under the terms and conditions of this Agreement.



23. Waiver:

No waiver of any breach of any covenant or provision of this Agreement shall be deemed a waiver of any other covenant or provision hereof, and no waiver shall be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act, and no extension shall be valid unless in writing and executed by the waiving party.

24. No Third Party Beneficiaries:

Nothing contained in this Agreement is intended to or shall be deemed to confer upon any person, other than the parties, any rights or remedies hereunder.

25. Headings:

The headings of the sections and exhibits of this Agreement are inserted for convenience only. They do not constitute part of this Agreement and are not to be used in its construction.

26. Non-Liability of Officials, Employees and Agents:

No officer, official, employee or agent of District shall be personally liable to CONSULTANT in the event of any default or breach by District or for any amount which may become due to CONSULTANT pursuant to this Agreement.

27. Entire Agreement and Modification:

This Agreement supersedes all previous Agreements either oral or in writing and constitutes the entire understanding of the parties hereto. No changes, amendments or alterations shall be effective unless in writing and signed by both parties.

IN WITNESS WHEREOF, MHCS D and CONSULTANT have executed this Agreement on the day and year first written above.

Cavanaugh & Associates, P.A.  
PO Box 11197  
Winston-Salem, NC 27116

By: William J. Kemjan  
Consultant

Mountain House Community  
Services District,  
a political subdivision of the State of California

By: Steven J. Pinkerton  
General Manager

Date: 9-11-19

Approved as to Form:

By: N/A  
John Bakker  
Interim General Counsel

PROFESSIONAL SERVICES AGREEMENT \_\_\_\_\_

**Scope of Services:** Conduct one (1) Level 1 Validation review of the Calendar 2018 or Fiscal 2018/19 AWWA Water Audit and requisite supporting documentation, in accordance with requirements set forth by California DWR for Water Audit Validation.

**Deliverables:** Validation document for Calendar 2018 or Fiscal 2018/19 AWWA Water Audit.

**Professional Services Fee Agreement:** Lump sum fee of \$4,900.00.

**Client Responsibilities:**

- Provision of completed Calendar 2018 or Fiscal 2018/19 AWWA Water Audit in Excel format
- Provision of required supporting documents as noted below in digital format, and any available supplemental data

REQUIRED	SUPPLEMENTAL
<input type="checkbox"/> Volume from Own Sources <i>broken down by month and meter</i>	<input type="checkbox"/> Customer Meter Inaccuracy derivation
<input type="checkbox"/> Water Imported <i>broken down by month and meter</i>	<input type="checkbox"/> Average Operating Pressure derivation
<input type="checkbox"/> Water Exported <i>broken down by month and meter</i>	<input type="checkbox"/> Customer Retail Unit Cost derivation
<input type="checkbox"/> Supply Meter Test Records <i>for Own and Import meters, if conducted</i>	<input type="checkbox"/> Variable Production Cost derivation
<input type="checkbox"/> Volume of Metered Consumption <i>broken down by month and use type/code</i>	<input type="checkbox"/> System Schematic <i>showing locations of Supply and Export Meters</i>

This Agreement is respectfully submitted by:


Will J. Jernigan, P.E.



VP, Director of Water Efficiency

Cavanaugh & Associates, P.A.

Authorization

 \_\_\_\_\_ 9/11/19  
Signature Date

Printed Name: Doug Louie

Utility Address:

Utility Name: MHCSD

Email contact for invoicing: mhcscdbilling@sjgov.org

The terms and conditions that follow are part of this agreement

**Terms and Conditions**

Consulting Engineer (CE) shall perform the services outlined in the attached for the stated fee agreement.

**Fee**

Fee shall be lump sum as described in the attached. Additional services, if requested by the Client, may be provided on an hourly basis. Hourly rates for additional services shall be those prevailing at the time services are rendered.

**Billings/Payment**

Invoices will be submitted monthly for services and reimbursable expenses and are due when rendered. Invoices shall be considered PAST DUE if not paid within 30 days after the invoice date and the CE may, without waiving any claim or right against the Client, and without liability whatsoever to the Client, terminate the performance of the service. Retainer shall be credited on the final invoice. A service charge will be charged at 1.5% (or the legal rate) per month on the unpaid balance. In the event any portion or all of an account remains unpaid for 90 days after billing, the client shall pay the cost of collection, including the attorney's fees.

**Validation Completion**

CE will provide all necessary documentation to show completion of Level 1 Validation contingent upon 1) the provision of the water audit and supporting documentation as described under Client Responsibilities and 2) the participation in the validation session interview. CE reserves the right to deem the water audit as provided or the supporting documentation insufficient for Level 1 Validation as required by Senate Bill 555 and the associated rulemaking published by the Department of Water Resources. In this case, CE will provide notice of what documentation must be included to complete validation. If the requested documentation is not provided, or if CE cannot validate the water audit due to lack of required supporting documentation, the Client is still responsible to compensate CE for the lump sum fee.

**Professional Liability**

CE maintains professional liability coverage for damages as a result of our negligent acts, errors or omissions. Our liability for this project will be limited to the project fee for its negligent acts, errors or omissions. If a higher limit of liability is desired by the Owner, then an additional fee to offset the additional cost associated with a higher limit of liability can be negotiated. Upon request, a certificate of insurance will be provided as proof of coverage.

**Termination of Services**

This agreement may be terminated upon 10 days written notice by either party should the other fail to perform his obligations hereunder. In the event of termination, the Client shall pay the CE for all services, rendered to the date of the termination, all reimbursable expenses, and reimbursable termination expenses.

**Applicable Law**

Unless otherwise specified, this agreement shall be governed by the laws of North Carolina.