



Contractor shall complete the Work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Contractor to complete the services required by this Agreement shall not affect MHCS D's right to terminate the Agreement, as referenced in Section 8.

- 2.3 Standard of Performance. Contractor shall perform all Work in a first-class manner in conformance with the standards of quality normally observed by a person practicing in Contractor's profession.
- 2.4 Inspection. All Work performed and materials (if any) provided by Contractor shall be subject to inspection and approval by MHCS D.
- 2.5 Contractor's Warranties and Guarantee. Contractor warrants to MHCS D that all materials and equipment furnished under this Agreement will be new unless MHCS D agrees otherwise in writing, and that all Work will be of good quality, free from faults and defects and in conformance with this Agreement. All Work not so conforming to these standards may be deemed defective by MHCS D. If required by MHCS D, the Contractor shall furnish to MHCS D satisfactory evidence as to the kind and quality of materials, equipment, and methods of installation by the Contractor or subcontractors.

Contractor shall guarantee the Work to be free of defects in material and workmanship for a period of one (1) year following MHCS D's acceptance of the Work ("Contractor's Guarantee"). As part of Contractor's Guarantee, Contractor agrees to make, at Contractor's sole cost and expense, all repairs or replacements made necessary by defects in material or workmanship which become evident within the one-year guarantee period.

- 2.6 Assignment of Personnel. Contractor shall assign only competent personnel to perform services pursuant to this Agreement. In the event that MHCS D, in its sole discretion and at any time during the term of this Agreement, desires the reassignment of any such persons, Contractor shall, immediately upon receiving notice from MHCS D of such desire of MHCS D, reassign such person or persons.
- 2.7 Time is of the Essence. Contractor shall devote such time to the performance of the Work as may be reasonably necessary to timely finish the Work, meet the standard of performance provided in Section 2.3 above, and satisfy Contractor's obligations hereunder.
- 2.8 Public Works Requirements. Because the Work described in Exhibit A include "work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work," the services constitute a public works within the definition of Section 1720(a)(1) of the Labor Code. As a result, Contractor is required to comply with the provisions of the Labor Code applicable to public works projects, as further described in Exhibit D. Contractor shall waive, indemnify, hold harmless, and defend MHCS D concerning any liability arising out of Labor Code Section 1720 *et seq.*

### 3. Terms of Payment.

- 3.1 Compensation. MHCS D hereby agrees to pay Contractor a sum not to exceed seventy nine thousand one hundred fifty dollars and twenty seven cents, (\$79,150.27) notwithstanding any contrary indications that may be contained in Contractor's proposal for services to be performed and reimbursable costs incurred under this Agreement. MHCS D shall pay Contractor for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from MHCS D to Contractor for services rendered pursuant to this Agreement. Contractor shall submit all invoices to MHCS D in the manner specified herein. Except as specifically authorized by MHCS D in writing, Contractor shall not bill MHCS D for duplicate services performed by more than one person.

Contractor and MHCS D acknowledge and agree that compensation paid by MHCS D to Contractor under this Agreement is based upon Contractor's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Contractor. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Contractor and its employees, agents, and subcontractors may be eligible. MHCS D therefore has no responsibility for such contributions beyond compensation required under this Agreement.

- 3.2 Invoices. Contractor shall submit invoices not more often than once a month during the term of this Agreement based on the cost for services performed and reimbursable costs incurred prior to the invoice date via e-mail to **mhcldbilling@sjgov.org**. Invoices delivered to any other e-mail address will be deemed undelivered and not paid.

Invoices shall contain the following information:

- a. Contract ID number;
- b. Federal Tax Payer Identification Number;
- c. The beginning and ending dates of the billing period;
- d. A task summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- e. At MHCS D's option, for each Work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the Work, the hours spent by each person, a brief description of the Work, and each reimbursable expense;
- f. The total number of hours of Work performed under the Agreement by Contractor and each employee, agent, and subcontractor of Contractor performing services hereunder; and
- g. The Contractor's signature.

