

AMG Management Group LLC

THIRD AMENDMENT TO AGREEMENT FOR SERVICES #4495

THIS THIRD AMENDMENT to that Agreement for Services #4495 made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County"), and AMG Management Group LLC, a limited liability company duly qualified to conduct business in the State of California, whose principal place of business is 2028 Larkstone Place, El Dorado Hills, California 95762 (hereinafter referred to as "Consultant");

RECITALS

WHEREAS, Consultant has been engaged by County to provide project management and real estate due diligence services concerning the Senate Bill 844 Adult Local Criminal Justice Facility Financing Placerville Jail Expansion Project and Senate Bill 81 Local Youthful Offender Rehabilitative Financing Program New Placerville Juvenile Hall Facility Project, pursuant to Agreement for Services #4495, dated December 13, 2019, First Amendment to Agreement for Services #4495, dated December 17, 2020, and Second Amendment to Agreement for Services #4495, dated December 10, 2021, incorporated herein and made by reference a part hereof (hereinafter referred to as "Agreement");

WHEREAS, the parties hereto desire to amend the Agreement to extend the expiration date of December 12, 2022 for one (1) additional year, amending **ARTICLE II, Term**;

WHEREAS, the parties hereto desire to amend the Agreement to increase the not-to-exceed compensation amount of the Agreement by \$235,100, and update Consultant's rates, amending **ARTICLE III, Compensation for Services**, and adding **Amended Exhibit A-3**, marked "Amended A-3 Fee Schedule," incorporated herein and made by reference a part hereof;

WHEREAS, the parties hereto desire to fully-replace specific Articles and add new Articles to include updated contract provisions;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants hereinafter contained, County and Consultant mutually agree to amend the terms of the Agreement in this Third Amendment to Agreement for Services #4495 on the following terms and conditions:

- I. **ARTICLE II, Term**, of the Agreement is amended in its entirety to read as follows:

ARTICLE II

Term: This Agreement shall become effective upon final execution by both parties hereto and, as amended, shall cover the period of December 13, 2019 through December 12, 2023.

- II. **ARTICLE III, Compensation for Services**, of the Agreement is amended in its entirety to read as follows:

ARTICLE III

Compensation for Services: For services provided herein, including any deliverables that may be identified in the individual Work Orders issued pursuant to this Agreement, County agrees to pay Consultant upon the satisfactory completion and County's acceptance of work, in arrears. Payment shall be made within forty-five (45) days following County's receipt and approval of invoices identifying the services rendered.

For the period beginning December 13, 2019, the effective date of the Agreement, and continuing through the day before the effective date of the First Amendment to the Agreement, for the services provided herein, the billing rates shall be in accordance with Exhibit A, marked "Fee Schedule," incorporated herein and made by reference a part hereof.

For the period beginning December 17, 2020, the effective date of the First Amendment, and continuing through the day before the effective date of the Second Amendment to the Agreement, for the services provided herein, the billing rates shall be in accordance with Amended Exhibit A, marked "Amended Fee Schedule," incorporated herein and made by reference a part hereof.

For the period beginning December 10, 2021, the effective date of the Second Amendment, and continuing through the day before the effective date of this Third Amendment to the Agreement, for the services provided herein, the billing rates shall be in accordance with Amended Exhibit A-2, marked "Amended A-2 Fee Schedule," incorporated herein and made by reference a part hereof.

For the period beginning on the effective date of this Third Amendment to the Agreement and continuing through the remaining term of the Agreement, for the services provided herein, the billing rates shall be in accordance with Amended Exhibit A-3, marked "Amended A-3 Fee Schedule," incorporated herein and made by reference a part hereof.

Other direct costs including special reproductions, delivery charges, and other outside services authorized herein, shall be invoiced at Consultant's cost, for the services rendered. Any invoices that include other direct costs shall be accompanied by backup documentation to substantiate Consultant's costs for the services being billed on those invoices.

Any reimbursements for mileage expenses, if any, will only be made if such expenses are included in the Cost Proposal of an approved and fully executed Work Order issued pursuant to this Agreement.

