

completed on a date prior thereto or unless terminated earlier as provided herein. Consultant 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 Consultant 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.** Consultant shall perform all Work in a first-class manner in conformance with the standards observed by a competent practitioner of the profession in which Consultant is engaged.
- 2.4 **Inspection.** All Work performed and materials (if any) provided by Consultant shall be subject to inspection and approval by MHCS D.
- 2.5 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that MHCS D, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from MHCS D of such desire of MHCS D, reassign such person or persons.
- 2.6 **Time is of the Essence.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to timely finish the Scope of Work, to meet the standard of performance provided in Section 2.3 above and to satisfy Consultant's obligations hereunder.

3. **Terms of Payment.**

- 3.1 **Compensation.** MHCS D hereby agrees to pay Consultant a sum not to exceed twenty thousand dollars, (\$20,000) notwithstanding any contrary indications that may be contained in Consultant's proposal for services to be performed and reimbursable costs incurred under this Agreement. MHCS D shall pay Consultant 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 Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to MHCS D in the manner specified herein. Except as specifically authorized by MHCS D in writing, Consultant shall not bill MHCS D for duplicate services performed by more than one person.

Consultant and MHCS D acknowledge and agree that compensation paid by MHCS D to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant 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.** Consultant 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. Contract expiration date;
- d. The beginning and ending dates of the billing period;
- e. 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;
- f. 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;
- g. The total number of hours of Work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder; and
- h. The Consultant'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 Consultant.

3.4 Final Payment. MHCS D shall pay the last 10% of the total sum due pursuant to this Agreement within sixty (60) days after completion of the services and submittal to MHCS D of a final invoice, if all services required have been satisfactorily performed.

3.5 Total Payment.

- a. MHCS D shall pay for the services to be rendered by Consultant pursuant to this Agreement. MHCS D shall make no payment for any extra, further, or additional service pursuant to this Agreement.
- b. In no event shall Consultant 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.

- c. MHCS D shall not pay any invoice or otherwise provide compensation to Consultant in excess of the maximum amount of compensation provided herein unless the Agreement is modified prior to the performance of such Work or services.
- d. MHCS D shall not pay any invoice or otherwise provide compensation to Consultant for Work or services performed after the expiration or termination of this Agreement unless the Agreement is modified prior to the performance of such Work or services.

3.6 Hourly Rate/Fees. Unless the services provided are for a lump sum or flat fee, fees for Work performed by Consultant 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 shall be billed as a direct costs. In no event shall expenses be advanced by MHCS D to the Consultant. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.

3.8 Payment of Taxes. Consultant 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 Consultant terminates this Agreement pursuant to Section 8, MHCS D shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for Work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets to verify costs incurred to that date.

3.10 Authorization to Perform Services. The Consultant 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. Consultant's Status.

4.1 Independent Contractor. In the performance of the Work, duties and other 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 MHCS D. Consultant shall perform the 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. San Joaquin County will issue a form 1099 on behalf of MHCS D at year-end for fees earned.

- 4.2 **Consultant Not an Agent.** Except as MHCS D may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of MHCS D in any capacity whatsoever as an agent. Consultant 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 Consultant any exclusive privileges or rights to provide services to MHCS D. Consultant may contract with other agencies, private companies or individuals for similar services.

5. **Legal Requirements.**

- 5.1 **Compliance.** Consultant shall comply with all Federal, State and local laws, regulations and requirements necessary for the performance of the Work. Consultant 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.** Consultant represents and warrants to MHCS D that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to MHCS D that Consultant 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 practice their respective professions.
- 5.3 **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 the Work. 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, including secretarial, clerical and similar incidental services except upon the written approval of MHCS D. Performance of the Work by associates or employees of Consultant shall not relieve Consultant from any responsibility under this Agreement.
- 5.4 **Nondiscrimination and Equal Opportunity.** Consultant 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 Consultant pursuant to this Agreement. Consultant 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 Consultant thereby.
- 5.5 **Drug Free Workplace.** Consultant 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. Consultant 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, Consultant 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 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, MHCS D 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 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 California Civil Code Section 2782, as may be amended from time to time, such duties of consultant to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

