



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

## CONSULTANT AGREEMENT

**CONTRACT ID # A-1920-19**

DATE: January 15, 2020

PARTIES:	MHCSD:	Mountain House Community Services District 230 S. Sterling Dr, Ste 100 Mountain House, CA 95391
	CONSULTANT:	Robertson-Bryan, Inc. 9888 Kent Street Elk Grove, CA 95624

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 December 5, 2019.

2. Scope of Professional Services:

CONSULTANT agrees to provide assistance with the Mountain House Creek Repair Project, 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, 2022, 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 \$66,712 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 prior to acceptance, approval and authorization of payments.

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 and the Federal Tax Payer Identification Number. All invoices must include a detailed description of work performed, indicate number of hours spent, and specify the related task/deliverable from scope of services. 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. MHCSO may assign projects to other consultants or staff at its sole discretion.

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.

MDB  
1-3-20



17. Conflict of Interest Statement:

CONSULTANT covenants that CONSULTANT, its officers or employees or their immediate family, presently has no interest, including, but not limited to, other projects or independent contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONSULTANT further covenants that in the performance of this Agreement no person having any such interest shall be employed or retained by CONSULTANT under this Agreement. CONSULTANT shall not hire MHCS D's employees to perform any portion of the work or services provided for herein including secretarial, clerical and similar incidental services except upon the written approval of MHCS D. Performance of services under this Agreement by associates or employees of CONSULTANT shall not relieve CONSULTANT from any responsibility under this Agreement.

18. Drug Free Workplace:

CONSULTANT shall comply with the provisions of Government Code Section 8350 et seq., otherwise known as the Drug-Free Workplace Act.

19. Force Majeure

It is agreed that neither party shall be responsible for delays in delivery or acceptance of delivery or failure to perform when such delay or failure is attributable to Acts of God, war, strikes, riots, lockouts, accidents, rules or regulations of any governmental agencies or other matters or conditions beyond the control of either the seller/contractor or the purchaser.

20. Form Law:

The Laws of the State of California shall govern this Agreement. Venue is San Joaquin County. The provision of this paragraph shall survive expiration or other termination of this Agreement regardless of the cause of such termination.

21. Documents:

All drawings, specifications, documents and other memoranda or writings relating to the work and services hereunder, shall remain or become the property of the MHCS D whether executed by or for the CONSULTANT for MHCS D, or otherwise by or for the CONSULTANT, or by or for a subcontractor operating under the CONSULTANT'S supervision, or direction, and all such documents and copies thereof shall be returned or transmitted to MHCS D forthwith upon termination or completion of the work under this Agreement.

22. Attorneys' Fees:

If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which such party may be entitled.

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:

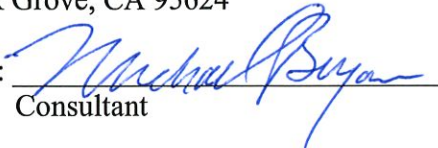
No officer, official, employee or agent of District shall be personally liable to CONSULTANT in the event of any default or breach by District or for any amount which may become due to CONSULTANT pursuant to this Agreement.

27. Entire Agreement and Modification:

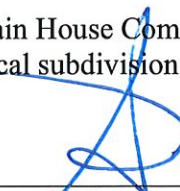
This Agreement supersedes all previous Agreements either oral or in writing and constitutes the entire understanding of the parties hereto. No changes, amendments or alterations shall be effective unless in writing and signed by both parties.

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

Robertson-Bryan, Inc.  
9888 Kent Street  
Elk Grove, CA 95624

By:   
Consultant

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

By:   
Steven J. Pinkerton  
General Manager

Date: 1-15-2020

Approved as to Form:

By:   
John Bakker  
Interim General Counsel



9888 Kent Street • Elk Grove CA 95624  
Phone (916) 714-1801 • Fax (916) 714-1804

December 5, 2019

**DELIVERED BY EMAIL**

Mr. Doug Louie  
Operations and Maintenance Superintendent  
Mountain House Community Services District  
230 S. Sterling Drive, Suite 100  
Mountain House, CA 95391

**Subject: Proposal to Continue to Assist Mountain House Community Services District  
with the Mountain House Creek Repair Project**