Travel costs (i.e., overnight lodging, meals, parking, airfare, bridge tolls, and other per diem expenses) will not be reimbursed as a direct cost for any services performed under this Agreement by Consultant. The total amount payable by County for an individual Work Order shall not exceed the amount agreed to in the Work Order, unless County's Contract Administrator and Consultant amend the Work Order in writing and prior to the performance of the work.

The total amount of this Agreement shall not exceed \$714,570, inclusive of all Work Orders and amended Work Orders, contingency work, costs, taxes, and expenses. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this Agreement through Work Orders.

Invoices shall follow the format specified by County and shall reference this Agreement number and the County-supplied Work Order number on their faces. Consultant shall attach copies of any progress reports required under the provisions of ARTICLE VII, Progress Reports, herein, that relate to the services being billed, as backup documentation to any invoices submitted for payment under the terms of this Agreement. Copies of documentation attached to invoices shall reflect Consultant's charges for the specific services billed on those invoices. Consultant shall bill County for only one (1) Work Order per invoice, as applicable. Invoices shall be mailed to County at the following address:

County of El Dorado
Chief Administrative Office
Facilities Division
3000 Fairlane Court, Suite One
Placerville, California 95667

or to such other location as County directs.

In the event that Consultant fails to deliver, in the format specified, the deliverables and progress reports required by the Agreement or in individual Work Orders issued pursuant to this Agreement, County at its sole option may delay the payment for the period of time of the delay, cease all payments until such time as the required deliverables or progress reports are received, or proceed as set forth below in ARTICLE XIV, Default, Termination, and Cancellation, herein.

III. The following Articles of the Agreement are fully replaced in their entirety to read as follows:

ARTICLE VII

Progress Reports: Upon issuance of a Work Order, Consultant shall submit written progress reports to County's Contract Administrator at intervals that are commensurate with the requirements of the items of work and tasks being performed and based upon a mutually agreeable schedule. At a minimum,

Consultant shall submit progress reports once per month. Consultant shall prepare the reports in a sufficiently detailed manner for County's Contract Administrator to determine if Consultant is performing to expectations and is on schedule to provide the services and deliverables described in the Scope of Work, to provide communication of interim findings, and to afford occasions for airing difficulties or special circumstances encountered so that remedies can be developed. County shall review the report to ensure that Consultant's services and deliverables adhere to current County requirements applicable to the project as determined by County's Contract Administrator, and Consultant shall modify its work if the County's Contract Administrator determined it is necessary to meet current County requirements applicable to the project. Separate detail shall be provided for each ongoing Work Order. Consultant shall include in a progress report the total number of hours worked by Consultant and any authorized subconsultants; a description of the tasks and work performed, including a description of any deliverables submitted during the reporting period; and the anticipated tasks, work, and deliverables proposed for the subsequent reporting period. Any invoices submitted by Consultant for payment under the terms of this Agreement shall include copies of the progress reports that relate to the services being billed on those invoices.

ARTICLE VIII

Ownership of Data: Upon completion or earlier termination of all services under this Agreement, or upon the completion or earlier termination of services provided in accordance with individual Work Orders issued pursuant to this Agreement, ownership and title to all reports, documents, plans, maps, specifications, estimates, compilations, photographs, videos, and any and all other materials or data produced or obtained as part of this Agreement will automatically be vested in County without restriction or limitation on their use, and no further agreement will be necessary to transfer ownership to County. Copies may be made for Consultant's records, but shall not be furnished to others without prior written authorization from County's Contract Administrator. Such deliverables shall be deemed works made for hire and all rights in copyright therein shall be retained by County. Consultant shall furnish County all necessary copies of data, including data stored in electronic format, needed to complete the review and approval process of the services and deliverables provided under this Agreement.

ARTICLE XVII

Indemnity: To the fullest extent permitted by law, Consultant shall defend at its own expense, indemnify, and hold the County harmless, its officers, employees, agents, and volunteers, against and from any and all liability, claims, suits, losses, damages, or expenses of every name, kind and description, including attorney's fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the acts or omissions of Consultant or its officers, agents, or employees in rendering the services,

operations, or performance hereunder, except for liability, claims, suits, losses, damages or expenses arising from the sole negligence or willful acts of the County, its officers and employees, or as expressly prescribed by statute. This duty of Consultant to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

The insurance obligations of Consultant are separate, independent obligations under the Agreement, and the provisions of this defense and indemnity are not intended to modify nor should they be construed as modifying or in any way limiting the insurance obligations set forth in the Agreement.

