

ATTACHMENT 1



INDEPENDENT CONTRACTOR AGREEMENT

BETWEEN THE

TRI-CITY MENTAL HEALTH AUTHORITY

AND

DATED

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AGREEMENT

1. PARTIES AND DATE.

THIS AGREEMENT (hereinafter “Contract” or “Agreement”) is made and entered into as of the _____ day of _____, 2023 (“Agreement Date”) by and between the TRI-CITY MENTAL HEALTH AUTHORITY, a joint powers agency organized under the laws of the State of California with its administrative office at 1717 N. Indian Hill Boulevard, #B, Claremont, California 91711 (hereinafter “TCMHA”) and _____, a California corporation, with its principal place of business at _____ (hereinafter "Contractor"). TCMHA and Contractor are sometimes individually referred to as a “Party” and collectively as “Parties.”

2. INDEPENDENT CONTRACTOR.

The express intention of the parties is that _____ is an independent contractor and not an employee, agent, joint venture or partner of TCMHA. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employee and employer between Contractor and TCMHA or any employee or agent of Contractor. At all times Contractor shall be an independent contractor and Contractor shall have no power to incur any debt, obligation, or liability on behalf of TCMHA without the express written consent of TCMHA. Neither TCMHA nor any of his agents shall have control over the conduct of Contractor or any of Contractor’s employees, except as set forth in this Agreement. In executing this Agreement, Contractor certifies that no one who has or will have any financial interest under this Agreement is an officer or employee of TCMHA.

3. SCOPE OF SERVICES.

Contractor shall obtain any required constructions permits; furnish all necessary materials, labor, tools and equipment for _____ as set forth on the project plans and drawings, and as described in the _____ project at TCMHA’s building located at 2001 N. Garey Avenue, Pomona, CA 91767; and as set forth in Contractor’s Proposal incorporated into and made a part of this Agreement as ‘Exhibit A.’

4. PERFORMANCE OF SERVICES.

Contractor reserves the sole right to control or direct the manner in which services are to be performed. Contractor shall retain the right to perform services for other entities during the term of this Agreement, so long as they are not competitive with the services to be performed under this Agreement. Contractor shall neither solicit remuneration nor accept any fees or commissions from any third party in connection with the Services provided to TCMHA under this Agreement without the expressed written permission of TCMHA. Contractor warrants that it is not a party to any other existing agreement, which would prevent Contractor from entering into this Agreement or which would adversely affect Contractor’s ability to fully and faithfully, without any conflict of interest, perform the Services under this Agreement. In addition:

a. Contractor shall cause the Project to be designed and constructed in accordance with TCMHA approved specifications.

b. Contractor shall comply will all applicable federal, state and local laws, codes, ordinances, rules, orders, regulations, and statutes affecting the construction of the project and/or any services performed under this Agreement.

c. Contractor shall take all reasonable steps during the course of the Project so as not to interfere with the on-going operation of TCMHA business, the adjacent residences, businesses and facilities, including but not limited to not interfering with pedestrian and vehicular access.

d. Contractor shall perform in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions and in similar locations. Compliance with this section by Contractor shall not in any way excuse or limit the Contractor's obligations to fully comply with all other terms in this Agreement.

5. SUBCONTRACTORS.

Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement.

6. TIME AND LOCATION OF WORK.

Contractor shall perform the services required by this Agreement at 2001 N. Garey Avenue in Pomona, CA and/or any other place or location and at any time as Contractor deems necessary and appropriate, so long as the services are provided within the manner outlined in the project plans and drawings; Specifications and Contract documents for _____Project; and in 'Exhibit A'.

7. TERMS.

This Agreement shall commence _____and shall be and remain in full force and effect until _____or the Project is confirmed completed, or the Agreement amended or terminated in accordance with the provisions of Section 8 below. All improvements shall be completed within one hundred twenty (120) working days after date set forth in the Notice to Proceed.

