

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement"), for reference dated March 30, 2018, is made by and between Newcastle Fire Protection District ("District"), whose principal office is located at 9211 Cypress Street, Newcastle, CA 95658, and Tricorp Group, Inc. ("Consultant"), whose contact address is located at 1030 G Street, Sacramento, CA 95814. WITNESSETH: WHEREAS, District desires to hire a consultant to provide services per attached Exhibit A; and, WHEREAS, Consultant, by reason of its qualifications, experience, and facilities for performing the types of services contemplated herein, has proposed to provide the requested services; NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, District and Consultant agree as follows:

Consultant Name and Mailing Address:

Tricorp Group, Inc.
1030 G Street
Sacramento, CA 95814

Phone No. 916-779-8010
Fax No. 916-779-8011

Preliminary Lien Information

Project Name: Newcastle Firehouse

Description of Project, Project Address:

Single story, 6,950 SF metal building with two truck bays, office, bedrooms, kitchen, and ancillary facilities,
9350 Old State Highway Newcastle, CA 95658

District Name/Address:

Newcastle Fire Protection District
9211 Cypress Street
Newcastle, CA 95658

Architect Name/Address:

Lichau & Associates Architects
100 El Dorado Street
Auburn, CA 95603

AGREEMENT

ARTICLE I SCOPE OF SERVICES

1.1 The scope of services covered by this Agreement includes all consulting services described and contained in Exhibit A, attached hereto and by this reference incorporated into this Agreement.

ARTICLE II TERM OF AGREEMENT

2.1 This Agreement shall be effective as of the date executed by all parties and shall continue until all services provided for in this Agreement have been performed unless otherwise terminated as set forth in Article XVI of this Agreement.

ARTICLE III SCHEDULE FOR PERFORMANCE

3.1 District and Consultant agree that time is of the essence in the performance of this work, and Consultant agrees to produce documents in the times stated in the Proposal. Deviations from the time schedule stated in the Proposal may be made with the approval of an authorized representative.

ARTICLE IV COMPENSATION

4.1 Compensation for the services shall be paid on a time-and-materials basis as described and contained in Exhibit B, attached hereto and by this reference incorporated into this AGREEMENT. District shall have the right to review all books and records kept by Consultant and any subcontractors relating to the operation and services performed under this Agreement.

ARTICLE V INVOICING, PAYMENT, NOTICES

5.1 Consultant shall submit monthly invoices on the final day of each month for services rendered during the preceding month. Invoices shall describe the services performed and costs incurred, the person(s) rendering the performed services, the amount of time spent by such person(s), and the applicable hourly rate.

5.2 Applications for Progress Payment. Consultant shall submit to District applications for payment. Each Application for Payment shall describe the services performed during the preceding payment period for which payment is requested, as specified in the form, and include such documentation as District requests.

5.3 Progress Payments. All undisputed portions of progress payments shall be made to Consultant within fifteen (15) calendar days. Consultant agrees that such payments are subject to the express condition precedent that District has approved the services as being in accordance with this Agreement and that Consultant has provided District with satisfactory proof it has paid all amounts it owes in connection with this Agreement. Progress payments shall not be subject to retainage.

5.4 Final Payment. Final payment shall be made within fifteen (15) calendar days after the final payment application is submitted to District, and Consultant satisfies all of the following conditions:

- 1) Satisfactory completion, of the services, including approval and acceptance of Consultant's services by District.
- 2) Submittal of satisfactory evidence by Consultant that all labor and material accounts incurred by Consultant in connection with its services have been paid in full.
- 3) Updated and current insurance certificates as required by this Agreement or as requested by District.

5.5 Penalties/Interest. If District fails to pay Consultant within the time allowed by Article V, Consultant shall be entitled to receive interest on amounts due, accruing from the day after the required date for payment until the date on which payment is made. The applicable rate of interest shall be at a rate of ten percent (10%) per annum.