- 3.3 Monthly Payment. MHCS D shall make monthly payments, based on invoices received, for services satisfactorily performed and for authorized reimbursable costs incurred. MHCS D shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above to pay Contractor.
- 3.4 Final Payment. MHCS D shall pay the last ten percent (10%) of the total sum due pursuant to this Agreement within sixty (60) days after completion of the Work and submittal to MHCS D of a final invoice if all services required have been satisfactorily performed.
- 3.5 Total Payment. MHCS D shall pay for the Work performed by Contractor pursuant to this Agreement. MHCS D shall make no payment for any extra, further, or additional service pursuant to this Agreement. In no event shall Contractor submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.
- 3.6 Hourly Rate/Fees. Unless the services provided are for a lump sum or flat fee, fees for Work performed by Contractor on an hourly basis shall not exceed the amounts shown on the compensation cost proposal attached hereto as Exhibit B and incorporated herein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit B, the Agreement shall prevail.
- 3.7 Reimbursable Expenses. Reimbursable expenses are specified in Exhibit B. Reimbursable expenses not listed in Exhibit B are not chargeable to MHCS D. Reimbursable expenses shall not include a mark-up and shall be billed as a direct costs. In no event shall expenses be advanced by MHCS D to the Contractor. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.
- 3.8 Payment of Taxes. Contractor is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 3.9 Payment upon Termination. In the event that MHCS D or Contractor terminates this Agreement pursuant to Section 8, MHCS D shall compensate the Contractor for all outstanding costs and reimbursable expenses incurred for Work satisfactorily completed as of the date of written notice of termination. Contractor shall maintain adequate logs and timesheets to verify costs incurred to that date.
- 3.10 Authorization to Perform Services. The Contractor is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

**4. Contractor's Status:**

- 4.1 Independent Contractor. In the performance of the Work, duties, and other obligations imposed by this Agreement, the Contractor is at all times acting as an Independent Contractor practicing his or her profession and not as an employee of MHCS D. Contractor shall perform the Work in accordance with currently approved methods and

standards of practice in the Contractor's professional specialty. A copy of Contractor's current business license shall be provided to MHCS D. The Contractor 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 Contractor shall be responsible for federal and state payroll taxes such as social security and unemployment. San Joaquin County will issue a form 1099 at year-end on behalf of MHCS D for fees earned.

- 4.2 Contractor Not an Agent. Except as MHCS D may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of MHCS D in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind MHCS D to any obligation whatsoever.
- 4.3 Non-Exclusive Rights. This Agreement does not grant to Contractor any exclusive privileges or rights to provide services to MHCS D. Contractor may contract with other agencies, private companies, or individuals for similar services.

## 5. Legal Requirements.

- 5.1 Compliance. Contractor shall comply with all Federal, State and local laws, regulations and requirements necessary for performance of the Work. Contractor shall comply with all laws applicable to wages and hours of employment, occupational safety, and to fire safety, health and sanitation.
- 5.2 Licenses and Permits. Contractor represents and warrants to MHCS D that Contractor and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required for the performance of the Work. Contractor represents and warrants to MHCS D that Contractor and its employees, agents, and any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to perform the Work.
- 5.3 Conflict of Interest Statement. Contractor covenants that Contractor, 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 the Work. Contractor further covenants that in the performance of this Agreement no person having any such interest shall be employed or retained by Contractor under this Agreement. Contractor shall not hire MHCS D's employees to perform any portion of the Work, including secretarial, clerical, and similar incidental services, except upon the written approval of MHCS D. Performance of the Work by associates or employees of Contractor shall not relieve Contractor from any responsibility under this Agreement.
- 5.4 Nondiscrimination and Equal Opportunity. Contractor shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, gender identity, or sexual orientation against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by

Contractor pursuant to this Agreement. Contractor shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Contractor thereby.

- 5.5 Drug Free Workplace. Contractor shall comply with the provisions of Government Code Section 8350 et seq., otherwise known as the Drug-Free Workplace Act.
- 5.6 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.
- 5.7 Subcontracts. Contractor shall include the provisions of this Section 5 in any subcontract approved by the Contract Administrator or this Agreement.

**6. Indemnification, Hold Harmless and Defense.**

To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend MHCS D, 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 MHCS D's property, arising out of Contractor's alleged negligence, or wrongful acts related to or in connection with Contractor's performance of duties under the terms and conditions of this Agreement.

To the fullest extent permitted by law, MHCS D shall indemnify, hold harmless and defend the Contractor, its directors, officers, employees, agents and each of them (collectively referred to as "Contractor 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 Contractor's property, arising out of MHCS D's alleged negligence, or wrongful acts related to or in connection with MHCS D's performance of duties under the terms and conditions of this Agreement.

Notwithstanding the forgoing, to the extent this Agreement is a "construction contract" as defined by Civil Code Section 2782, as may be amended from time to time, such duties of Contractor to indemnify shall not apply when to do so would be prohibited by Civil Code Section 2782.