8. TERMINATION. This Agreement may be terminated only as follows:

a. Written Election. TCMHA may terminate this Agreement at any time, without cause, upon thirty (30) calendar days prior written notice to Contractor. Contractor agrees to cooperate fully in any such transition, including the transfer of records and/or work performed. TCMHA will reimburse Contractor for its satisfactorily-completed services up to the date specified in the notice of termination and for demobilization costs reasonably incurred by Contractor after that date.

b. Breach. TCMHA, in its sole discretion, may terminate this Agreement "for cause" effective upon written notice to Contractor if Contractor has committed a material default under, or a breach of, this Agreement or has committed an act of gross misconduct. Contractor's failure to complete the engineering services on a timely basis shall constitute a material breach of this Agreement. For the purposes of this Agreement, the term "act of gross misconduct" shall mean the commission of any theft offense, misappropriation of funds, dishonest or fraudulent conduct, or any violation of any of the provisions under this Agreement.

c. Effect of Termination. In the event of termination, Contractor shall immediately deliver all written work product to TCMHA, which work product shall be consistent with all progress payments made to the date of termination.

9. COMPENSATION. For the full performance of this Agreement:

a. TCMHA shall pay Contractor an amount not to exceed the amount stated in 'Exhibit A'. Payment will be made within thirty (30) days following receipt of invoices and completion/delivery of services/goods as detailed in Section 3 of this Agreement and only upon satisfactory delivery/completion of goods/services in a manner consistent with professional/industry standards for the area in which Contractor operates. TCMHA is not responsible for paying for any work done by Contractor or any subcontractor above and beyond the amount listed in the Contractor's Proposal for the _____ Project at TCMHA's building located at 2001 N. Garey Avenue in Pomona, California, dated _____, and incorporated herein as 'Exhibit A'; unless agreed upon in writing by TCMHA's Executive Director.

b. Contractor is responsible for monitoring its own forces/employees/agents/subcontractors to ensure delivery of goods/services within the terms of this Agreement. TCMHA will not accept or compensate Contractor for incomplete goods/services.

c. Contractor acknowledges and agrees that, as an independent contractor, the Contractor will be responsible for paying all required state and federal income taxes, social security contributions, prevailing wages, and other mandatory taxes and contributions. TCMHA shall neither withhold any amounts from the Compensation for such taxes, nor pay such taxes on Contractor's behalf, nor reimburse for any of Contractor's costs or expenses to deliver any services/goods including, without limitation, all fees, fines, licenses, bonds, or taxes required of or imposed upon Contractor. TCMHA shall not be responsible for any interest or late charges on any payments from TCMHA to Contractor.

10. LICENSES.

Contractor declares that Contractor has complied with all federal, state, and local business permits and licensing requirements necessary to conduct business.

11. PROPRIETARY INFORMATION.

The Contractor agrees that all information, whether or not in writing, of a private, secret or confidential nature concerning TCMHA's business, business relationships or financial affairs

(collectively, "Proprietary Information") is and shall be the exclusive property of TCMHA. The Contractor will not disclose any Proprietary Information to any person or entity, other than persons who have a need to know about such information in order for Contractor to render services to TCMHA and employees of TCMHA, without written approval by Executive Director of TCMHA, either during or after its engagement with TCMHA, unless and until such Proprietary Information has become public knowledge without fault by the Contractor. Contractor shall also be bound by all the requirements of HIPAA.

12. REPORTS AND INFORMATION

The Contractor, at such times and in such forms as the TCMHA may require, shall furnish TCMHA such reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Contract.

13. RECORDS AND AUDITS

The Contractor shall maintain accounts and records, including all working papers, personnel, property, and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by TCMHA to assure proper accounting for all project funds, both Federal and non-Federal shares. These records must be made available for audit purposes to TCMHA or any authorized representative, and must be retained, at the Contractor's expense, for a minimum of seven (7) years, unless Contractor is notified in writing by TCMHA of the need to extend the retention period.

14. CONFLICT OF INTEREST

Contractor hereby certify that to the best of their knowledge or belief, no elected/appointed official or employee of TCMHA is financially interested, directly or indirectly, in the provision of goods/services specified in this Agreement. Furthermore, Contractor represents and warrants to TCMHA that it has not employed or retained any person or company employed by the TCMHA to solicit or secure the award of this Agreement and that it has not offered to pay, paid, or agreed to pay any person any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or in connection with, the award of the Agreement.