7. Insurance.

Before beginning any Work under this Agreement, Consultant, 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 Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant 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. Consultant 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 Consultant's proposal. Consultant shall not allow any subcontractor to commence Work on any subcontract until Consultant 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 Consultant. Consultant 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, Consultant shall be entitled to compensation for services performed to the effective date of termination; MHCS D, however, may condition payment of such compensation upon Consultant 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 Consultant or prepared by or for Consultant 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 Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to MHCS D for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant 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 Consultant shall survive the termination of this Agreement.

8.6 Options upon Breach by Consultant. If Consultant 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 Consultant pursuant to this Agreement;

- c. Retain a different consultant to complete the Work described in Exhibit A not finished by Consultant; or
- d. Charge Consultant the difference between the cost to complete the Work that is unfinished at the time of breach and the amount that MHCSD would have paid Consultant pursuant to Section 3 if Consultant had completed the Work.

9. **Miscellaneous.**

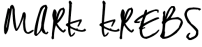
- 9.1 **Contract Administrator.** The Contractor Administrator shall be designated, and may be changed, by the MHCSD General Manager in writing.
- 9.2 **Notices.** Any notice required to be given pursuant to the terms and provisions hereof shall be in writing and shall be effected by personal delivery 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 Consultant in the event of any default or breach by District or for any amount that may become due to Consultant 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 MHCSD upon termination of this Agreement, whether executed by or for the Consultant for MHCSD, 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 MHCSD forthwith upon termination or completion of the Work under this Agreement. Prior to termination Contractor shall deliver to MHCSD 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 Consultant have executed this Agreement on the day and year first written above.

PACE

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

DocuSigned by:

 By: _____
FA95107B5322493...
 Consultant

DocuSigned by:

 By: _____
4DAD8C075F124D8...
 Steven J. Pinkerton
 General Manager

Date: 8/9/2022

Date: 8/9/2022

EXHIBIT A
SCOPE OF SERVICES

[Insert]



Revised June 27, 2022
(June 13, 2022)

David James
Community Development Director
Mountain House Community Service District
251 E Main St.
Mountain House, CA 95391

Re: Prologis Review Services
Professional Engineering Services Proposal

C006

Dear Mr. James,

PACE is pleased to provide our proposal for engineering review services for the Prologis project. Attached are our Scope of Services, Compensation, Hourly Rate Schedule and Provisions.

We appreciate the opportunity to be of service to Mountain House Community Service District and look forward to the successful completion of the Prologis Review Services. Please contact me if there are any questions or if we may provide any additional information.

Sincerely,

A handwritten signature in blue ink that reads "Ron Rovanseck".

Ron Rovanseck, Ph.D., P.E., LEED A.P
Vice President – Stormwater Management

RJR/ch

Enclosures: Scope of Services, Compensation, Hourly Rate Schedule and Provisions.

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PROPOSAL FOR PROFESSIONAL ENGINEERING SERVICES

PROLOGIS REVIEW SERVICES #C006

OBJECTIVE:

PACE has been asked by Mountain House Community Services District to review a plan proposed by Prologis to alter runoff conditions south of Mountain House, and thus to potentially alter the volume, flow rate, or timing of runoff entering Mountain House. PACE is proposing to review the existing Master Drainage Plan and similar documents, compare the proposed discharges with discharges assumed in the Master Drainage Plan, and provide analyses of existing and proposed facilities to evaluate potential impacts of proposed discharges.

