

**COMMUNITY SERVICES DISTRICT  
TOWN OF DISCOVERY BAY**

**AGREEMENT WITH \_\_\_\_\_  
FOR SERVICES UP TO \$25,000**

**THIS AGREEMENT**, is made and effective as of \_\_\_\_\_, 2011, between the **Town of Discovery Bay**, Community Services Discovery Bay, a political subdivision of the State of California ("Discovery Bay") Discovery Bay and \_\_\_\_\_ ("Contractor"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM.** This Agreement shall commence on \_\_\_\_\_, and shall remain and continue in effect until tasks described herein are completed, but in no event later than \_\_\_\_\_, unless sooner terminated pursuant to the provisions of this Agreement.

2. **SERVICES.** Contractor shall perform the tasks described in its proposal, dated \_\_\_\_\_ as set forth in **Exhibit A**, attached hereto and incorporated herein as though set forth in full.

3. **PERFORMANCE.** Contractor shall at all times faithfully, competently and to the best of his or her ability, experiences, and talent, perform all tasks described herein. Contractor represents to Discovery Bay that it has the qualifications necessary to perform the tasks described herein. Contractor shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Contractor hereunder in meeting its obligations under this Agreement.

4. **PAYMENT.**

a. Discovery Bay agrees to pay Contractor monthly, in accordance with the conditions of this Agreement, based upon actual time spent on the above tasks. This amount shall not exceed \_\_\_\_\_ Dollars (\$) for the total term of the Agreement unless additional payment is approved as provided in this Agreement. Any terms or conditions set forth on **Exhibit A** which does not describe the work to be performed, the payment rates and terms, or the payment schedule have not been agreed to by Discovery Bay and shall not be deemed a part of this Agreement.

b. Contractor shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the General Manager, or his or her designee. Contractor shall be compensated for any additional services in the amounts and in the manner as agreed to by General Manager and Contractor at the time Discovery Bay's written authorization is given to Contractor for the performance of said services. The General Manager is authorized to approve work that does not exceed five thousand dollars (\$5,000). However, the General Manager may approve additional work not to exceed an additional amount of five thousand dollars (\$5,000.00) if the original contract was authorized by Discovery Bay's Board of

Directors. Any work in excess of this amount shall be approved by Discovery Bay's Board of Directors at a regularly scheduled or special meeting of the Board.

c. Contractor shall submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all no disputed fees. If Discovery Bay disputes any of Contractor's fees it shall give written notice to Contractor within 30 days of receipt of an invoice of any disputed fees set forth on the invoice.

d. Notwithstanding the above provisions, Contractor shall not be paid for any work performed until it has submitted to Discovery Bay a fully completed and executed Internal Revenue Service Form W-9.

**5. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE.**

a. Discovery Bay may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Contractor at least ten (10) days prior written notice of termination. Discovery Bay shall not be obligated to explain its reasons for termination. Upon receipt of said notice, the Contractor shall immediately cease all work under this Agreement, unless the notice provides otherwise. If Discovery Bay suspends or terminates a portion of this Agreement, such suspension or termination shall not make void or invalidate the remainder of this Agreement.

b. In the event this Agreement is terminated pursuant to this Section, Discovery Bay shall pay to Contractor the actual value of the work performed up to the time of termination, provided that the work performed is of value to Discovery Bay. Upon termination of the Agreement pursuant to this Section, the Contractor will submit an invoice to Discovery Bay pursuant to Section 3.

**6. DEFAULT OF CONTRACTOR.**

a. The Contractor's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Contractor is in default for cause under the terms of this Agreement, Discovery Bay shall have no obligation or duty to continue compensating Contractor for any work performed after the date of default and the General Manager may terminate this Agreement immediately by written notice to the Contractor. If such failure by the Contractor to make progress in the performance of work hereunder arises out of causes beyond the Contractor's control, and without fault or negligence of the Contractor, it shall not be considered a default.

b. If the General Manager or his or her delegate determines that the Contractor is in default in the performance of any of the terms or conditions of this Agreement, it shall serve the Contractor with written notice of the default. The Contractor shall have (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Contractor fails to cure its default within such period of time, the General Manager shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

**7. OWNERSHIP OF DOCUMENTS.**

ATTACHMENT 'C'

a. Contractor shall maintain complete and accurate records with respect to sales, costs, expenses, receipts and other such information required by Discovery Bay that relate to the performance of services under this Agreement. Contractor shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Contractor shall provide free access to the representatives of Discovery Bay or its designees at reasonable times to such books and records, shall give Discovery Bay the right to examine and audit said books and records, shall permit Discovery Bay to make transcripts there from as necessary, and shall allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

b. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of Discovery Bay and may be used, reused or otherwise disposed of by Discovery Bay without the permission of the Contractor. With respect to computer files, Contractor shall make available to Discovery Bay, upon reasonable written request by Discovery Bay, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.

c. With respect to the design of public improvements, the Contractor shall not be liable for any injuries or property damage resulting from the reuse of the design at a location other than that specified in Exhibit A without the written consent of the Contractor.