15. GENERAL TERMS AND CONDITIONS.

a. Indemnity. Contractor agrees to indemnify, defend and hold harmless TCMHA, its officers, agents and employees from any and all demands, claims or liability of personal injury (including death) and property damage of any nature, caused by or arising out of the performance of Contractor under this Agreement. With regard to Contractor's work product, Contractor agrees to indemnify, defend and hold harmless TCMHA, its officers, agents and employees from any and all demands, claims or liability of any nature to the extent caused by the negligent performance of Contractor under this Agreement.

b. Insurance. Contractor shall obtain and file with TCMHA, at its expense, a certificate of insurance before commencing any services under this Agreement as follows:

- i. Workers Compensation Insurance:** Minimum statutory limits.
- ii. Commercial General Liability And Property Damage Insurance:** General Liability and Property Damage Combined. \$2,000,000.00 per occurrence including comprehensive form, personal injury, broad form personal damage, contractual and premises/operation, all on an occurrence basis. If an aggregate limit exists, it shall apply separately or be no less than two (2) times the occurrence limit.
- iii. Automobile Insurance:** \$1,000,000.00 per occurrence.
- iv. Errors And Omissions Insurance:** \$1,000,000.00 per occurrence.
- v. Builder's Risk Property Insurance:** request subcontractors to carry coverage for "all risk" Builder's Risk Insurance, with some exceptions, for the hard construction cost of structure.
- vi. Notice Of Cancellation:** The TCMHA requires 10 days written notice of cancellation.
- vii. Certificate Of Insurance:** Prior to commencement of services, evidence of insurance coverage must be shown by a properly executed certificate of insurance by an insurer licensed to do business in California, satisfactory to TCMHA, and it shall name "Tri-City Mental Health Authority, its elective and appointed officers, employees, volunteers, and contractors who serve as TCMHA officers, officials, or staff" as additional insureds. All coverage for subcontractors shall be subject to all of the requirements stated herein. All subcontractors shall be protected against risk of loss by maintaining insurance in the categories and the limits required herein. Subcontractors shall name TCMHA and Contractor as additional insured.
- viii.** To prevent delay and ensure compliance with this Agreement, the insurance certificates and endorsements must be submitted to:

Tri-City Mental Health Authority
Attn: JPA Administrator/Clerk
1717 N. Indian Hill Boulevard, #B
Claremont, CA 91711-2788

- c. Prevailing Wage Rates.** Federal Labor Standards Provisions, including prevailing wage requirements of the Davis-Bacon and Related Acts will be enforced. In the event of a conflict between Federal and State wage rates, the higher of the two will prevail. The Contractor's duty to pay State prevailing wages can be found under Labor Code Section 1770 et seq. and Labor Code Sections 1775 and 1777.7 outline the penalties for failure to pay prevailing wages and employ apprentices including forfeitures and debarment. Any classification omitted herein shall be paid not less than the prevailing wage scale as established for similar work in the particular area, and all overtime shall be paid at the prevailing rates as established for the particular area. Sunday and holiday time shall be paid at the wage rates determined by the Director of Industrial Relations. The current prevailing wage rates as adopted by the Director are available at the office of the Board of Supervisors, Room 383, Hall of Administration, 500 West Temple Street, Los Angeles, CA 90012.
- d. Prohibition on Assignment.** This Agreement shall not be assigned or transferred without advance written consent of TCMHA.

e. Non-Discrimination and Equal Employment Opportunity. In the performance of this Agreement, Contractor shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental disability, medical condition, sexual orientation or gender identity. Contractor will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, sexual orientation or gender identity.