SECTION A - SCOPE OF SERVICES:

A. Consultant agrees to perform the following services:

PACE is proposing to provide the following Services:

- PACE shall attend meetings, communicate with Client and others, and coordinate project efforts as directed by Client.
- Review of the Mountain House Master Drainage plan and associated documents to determine the runoff conditions (locations, peak flow rates, volumes, timing) originally anticipated from the watersheds on and surrounding the Prologis Site, including conditions and facilities within Mountain House.
- Review Prologis submittals and other documents to evaluate the consistency with Master Drainage Plan.
- Perform evaluations of facilities to determine if discharges proposed by Prologis are consistent with adequate flood protection within Mountain House.
- Evaluate the interim intake structure downstream of I205 to determine criteria to trigger reconstruction/redesign of the structure. Evaluate the adequacy of the structure to handle existing and proposed conditions peak discharges, and evaluate the contribution of the Prologis project to any deficiency in the structure. Develop pro rata cost sharing criteria for the permanent structure.
- Other services as directed by MHCS D

SECTION B - COMPENSATION:

PACE is proposing to complete the work outlined above on a Time and Expense (T&E), Not to Exceed (NTE.) basis. Actual time spent on the project will be billed at the rates indicated in the attached Hourly Fee Schedule. The proposed budget is **\$20,000** which will not be exceeded without written contract amendment.

ASSUMPTIONS AND EXCLUSIONS:

1. The Client's responsibilities shall include providing PACE with the base data and project information in a timely manner, coordination and management of other team consultants to assure that the project schedule can be met, and prompt payment of invoices in accordance with the terms and conditions included herein. The specific items that are to be provided by the Client or other consultants include the following:
 - a. Client input pertaining to project design issues and requirements including scheduling.
 - b. Plans, documents and materials appropriate for PACE review.
 - c. Geologic and soils investigation reports.
 - d. Existing and proposed hydrologic and drainage data, maps, and reports.
 - e. Any other data that directly impacts PACE ability to perform the design in an efficient and economic manner.
2. Any proposed project changes which affect work in progress or previously completed will be justification for additional compensation.
3. All required aerial topography and base mapping will be paid for and supplied by Client, or others. Base topo and site information will be provided in digital (electronic) format compatible with AUTOCAD or C3D version 2019 or earlier.
4. No environmental documentation or support, including no environmental permitting.
5. Surveys of existing facilities or other field data shall be provided by MHCS D or collected by others; PACE is not proposing any field data collection.
6. Local government approval meetings, hearings, etc., and preparation of presentation graphics will be under separate work authorization, if required.
7. Existing utility information research and mapping is not included and will be provided by Client.
8. For all the data delivered to PACE for the purpose of digital mapping, including but not limited to GIS and AutoCAD, PACE requires said data be delivered in one of the recognized standard coordinate systems such as the Stateplane Coordinate System or the Universe Transverse Mercator (UTM). In addition, PACE requires all datums, vertical and horizontal, be documented in a metadata sheet and be included along with the delivered data. If the coordinate system is in what is often referred to as a "Local Coordinate System," and the deliverer does not have the capability to convert data into one of the recognized standard coordinate systems, PACE requires a Control Conversion document (CCD) be included in the deliverable. The CCD will include all the necessary coordinate transformation information and scale factors needed to make an accurate translation of the data to PACE's acceptable coordinate systems. If this information is not available, PACE will require an addendum to this proposal to include Time and Materials used to translate the delivered data into the appropriate standard coordinate system.

9. The fees proposed herein shall apply until one year from date of proposal. Due to ever-changing costs, Consultant will increase those portions of the contract fee for which work must still be completed after one year from date of proposal, as negotiated with the Client up to a maximum of ten-percent (10%).



2022 HOURLY LABOR RATES

Principal	\$265
Sr. Project Manager / Sr. Consulting Engineer	\$235
Sr. Electrical Engineer / Sr. GIS Analyst	\$225
Project Manager / Consulting Engineer / Sr. I&C Specialist	\$220
Sr. Project Engineer / Sr. Design Engineer	\$200
Instrumentation & Controls Specialist	\$165
Project Engineer / Design Engineer II	\$170
Sr. CAD Designer	\$150
Design Engineer	\$135
Graphic Designer	\$115
CAD Designer / GIS Analyst	\$115
Project Coordinator	\$95
Administrative Support	\$90
Assistant Designer	\$80
G.P.S. Survey Unit (w/ Operator)	\$250
Expert Witness / Legal Consultation	\$350 + Exp.