**7. Insurance.**

Before beginning any Work under this Agreement, Contractor, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance described in Exhibit C, incorporated herein, against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Work hereunder by the Contractor and its agents, representatives, employees, and subcontractors. Consistent with the following

provisions, Contractor shall provide proof satisfactory to MHCS D of such insurance that meets the requirements of Exhibit C and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning Work to MHCS D. Contractor shall maintain the insurance policies required by Exhibit C throughout the term of this Agreement. The cost of such insurance shall be included in the Contractor's proposal. Contractor shall not allow any subcontractor to commence Work on any subcontract until Contractor has obtained all insurance required by Exhibit C for the subcontractor(s) and provided evidence that such insurance is in effect to MHCS D. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

## **8. Termination and Modification.**

8.1 Termination. MHCS D may cancel this Agreement at any time and without cause upon written notification to Contractor. Contractor may cancel this Agreement upon sixty (60) days' written notice to MHCS D and shall include in such notice the reasons for cancellation.

In the event of termination, Contractor shall be entitled to compensation for services performed to the effective date of termination; MHCS D, however, may condition payment of such compensation upon Contractor delivering to MHCS D any or all work product, including, but not limited to documents, photographs, computer software, video and audio tapes, and other materials provided to Contractor or prepared by or for Contractor or MHCS D in connection with this Agreement.

8.2 Extension. MHCS D may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Section 2.2. Any such extension shall require a written amendment to this Agreement, as provided for herein. The MHCS D General Manager is hereby authorized to negotiate and execute such extension.

8.3 Amendments. The parties may amend this Agreement only by a writing signed by all the parties.

8.4 Assignment and Subcontracting. MHCS D and Contractor recognize and agree that this Agreement contemplates performance of specialized services by Contractor and is based upon a determination of Contractor's unique competence, experience, and specialized knowledge. Contractor may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Contractor shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator. Any such assignment, transfer, delegation or subcontract without the prior written consent shall be considered null and void.

8.5 Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between MHCS D and Contractor shall survive the termination of this Agreement.

8.6 Options upon Breach by Contractor. If Contractor materially breaches any of the terms of this Agreement, MHCS D's remedies shall include, but not be limited to, the following:

- a. Immediately terminate the Agreement;
- b. Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Contractor pursuant to this Agreement;
- c. Retain a different contractor to complete the Work described in Exhibit A not finished by Contractor; or
- d. Charge Contractor the difference between the cost to complete the Work described in Exhibit A that is unfinished at the time of breach and the amount that MHCS D would have paid Contractor pursuant to Section 3 if Contractor had completed the Work.

**9. Miscellaneous.**

- 9.1 Contract Administrator. The Contractor Administrator shall be designated, and may be changed, by the MHCS D General Manager in writing.
- 9.2 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.
- 9.3 Non-Liability of Officials, Employees and Agents. No officer, official, employee or agent of District shall be personally liable to Contractor in the event of any default or breach by District or for any amount that may become due to Contractor pursuant to this Agreement.
- 9.4 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.
- 9.5 Documents. All drawings, specifications, documents and other memoranda or writings relating to the Work hereunder, shall remain or become the property of MHCS D upon termination of this Agreement, whether executed by or for the Contractor for MHCS D, or otherwise, by or for the Contractor, or by or for a subcontractor operating under the Contractor'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. Prior to termination Contractor shall deliver to MHCS D any such records upon request.
- 9.6 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.



- 9.7 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.
- 9.8 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.
- 9.9 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.
- 9.10 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.
- 9.11 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

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

Precision Concrete Cutting

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

By: Ernesto Martinez  
DocuSigned by:  
9413135C4A6E49C...  
 Ernesto Martinez

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

Date: 1/18/2022

Date: 1/19/2022

**EXHIBIT A**  
**SCOPE OF SERVICES**

**[Attached]**



Date: 10.19.21

## **PROPOSAL FOR “NOT TO EXCEED” AGREEMENT BETWEEN THE MOUNTAIN HOUSE COMMUNITY SERVICES DISTRICT 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 Mountain House Community Services District and PCC enter into an agreement whereby PCC will assess, and repair 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.

