

AGREEMENT FOR PROFESSIONAL SERVICES
Twain Harte Community Services District Hazard Tree Removal

THIS AGREEMENT for Professional Services (“Agreement”) is made on _____, 2019 (“Effective Date”), by and between the Twain Harte Community Services District (“District”), a special district of the State of California, and **CONTRACTOR** (“Contractor”) (together sometimes referred to as the “Parties”).

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Contractor shall provide to District the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 Time for Completion of Work.** No work shall be commenced prior to the Contractor’s receipt of the District’s Notice to Proceed. All work shall be completed no later than **DATE**, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Contractor to complete the services required by this Agreement shall not affect the District’s right to terminate the Agreement, as referenced in Section 8.
- 1.2 Deletion of Work.** The District reserves the right to delete work from the Scope of Work set forth in Exhibit A. Such deletion of work must be in writing and must expressly state that certain portion of work being deleted. Contractor shall be entitled to no compensation for any work that is deleted.
- 1.3 Standard of Performance and Responsibility for Work.** Contractor shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Contractor is engaged. The Contractor shall be solely responsible for the work described in Exhibit A.
 - a. The District is under no duty or obligation to review or verify the appropriateness, quality or accuracy of any of the Contractor’s work. The District’s review, approval, and/or adoption of any designs, plans, specifications or any other work shall be in reliance on the Contractor’s specialized expertise and shall not relieve the Contractor of its sole responsibility for the work.
 - b. All information which the Contractor receives from the District should be independently verified by the Contractor. The Contractor shall not rely upon such information, unless otherwise stated by the District in writing, until it has independently verified its accuracy.
 - c. If Contractor ever has reason to believe that any of its general or professional duties of care conflict with any requirements of this Agreement, the Contractor shall promptly notify the District in writing.

- 1.4 **Assignment of Personnel.** Contractor shall assign only competent personnel to perform services pursuant to this Agreement. In the event that District, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Contractor shall, immediately upon receiving notice from District of such desire of District, reassign such person or persons.
- 1.5 **Time.** Contractor shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.3 above and to satisfy Contractor's obligations hereunder.

Section 2. COMPENSATION. District hereby agrees to pay Contractor in full for all work required by this Agreement a sum not to exceed the total Agreement amount of **\$XXX,XXX.XX**. Progress payments will be made to Contractor based on compensable services provided at the rates set forth in the Contractor's Proposal Form, attached hereto as Exhibit B.

- 2.1 **Invoices.** Contractor shall submit invoices, not more often than once a month during the term of this Agreement, based on the services completed prior to the invoice date, at the rates set forth in the Contractor's Proposal Form (Exhibit B). Invoices shall be based on the Bid Form and must contain the following information:
- Invoice number;
 - The beginning and ending dates of the billing period; and
 - A Schedule of Values containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, the percentage of completion, and number of items completed with appropriate support documentation.
- 2.2 **Monthly Payment.** District shall make monthly payments, based on invoices received, for actual services satisfactorily performed, based on actual measured quantities and percentage of work completed. District will verify work completed prior to payment and will pay Contractor no later than 30 days from the receipt of a compliant invoice.
- 2.3 **Final Payment.** Contractor shall only submit a final invoice upon completion of all services. The final 10% of the total sum due to pursuant to this Agreement will only be paid if all services required have been satisfactorily performed.
- 2.4 **Excess Payments.** District shall pay only for the services to be rendered by Contractor pursuant to this Agreement and shall not pay any additional sum for any expense or cost whatsoever incurred by Contractor for said services or for any other services, unless the Agreement is modified by amendment to include said additional costs or services.

In no event shall Contractor submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the

entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed amendment.

2.5 Payment upon Termination. In the event that the District or Contractor terminates this Agreement pursuant to Section 8, the District shall compensate the Contractor for all outstanding costs incurred for work satisfactorily completed as of the date of written notice of termination. District, however, may condition payment of such compensation upon Contractor delivering to District any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Contractor or prepared by or for Contractor or the District in connection with this Agreement. Contractor shall maintain adequate logs and timesheets to verify costs incurred to that date.