8. **INDEMNIFICATION.** The Contractor agrees to defend, indemnify, protect and hold harmless Discovery Bay, its officers, officials, employees and volunteers from and against any and all claims, demands, losses, defense costs or expenses, or liability of any kind or nature which Discovery Bay, its officers, officials, employees, and volunteers may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property arising out of Contractor's negligent or wrongful acts or omissions in performing or failing to perform under the terms of this Agreement, excepting only liability arising out of the negligence of Discovery Bay.

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

Contractor agrees that Contractor is responsible to insure that the requirements set forth in this section are also being met by Contractor's subcontractors who provide services pursuant to this Agreement. Copies of insurance certificates shall be filed with Discovery Bay.

**General Liability Limits**

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

*Worker's Compensation and Employer's Liability*

*Statutory requirement*

**10. INDEPENDENT CONTRACTOR.**

a. Contractor is and shall at all times remain as to Discovery Bay a wholly independent contractor. The personnel performing the services under this Agreement on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Neither Discovery Bay nor any of its officers, employees or agents shall have control over the conduct of Contractor or any of Contractor's officers, employees or agents, except as set forth in this Agreement. Contractor shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner officers, employees or agents of Discovery Bay. Contractor shall not incur or have the power to incur any debt, obligation or liability whatever against Discovery Bay, or bind Discovery Bay in any manner.

b. No employee benefits shall be available to Contractor in connection with the performance of this Agreement. Except for the fees paid to Contractor as provided in the Agreement, Discovery Bay shall not pay salaries, wages, or other compensation to Contractor for performing services hereunder for Discovery Bay. Discovery Bay shall not be liable for compensation or indemnification to Contractor for injury or sickness arising out of performing services hereunder.

**11. LEGAL RESPONSIBILITIES.** The Contractor shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Contractor shall at all times observe and comply with all such laws and regulations. Discovery Bay, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Contractor to comply with this section.

a. Contractor agrees to pay to each craft, classification or type of workman the prevailing wage determined by the State of California, Director of Industrial Relations, in the published wage scale determination, a copy of which is available at the Office of the Town of Discovery Bay CSD. Contractor agrees to comply with California Labor Code §§ 1777.5, 1776.

**12. RELEASE OF INFORMATION.**

a. All information gained by Contractor in performance of this Agreement shall be considered confidential and shall not be released by Contractor without Discovery Bay's prior written authorization. Contractor, its officers, employees, agents or subcontractors, shall not without written authorization from the General Manager or unless requested by Discovery Bay's attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within Discovery Bay. Response to a subpoena or court

order shall not be considered "voluntary" provided Contractor gives Discovery Bay notice of such court order or subpoena.

b. Contractor shall promptly notify Discovery Bay should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any person regarding this Agreement and the work performed hereunder or with respect to any project or property located within Discovery Bay. Discovery Bay retains the right, but has no obligation, to represent Contractor and/or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with Discovery Bay and to provide Discovery Bay with the opportunity to review any response to discovery requests provided by Contractor. However, Discovery Bay's right to review any such response does not imply or mean the right by Discovery Bay to control, direct, or rewrite said response.

13. **NOTICES.** Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by Notice:

To Discovery Bay: Town of Discovery Bay CSD  
1700 Willow Lake Road  
Discovery Bay, California 94505  
Attention: General Manager

To Contractor:

14. **ASSIGNMENT.** The Contractor shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of Discovery Bay.

15. **LICENSES.** At all times during the term of this Agreement, Contractor shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement.

16. **GOVERNING LAW.** Discovery Bay and Contractor understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement.

17. **LITIGATION.** Any litigation concerning this Agreement shall take place in the municipal, superior, or federal Discovery Bay court with geographic jurisdiction over the Town of Discovery Bay. In the event such litigation is filed by one party against the other to enforce its rights under this Agreement, the prevailing party, as determined by the Court's judgment, shall be entitled to reasonable attorney fees and litigation expenses for the relief granted.

18. **ENTIRE AGREEMENT.** This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

19. **AUTHORITY TO EXECUTE THIS AGREEMENT.** The person or persons executing this Agreement on behalf of Contractor warrants and represents that he or she has the authority to execute this Agreement on behalf of the Contractor and has the authority to bind Contractor to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

**CONTRACTOR**

**TOWN OF DISCOVERY BAY**

\_\_\_\_\_  
By:  
Title:

\_\_\_\_\_  
By:  
Title:

\_\_\_\_\_  
By:  
Title:

\_\_\_\_\_  
Richard Howard  
General Manager

[Two signatures of corporate officers required]