REIMBURSABLE EXPENSE RATES*

	Units	Cost
Travel		
Mileage (Per Mile)	Mile	\$0.59
Airfare, Auto Rental, Hotel		At Cost
Misc. Travel (Parking, tax, tolls, meals, etc.)		At Cost
Per Diem (Contract Rate)	DAY	Contract Rate
Outside Reproduction		
		At Cost
Shipping (FedEx, UPS, Courier, etc.)		
		At Cost
Misc. (Review Fees, Specific Charges)		
		At Cost
Reproduction (In-House)		
Sheet Bond - B/W Prints and Copies – All sizes (8 ½ x 11 to 12 x18)	SF	\$0.16
Sheet - Color Prints and Copies – All sizes	SF	\$1.20
Sheet - Glossy Color Print/Photo – All sizes	SF	\$2.60
Roll - Plots and Copies (Roll Paper)		
- Bond (B/W)	SF	\$0.88
- Bond (Color)	SF	\$1.56
Roll - Vellum or Mylar Plots	SF	\$2.60
Roll - Glossy Color Plot Exhibits (Roll Paper)	SF	\$3.12
Report 3-Ring Binders		
< 1.5"	EA	\$10.40
1.5" to 3"	EA	\$15.60
> 3"	EA	\$26.00
Coil or GBC Punch Binding	EA	\$1.04

*Note: All reimbursable expenses will be invoiced at the above rates + 10%



AGREEMENT BETWEEN CLIENT AND CONSULTANT

AGREEMENT ENTERED INTO AT Fountain Valley, CA made this 27th day of June 2022, by and between Mountain House Community Services District, hereinafter called "Client," and Pacific Advanced Civil Engineering, Inc. (PACE), a California corporation, herein called "Consultant."

Client and Consultant agree as follows:

A. Client retains Consultant to perform services for:

Prologis Review Services

hereinafter called "Project."

B. Consultant agrees to perform the following scope of services:

(See attached Scope of Services – Section "A" for a detailed description)

C. Client agrees to compensate Consultant for such services as follows:

Fee

(See attached Compensation Page – Section "B" for a detailed description)

D. This Agreement is subject to Provisions of Agreement 1 through 28 attached herewith, and the terms and conditions contained in initialed exhibits attached herewith and made a part hereof.

IN WITNESS WHEREOF, the parties hereby execute this agreement upon the terms and conditions stated above and on the day and year indicated above.

Pacific Advanced Civil Engineering, Inc. (PACE)

CLIENT: Mountain House Community Services District

By: Ron Rovanseck

By: _____

Name: Ron Rovanseck, Ph.D., P.E., LEED AP

Name: _____

Title: Vice President – Stormwater Management

Title: _____

Job #: C006

Date: _____

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**GENERAL PROVISIONS ATTACHED TO THAT CERTAIN
AGREEMENT BETWEEN CLIENT AND CONSULTANT
DATED June 27, 2022 (collectively, the "Agreement")**

Pacific Advanced Civil Engineering, Inc. (PACE) shall be hereinafter referred to as "CONSULTANT" and **Mountain House Community Services District** will be hereinafter referred to as "CLIENT" with respect to the "PROJECT" known as "Prologis Review Services".