### **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](http://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:** \$79,150.27

**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:

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

**Areas to repair: Tracts E, F, G and H: ½ inch to 1 inch**

### **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 \_\_\_\_\_



**EXHIBIT B**  
**COMPENSATION SCHEDULE & REIMBURSABLE EXPENSES**

**1) Compensation Schedule.**

**Contract amount:** \$79,150.27

**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:

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

**Areas to repair:** Tracts E, F, G and H: ½ inch to 1 inch

**2) Reimbursable Expenses.**

Reimbursable expenses for Contractors working for MHCS D shall follow the guidelines outlined below. An invoice and receipts, outlining travel expenses, shall be submitted to NHCS D after the travel has occurred.

<b>Expense Type</b>	<b>Reimbursement Policies</b>	<b>Receipt Required</b>
Airfare	Actual cost of the least expensive class available. Business class and first class are not reimbursable.	Yes
Airline Baggage Fees	Actual expense.	Yes
Rental Car	Reimbursement for rental cars will be for a standard size car or smaller and will be reimbursed for the actual expense.	Yes
Airport Shuttle	Actual expense, including gratuity.	Yes
Taxi	Actual expense, including gratuity.	Yes
Meals & Incidentals	Actual expense, including gratuity. Itemized receipts must be included for reimbursement. No alcohol.  Other incidentals per itemized receipt.	Yes
Hotel	Lodging obtained will be reasonable and in line with the moderate priced hotels for the area. Reimbursement will be only for room charge, taxes, and parking (if applicable).  Itemized receipts must be included for reimbursement.	Yes
Privately Owned Vehicle Mileage Rate	IRS allowable rate for the current year.	No
Office Incidentals	Actual expense.  Copies/printing, courier/express delivery fees, phone calls.	Yes

**EXHIBIT C**  
**INSURANCE REQUIREMENTS**

- 1) **Required Coverage.** Contractor shall maintain all required insurance listed herein for the duration of this Agreement.

<b><u>TYPE OF INSURANCE</u></b>	<b><u>MINIMUM LIMITS</u></b>
<b>Commercial General Liability</b> Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability	\$1,000,000 per occurrence; Bodily Injury and Property Damage \$2,000,00 in the aggregate; Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis
<b>Commercial or Business Automobile Liability</b> All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability is acceptable for individual contractors with no transportation or hauling related activities	\$1,000,000 per occurrence; Any Auto; Bodily Injury and Property Damage. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition), Code 1 (any auto). No endorsement shall be attached limiting the coverage.
<b>Workers' Compensation (WC) and Employers Liability (EL)</b> Required for all contractors with employees	WC: Statutory Limits EL: \$100,000 per accident for bodily injury or disease. Contractor may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. The insurer shall waive all rights of subrogation against MHCS D and its officers, officials, employees, and volunteers for loss arising from Work performed under this Agreement
<b>Professional Liability/Errors &amp; Omissions</b> Includes endorsements of contractual liability	\$1,000,000 per occurrence \$2,000,000 policy aggregate; Any deductible or self-insured retention shall not exceed \$150,000 per claim

- 2) **Additional requirements.** Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a) **Term.** All required insurance shall be maintained during the entire term of the Agreement with the following exception: Insurance policies and coverage(s) written on a claims-made basis shall be maintained during the entire term of the Agreement and until

three (3) years following termination and acceptance of all Work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement.

- b) Additional Insured. All insurance required above with the exception of Professional Liability, Personal Automobile Liability, Workers' Compensation and Employers Liability, shall be endorsed to name as additional insured: Mountain House Community Services District, its Board of Directors, and all MHCSO officers, agents, employees, volunteers and representatives.
- c) Primary Insurance. For any claims related to this Agreement or the Work hereunder, the Contractor's insurance covered shall be primary insurance as respects MHCSO, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by MHCSO, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
- d) Cancellation. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to MHCSO.
- e) Certificates of Insurance. Before commencing operations under this Agreement, Contractor shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to MHCSO, evidencing that all required insurance coverage is in effect. MHCSO reserves the rights to require the Contractor to provide complete, certified copies of all required insurance policies.
- f) Subcontractors. Contractor shall include all subcontractors as an insured (covered party) under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- g) Claims-made limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:
  - i) The retroactive date of the policy must be shown and must be before the date of the Agreement.
  - ii) Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the Work, so long as commercially available at reasonable rates.
  - iii) If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Contractor must purchase an extended period coverage for a minimum of three (3) years after completion of Work under this Agreement.
  - iv) A copy of the claim reporting requirements must be submitted to MHCSO for review prior to the commencement of any Work under this Agreement.

