

# ConsensusDocs® 400

## PRELIMINARY DESIGN-BUILD AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER



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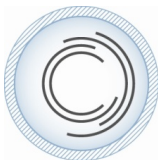
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This Agreement is made this 28th day of February in the year 2024, by and between the OWNER, Incline Village General Improvement District, located at 1220 Sweetwater Road, Incline Village, Washoe County Nevada, and the DESIGN-BUILDER, CORE West Inc dba CORE Construction, located at 7150 Cascade Valley Court, Las Vegas, Nevada, for preliminary services in connection with the following PROJECT

### 30% Schematic Design of the Incline Beach House

Notice to the Parties shall be given at the above addresses.

### ARTICLE 1 TEAM RELATIONSHIP



1.1 The Owner and the Design-Builder agree to proceed on the basis of trust, good faith and fair dealing, and shall take all actions reasonably necessary to perform this Agreement in an economical and timely manner. The Owner and the Design-Builder shall perform their obligations with integrity, ensuring at a minimum that: (a) conflicts of interest shall be avoided or disclosed promptly to the other Party; and (b) the Design-Builder and the Owner warrant that they have not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including their agents, officers and employees, Subcontractors or others for whom they may be liable, to secure preferential treatment.

## ARTICLE 2 DESIGN-BUILDER'S RESPONSIBILITIES

The Design-Builder shall exercise reasonable skill and judgment in the performance of its services. Architectural and engineering services shall be procured from licensed, independent design professionals retained by the Design-Builder or furnished by licensed employees of the Design-Builder, or as permitted by the law of the State in which the Project is located. The person or entity providing architectural and engineering services shall be referred to as the Design Professional. If the Design Professional is an independent design professional, the architectural and engineering services shall be procured pursuant to a separate agreement between the Design-Builder and the Design Professional. The Design Professional for the Project is Hershonow + Klippenstein Architects, LTD., dba H+K Architects

The Design-Builder shall provide full design and engineering services (including, without limitation, survey services) necessary to complete 30% Schematic Documents for the Project and in accordance with the District's direction and design standards. Design services required are evaluation of the site and of the design criteria documents and other Project-related information; preparation of a preliminary schedule and preliminary estimate; preparing 30% Schematic Documents, including supporting the District's design review process, with minimum elements as described in Attachment A, attending design review meetings and resolving review comments to the satisfaction of District; and performing work necessary to prepare and submit an acceptable cost estimate proposal within the expected cost range for the Project. The background information provided to the Design-Builder for the Interviews information, including, without limitation, the Request for Proposals as well as the Technical Documents, shall be included in the design process.

2.1 The Design-Builder is responsible for the following Preliminary Design-Build Services:

2.1.1 OWNER'S PROGRAM The Design-Builder shall assist the Owner in the development and preparation of the Owner's Program, which is an initial description of the Owner's objectives. The Owner's Program will include budget and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements. The Owner's Program will also include initial strategies and timelines for obtaining all permits required for the Project including but not limited to Washoe County and TRPA.

In concurrence with the development of the OWNER'S PROGRAMMING, a PRELIMINARY EVALUATION will be completed. The Design-Builder's review shall provide a preliminary evaluation of the site with regard to access, traffic, drainage, parking, building placement and other considerations affecting the building, the environment and energy use, as well as information regarding applicable governmental laws, regulations and requirements. The Design-Builder shall review the Owner's existing test reports but will not undertake any independent testing nor be required to furnish types of information derived from such testing in its preliminary evaluation. The Design-Builder shall also propose alternative architectural, civil, structural, mechanical, electrical and other systems for review by the Owner, in order to determine the most desirable method of achieving the Owner's requirements in terms of cost, technology, quality and speed of delivery. Based upon its review and verification of the Owner's Program and other relevant information, the Design-Builder shall provide a preliminary evaluation of the Project's feasibility for the Owner's acceptance. The



Design-Builder's preliminary evaluation shall specifically identify any deviations from the Owner's Program.

The OWNER'S PROGRAM and PRELIMINARY EVALUATION will be delivered in writing for preliminary review by the District or before April 15, 2024.

2.1.2 PRELIMINARY PROJECT SCHEDULE The Design-Builder shall provide a preliminary schedule for the Owner's written approval through the end of the Project, through final construction and Project closeout. The schedule shall show the activities of the Owner and the Design-Builder necessary to meet the Owner's completion requirements.

The PRELIMINARY PROJECT SCHEDULE will be developed through the end of construction and will include design milestones and delivery dates. The schedule will be in the form of the Critical Path Method and will be delivered on or before June 24, 2024.