Dear Mr. Louie,

Please accept this proposal from Robertson-Bryan, Inc. (RBI) to continue to provide professional services to the Mountain House Community Services District (MHCS D) associated with its Mountain House Creek Repair Project. RBI understands that MHCS D seeks to plan and obtain approval for completing a series of improvement and maintenance tasks within the Mountain House Creek corridor, where storm water basins and associated berms are located. These tasks include establishing ingress/egress points allowing access to Mountain House Creek and storm water BMP basins, maintenance and repairs of storm water BMP basins and berms, maintenance within the Mountain House Creek riparian corridor, debris and trash removal, and weed abatement. RBI also understands that a critical component of completing these tasks and reducing future maintenance and repair efforts is to collaborate with resource agencies and residents on finding solutions to reducing the effects of the local beaver population, which are the cause of many of the repair and maintenance issues.

Based on receipt of the Mountain House Creek Repair Project Request for Proposal document, RBI understands that the specific project components MHCS D seeks to complete are as follows:

- Initial Project Start-Up;
- Creek Access and Staging Area Improvements;
- Waters of the US Maintenance Project;
- Berm and Bank Protection Devices;
- BMP Wet Pond Berm and Bank Repairs; and
- Review of Long-Term Maintenance Scope and Specifications.

It's important to note that much of the work associated with repair and maintenance of the Mountain House Creek improvements will require some level of permitting from State and federal resource agencies (i.e., California Department of Fish Wildlife (CDFW), United States

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Army Corps of Engineers (USACE), United States Fish and Wildlife Service (USFWS), and Regional Water Quality Control Board (RWQCB)). The Mountain House Creek Repair Project Request for Proposal document states that preparation and applying for permits would fall under Task 1: Initial Project Start-up, but many of the subtasks that are scoped under Tasks 2-6 will provide information necessary to complete permit applications. Therefore, a seventh task is included here, applying for and securing the permits necessary to complete the creek repair and maintenance., which will be completed after Tasks 1-6 have been completed.

Each of these seven tasks are described in detail below under scope of services.

## **BACKGROUND**

Under a previous contract, RBI and Madrone Consultants staff, compiled and reviewed all of the available permitting applications and documents from when the initial creek improvements were constructed. By doing so, RBI was able to determine the original design and intent of the creek improvements, including those associated with the storm water system. The premise of the initial design and construction was that there would be separation between “Waters of United States” (i.e., jurisdictional waters, which in this case is Mountain House Creek) and the storm water system and other creek improvements (i.e., non-jurisdictional waters). In doing so, this would theoretically allow for maintenance and operation of the storm water system, which is located within the bank and bed of the Mountain House Creek, without requiring federal and state permits.

## **SCOPE OF SERVICES**

### **TASK 1: INITIAL PROJECT START UP**

Start-up tasks are those necessary to complete prior to the initiation of Tasks 2-7 below because they will provide information that will inform and guide completion of Tasks 2-7. As an example, the biological survey will assist in guiding the location of where creek access and staging areas should be constructed based on the location of special status plants and wildlife.

Subtasks under Task 1 include preparing for and attending meetings with MHCS staff to discuss and prepare for the MHCS Creek Repair Project, completion of a thorough biological survey to determine what special status species occur in the work area, recommend options for public outreach and information, and completion of a wetland delineation, as described above.

*Task 1 Deliverables:* Draft and Final Wetland Delineation Report; Special Status Species Survey Report.



**NOTE: TASKS 2-6 BELOW CAN BE WORKED ON IN UNISON.**

#### **TASK 2: CREEK ACCESS AND STAGING AREA IMPROVEMENTS**

An important element of completing future repairs and maintenance to the Creek Improvement Project is to provide permanent access and staging areas for the necessary work in the creek bed. To do this, RBI staff will work closely with MHCS staff in the development of a draft and final Work Plan to construct permanent access and staging areas. Subtasks necessary to complete the access and staging areas Work Plan include:

- discussions with MHCS staff to determine the number and type of access points and staging areas needed and in what locations; and
- site visit to discuss the most appropriate and least impactful locations to construct access and staging areas.

*Task 2 Deliverables:* Draft and Final Work Plan for construction and maintenance of creek access points and staging areas.

