

3. Term of Agreement:

This Agreement shall commence on the date of execution by the MHCSD General Manager, and continue until June 30, 2021, 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 \$24,643.20 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 MHCSD.

7. Invoicing:

CONSULTANT shall submit one original and one copy of each invoice to: MHCSD, 251 E. Main Street, 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 MHCSD. 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 MHCSD. The CONSULTANT shall not have any claim under this Agreement or otherwise against MHCSD 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. MHCSD 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.

13. Insurance:

CONSULTANT, if required to work on MHCS D property during the contract period, shall submit proof of insurance to MHCS D showing Mountain House Community Services District, its officers, agents and employees named as Additional Insured. Insurance policy shall contain provisions that such policy may not be canceled except after thirty (30) days written notice to the MHCS D, ten (10) days notice if cancellation is due to nonpayment of premium.

CONSULTANT agrees that CONSULTANT is responsible to insure that the requirements set forth in this article/paragraph are also be met by CONSULTANT’S subcontractors/consultants who provide services pursuant to this Agreement. Copies of insurance certificates shall be filed with the MHCS D.

General Liability Limits

1.	BI & PD combined/per occurrence /Aggregate	\$1,000,000 \$1,000,000
2.	Personal Injury/Aggregate	\$1,000,000
3.	Professional Liabilities	\$1,000,000

Workers’ Compensation and Employer’s Liability Statutory requirement

14. Discrimination:

CONSULTANT shall not discriminate in the provision of service or in the employment of persons engaged in the performance of this Agreement on account of race, color, national origin, ancestry, religion, gender, marital status, sexual orientation, age, physical or mental disability in violation of any applicable local, state or federal laws or regulations.

15. Notices:

Any notice required to be given pursuant to the terms and provisions hereof shall be in writing and shall be effected by personal delivery or by first class mail, registered or certified, postage prepaid, return receipt requested. Unless otherwise designated by either party in writing, such notices shall be mailed as shown on the first page of this Agreement.

16. Termination:

If the CONSULTANT breaches or habitually neglects the CONSULTANT’S duties under this Agreement without curing such breach or neglect upon fifteen (15) working days written notice, the MHCS D may, by written notice, immediately terminate this Agreement without prejudice to any other remedy to which MHCS D may be entitled, either at law, in equity, or under this Agreement. In addition, either party may terminate this Agreement upon sixty (60) days written notice to other party.

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.

Consultant

DocuSigned by:
By: Ernesto Martinez
8413135C4A6E49C...
Consultant

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

DocuSigned by:
By: Steve Pinkerton
4DAD8C075F124D8...
Steven J. Pinkerton
General Manager

12/21/2020
Date: _____



Date: 12.18.20

PROPOSAL FOR “NOT TO EXCEED” AGREEMENT BETWEEN THE CITY OF MOUNTAIN HOUSE AND PRECISION CONCRETE CUTTING (PCC)

OVERVIEW

Uneven sidewalks caused by ground settling and tree roots cause a potential hazard to pedestrians. Displaced sidewalks cause problems for both public and private entities in the form of trip and fall liability exposure.

It is proposed that the City of Mountain House and PCC enter into an agreement whereby PCC will assess, sidewalks as identified and requested by City staff. The price for these services shall not exceed the dollar amount and quantity defined in the “Proposal Detail” section below.

BACKGROUND INFORMATION ON PRECISION CONCRETE CUTTING

PCC has been assessing and repairing sidewalks since 1990. The company performs work throughout the United States and with dozens of cities in California.

PCC is the leader in sidewalk asset management. We specialize in assessing sidewalk infrastructure and repairing uneven sidewalks. Our unique saw-cutting method for correcting off-set sidewalk panels leaves behind ADA compliant results for a fraction of the cost of new concrete. Our clients benefit from detailed GIS maps that allow them to create a GIS database to cost effectively manage their sidewalk infrastructure.

