



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

CONSULTANT AGREEMENT

CONTRACT ID # A-2021-12

DATE: July 10, 2020

PARTIES:	MHCSD:	Mountain House Community Services District 251 E. Main Street 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 April 08, 2020.

2. Scope of Professional Services:

CONSULTANT agrees to provide NPDES Compliance Services, 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, 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 \$22,320 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, 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 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 MHCSD. 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 MHCSD. 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 MHCSD, 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 MHCSD'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, MHCSD 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 MHCSD's alleged negligence, or wrongful acts related to or in connection with MHCSD's performance of duties under the terms and conditions of this Agreement.

13. Insurance:

CONSULTANT, if required to work on MHCSD property during the contract period, shall submit proof of insurance to MHCSD 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 MHCSD, 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 MHCSD.

General Liability Limits

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

<i>Workers' Compensation and Employer's Liability</i>	Statutory requirement
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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 MHCSD may, by written notice, immediately terminate this Agreement without prejudice to any other remedy to which MHCSD 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

By: 

Consultant

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

By: 

Steven J. Pinkerton
General Manager

Date: 8/21/20

Approved as to Form:

By: _____

John Bakker
Interim General Counsel

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.

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

Consultant

By: Michael Bryan
Consultant

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

By: Steven J. Pinkerton
General Manager

Date: 8/21/20

Approved as to Form:

By: John Bakker
Interim General Counsel



April 8, 2020

DELIVERED BY EMAIL

Mr. Nader Shareghi
Public Works Director
Mountain House Community Services District
251 E. Main Street
Mountain House, CA 95391

Subject: Proposal to Provide NPDES Permit Compliance Services During Fiscal Year 2020–2021

Dear Nader:

Robertson-Bryan, Inc. (RBI) has prepared this proposal to provide NPDES permit compliance services to the Mountain House Community Services District (MHCS D) during fiscal year 2020–2021 (FY20/21).

The NPDES permit for the Mountain House Wastewater Treatment Plant (MHWWT P) contains annual reporting requirements for mercury and salinity. In addition, RBI is assisting the MHCS D with obtaining a Thermal Plan Exception to allow for alternate effluent temperature limitations in the NPDES permit. Finally, RBI provides on-call services to the MHCS D to assist with NPDES permit-related compliance issues as they arise. Thus, RBI proposes the following tasks for FY20/21.

- Task 1: Mercury Compliance
- Task 2: Salinity Compliance
- Task 3: Thermal Plan Exception
- Task 4: On-call Services

Based on RBI having negotiated the current NPDES permit with the Central Valley Water Board on behalf of the MHCS D, and having prepared past and current permit-required compliance work plans, programs, and progress reports, RBI can efficiently and cost-effectively assist the MHCS D in completing the above-cited tasks. RBI's scope-of-work and budget for services are provided below.

I. SCOPE OF WORK

TASK 1: MERCURY COMPLIANCE

The MHWWT P NPDES permit contains multiple provisions related to mercury pollution prevention and compliance: (1) Phase 1 Methylmercury Control Study; (2) Mercury Exposure Reduction Program; and (3) Mercury pollution prevention plan (PPP). The MHCS D is participant in the CVCWA Methylmercury Control Study to address #1 and the Central Valley Water Board's Mercury Exposure Reduction Program to address #2. The MHCS D is

responsible for the Mercury PPP and submitted an updated PPP in May 2013. The NPDES permit requires submittal of an annual progress report for the Methylmercury Compliance Schedule/Mercury PPP on October 20 annually.

RBI will prepare the annual Methylmercury Compliance Schedule/Mercury PPP for the MHCSO. This report is due on October 20, 2020. RBI will prepare a draft report for MHCSO review, and then submit a final report in MS Word format for submittal to the Central Valley Water Board on MHCSO letterhead.

TASK 2: SALINITY COMPLIANCE

The MHWWTNP NPDES permit requires the MHCSO to maintain a Salinity Reduction Plan and submit an annual update and progress report that describes: (1) the effectiveness of the pollution prevention plan and any updates to the salinity PPP; (2) a discussion of progress in meeting the salinity reduction goal; (3) and a discussion of MHCSO's participation in CV-SALTS. This progress report is due June 1 of each year.