#### **TASK 3: WATERS OF THE UNITED STATES MAINTENANCE PROJECT**

Mountain House Creek is a water of the US and, therefore, is considered a jurisdictional wetland. Working in and around jurisdictional wetlands can be complex due to the various rules and regulations associated with jurisdictional waters. Typically, maintenance activities in a creek bed that are limited to hand removal of debris and doesn't require placement of equipment within the bed or banks, doesn't require permits from the federal agencies but would require a streambed alteration agreement (permit) from CDFW. Alternatively, any action that includes placement of fill material in the creek bed would require federal permits in addition to a CDFW permit. Therefore, an important element under this task will be to explore all of the possible ways in which debris can be removed from the creek and then prepare a Work Plan describing what types of debris will be removed, how, and from which areas. The completed Work Plan will then guide MHCS in determining which permits are necessary for the maintenance of Mountain House Creek.

*Task 3 Deliverables:* Draft and Final Work Plan for maintenance of Mountain House Creek.

#### **TASK 4: BERM AND BANK PROTECTION DEVICES**

One of the primary drivers of the necessary repair and maintenance of the Creek Improvements is the damage caused by the local beaver population. Beavers have moved into the area, built dams, destroyed berms, and burrowed into the creek banks causing significant damage and causing concern for future impacts. Work activities under this task will include providing recommendations on permanent designs of devices for the protection of storm water conveyance BMP wet pond berms and adjacent slopes from beaver activity and on the effective design of pond leveling devices for use in storm water conveyance BMP wet ponds. In addition, because placement and operation of protection and pond leveling devices could

require permits, a draft and final Work Plan for the placement of berm and bank protection devices will be developed to assist in guiding permit applications.

*Task 4 Deliverables:* Draft and Final Work Plan for placement of berm and bank protection devices in Mountain House Creek.

#### **TASK 5: BMP WET POND BERM AND BANK REPAIRS**

As discussed above, beavers have destroyed the berms that separate Mountain House Creek from the storm water system and have caused significant damage to the banks of Mountain House Creek. These berms and banks segments must be repaired. A draft and final Work Plan will be prepared to guide these repair activities and prepare for permit applications. In order to prepare a Work Plan, RBI proposes to conduct a site visit with MHCS D staff to map out all of the areas that need repair and assist with determining the best methodologies for completing the repairs. The Work Plan will include a map of all areas that need repair, what types of equipment and fill will be used to complete the repairs, and expected seasonal timing of the repairs.

*Task 5 Deliverables:* Draft and Final Work Plan for Mountain House Creek berm and bank repairs.

#### **TASK 6: REVIEW OF LONG-TERM MAINTENANCE SCOPE AND SPECIFICATIONS**

Long-term maintenance of the Creek Improvements include weed abatement, cattail and reed removal and other work tasks associated with the keeping the Creek Improvement area in good, functional condition. RBI staff will meet with MHCS D and prepare a draft and final Work Plan that will include a list of all of the necessary long-term maintenance actions, where these actions will occur, the preferred timing of these actions, and the methods for completing these actions. Once complete the final Work Plan will guide MHCS D in which, if any, permits are necessary to complete long-term maintenance. In addition, RBI will assist MHCS D will estimating the probably long-term costs of long-term maintenance.

*Task 6 Deliverables:* Draft and Final Maintenance Plan for the long-term maintenance of Mountain House Creek Improvements

#### **TASK 7: PREPARATION OF PERMIT APPLICATIONS AND ASSISTANCE WITH PERMIT COMPLIANCE**

Once all of the individual Work Plans (Tasks 2-6) are complete, along with the Biological Survey and the Wetland Delineation (Task 1), MHCS D will be ready to proceed with permit applications. All repair and maintenance activities and locations will be defined, an understanding of where special status species occur will be known, and the wetland delineation will clearly define the demarcation between jurisdictional and non-jurisdictional waters. Based on this information a determination will be made on which permits are needed and what activities need to be authorized under each permit. Given the complicated nature of

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the project site, the process for making this determination will include “pre-consultation” meetings/discussions with the various resource agencies.

Based on information already know, a CDFW streambed alteration agreement will be required. An USACE 404 permit, a RWQCB 401 permit, USFWS consultation under Section 10, and potential participation in the San Joaquin Handicap Conservation Plan will be determined by reviewing the Work Plans completed under Tasks 2-6 above and through pre-consultation discussions with the various agencies.

Once necessary permits have been applied for and received, RBI will prepare a permit compliance document that will assist MHCS D staff with complying with their various permits. Information to be contained in the permit compliance document will include work windows, geographic limits to work activities, methodology allowed for completing work activities, timing and sequencing of work activities, reporting guidelines for permits, etc. In addition, work under this task includes assisting MHCS D with estimating the probable costs for completion of Tasks 2-6.