ARTICLE VI INDEPENDENT CONTRACTOR

6.1 It is understood and agreed that Consultant (including Consultant's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto.

6.2 District is not required to make any deductions or withholdings from the compensation payable to Consultant under the provisions of this Agreement, and is not required to issue W-2 Forms for income and employment tax purposes for any of Consultant's assigned personnel.

6.3 Consultant, in the performance of its obligation hereunder, is only subject to the control or direction of District as to the designation of tasks to be performed and the results to be accomplished.

6.4 Any third persons employed by Consultant shall be entirely and exclusively under the direction, supervision, and control of Consultant.

~~6.5 Consultant hereby agrees to indemnify, defend, and hold harmless District, its officers, officials, agents, and employees against all claims, damages, demands, liability, costs, losses, and expenses, including without limitation court costs and reasonable attorneys' fees, that may be made against District, its officers, officials, agents, and employees based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.~~ **Duplication of Article XI Indemnification.**

6.6 Nothing in this Agreement shall be construed to be inconsistent with the independent contractor relationship between the parties.

ARTICLE VII AUTHORITY OF CONSULTANT

7.1 Consultant shall possess no authority with respect to any District decision and no right to act on behalf of District in any capacity whatsoever as agent, or to bind District to any obligations whatsoever.

ARTICLE VIII CONFLICT OF INTEREST

8.1 Consultant certifies that it has disclosed to District any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this Agreement. Consultant agrees to advise District of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this Agreement. Consultant further agrees to complete any statements of economic interest required by either District ordinance or state law.

ARTICLE IX ASSIGNMENT AND SUBCONTRACTING

9.1 Except as expressly authorized herein, Consultant's obligations under this Agreement are not assignable or transferable, and Consultant shall not subcontract any work, without the prior written approval of District.

ARTICLE X OWNERSHIP OF WORK PRODUCT

10.1 All technical data, evaluations, reports, plans, and other work products of Consultant provided hereunder shall become the property of District and shall be delivered to District upon completion of the services authorized hereunder. Consultant may retain copies thereof for its files and internal use. District representatives shall have access to work products for the purpose of inspecting same and determining that the services are being performed in accordance with the terms of the Agreement. Publication of the information derived from work performed or data obtained in connection with services rendered under this Agreement must be approved in writing by District.

ARTICLE XI INDEMNIFICATION

11.1 Consultant shall indemnify, defend, and hold harmless District, its officers, officials, agents, and employees against all claims, damages, demands, liability, costs, losses, and expenses, including without limitation court costs and reasonable attorneys' fees, arising out of the active negligence or willful misconduct of Consultant. The foregoing duties shall arise upon written notice from District. The duty to indemnify shall relate to all claims, demands, losses, damages, costs, fees (including attorney's' fees), liabilities, awards, and/or judgments, which arise from the conduct of Consultant identified above. Upon written notice to Consultant, Consultant shall retain counsel in construction law matters. The duties of Consultant to defend, indemnify and/or hold harmless shall not extend to any claims, demands, etc., which arise from or relate to the negligence or willful misconduct of District or any other individual or entity. The duties of Consultant shall arise if the claims, demands, etc. arise from or relate to bodily injury and or resultant tangible property damage.

ARTICLE XII INSURANCE

12.1 Consultant shall not commence any work before obtaining, and shall maintain in full force and effect at all times during the duration and performance of this Agreement, the policies of insurance specified in this Article and Exhibit D, attached hereto and by this reference incorporated into this Agreement. Such insurance must have the approval of District as to limit, form, and amount, and shall be placed with insurers with a current A.M. Best's rating of no less than A-VII (an NR rating is acceptable for Workers' Compensation insurance written with the State Compensation Insurance Fund of California).