2.6 Total Payment. Contractor and District acknowledge and agree that compensation paid by District to Contractor under this Agreement is based upon the Contractor's bid, which includes all costs for providing the services required hereunder, including salaries, taxes, employment taxes and benefits of employees and subcontractors of Contractor. District therefore has no responsibility for contributions beyond compensation required under this Agreement.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Contractor shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. District shall make available to Contractor only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

District shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Contractor's use while consulting with District employees and reviewing records and the information in possession of the District. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of District. In no event shall District be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

Section 4. INSURANCE REQUIREMENTS. Contractor, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Contractor and its agents, representatives, employees, and subcontractors. Contractor shall maintain the insurance policies required by this section throughout the term of this Agreement and for any additional period required below.

4.1 All Policies Requirements.

4.1.1 Acceptability of insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

- 4.1.2 Verification of coverage.** Prior to beginning any work under this Agreement, Contractor shall furnish District with complete copies of all policies, in a form satisfactory to the District, including complete copies of all endorsements attached to those policies. If the District does not receive the required insurance documents prior to the Contractor beginning work, it shall not waive the Contractor's obligation to provide them at the request of the District.
- 4.1.3 Deductibles and Self-Insured Retentions.** Contractor shall disclose to and obtain the District's written approval for the self-insured retentions and deductibles before beginning any of the work called for in this Agreement. At the option of the District, the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the District, its officers, employees, and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the District guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- 4.1.4 Wasting Policies.** No policy required by this Section 4 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).
- 4.1.5 Waiver of Subrogation.** Contractor hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Contractor agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation.
- 4.1.6 Subcontractors.** Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein. Contractor shall not allow any subcontractor to commence work on any subcontract until Contractor has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to District.
- 4.2 Workers' Compensation.** Contractor shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Contractor. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than **\$1,000,000** per accident. In the alternative, Contractor may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract Administrator. The insurer, if insurance is provided, or the Contractor, if a program of self-insurance is provided, shall provide an endorsement waiving all rights of subrogation against the District and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

4.3 Commercial General and Automobile Liability Insurance.

4.3.1 General requirements. Contractor, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than **\$2,000,000** per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.3.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an “occurrence” basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001, Code 1 (any auto). No endorsement shall be attached limiting the coverage.

4.3.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- District, its officers, officials, employees, and volunteers are to be covered as insureds as respects: liability arising out of work or operations performed by or on behalf of the Contractor; or automobiles owned, leased, hired, or borrowed by the Contractor
- For any claims related to this Agreement or the work hereunder, the Contractor’s insurance covered shall be primary insurance as respects the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be excess of the Contractor’s insurance and shall not contribute with it.
- Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days’ prior written notice has been provided to the District.

4.4 Remedies. In addition to any other remedies District may have if Contractor fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, District may, at its sole option, exercise any of the following remedies:

- a. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- b. Order Contractor to stop work under this Agreement or withhold any payment that becomes due to Contractor hereunder, or both stop work and withhold any payment, until Contractor demonstrates compliance with the requirements hereof; and/or
- c. Terminate this Agreement.

Section 5. HOLD HARMLESS / INDEMNIFICATION.

Contractor shall indemnify, defend, save, protect and hold harmless District, its elected and appointed officials, officers, employees, agents and volunteers (collectively, "District") from any and all demands, losses, claims, costs, suits, liabilities and expenses for any damage, injury or death (collectively, "Liability") arising directly or indirectly from or connected with the services provided hereunder which is caused, or claimed or alleged to be caused, in whole or in part, by the negligence or willful misconduct of Contractor, its officers, employees, agents, contractors, consultants, or any person under its direction or control and shall make good to and reimburse District for any expenditures, including reasonable attorney's fees, the District may make by reason of such matters and, if requested by District, shall defend any such suits at the sole cost and expense of Contractor. Contractor's obligations under this section shall exist regardless of concurrent negligence or willful misconduct on the part of the District or any other person; provided, however, that Contractor shall not be required to indemnify District for the proportion of Liability a court determines is attributable to the negligence or willful misconduct of the District.

If such indemnification becomes necessary, the District's Counsel shall have the absolute right and discretion to approve or disapprove of any and all counsel employed to defend the District. This indemnification clause shall survive the termination or expiration of this Agreement.

Section 6. STATUS OF CONTRACTOR.

- 6.1 Independent Contractor.** At all times during the term of this Agreement, Contractor shall be an independent contractor and shall not be an employee of District. District shall have the right to control Contractor only insofar as the results of Contractor's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subsection 1.4; however, otherwise District shall not have the right to control the means by which Contractor accomplishes services rendered pursuant to this Agreement. Notwithstanding any other District, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Contractor and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by District, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of District and entitlement to any contribution to be paid by District for employer contributions and/or employee contributions for PERS benefits.