GENERAL

1. In the performance of the services under the Agreement, CONSULTANT shall at all times be an independent contractor, contracting services to CLIENT solely pursuant to the Agreement, and CONSULTANT is not, nor shall CONSULTANT represent CONSULTANT to be at any time, an agent or employee of CLIENT except as expressly set forth in the Agreement.
2. CLIENT agrees to cooperate in any and every way or manner with CONSULTANT on the PROJECT.
3. In addition to the printed provisions, the drawings and specifications shall become the property of CLIENT at completion of construction of the PROJECT. The CLIENT shall not reuse project design, drawings, and specifications without written consent of CONSULTANT. CONSULTANT will provide reproducible transparencies of the final PROJECT plans to CLIENT at completion of construction of the PROJECT. CONSULTANT, however, does not assume any professional responsibility or liability for use of the final plans and/or the drawings or specifications at any location other than this particular PROJECT site. CLIENT will defend, indemnify and hold CONSULTANT harmless from any errors and/or omissions arising out of the use of the final plans and/or the drawings and specifications at any other location.
4. All agreements on CONSULTANT'S part are contingent upon and subject to, the fact that CONSULTANT shall not be responsible for damages, or be in default or be deemed to be in default, by reason of delays in performance by reason of strike, lockouts, accidents, acts of God and other delays unavoidable or beyond CONSULTANT'S reasonable control or due to shortages or unavailability of labor at established area wage rates or delays caused by failure of CLIENT or CLIENT'S agents to furnish information or to approve or disapprove CONSULTANT'S work promptly, or due to late or slow, or faulty performance by CLIENT or Client's consultants or contractors, or by governmental agencies. In the case of the happening of any such cause of delay, the time of completion of CLIENT'S work under the Agreement shall be extended accordingly.
5. In the event that all of the obligations of CONSULTANT or CLIENT, respectively, required to be performed under the Agreement have not been performed as agreed for any reason other than a default by other party hereto, the non-defaulting party shall have the right, upon giving 30 calendar days prior written notice to the other party hereto, to terminate the Agreement and CONSULTANT shall be paid to the date of termination for all services rendered and cost incurred hereunder.
6. CONSULTANT makes no warranty, either expressed or implied, as to CONSULTANT'S findings, recommendations, specifications or professional advice except that these were promulgated after being prepared in accordance with generally accepted Civil Engineer practices and under the direction of a Civil Engineer and/or a professional staff.
7. CONSULTANT makes no representations concerning soil conditions unless specifically included in writing in the Agreement and CLIENT is not responsible for any liability that may arise out of the making, or any failure to make, soil surveys or subsurface soil tests or general soil testing.
8. CONSULTANT makes no representation concerning construction cost figures estimated in connection with maps, plans, specifications or drawings other than that all cost figures are estimates only.
9. In consideration of CONSULTANT'S fee for services, CLIENT agrees that, unless otherwise specified, CONSULTANT will perform no on site construction review for this PROJECT, unless specifically included in writing in this Agreement, that such services will be provided by others and that CLIENT shall defend, indemnify and hold CONSULTANT harmless from any and all liability, real or alleged, that might be occasioned by others performing construction review for this PROJECT.
10. CLIENT agrees that in accordance with generally accepted construction practices, the construction contractor will be required to assume sole and complete responsibility for the PROJECT site, including safety of all persons and property; that this requirement shall be made to apply continuously and not be limited to normal working hours and CLIENT further agrees to defend, indemnify and hold CONSULTANT harmless from any and all liability, real or alleged, in connection with the performance of work of this PROJECT, except liability arising from the sole negligence of CONSULTANT.
11. Notwithstanding anything else to the contrary contained herein or in the Agreement, CLIENT agrees to limit CONSULTANT'S exposure to liability and damages to CLIENT and to all contractors and subcontractors on the PROJECT, due to professional negligent acts, errors or omissions of CONSULTANT, to the lesser of the limits of CONSULTANT'S errors and omissions and general liability insurance policies, or the fee paid to CONSULTANT for the performance of the services under the Agreement. IN NO EVENT WILL CONSULTANT BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, EXPENSES, LOST PROFITS, OR OTHER DAMAGES ARISING OUT OF THE PERFORMANCE OR NON-PERFORMANCE OF THE SERVICES UNDER THE AGREEMENT, EVEN IF CONSULTANT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THIS SECTION WILL SURVIVE THE TERMINATION OF THE AGREEMENT.
12. Upon written request, each of the parties hereto shall execute and deliver, or cause to be executed and delivered, such additional instruments and documents which may be necessary and proper to carry out the terms of the Agreement.
13. The terms and provisions of the Agreement shall not be construed to alter, waive or affect any lien or stop notice rights, which CONSULTANT may have for the performance of services under the Agreement.
14. No conditions or representations, altering, detracting from or adding to the terms of the Agreement or hereof shall be valid unless printed or written hereon or evidenced in writing by either party to the Agreement and accepted in writing by the other party hereto.
15. One or more waivers of any term, condition or covenant by CONSULTANT shall only be effective if in writing and shall not be construed as a waiver of any subsequent breach of the same or any other term, condition or covenant.