12.2 Prior to execution of this Agreement and prior to commencement of any work, Consultant shall furnish District with certificates of insurance and copies of endorsements providing evidence of coverage for all policies required by this Agreement. Consultant and its contractors and subcontractors shall, at their expense, maintain in effect at all times during the performance of work under this Agreement not less than the following coverage and limits of insurance, which shall be maintained with insurers and under forms of policy satisfactory to District. The maintenance by Consultant and its contractors and subcontractors of the following coverage and limits of insurance is a material element of this Agreement. The failure of Consultant or of any of its contractors or subcontractors to maintain or renew coverage or to provide evidence of renewal may be treated by District as a material breach of this Agreement. Approval of the insurance by District shall not relieve or decrease any liability of Consultant.

- 1) Workers' Compensation and Employer's Liability Insurance

- a) Workers' Compensation - Insurance to protect Consultant, its contractors and subcontractors from all claims under Workers' Compensation and Employer's Liability Acts, including Longshoremen's and Harbor Workers Act ("Acts"), if applicable. Such coverage shall be maintained, in type and amount, in strict compliance with all applicable state and federal statutes and regulations. Consultant shall execute a certificate in compliance with Labor Code section 1861, on the form provided in the Contract Documents.
 - b) Consultant shall provide a Waiver of Subrogation endorsement in favor of District, its officers, officials, employees, agents, and volunteers for losses arising from work performed by Consultant.
 - c) Consultant shall sign the Worker's Compensation Certificate of Compliance with Labor Code section 3700, described and contained in Exhibit C, attached hereto and by this reference incorporated into this Agreement.
- 2) Commercial General Liability Insurance
- a) The insurance shall be provided on form CG0001, or its equivalent, and shall include coverage for claims for bodily injury or property damage arising out of premises/operations, products/completed operations, contractual liability, and subconsultant's work and personal and advertising injury resulting from actions, failures to act, or operations of the insured, or by its employees or agents, or by anyone directly or indirectly employed by the insured. The amount of insurance coverage shall not be less than **[\$1,000,000.00]** per occurrence and **[\$2,000,000]** general and products/completed operations aggregates.
 - b) The commercial general liability insurance shall also include the following:
 - i) Endorsement equivalent to CG 2010 1185 naming District, its officers, officials, employees, agents, and volunteers as additional insureds. The endorsement shall contain no special limitations on the scope of protection afforded to District, its officers, officials, employees or volunteers.
 - ii) Endorsement stating insurance provided to District shall be primary as respects District, its officers, officials, employees and any insurance or self-insurance maintained by District, its officers, officials, employees or volunteers shall be in excess of Consultant's insurance and shall not contribute with it, to the payment or satisfaction of any defense expenses, loss, or judgment.
 - iii) Provision or endorsement stating that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 3) Commercial Automobile Insurance
- a) The insurance shall include, but shall not be limited to, coverage for claims for bodily injury or property damage for owned, non-owned, and hired automobiles resulting from actions, failures to act, or operations of the insured, or by its employees or agents, or by anyone directly or indirectly employed by the insured. The amount of insurance coverage shall not be less than **[\$1,000,000.00]** per accident.
 - b) The commercial automobile insurance shall include the same endorsements required for the commercial general liability policy, described above.

- 4) Professional Liability. Consultant and its contractors and subcontractors shall secure and maintain in full force and effect, during the term of this Agreement and for five (5) years thereafter, professional liability insurance policies appropriate to the respective professions and the work to be performed as specified in this Agreement. The limits of such professional liability insurance coverage shall not be less than **[\$1,000,000]** per claim.

12.3 In addition to any other remedy District may have, if Consultant fails to maintain the insurance coverage as required in this Article, District may obtain such insurance coverage as is not being maintained, in form and amount substantially the same as is required herein, and District may deduct the cost of such insurance from any amounts due or which may become due Consultant under this Agreement.

12.4 No policy required by this Agreement shall be suspended, cancelled, terminated by either party, or reduced in coverage or in limits unless Consultant has provided thirty (30) days' prior written notice by certified mail, return receipt requested, to District.

