

AGREEMENT FOR PROFESSIONAL SERVICES

Contract ID #A-2223-28

Mountain House California

This Agreement is made and entered into as of 7/1/2022, by and between the Mountain House Community Services District, a California public agency, ("District") and Design/Build consultant, a California sole proprietorship ("Consultant").

RECITALS

- A. Consultant is specially trained, experienced and competent to perform the special services which will be required by this Agreement; and
- B. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein.
- C. District desires to retain Consultant to render professional consulting services as set forth in this Agreement.

AGREEMENT

1. Scope of Services. The Consultant shall furnish the following services in a professional manner. Consultant shall perform the services described on **Exhibit A:** which is attached hereto and incorporated herein by reference. Consultant shall provide said services at the time, place, and in the manner specified in Exhibit A, subject to the direction of the of the Community Development Director.
2. Time of Performance. The services of Consultant are to commence upon execution of this Agreement and shall continue until June 30, 2023.
3. Compensation. Payment by District under this Agreement shall be on an hourly rate of \$120.00 per hour. In no event shall Consultant's compensation exceed **\$95,000** without additional authorization from the District.
4. Method of Payment. Consultant shall submit monthly billings to District describing the work performed during the preceding month. Consultant's bills shall include a brief description of the services performed. District shall pay Consultant no later than 30 days after approval of the monthly invoice by District staff.
5. Extra Work. At any time during the term of this Agreement, District may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by District to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from District.

6. Termination. This Agreement may be terminated by the District immediately for cause or by either party without cause upon fifteen days' written notice of termination. Upon termination; Consultant shall be entitled to compensation for services performed up to the effective date of termination.

7. Ownership of Documents. All plans, studies, documents and other writings prepared by and for Consultant, its officers, employees and agents and subcontractors in the course of implementing this Agreement, except working notes and internal documents, shall become the property of the District upon payment to Consultant for such work, and the District shall have the sole right to use such materials in its discretion without further compensation to Consultant or to any other party. Consultant shall, at Consultant's expense, provide such reports, plans, studies, documents and other writings to District upon written request.

8. Consultant's Books and Records.

a. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to District for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant to this Agreement.

b. Consultant shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

c. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the District Manager, District Attorney, District Auditor, or a designated representative of these officers. Copies of such documents shall be provided to the District for inspection at District Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

d. Where District has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Consultant's business, District may, by written request by any of the above named officers, require that custody of the records be given to the District and that the records and documents be maintained in District Hall. Access to such records and documents shall be granted to any party authorized by Consultant, Consultant's representatives, or Consultant's successor-in-interest.

9. Independent Contractor. It is understood that Consultant, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and shall not act as an agent or employee of the District. Consultant shall obtain no rights to retirement benefits or other benefits which accrue to District's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

10. Interest of Consultant. Consultant (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this Agreement or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's services hereunder. Consultant further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this Agreement.

Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

- a. will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the District or of any District official, other than normal agreement monitoring; and
- b. possesses no authority with respect to any District decision beyond rendition of information, advice, recommendation, or counsel. (FPPC Reg. 18700(a)(2).)

11. Professional Ability of Consultant. District has relied upon the professional training and ability of Consultant to perform the services hereunder as a material inducement to enter into this Agreement. Consultant shall therefore provide properly skilled professional and technical personnel to perform all services under this Agreement. All work performed by Consultant under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.

12. Compliance with Laws. Consultant shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations.

13. Licenses. Consultant represents and warrants to District that it has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required of Consultant to practice its profession. Consultant represents and warrants to District that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits and approvals which are legally required of Consultant to practice its profession.

14. Insurance Requirements.

a. Consultant, at Consultant's own cost and expense, shall, procure and maintain, for the duration of the contract, the following insurance policies.

- i. Automobile Liability Coverage. Consultant shall maintain automobile liability insurance covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired and non-owned vehicles, in an amount of not less than one million dollars (\$1,000,000) combined single limit for each occurrence.