2.1.3 PRELIMINARY ESTIMATE The Design-Builder shall prepare for the Owner's written approval a preliminary estimate utilizing area, volume, or similar conceptual estimating techniques. The level of detail for the estimate shall reflect the Owner's Program and any additional available information. If the preliminary estimate exceeds the Owner's budget, the Design-Builder shall make written recommendations to the Owner.

The PRELIMINARY ESTIMATE will be will be delivered in an excel spreadsheet and PDF format on or before June 24, 2024.

2.1.4 SCHEMATIC DESIGN DOCUMENTS The Design-Builder shall submit for the Owner's written approval Schematic Design Documents based on the agreed upon Preliminary Evaluation. Schematic Design Documents shall include drawings, outline specifications and other conceptual documents illustrating the Projects basic elements, scale and their relationship to the Worksite. One set of these Documents shall be furnished to the Owner. When the Design-Builder submits the Schematic Design Documents, the Design-Builder shall identify in writing all material changes and deviations from the Design-Builder's preliminary evaluation, schedule and estimate. The Design-Builder shall update the preliminary schedule and preliminary estimate based on the Schematic Design Documents.

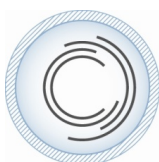
The SCHEMATIC DESIGN DOCUMENTS will include the 30% Schematic Design of architectural and engineering drawings in both AutoCAD and PDF formats. The 30% Schematic Design will be delivered on or before June 3, 2024.

### ARTICLE 3 OWNERSHIP OF DOCUMENTS

3.1 OWNERSHIP OF TANGIBLE DOCUMENTS Upon the making of final payment to the Design-Builder, the Owner shall receive ownership of the property rights, except for copyrights, of all documents, drawings, specifications, electronic data and information (hereinafter "Documents") prepared, provided or procured by the Design-Builder, its Design Professional, Subcontractors or consultants and distributed to the Owner for this Project.

3.2 COPYRIGHT The Parties agree that Owner shall obtain ownership of the copyright of all Documents. The Owner's acquisition of the copyright for all Documents shall be subject to the making of payments as required by ARTICLE 6 and the payment of the fee reflecting the agreed value of the copyright set forth below:

3.3 OWNER'S USE The Owner shall have the right to use, reproduce or make derivative works of the Design-Build Documents for other projects without the written authorization of the Design-Builder, who shall



not unreasonably withhold consent. The Owner's use of the Design-Build Documents on other projects or without the Design-Builder's written authorization or involvement is at the Owner's sole risk, and the Owner shall indemnify and hold harmless the Design-Builder, the Design Professional and Subcontractors, and the agents, officers, directors and employees of each of them from and against any and all claims, damages, losses, costs and expenses, including but not limited to attorneys' fees, costs and expenses incurred in connection with any dispute resolution process, arising out of or resulting from such use of the Design-Build Documents.

3.4 DESIGN-BUILDER'S USE Where the Design-Builder has transferred its copyright interest in the Documents, the Design-Builder may reuse Documents prepared by it pursuant to this Agreement in its practice, but only in their separate constituent parts and not as a whole. The Design-Builder shall obtain from its Design Professional, Subcontractors and consultants property rights and rights of use that correspond to the rights given by the Design-Builder to the Owner in this Agreement.

#### ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1 The Owner shall provide to the Design-Builder all relevant information for the Project. The Owner shall timely review and approve schedules, estimates, Schematic Design Documents and other documents provided under this Agreement.

4.2 OWNER'S ELECTION TO PROCEED If the Owner elects to proceed with the Project beyond the Preliminary Design-Build Services provided in this Agreement, the Owner and the Design-Builder shall enter into an additional agreement for the completion of the design and the construction of the Project. If the Owner elects not to proceed with the Project, the Owner shall have no further obligation to the Design-Builder other than the payment of compensation as set forth in this Agreement.

#### ARTICLE 5 CONTRACT TIME

5.1 The Design-Builder's Services provided under this Agreement shall commence on or about Feb. 28, 2024, and shall be completed on or about July 10, 2024.

#### ARTICLE 6 COMPENSATION

6.1 The Owner shall compensate the Design-Builder monthly for Preliminary Design-Build Services performed under the Agreement on the following basis:

A stipulated sum in the amount of **One Hundred Three Thousand Five Hundred Dollars (\$103,500)** that shall be paid for in progressive payment proportionate to the deliverables.