ARTICLE XVIII

Insurance: Consultant shall provide proof of a policy of insurance satisfactory to County's Risk Management Division and documentation evidencing that Consultant maintains insurance that meets the following requirements:

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Consultant as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000 aggregate limit. County, including, without limitation, its officers, officials, employees, and volunteers shall be named as an additional insured on ISO form CG 2010 1185, or its equivalent.
- C. Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by Consultant in performance of the Agreement.
- D. In the event Consultant is a licensed professional or professional consultant and is performing professional services under this Agreement, Professional Liability Insurance is required with a limit of liability of not less than \$1,000,000.
- E. Consultant shall furnish a certificate of insurance satisfactory to County's Risk Management Division as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to County's Risk Management Division or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- G. Consultant agrees that the insurance required herein shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Consultant agrees to provide at least thirty (30) days prior to said expiration date, a new

certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and Consultant agrees that no work or services shall be performed prior to the giving of such approval. In the event Consultant fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

- H. The certificate of insurance must include the following provisions stating that:
 - 1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to County; and
 - 2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- I. Consultant's insurance coverage shall be primary insurance in respect to County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees, or volunteers shall be in excess of Consultant's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by County. At the option of County, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions in respect to County, its officers, officials, employees, and volunteers; or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to County, its officers, officials, employees, or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers, and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Consultant's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.

- N. In the event Consultant cannot provide an occurrence policy, Consultant shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. The certificate of insurance shall meet such additional standards as may be determined by the contracting County department, either independently or in consultation with County's Risk Management Division as essential for protection of County.

IV. The following Articles of the Agreement are added to read as follows:

ARTICLE XXXV

Business License: County's Business License Ordinance provides that it is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Ordinance Code Section 5.08.070. Consultant warrants and represents that it and any of its subconsultants employed under this Agreement shall comply with all of the requirements of County's Business License Ordinance, where applicable, prior to beginning work under this Agreement and at all times during the term of this Agreement.

ARTICLE XXXVI

Electronic Signatures: Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement, are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic Signature means any electronic visual symbol or signature attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or email electronic signatures, pursuant to the California Uniform Electronic Transactions Act (Cal. Civ. Code §§ 1633.1 to 1633.17) as amended from time to time.

Except as herein amended, all other parts and sections of Agreement for Services #4495 shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Third Amendment to Agreement for Services #4495 on the dates indicated below.

--COUNTY OF EL DORADO--

By: _____

Dated: _____

Purchasing Agent
Chief Administrative Office
"County"

--AMG MANAGEMENT GROUP LLC--

By: _____

Dated: _____

Jayson J. Mills
Manager
"Consultant"

AMG Management Group LLC

Amended Exhibit A-3

Amended A-3 Fee Schedule

SB844 - NEW	Cost Per Hour	Amount	Approximate Number of Hours
Real Estate Due Diligence Phase	\$170	\$4,760	28
Bridging Document Phase	\$170	0	0
Request for Qualification (RFQ) / Request for Proposal (RFP) Phase	\$170	\$12,580	74
Design Build Development Phase	\$ 170	\$47,090	277
Design Build Project Management Phase	\$170	\$32,300	190
TOTALS		\$96,730	569

SB81 - NEW	Cost Per Hour	Amount	Approximate Number of Hours
Real Estate Due Diligence Phase	\$170	\$15,300	90
Bridging Document Phase	\$170	\$16,830	99
Request for Qualification (RFQ) / Request for Proposal (RFP) Phase	\$ 170	\$12,070	71
Design Build Development Phase	\$170	\$34,170	201
Design Build Project Management Phase	\$170	0	0
TOTALS		\$78,370	461

Contingency Services		\$60,000
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AMENDMENT TOTAL		\$235,100
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AMENDED TOTAL NOT-TO-EXCEED AMOUNT:		\$714,570.00
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The distributions of costs among the phases are estimates only. In the performance of the scope of services, Consultant may request to reallocate the costs listed among the various line items, subject to County Contract Administrator's prior written approval, provided the amendment total amount and the amended total not-to-exceed amount specified above shall not be exceeded.