12.5 Any deductibles or self-insured retentions in excess of \$10,000 must be declared to, and approved by, District.

12.6 The requirement as to types, limits, and District's approval of insurance coverage to be maintained by Consultant are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by Consultant under this Agreement.

ARTICLE XIII EMPLOYMENT PRACTICES

13.1 Consultant, by execution of this Agreement, certifies that it does not discriminate against any person upon the basis of race, color, creed, national origin, age, sex, disability or marital status in its employment practices.

ARTICLE XIV LICENSES PERMITS, ETC.

14.1 Consultant represents and warrants to District that it has all licenses and qualifications legally required for Consultant to practice its profession. Consultant represents and warrants to District that Consultant shall, at its sole cost and expense, obtain and/or keep in effect at all times during the term of this Agreement any licenses, which are legally required for Consultant to practice its profession at the time the services are performed.

ARTICLE XV RECORDS

15.1 Consultant shall maintain records, books, documents, and other evidence directly pertinent to the performance of work under this Agreement in accordance with generally accepted accounting principles and practices for a period of three (3) years beyond completion of the project.

ARTICLE XVI TERMINATION

16.1 District or Consultant may terminate this Agreement by providing thirty (30) days' written notice prior to the effective termination date.

16.2 In the event of such termination, District shall pay Consultant for all services actually rendered up to and including the date of termination.

16.3 Consultant shall deliver to District copies of all drawings, reports, analyses, and investigations whether completed or not, prepared or in the process of being prepared under the provisions of this Agreement.

~~16.4 Notwithstanding any provisions of this Agreement, Consultant shall not be relieved of liability to District for damages sustained by District by virtue of any breach of this Agreement by Consultant, and District may withhold any payments due to Consultant until such time as the exact amount of damages, if any, due District from Consultant is determined.~~ Consultant has agreed to indemnify under Article XI

16.5 In the event of termination, Consultant shall be compensated as provided for in this Agreement, except as provided in Section 16.4. Upon termination, District shall be entitled to all work, including but not limited to,

appraisals, inventories, studies, analyses, drawings, and data estimates performed to that date in accordance with Article X hereof.

16.6 District may temporarily suspend this Agreement, at no additional cost to District, provided that Consultant is given written **seven (7) Calendar Day Notice** (delivered by certified mail, return receipt requested) of temporary suspension. If District gives such notice of temporary suspension, Consultant shall immediately suspend its activities under this Agreement. **In the event the temporary suspension exceeds (6) months, consultant shall have the right to renegotiate its' hourly fee rates as currently identified in Exhibit B.**

ARTICLE XVII AMENDMENTS

17.1 Any modification, change, or amendment of any provision of this Agreement shall be by written mutual agreement and must be executed by all parties.

ARTICLE XVIII MISCELLANEOUS PROVISIONS

18.1 Attorneys' Fees: In the event an action or proceeding is instituted by either party for the breach or enforcement of any provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees according to law.

18.2 Venue: This Agreement shall be deemed to be made in, and the rights and liabilities of the parties, and the interpretation and construction of this Agreement governed by and construed in accordance with the laws of the State of California. Any legal action arising out of this Agreement shall be filed in and adjudicated by a court of competent jurisdiction in the County of Placer, State of California.

18.3 Enforceability: If any term or provision of this Agreement is found to be void, voidable, invalid or unenforceable by a court of competent jurisdiction under the laws of the State of California, all of the remaining terms and provisions of this Agreement shall remain binding.

18.3 Time: All times stated herein or in any other contract documents are of the essence.

18.4 Binding: This Agreement shall bind and inure to the heirs, devisees, assignees, and successors in interest of Consultant and to the successors in interest of District in the same manner as if such parties had been expressly named herein.

18.5 Survivorship: Any responsibility of Consultant for insurance, indemnity, record keeping or compliance with laws with respect to this Agreement shall not be invalidated due to the expiration, termination or cancellation of this Agreement.

