A-08-583

MOUNTAIN HOUSE COMMUNITY SERVICES DISTRICT CONTRACT FOR PROFESSIONAL SERVICES

This Contract is made this 12th day of August, 2008, by and between Mountain House Community Services District, a community services district formed under the California Community Services District Law, (hereinafter called "MHCSD"), and Neumiller & Beardslee, a professional corporation (hereinafter called "Attorney").

- 1. **Retention of Attorney**. MHCSD hereby retains Attorney effective December 5, 2008 to perform the duties of Attorney, as General Counsel for MHCSD, on the terms and conditions specified herein. Attorney hereby agrees to perform the duties of General Counsel for MHCSD, on the terms and conditions specified herein.
- 2. **Duties to be Performed**. Attorney, in the person Michael F. McGrew, shall perform all the normal and usual duties of Attorney and General Counsel for MHCSD and shall serve as chief legal advisor to MHCSD, except:
- A. When, in the opinion of MHCSD, it would be more appropriate to hire outside specialist counsel. In such event, Attorney shall assist MHCSD in selecting such outside specialist counsel. Such outside specialist counsel may serve in lieu of Attorney on any particular matter, or may assist Attorney; or,
- B. When counsel for MHCSD is otherwise provided, as in the case of counsel provided by insurers in connection with various insurance policies held by MHCSD; or,
- C. When a conflict exists such that Attorney is prohibited by law or rules of professional conflict from representing or advising MHCSD. In the event of certain conflicts, Paragraph 7 below shall apply.
- 3. Specific Attendance at Meetings. Attorney shall, in person of Michael F. McGrew (except that Attorney with the consent of the General Manager retains the right, in the event of irreconcilable schedule conflicts or absence of Michael F. McGrew, to substitute another principal or associate of Attorney), attend meetings of MHCSD,
- 4. **Term**. This Contract shall commence December 5, 2008 and shall continue indefinitely, except that MHCSD may terminate this Contract, at any time, with or without cause, by written notice to Attorney, and shall have no liability for such termination except for services performed prior to termination. Attorney may terminate this Contract, at any time, by written notice to MHCSD at least thirty (30) days prior to termination, and shall have no liability for such termination.
- 5. **Compensation**. MHCSD shall pay Attorney for services performed and on the following basis:

- A. For actual hours worked, including travel time, MHCSD shall pay Attorney \$235.00 per hour for time worked by principals of Attorney, \$195.00 per hour for time worked by associates of Attorney, and \$95.00 per hour for time worked by law clerks or paralegals of Attorney, all in minimum units of one-tenth (1/10) hour. For matters of litigation, MHCSD shall pay Attorney the fees set forth in Attorney's then current standard fee schedule.
- B. MHCSD shall pay Attorney within ninety (90) days of receipt of any statement from Attorney. Attorney shall bill monthly, with an itemized bill, sufficient to show services performed, person performing them, and charges, in a form specified by MHCSD.
- C. MHCSD further agrees to reimburse Attorney for out-of-pocket expenses incurred by Attorney in performing services for MHCSD including, but not limited to, copying costs, long-distance telephone calls, and mileage at \$.70 per mile. For single expenses in excess of \$250.00, MHCSD agrees to reimburse the provider thereof directly.
- D. Attendance by Attorney at courses, seminars or conventions, unless specifically requested by MHCSD, shall be at Attorney's sole expense.
- E. The rates specified in this Paragraph shall remain in effect until modification or termination of Contract, whichever is earlier.
- 6. Status. Attorney is an independent contractor, and neither Attorney nor any individuals employed by Attorney is or shall be an employee of MHCSD. Neither Attorney nor any individual employed by Attorney shall receive or be entitled to receive retirement or pension benefits, Public Employees Retirement System benefits, workers' compensation insurance coverage, health insurance coverage, or any other benefit from MHCSD except the compensation specified in Paragraph 5 above. Attorney shall maintain its own workers' compensation and malpractice insurance in accordance with California law.
- 7. Conflict. In the event any individual employed by Attorney shall represent any person appearing before, or negotiating with, MHCSD, Attorney shall be entitled to continue such representation except where Attorney or any employee of Attorney has knowledge of confidential information relating to the matter for which such representation is being made (obtained in the performance of duties as MHCSD Attorney), and except neither Attorney nor any employee of Attorney shall prosecute a claim or lawsuit against, or defend a lawsuit brought by MHCSD against such other person. In the event such representation occurs, and neither of the exceptions in this Paragraph 7 apply, Attorney shall withdraw from representation of its own choice for that matter. In the event such representation occurs, and either or both of the exceptions in this Paragraph 7 apply, Attorney shall withdraw from representations of both MHCSD and such other person.
- 8. **Provision of Material**. MHCSD shall provide Attorney, at MHCSD's sole cost and expense, agendas, notices, reports, and all other materials necessary to enable Attorney to carry out the duties of MHCSD Attorney.

9. Notice. Except as otherwise expressly provided by law, any and all notices or other communication required or permitted by this Contract or by law to be served on a delivered or given to a party by another party to this Contract shall be in writing, and shall be deemed duly served, given or delivered when personally delivered to the party to whom it is directed or, in lieu of such personal service, two (2) days after such written notice is deposited in the United States mail, first class, postage pre-paid, addressed to the party at the address identified for the party in this Contract. Any party may change their address for the purpose of this Paragraph by giving written notice of such change to each other party in the manner provided in this Paragraph.

To MHCSD:

General Manager

Mountain House Community Services District

230 South Sterling Drive, Suite 100

Mountain House, CA 95391

To Attorney:

Neumiller & Beardslee A Professional Corporation

Post Office Box 20

Stockton, CA 95201-3020

- 10. Excuse of Default. Should the performance of the obligations of any party under this Contract be prevented or delayed by act of God, war, civil insurrection, fire, flood, storm, strikes, lockouts, or by any law, regulation or order of any federal, state, county, municipal authority, or by any other cause beyond the control of such party, such party's performance under this Contract shall be excused to the extent it is so prevented or delayed.
- 11. No Other Relationship Created. Except as otherwise specifically set forth in this Contract, no partnership, joint venture, employment franchise, agency, corporation, association, or other relationship is intended to have been created between or among the parties as a result of this Contract.
- 12. **Choice of Law**. This Contract shall be governed by the procedural and substantive laws of the State of California.
- 13. Renegotiation of Contract. It is specifically provided that the Attorney may renegotiate this Contact, including rates for services.

NEUMILLER & BEARDSLEE

A PROFESSIONAL CORPORATION

MICHAEL F. MCGREW

MOUNTAIN HOUSE COMMUNITY

SERVICES DISTRICT

DALL M CENC

General Manager