3) **All Policies Requirements.**

- a) **Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII. Insurance shall be maintained through an insurer with a minimum A.M. Best Rating of A- or better, with deductible amounts acceptable to MHCS D. Acceptance of Contractor's insurance by MHCS D shall not relieve or decrease the liability of Contractor hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor.
- b) **Deductibles and Self-Insured Retentions.** Contractor shall disclose to and obtain the written approval of MHCS D for the self-insured retentions and deductibles before beginning any of the Work called for by any term of this Agreement. At the option of MHCS D, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects MHCS D, its officers, employees, and volunteers; or the Contractor shall provide a financial guarantee satisfactory to MHCS D guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- c) **Wasting Policies.** No policy required by this Section 4 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).
- d) **Waiver of Subrogation.** Contractor hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Contractor agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all Work performed by Contractor, its employees, agents, and subcontractors.

4) **Remedies.** In addition to any other remedies MHCS D may have if Contractor fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, MHCS D may, at its sole option exercise any of the following remedies, which are alternatives to other remedies MHCS D may have and are not the exclusive remedy for Contractor's breach:

- a) Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- b) Order Contractor to stop work under this Agreement or withhold any payment that becomes due to Contractor hereunder, or both stop work and withhold any payment, until Contractor demonstrates compliance with the requirements hereof; and/or
- c) Terminate this Agreement.



**EXHIBIT D**  
**REQUIREMENTS OF PUBLIC WORKS CONTRACTS**

**1) Wages.**

- a) In accordance with Labor Code Section 1773.2, MHCS D has determined the general prevailing wages in the locality in which the Work described in Exhibit A are to be performed for each craft or type of work needed, as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file in MHCS D Public Works Office, and shall be made available on request. Contractor and subcontractors engaged in the performance of the Work shall pay no less than these rates to all persons engaged in performance of the Work.
- b) In accordance with Labor Code Section 1775, Contractor and any subcontractors engaged in performance of the Work shall comply with Labor Code Section 1775, which establishes a penalty of up to \$200 per day for each worker engaged in the performance of the Work for which Contractor or any subcontractor pays less than the specified prevailing wage. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if Contractor or subcontractor had knowledge of their obligations under the Labor Code. Contractor or subcontractor shall pay the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate. If a subcontractor worker engaged in performance of the services described in Exhibit A is not paid the general prevailing per diem wages by the subcontractor, Contractor is not liable for any penalties therefore unless Contractor had knowledge of that failure or unless the Contractor fails to comply with all of the following requirements:
- i) The contract executed between Contractor and the subcontractor for the performance of part of the Work shall include a copy of the provisions of Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.
  - ii) Contractor shall monitor payment of the specified general prevailing rate of per diem wages by the subcontractor by periodic review of the subcontractor's certified payroll records.
  - iii) Upon becoming aware of a subcontractor's failure to pay the specified prevailing rate of wages, Contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for performance of the Work.
  - iv) Prior to making final payment to the subcontractor, Contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages for employees engaged in the performance of the Work any amounts due pursuant to Labor Code Section 1813.
- c) In accordance with Labor Code Section 1776, Contractor and each subcontractor engaged in performance of the Work shall keep accurate payroll records showing the name, address, social security number, work, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in performance of the Work. Each payroll record shall contain

or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

- i) The information contained in the payroll record is true and correct.
- ii) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by the employer's employees on the public works project.

The payroll records required pursuant to Labor Code Section 1776 shall be certified and shall be available for inspection by MHCSD and its authorized representatives, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations, and shall otherwise be available for inspection in accordance with Labor Code Section 1776.

- d) In accordance with Labor Code Section 1777.5, Contractor, on behalf of Contractor and any subcontractors engaged in performance of the Work, shall be responsible for ensuring compliance with Labor Code Section 1777.5 governing employment and payment of apprentices on public works contracts.
- e) Contractor or any subcontractor, in performance of the Work, employs any person in a trade or occupation (except executive, supervisory, administrative, clerical, or other non manual workers as such) for which no minimum wage rate has been determined by the Director of the Department of Industrial Relations, Contractor shall pay the minimum rate of wages specified therein for the classification that most nearly corresponds to the Work performed by that person. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

2) **DIR Registration.**

At all times, Contractor shall be registered with the Department of Industrial Relations and qualified to perform public work consistent with Labor Code section 1725.5, except in limited circumstances as set forth in Labor Code section 1771.1. No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5. Contractor agrees, in accordance with Section 1771.4 of the Labor Code, that if the Work under this Agreement qualifies as a public works project, it is subject to compliance monitoring and enforcement by the Department of Industrial Relations.