ASSESSMENT SERVICES

PCC technicians will walk every panel in the project area and visually assess potential tripping hazards and damage. PCC will provide a GIS compatible report that list each location identified including a photo, exact location, off-set height and square foot amount for replacement locations.

Billing Units: Services are billed in “Inch Feet”. An inch foot is calculated by measuring the average height of the sidewalk off-set and multiplying this average by the length of the cut. Example: A sidewalk off-set on a 4-foot wide sidewalk that consists of a 0.5” rise on one side, and tapers down to a zero rise on the other is calculated as follows:

$$\frac{0.5" + 0"}{2} \times 4\text{ft} = 1 \text{ inch-foot}$$

Unit price for sidewalk shaving: \$35 per inch foot (areas to be approved by City to shave post assessment)

PROPRIETARY MOBILE PHONE SOFTWARE

PCC has developed proprietary mobile software useable across multiple platforms (Android, iPhone, iPad, Smart Phone, etc.)

- Provides GPS Coordinates – Integrates with GIS systems
- Mapping – Provides detailed location data plotted with Google Maps
- Detailed Reporting – Provides specific and detailed data on measurements for every trip hazard
- Addresses – The software gives the address and longitude / latitude of each trip hazard location





- Additional Data - Records other data, e.g. spalling, cracks, replacements or other data you need
- Sidewalk Asset Management – PCC offers complete sidewalk asset management

PROPRIETARY AND PATENTED REPAIR METHOD

To Date, PCC has been awarded 8 patents by the US Patent and Trademark Office on our trip hazard removal equipment and process. The following is each patent description and number where they can be reviewed on the US Patent office web site – www.uspto.gov

6,827,074 - Hub and blade combination patent
 6,896,604 - Dust hood patent
 7,000,606 - Cutting apparatus and broadening patent
 7,143,760 - Method patent
 7,201,644 - Variations and broadening patent
 7,402,095 - Extended methods patent
 9,759,559 - Stand up measuring gauge digitized readout
 9,494,407 - Stand up measuring gauge

PROPOSAL DETAILS

Contract amount: Total charge for services rendered shall not exceed \$24,643.20

NH	Neighborhood Name	Sidewalk miles	unit price per sidewalk mile	Total cost
NH F	Wicklund	15.93	x \$340	\$5,416.20
NH E	Bethany	20.63	x \$340	\$7,014.20
NH G	Altamont	16.61	x \$340	\$5,647.40
<u>NH H</u>	Questa	<u>19.31</u>	<u>x \$340</u>	<u>\$6,565.40</u>
Totals		72.48	x \$340	\$24,643.20

Unit price for sidewalk assessments: \$340 per sidewalk mile w/ incurred discount for the month of December

Assessment details:

- Provides GPS Coordinates – Integrates with GIS systems
- Mapping – Provides detailed location data plotted with Google Maps
- Detailed Reporting – Provides specific and detailed data on measurements for every trip hazard
- Addresses – The software gives the address and longitude / latitude of each trip hazard location
- Additional Data - Records other data, e.g. spalling, cracks, replacements or other data you need
- Sidewalk Asset Management – PCC offers complete sidewalk asset management

LIMITATIONS

PCC removes only those trip hazards specifically requested or approved by customers, and therefore makes no guarantee or representation that areas are free of trip hazards after the work is completed. It is our customers' responsibility to provide proper access and PCC assumes no liability for trip hazards that cannot be repaired due to parked vehicles or other obstacles preventing safe and practical access. In such cases, PCC returns once to attempt completion of repairs that could not be completed the first time. Additionally, it is recognized that after completion of the work, the concrete trip hazards may and frequently do continue to move naturally over time due to roots, water, freezing, pipes, and other natural or man-made causes. PCC is





not responsible for movement or changes in the sidewalk and is not liable for any related claims, losses, damages or liabilities thereto pertaining.

Precision Concrete Cutting is committed to providing the highest quality service to our customers. Should you have any questions or comments, please do not hesitate to contact us.

PCC Representative:

YOUR REPRESENTATIVE:

[Ernesto Martinez](#)

X _____