If the Owner elects to proceed with the Project beyond the Preliminary Design-Build Services provided in this Agreement, the Owner and the Design-Builder shall enter into additional agreements for the completion of the design and the construction of the Project. For the construction phase of the Project, the Design-Builder agrees to the following fees:

Design Build Team's Construction Fee	4.75%
Design Build Team's General Liability Insurance Fee	1.15%
Design Build Team's Bonding Fee	0.90%



## ARTICLE 7 INSURANCE

7.1 The Design-Builder shall obtain insurance for claims arising from the negligent performance of professional services under this Agreement, which shall be:

Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) General Liability: \$5,000,000 per occurrence for bodily injury, personal injury and property damage, and shall be endorsed to include contractual liability. Limits can be satisfied by providing Excess Liability coverage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) Automobile Liability: \$2,000,000 combined single limit (each accident) for bodily injury and property damage; and (3) Industrial Insurance: Workers' Compensation limits as required by the Labor Code of the State of Nevada. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease; and (4) Professional Liability/Errors and Omissions: Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years following completion of the Services, professional liability/errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$2,000,000 per claim. "Covered Professional Services" as designated in the Professional Liability/Errors and Omissions policy must specifically include work performed under this Agreement.

7.1.1 Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as additional insured pursuant to this Agreement. Defense costs shall be payable in addition to the limits.

7.1.2 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by the District to add the following provisions to the insurance policies:

7.1.2.1 Commercial General Liability. The commercial general liability policy shall be endorsed to provide the following: (1) the District, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds; (2) the insurance coverage shall be primary insurance as respects the District, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the District, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way; and (3) the insurance coverage shall contain or be endorsed to provide waiver of subrogation in favor of the District, its directors, officials, officers, employees, agents and volunteers or shall specifically allow Consultant to waive its right of recovery prior to a loss. Consultant hereby waives its own right of recovery against District, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

7.1.2.2 Automobile Liability. The automobile liability policy shall be endorsed to provide the following: (1) the District, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; (2) the insurance coverage shall be primary insurance as respects the District, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the District, its directors, officials, officers, employees, agents and volunteers shall be excess of the



Consultant's insurance and shall not be called upon to contribute with it in any way; and (3) the insurance coverage shall contain or be endorsed to provide waiver of subrogation in favor of the District, its directors, officials, officers, employees, agents and volunteers or shall specifically allow Consultant to waive its right of recovery prior to a loss. Consultant hereby waives its own right of recovery against District, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

7.1.2.3 Industrial (Workers' Compensation and Employers Liability) Insurance. The insurer shall agree to waive all rights of subrogation against the District, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

7.1.2.4 All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the District, its directors, officials, officers, employees, agents and volunteers.

7.1.3 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the District, its directors, officials, officers, employees, agents and volunteers.

7.1.4 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the District. Consultant shall guarantee that, at the option of the District, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the District, its directors, officials, officers, employees, agents and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

7.1.5 Acceptability of Insurers. Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Nevada and with an "A.M. Best" rating of not less than A-VII. The District in no way warrants that the above-required minimum insurer rating is sufficient to protect the Consultant from potential insurer insolvency.

7.1.6 Verification of Coverage. Consultant shall furnish the District with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the District. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the District if requested. All certificates and endorsements must be received and approved by the District before work commences. The District reserves the right to require complete, certified copies of all required insurance policies, at any time.

7.1.7 3.2.10.8 Subconsultants. Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the District that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the District as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, District may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

7.1.8 Compliance With Coverage Requirements. If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, District has the right but not the duty to obtain the insurance it deems necessary and any premium paid by District will be promptly reimbursed by Consultant or District will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, District may terminate this Agreement for cause.



7.1.9 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed.

**OWNER:**  
**INCLINE VILLAGE G. I. D.**  
**Agreed to:**

\_\_\_\_\_  
Trustee Sara Schmitz, Chairperson

\_\_\_\_\_  
Date

\_\_\_\_\_  
Trustee Michaela Tonking, Secretary

\_\_\_\_\_  
Date

**CONTRACTOR:**  
**CORE West Inc dba CORE Construction**  
**Agreed to:**

By: \_\_\_\_\_  
*Signature of Authorized Agent*

\_\_\_\_\_  
*Print or Type Name and Title*

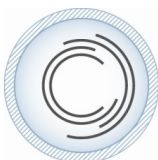
\_\_\_\_\_  
Date

If CONTRACTOR is a Corporation, attach evidence of authority to sign.

**Reviewed as to Form:**

\_\_\_\_\_  
Sergio Rudin  
District Legal Counsel

\_\_\_\_\_  
Date



## **Attachment A**

### **Incline Beach House Project**

The District has requested that the minimum elements to be included in the 30% Schematic Design include:

1. A kitchen sized and equipped to deliver at least an equivalent level of service as is currently available.
2. The project is to prioritize the number of restroom stalls to eliminate the year-round need for portable toilet facilities.
3. An increase to the size of the bar with attention paid to the flow of patrons both purchasing from the bar as well as from the kitchen.
4. The budget for the total project cost is \$4M, inclusive of all hard and soft costs. Hard costs representing the construction of the building and associated improvements. Soft costs may include permitting, design, pre-construction services, general conditions, bonds, insurance, profit and overhead.