6.2 Contractor Not an Agent. Except as District may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of District in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind District to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

7.1 Governing Law. The laws of the State of California shall govern this Agreement.

7.2 Compliance with Applicable Laws. Contractor and any subcontractors shall comply with all federal, state and local laws, ordinances and regulations applicable to the performance of the work hereunder. Contractor's Failure to comply with any law(s) or regulation(s) applicable to the performance of the work hereunder shall constitute a breach of contract.

7.3 Other Governmental Regulations. To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Contractor and any subcontractors shall comply with all applicable rules and regulations to which District is bound by the terms of such fiscal assistance program.

7.4 Licenses and Permits. Contractor represents and warrants to District that Contractor and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Contractor represents and warrants to District that Contractor and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Contractor and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses.

7.5 Nondiscrimination and Equal Opportunity. Contractor shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Contractor under this Agreement. Contractor shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Contractor thereby. Contractor shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 Termination.** District may cancel this Agreement at any time and without cause upon written notification to Contractor. Contractor may cancel this Agreement upon thirty (30) days' written notice to District and shall include in such notice the reasons for cancellation.
- 8.2 Extension.** District may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Contractor understands and agrees that, if District grants such an extension, District shall have no obligation to provide Contractor with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the District, District shall have no obligation to reimburse Contractor for any otherwise reimbursable expenses incurred during the extension period.
- 8.3 Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.
- 8.4 Assignment and Subcontracting.** District and Contractor recognize and agree that this Agreement contemplates personal performance by Contractor and is based upon a determination of Contractor's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to District for entering into this Agreement was and is the professional reputation and competence of Contractor. Contractor may not assign this Agreement or any interest therein without the prior written approval of the District. Contractor shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the District.
- 8.5 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between District and Contractor shall survive the termination of this Agreement.
- 8.6 Options upon Breach by Contractor.** If Contractor materially breaches any of the terms of this Agreement, District's remedies shall include, but not be limited to, the following:
- a. Immediately terminate the Agreement;
 - b. Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Contractor pursuant to this Agreement;
 - c. Retain a different Contractor to complete the work described in Exhibit A not finished by Contractor; or
 - d. Charge Contractor the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that District would have paid Contractor pursuant to Section 2 if Contractor had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 Records Created as Part of Contractor's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, whether complete or in process, that Contractor prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the District. Contractor hereby agrees to deliver those documents to the District upon termination of the Agreement. The Contractor shall assume no responsibility for the unintended use by others of any such documents. District and Contractor agree that, until final approval by District, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.
- 9.2 Contractor's Books and Records.** Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the District under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Contractor to this Agreement.
- 9.3 Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Contractor to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the District. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of District or as part of any audit of the District, for a period of 3 years after final payment under the Agreement.

Section 10. MISCELLANEOUS PROVISIONS.

- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Tuolumne or in the United States District Court for the Northern District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

- 10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Warranty.** District has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby warrants that all work shall be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor's work by District shall not operate as a waiver of release.
- 10.6 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.7 Conflict of Interest.** Contractor may serve other clients, but none whose activities within the corporate limits of District or whose business, regardless of location, would place Contractor in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Contractor shall not employ any District official in the work performed pursuant to this Agreement. No officer or employee of District shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Contractor hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the District. If Contractor was an employee, agent, appointee, or official of the District in the previous twelve months, Contractor warrants that it did not participate in any manner in the forming of this Agreement. Contractor understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Contractor will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Contractor will be required to reimburse the District for any sums paid to the Contractor. Contractor understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

- 10.8 Notices.** Any written notice to Contractor shall be sent to:

Contractor
ADDRESS
ADDRESS
ADDRESS

Any written notice to District shall be sent to:

Tom Trott, General Manager
Twain Harte Community Services District
P.O. Box 649

Twain Harte, CA 95383

10.9 Integration. This Agreement, including the following exhibits attached hereto and incorporated herein represents the entire and integrated agreement between District and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral:

<u>Exhibit A</u>	Scope of Work
<u>Exhibit B</u>	Proposal Form

10.10 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

The Parties have executed this Agreement as of the Effective Date.

DISTRICT

CONTRACTOR

GARY SIPPERLEY
District Board President

Name
Title

Attest:

CAROLYN HIGGINS
District Board Secretary