f. Records. All reports, data, maps, models, charts, studies, surveys, calculations, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that are prepared or obtained pursuant to this Agreement and that relate to the matters covered hereunder shall be and remain the property of TCMHA. Contractor will be responsible for and maintain such records during the term of this Agreement. Contractor hereby agrees to deliver those documents to TCMHA at any time upon demand of TCMHA. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for TCMHA and are not necessarily suitable for any future or other use. Failure by Contractor to deliver these documents to TCMHA within a reasonable time period or as specified by TCMHA shall be a material breach of this Agreement. TCMHA and Contractor agree that until final approval by TCMHA, all data, reports and other documents are preliminary drafts not kept by TCMHA in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties. All work products submitted to TCMHA pursuant to this Agreement shall be deemed a "work for hire." Upon submission of any work for hire pursuant to this Agreement, and acceptance by TCMHA as complete, non-exclusive title to copyright of said work for hire shall transfer to TCMHA. The compensation recited in Section 9 shall be deemed to be sufficient consideration for said transfer of copyright. Contractor retains the right to use any project records, documents and materials for marketing of their professional services.

g. Changes to the Agreement. This Agreement shall not be assigned or transferred without advance written consent of TCMHA. No changes or variations of any kind are authorized without the written consent of the Executive Director. This Agreement may only be amended by a written instrument signed by both parties. The Contractor agrees that any written change or changes in compensation after the signing of this Agreement shall not affect the validity or scope of this Agreement and shall be deemed to be a supplement to this Agreement and shall specify any changes in the Scope of Services.

h. Contractor Attestation. Also in accordance with TCMHA's policies and procedures, TCMHA will not enter into contracts with individuals, or entities, or owners, officers, partners, directors, or other principals of entities, who have been convicted recently of a criminal offense related to health care or who are debarred, excluded or otherwise precluded from providing goods or services under Federal health care programs, or who are debarred, suspended, ineligible, or voluntarily suspended from securing Federally funded contracts. TCMHA requires that Contractor certifies that no staff member, officer, director, partner, or principal, or sub-contractor is excluded from any Federal health care program, or federally funded contract and will sign attached *Contractor's Attestation That Neither It Nor Any Of Its Staff Members Are Restricted,*

Excluded Or Suspended From Providing Goods Or Services Under Any Federal Or State Health Care Program, incorporated herein as 'Exhibit B'.

i. Non-Use of Names. Except as required by applicable law, neither Party shall use the name of the other Party, of the other Party's officials, employees, volunteers, or independent contractors acting as that Party's official, in any publicity without the prior written permission of the Party whose name is to be used.

j. Governing Law, Jurisdiction and Venue. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California. Except that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be applied in interpreting this Agreement. The Parties agree that venue of any action that arises under or relates to this Agreement (whether contract, tort, or both) shall be resolved exclusively in a superior court or federal court in the County of Los Angeles, California.

16. PROJECT COMPLETION

Final Completion shall be deemed to occur on the last of the following events:

- a.** Recordation of a Notice of Completion for the Project;
- b.** Acceptance of the Project by TCMHA;
- c.** Submission of all documents required to be supplied by Contractor to TCMHA under this Agreement, including but not limited to as-build drawings, warranties, and operating manuals; and delivery to TCMHA of Certificate of Completion duly verified by Contractor.

17. NO INTENT TO CREATE A THIRD PARTY BENEFICIARY CONTRACT

Notwithstanding any other provision of this Agreement, the Parties do not in any way intend that any person shall acquire any rights as a third party beneficiary of this Agreement; and no third Party shall have the right to enforce any right or enjoy any benefit created or established under this Agreement.

18. REPRESENTATIVE AND NOTICE.

a. TCMHA's Representative. TCMHA hereby designates its Executive Director to act as its representative for the performance of this Agreement ("TCMHA's Representative"). TCMHA's Representative shall have the power to act on behalf of TCMHA for all purposes under this Agreement.

b. Contractor's Representative. Contractor warrants that the individual who has signed the Agreement has the legal power, right, and authority to make this Agreement and to act on behalf of Contractor for all purposes under this Agreement.

c. Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

If to Contractor: Name:
 Attn:
 Address:
 City, State and Zip Code:

If to TCMHA: Tri-City Mental Health Authority
 Attn: Executive Director
 1717 N. Indian Hill Boulevard, Suite B
 Claremont, CA 91711-2788

Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

19. EXHIBITS.

The following attached exhibits are hereby incorporated into and made a part of this Agreement:

Exhibit A: Proposal from Contractor dated _____

Exhibit B: Contractor’s Attestation That Neither It Nor Any Of Its Staff Members Are Restricted, Excluded Or Suspended From Providing Goods Or Services Under Any Federal Or State Health Care Program

20. EFFECTIVE DATE

This Agreement shall become effective upon (a) its approval and execution by Contractor; and (b) its approval and execution by TCMHA.

21. ENTIRE AGREEMENT.

This Agreement and any other documents incorporated herein by specific reference, represents the entire and integrated agreement between the Parties. Any ambiguities or disputed terms between this Agreement and any attached Exhibits shall be interpreted according to the language in this Agreement and not the Exhibits. This Agreement supersedes all prior agreements, written or oral, between the Contractor and TCMHA relating to the subject matter of this Agreement.

22. SEVERABILITY

The validity or unenforceability of any provision of this Agreement declared by a valid judgment or decree of a court of competent jurisdiction, shall not affect the validity or enforceability of any other provision of this Agreement.

23. WAIVER

No delay or omission by TCMHA in exercising any right under this Agreement will operate as a waiver of that or any other right. A waiver or consent given by TCMHA on any one occasion is effective only in that instance and will not be construed as a bar to or waiver of any right on any other occasion or a waiver of any other condition of performance under this Agreement.

24. EXECUTION.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Agreement Date.

TRI-CITY MENTAL HEALTH AUTHORITY CONTRACTOR

By: _____
Rimmi Hundal, Executive Director

By: _____

Attest:

By: _____
Micaela P. Olmos,
JPA Administrator/Clerk

Approved as to Form:
RICHARDS WATSON & GERSHON LAW

By: _____
Steven L. Flower, General Counsel

EXHIBIT A

CONTRACTOR'S PROPOSAL

DRAFT

EXHIBIT B



CONTRACTOR'S ATTESTATION THAT NEITHER IT NOR ANY OF ITS STAFF MEMBERS ARE RESTRICTED, EXCLUDED OR SUSPENDED FROM PROVIDING GOODS OR SERVICES UNDER ANY FEDERAL OR STATE HEALTH CARE PROGRAM

Contractor's Name	Last	First
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Contractor hereby warrants that neither it nor any of its staff members is restricted, excluded, or suspended from providing goods or services under any health care program funded by the Federal or State Government, directly or indirectly, in whole or in part, and the Contractor will notify the Tri-City Mental Health Authority (TCMHA) within thirty (30) days in writing of: 1) any event that would require Contractor or a staff member's mandatory exclusion or suspension from participation in a Federal or State funded health care program; and 2) any exclusionary action taken by any agency of the Federal or State Government against Contractor or one or more staff members barring it or the staff members from participation in a Federal or State funded health care program, whether such bar is direct or indirect, or whether such bar is in whole or in part.

Contractor shall indemnify and hold TCMHA harmless against any and all loss or damage Contractor may suffer arising from the Federal or State exclusion or suspension of Contractor or its staff members from such participation in a Federal or State funded health care program.

Failure by Contractor to meet the requirements of this paragraph shall constitute a material breach of contract upon which TCMHA may immediately terminate or suspend this Agreement.

Is Contractor/Proposer/Vendor or any of its staff members currently barred from participation in any Federal or State funded health care program?

_____ **NO**, Contractor or any of its staff members is not currently barred from participation in any Federal or State funded health care program.

_____ **YES**, Contractor or any of its staff members is currently barred from participation in any Federal or State funded health care program. Describe the particulars on a separate page.

Date	Contractor or Vendor's Name	Contractor or Vendor's Signature
	Rimmi Hundal, Executive Director	

Date	TCMHA Executive Official's Name	TCMHA Executive Official's Signature
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DISTRIBUTION:

COPIES: HR Representative
 Contractor
 Finance