RBI will prepare a draft Salinity Reduction Plan update and progress report for MHCSO review and comment. RBI will then prepare a final Salinity Reduction Plan update and progress report and email it in portable document format (PDF) to the MHCSO for submittal to the Central Valley Water Board. The plan update and progress report will be based on the 2020 update and report being prepared by RBI.

TASK 3: THERMAL PLAN EXCEPTION

The MHCSO's Thermal Plan Exception Justification Report, prepared by RBI, has undergone federal and state fish agency reviews, as requested by Central Valley Water Board staff. Central Valley Water Board staff are preparing a tentative Thermal Plan Exception, to be followed by revisions to the NPDES permit to include modified effluent temperature limitations. If adopted by the Central Valley Water Board, then the State Water Resources Control Board then considers a resolution to approve the exception adopted by the Central Valley Water Board at its own Board meeting.

RBI will continue to work with Central Valley Water Board staff to support processing the Thermal Plan Exception through the various approvals. This includes reviewing and editing Central Valley Water Board revisions, and preparing draft findings for insertion into permit. In addition Dr. Michael Bryan of RBI will attend the Central Valley Water Board hearing at which the Thermal Plan Exception and revised NPDES permit will be considered for adoption, to provide support to Central Valley Water Board staff regarding the technical basis for the exceptions, should there be questions from Board members. Dr. Bryan also will attend the State Water Resources Control Board meeting at which they will consider adoption of a resolution concurring with the Central Valley Water Board's adoption of the Thermal Plan exception.

TASK 4: ON-CALL SERVICES

RBI will provide on-call services needed as part of the MHCSD's NPDES permit compliance activities and wastewater operations. The types of services that RBI may provide under this task include: responding to operations questions, review of monthly discharger self-monitoring reports, drafting responses to notices of violations or other correspondence with the Central Valley Water Board, and advising the MHCSD of Central Valley Water Board or State Water Resources Control Board actions that might affect the MHWWTNP NPDES permit or future operations. This task is intended for RBI to be able to be responsive to compliance issues as they arise, taking advantage of timely needs for actions/consultations, that might otherwise be missed while waiting for contract modifications. Upon initiation of services under this task, RBI may also submit a project-specific proposal to fund completion of the related services, should the scope of the services needed exceed this task budget.

II. SCHEDULE

RBI can begin providing professional services associated with the tasks defined herein upon receipt of a contract or written authorization to proceed.

III. CONTRACT AND BILLING ARRANGEMENT

RBI recommends a time-and-materials contract, not to exceed **\$22,320** without written authorization, to provide the professional services outlined herein (see Attachment 1 for a detailed project budget). RBI will invoice the MHCSD monthly according to its 2020 rates (Attachment 2) for all RBI work activities completed in the prior month.

If you have any questions regarding this proposal, please do not hesitate to contact me at (916) 714-1802 or Michelle Brown at (916) 405-8933. We look forward to continuing to provide the MHCSD with NPDES permit compliance services.

Sincerely,



Michael D. Bryan, Ph.D.
Managing Partner

Attachment 1: RBI Budget
Attachment 2: 2020 Fee Schedule

ATTACHMENT 1

RBI Budget

	Managing Partner	Associate Engineer	Project Engineer III	RBI Subtotal
PROFESSIONAL SERVICES				
Task 1: Mercury Compliance		2	4	\$ 1,350
Task 2: Salinity Compliance		2	12	\$ 3,062
Task 3: Thermal Plan Exception	24	8		\$ 9,224
Task 4: On-Call Services	4	16	16	\$ 8,584
Total Hours:	28	28	32	
Rate:	\$ 302	\$ 247	\$ 214	
Labor Subtotal:	\$ 8,456	\$ 6,916	\$ 6,848	\$ 22,220
DIRECT EXPENSES				
Mileage	\$ 100			
Direct Expenses Subtotal	\$ 100			
TOTAL BUDGET	\$ 22,320			

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.

Professional Services	Rate/Hour
♦ 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
♦ Intern	\$64.00

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 16th.

INVOICING AND PAYMENTS

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