16. In the event any provision of the Agreement shall be held to be invalid and unenforceable, the other provisions of the Agreement shall be valid and binding on the parties hereto.
17. Should litigation be necessary to enforce any term or provision of the Agreement, or to collect any portion of the amount payable under the Agreement, then all litigation and collection expenses, witness fees and court costs and attorneys' fees shall be paid to the prevailing party.
18. The Agreement binds CONSULTANT and CLIENT and their successors and permitted assigns. Neither party hereto shall assign or transfer, whether by operation of law or otherwise, all or any portion of such party's interest, rights or obligations in the Agreement without the prior written consent of the other party hereto.
19. The Agreement and the documents, drawings, plans and specifications referred to therein, and these General Provisions, constitute the entire agreement of the parties hereto with respect to the matters set forth therein and herein and are the final, complete and exclusive expression of the terms and conditions thereof. All prior or contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, express or implied, are hereby superseded and merged herein.
20. The Agreement shall be construed and enforced in accordance with the laws of the State of California. Each Party hereby irrevocably consents that all proceedings arising in connection with the Agreement shall be tried and litigated exclusively in the State and Federal courts located in the County of Orange, State of California. The aforementioned choice of venue is intended by the parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the parties with respect to, or arising out of, the Agreement in any jurisdiction other than that specified in this Section.
21. All notices, demands or other communications given hereunder shall be in writing and shall be delivered personally, by facsimile or electronic mail transmission, or by United States certified or registered mail, return receipt requested, postage prepaid, addressed to the address for such party set forth in the Agreement. All notices shall be deemed given upon the earliest of receipt, confirmed facsimile or electronic mail transmission, or three 3 calendar days after deposit in the United States mail.
22. In the event of any conflict or inconsistency between the provisions of these General Provisions and the provisions of the Agreement, the provisions of these General Provisions shall control.

PAYMENT

23. CONSULTANT shall present all invoices to CLIENT prior to the last day of each calendar month based upon percentage of completion, per the fee set forth in the Agreement. Invoices shall be due and payable when delivered. Payment is to be made at 17520 Newhope Street, Suite 200, Fountain Valley, CA 92708.
24. CLIENT shall promptly review invoices and notify CONSULTANT of any objection thereto; absent such objection in writing within 10 calendar days of the date of the invoice, the invoice shall be deemed proper and acceptable and immediately payable in full.
25. If the undisputed amount of any invoice is not paid within 30 calendar days of the date of the invoice, such undisputed amount shall commence bearing interest from the date of the invoice at the rate of 1.5% per month or the maximum rate allowed by law, whichever is greater, and CLIENT agrees to pay all accrued interest thereon, together with the undisputed amounts set forth in such invoice.
26. In the event that any undisputed amount of any invoice is not paid in full within 60 calendar days following the date of the invoice, such failure shall constitute a material breach of the Agreement and CONSULTANT may exercise all rights and remedies CONSULTANT may have at law, in equity or under the Agreement with respect to such material breach including, without limitation, termination of the Agreement following 10 calendar days' written notice of such material breach to CLIENT and CLIENT'S failure to cure such breach within such 10-day period.
27. CLIENT shall pay, in addition to the stated fee, the cost of all reimbursable items such as fees, permits, bond premiums, title company charges, delivery charges, blueprints, and reproductions and all other charges and expenses not specifically covered by the terms of the Agreement. In the event such reimbursable items are paid directly by CONSULTANT, then such charges and expenses shall be invoiced at CONSULTANT'S direct cost plus 10% for handling.
28. Any additional services not covered in the Scope of Work of the Agreement, which CLIENT requests CONSULTANT to perform, such as site reconnaissance and inspections during construction, additional visits out of town or to other places of business, will be requested in writing and will be invoiced on a time and material basis based on CONSULTANT'S then current schedule of fees and costs.