18.6 Entire Agreement: This instrument and any attachments hereto constitute the entire agreement between District and Consultant concerning the subject matter hereof and supersedes any and all prior oral and written communications between the parties regarding the subject matter hereof.

18.7 Schedules, Attachments, and Exhibits

- Exhibit A** Scope of Services
- Exhibit B** Hourly Fee Rates
- Exhibit C** Workers' Compensation Certificate of Compliance with Labor Code Section 3700
- Exhibit D** Insurance Requirements

THE PARTIES HAVE READ AND UNDERSTAND THIS AGREEMENT.

[SIGNATURE PAGE FOLLOWS]

Newcastle Fire Protection District

Tricorp Group, Inc.

By: _____

By: _____

Fire Chief

Tony Moayed

Print Name: _____

Print _____

Name: _____

Date: _____

Date: _____

Attest:

By: _____ District Clerk

By: _____ Legal Counsel

Exhibit A

SCOPE OF SERVICES

A. Primary Responsibilities

- Code and Regulatory Assessments and Compliance (Excluded inspections. Inspections to be performed by Authority Having Jurisdiction)
- Approve Monthly Contractor Invoices
- Cost Control and Change Order Log
- Monitor Construction Schedule Provided by General Contractor
- Construction Supervision and Construction Closeout

B. Secondary Responsibilities

- Coordination of Partnering Meetings with District (an initial partnering session and updates at normal Construction meetings).
- Coordination with District staff and general contractor to ensure District's move into the Project at substantial completion.
- Constructability Review of Contract Documents
- Value Engineering Services



**Exhibit B
Hourly Fee Rates**

Principal	\$200.00
Const Mgr	\$150.00
Scheduler	\$95.00
Clerical	\$50.00
Sr. Estimator	\$125.00
Estimator	\$95.00

Rates include travel to project site. Reimbursable costs will be billed without markup.

Exhibit C

**CERTIFICATE OF COMPLIANCE WITH LABOR CODE § 3700
[Labor Code § 1861]**

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

CONSULTANTS

By:

[Title]

Exhibit D
INSURANCE REQUIREMENTS

PROJECT NAME: Newcastle Firehouse

PROJECT LOCATION: 9350 Old State Highway, Newcastle, CA 95658

Please submit a certificate of insurance for the above project according to the following requirements:

Certificate Holder: Newcastle Fire Protection District
9211 Cypress Street
Newcastle, CA 95658

Commercial General Liability: A.M. Best Rating A-VII or better.

\$1 Million per Occurrence / \$2 Million aggregate, including bodily injury or property damage. \$1 Million Personal & Advertising Injury, \$2 Million Products/Completed Operations. Per Project Aggregate. Additional Insured Status and Wording, see below. Must include Primary Wording, Ongoing and Completed Operations Coverage and insurance shall apply separately to each insured against whom claim is made or suit is brought.

Commercial Automobile Liability: A.M. Best Rating A-VII or better

Covering all owned, non-owned and hired automobiles used in connection with the work. Minimum limit of \$1 million combined Single Limit. Additional Insured Status and Wording, see below. Must include Primary Wording and insurance shall apply separately to each insured against whom claim is made or suit is brought.

Workers' Compensation and Employers' Liability Insurance: Statutory Limits, Employers Liability Limits; \$1,000,000 Each Accident, \$1,000,000 Each Employee, and \$1,000,000 Policy Limit. Must include a Waiver of Subrogation in favor of District, its officers, officials, employees, agents and volunteers.

Professional Liability: A.M. Best Rating A-VII or better. Policy shall be maintained in full force and effect during the term and for a period of at least 5 years following the date of final payment of your contract. \$1 Million per Occurrence, per project, specific.

Requirement for Additional Insured Endorsement:

- 10 Day Cancellation Notice applies for nonpayment of premium only.
- List Project Name and Address on all Insurance Certificates.
- Additional Insured's to be listed on the Endorsement's Newcastle Fire Protection District