15. Notices. Any notice required to be given under this Agreement shall be in writing and either served personally or sent prepaid, first class mail. Any such notice shall be addressed to the other party at the address set forth below. Notice shall be deemed communicated within 48 hours from the time of retailing if mailed as provided in this section.

If to District:
Attention:
Steve J. Pinkerton
251 East Main Street
Mountain House, California 95391

If to Consultant:
Harold Holland
Design Build Consultant
3012 North Beecher Road
Stockton, California 95215

16. Entire Agreement. This Agreement constitutes the complete and exclusive statement of Agreement between the District and Consultant. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement.

17. Amendments. This Agreement may be modified or amended only by a written document executed by both Consultant and District and approved as to form by the District Attorney.

18. Assignment and Subcontracting. The parties recognize that a substantial inducement to District for entering into this Agreement is the professional reputation, experience and competence of Consultant. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express consent of the District. Consultant shall not subcontract any portion of the work to be performed under this Agreement without the written authorization of the District. If District consents to such subcontract, Consultant shall be fully responsible to District for all acts or omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship between District and subcontractor nor shall it create any obligation on the part of the District to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise is required by law.

19. Waiver. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this Agreement.

20. Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

21. Controlling Law Venue. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of San Joaquin.

22. Litigation Expenses and Attorneys' Fees. If either party to this Agreement commences any legal action against the other party arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys' fees.

23. Mediation. The parties agree to make a good faith attempt to resolve any disputes arising out of this Agreement through mediation prior to commencing litigation. The parties shall mutually agree upon the mediator and shall divide the costs of mediation equally. If the parties are unable to agree upon a mediator, the dispute shall be submitted to JAMS/ENDISPUTE ("JAMS") or its successor in interest. JAMS shall provide the parties with the names of five qualified mediators. Each party shall have the option to strike two of the five mediators selected by JAMS and thereafter the mediator remaining shall hear the dispute. If the dispute remains unresolved after mediation, either party may commence litigation.

24. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

25. Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.

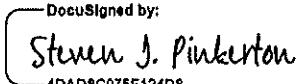
26. Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, District shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of District, during the term of his or her service with District, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

27. Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age.

TO EFFECTUATE THIS AGREEMENT, each of the parties has caused this Agreement to be executed by its duly authorized representative as of the date set forth in the introductory paragraph on page 1 above.

Mountain House Service District

a public body, corporate and politic

By:  4DAD8C078F124D8...

Name: Steve Pinkerton

Title: General Manager

CONSULTANT:

Design Build Consulate

By:  3AA8BC10A1D4447...

Name: Harold Holland

Exhibit A

PROPOSAL FOR PROFESSIONAL SERVICES

SCOPE OF WORK

The on-site scope of services of the Owner's Representative includes, but is not limited to the following:

The scope of services of the consultant includes, but is not limited to:

1. Attend and participate in periodic construction and staff meetings.
2. Observation of District, consultant testing and inspection of construction.
3. Observation and oversee construction activities in the District for Private Development work.
4. Review Request for information, Change Orders, Submittals, and other contractor's submittals in association with District retained consultants and respond to the Contractors in a timely manner.
5. Review of Traffic Control Plans, Project Schedules and Materials testing documents submitted by the Contractor
6. Analyze and review Engineer's Estimates prepared by developer's Engineers.
7. Provide recommendations and perform "value engineering" as needed/directed during construction phase.
8. Participate in the final project inspection, preparation of the inspection checklist, preparation of the project acceptance and offers of dedication and project close-out documentation.
9. Provide a recommendation for project acceptance to the District.
10. Participate and respond to the cost certification reviews which will be conducted by other consultants.

11. Other construction management, inspection, and project acceptance services as needed and associated with the private development construction activities.

The Consultant shall submit monthly invoices in MHCSD's format.

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