EXHIBIT B
COMPENSATION SCHEDULE & REIMBURSABLE EXPENSES

1) **Compensation Schedule.**

2022 HOURLY LABOR RATES

Principal	\$265
Sr. Project Manager / Sr. Consulting Engineer	\$235
Sr. Electrical Engineer / Sr. GIS Analyst	\$225
Project Manager / Consulting Engineer / Sr. I&C Specialist	\$220
Sr. Project Engineer / Sr. Design Engineer	\$200
Instrumentation & Controls Specialist	\$165
Project Engineer / Design Engineer II	\$170
Sr. CAD Designer	\$150
Design Engineer	\$135
Graphic Designer	\$115
CAD Designer / GIS Analyst	\$115
Project Coordinator	\$95
Administrative Support	\$90
Assistant Designer	\$80
G.P.S. Survey Unit (w/ Operator)	\$250
Expert Witness / Legal Consultation	\$350 + Exp.

2) **Reimbursable Expenses.**

Reimbursable expenses for Consultants 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.

Expense Type	Reimbursement Policies	Receipt Required
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.** Consultant shall maintain all required insurance listed herein for the duration of this Agreement.

<u>TYPE OF INSURANCE</u>	<u>MINIMUM LIMITS</u>
<p>Commercial General Liability Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability</p>	<p>\$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</p>
<p>Commercial or Business Automobile Liability 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</p>	<p>\$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.</p>
<p>Workers’ Compensation (WC) and Employers Liability (EL) Required for all contractors with employees</p>	<p>WC: Statutory Limits EL: \$100,000 per accident for bodily injury or disease. Consultant 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 MHCSD and its officers, officials, employees, and volunteers for loss arising from Work performed under this Agreement</p>
<p>Professional Liability/Errors & Omissions Includes endorsements of contractual liability</p>	<p>\$1,000,000 per occurrence \$2,000,000 policy aggregate; Any deductible or self-insured retention shall not exceed \$150,000 per claim</p>

- 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 MHCS D officers, agents, employees, volunteers and representatives.
- c) Primary Insurance. For any claims related to this Agreement or the Work hereunder, the Consultant's insurance covered shall be primary insurance as respects MHCS D, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by MHCS D, its officers, officials, employees, or volunteers shall be excess of the Consultant'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 MHCS D.
- e) Certificates of Insurance. Before commencing operations under this Agreement, Consultant shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to MHCS D, evidencing that all required insurance coverage is in effect. MHCS D reserves the rights to require the Consultant to provide complete, certified copies of all required insurance policies.
- f) Subcontractors. Consultant 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, Consultant 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 MHCS D 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 Consultant's insurance by MHCS D shall not relieve or decrease the liability of Consultant hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Consultant.
- b) Deductibles and Self-Insured Retentions. Consultant shall disclose to and obtain the written approval of MHCS D for the self-insured retentions and deductibles before beginning any of 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 Consultant 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. Consultant hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant 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 the consultant, its employees, agents, and subcontractors.

4) Remedies. In addition to any other remedies MHCS D may have if Consultant 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 Consultant'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 Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- c) Terminate this Agreement.