*Task 7 Deliverables:* All necessary permit applications; Permit Compliance Document

## **TASK 8: PROJECT MANAGEMENT**

Project management activities include coordination by phone and fax with other project team members, scheduling of meeting times, review of work products, budget and schedule tracking, and other duties to coordinate/administer the project.

## **SCHEDULE**

RBI can begin providing professional services upon receipt of a signed contract or written authorization to proceed.

## **CONTRACT AND BILLING ARRANGEMENT**

RBI recommends a time-and-materials contract, not to exceed **\$66,712** without written authorization, to provide the professional services outlined herein (**Attachment 1**). RBI will invoice the MHCS D monthly according to its 2020 rates for all RBI work activities completed in the prior month (**Attachment 2**).

If you have any questions regarding this proposal, please do not hesitate to contact me at (916) 405-8924. We look forward to working with you on this important effort.

Sincerely,  
Keith Whitener,  
Associate

Attachment 1: Detailed Budget  
Attachment 2: RBI 2020 Fee Schedule

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**ATTACHMENT 1**

MHCSD - Mountain House Creek Repair Project

	Robertson-Bryan, Inc.			
	Principal Scientist	Associate	Senior Scientist I	RBI Subtotal
<b>PROFESSIONAL SERVICES</b>				
Task 1: INITIAL PROJECT START UP		24	12	\$ 8,688.00
Task 2: CREEK ACCESS AND STAGING AREA IMPROVEMENTS	2	16		\$ 4,526.00
Task 3: WATERS OF THE UNITED STATES MAINTENANCE PROJECT	2	16		\$ 4,526.00
Task 4: BERM AND BANK PROTECTION DEVICES		24	4	\$ 6,848.00
Task 5: BMP WET POND BERM AND BANK REPAIRS	2	24	2	\$ 6,962.00
Task 6: REVIEW OF LONG-TERM MAINTENANCE SCOPE AND SPECIFICATIONS	2	12		\$ 3,538.00
Task 7: PREPARATION OF PERMIT APPLICATIONS AND ASSISTANCE WITH PERMIT COMPLIANCE		40	24	\$ 15,400.00
Task 8: PROJECT MANAGEMENT	2	20	2	\$ 5,974.00
Total Hours:	10	176	44	
Rate:	\$ 287.00	\$ 247.00	\$ 230.00	
<b>RBI Labor Subtotal:</b>	<b>\$ 2,870.00</b>	<b>\$ 43,472.00</b>	<b>\$ 10,120.00</b>	<b>\$ 56,462</b>
<b>DIRECT EXPENSES</b>				
Mileage		\$ 250.00		
Wetland Delineation - Madrone Consultants with 10% mark-up		\$ 10,000.00		
<b>Direct Expenses Subtotal:</b>		<b>\$ 10,250.00</b>		
<b>TOTAL BUDGET</b>		<b>\$ 66,712</b>		

**ATTACHMENT 2**  
**2020 FEE SCHEDULE**

Charges for project work performed by Robertson-Bryan, Inc. (RBI) will be calculated and billed at the hourly rates shown below.

<b>PROFESSIONAL SERVICES</b>	<b>RATE/HOUR</b>
◆ Managing Partner	\$302.00
◆ Partner	\$295.00
◆ Principal Engineer/Scientist	\$287.00
◆ Resource Director	\$259.00
◆ Associate	\$247.00
◆ Senior Engineer/Scientist II	\$242.00
◆ Senior Engineer/Scientist I	\$230.00
◆ Project Engineer/Scientist III	\$214.00
◆ Project Engineer/Scientist II	\$205.00
◆ Project Engineer/Scientist I	\$185.00
◆ Staff Engineer/Scientist II	\$172.00
◆ Staff Engineer/Scientist I	\$157.00
◆ Technical Analyst	\$151.00
◆ Graphics/GIS	\$138.00
◆ Laboratory Compliance Specialist	\$134.00
◆ Administrative Assistant	\$99.00

Up to ten percent (10%) of subcontractor charges will be added to cover administrative costs. Hourly rates will be increased by a minimum of fifty percent (50%) for depositions, trials, and hearings. Rates will be adjusted annually. Rates are adjusted annually, effective December 16<sup>th</sup>.

Invoices will be issued on a monthly basis for all work performed on a project. Payment is due upon receipt of the invoice.