

NAPA COUNTY AGREEMENT NO. 230142B

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into as of this 1st day of July, 2022, by and between NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as “COUNTY”, and NAPA COUNTY RESOURCE CONSERVATION DISTRICT, whose mailing [or business] address is 1303 Jefferson Street, Suite 500B, Napa CA 94559, hereinafter referred to as “CONTRACTOR”;

RECITALS

WHEREAS, COUNTY wishes to obtain specialized services, as authorized by Government Code section 31000, to provide support to the Open Space District to satisfy the 2021 Noxious Weed Grant requirements; and

WHEREAS, CONTRACTOR is willing to provide such specialized services to COUNTY under the terms and conditions set forth herein; and

TERMS

NOW, THEREFORE, COUNTY hereby engages the services of CONTRACTOR, and CONTRACTOR agrees to serve COUNTY in accordance with the terms and conditions set forth herein:

1. **Term of the Agreement.** The term of this Agreement shall commence on the date first above written and shall expire on June 30, 2023, unless terminated earlier in accordance with Paragraphs 9 (Termination for Cause), 10 (Other Termination) or 23(a) (Covenant of No Undisclosed Conflict); except that the obligations of the parties under Paragraphs 7 (Insurance) and 8 (Indemnification) shall continue in full force and effect after said expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of CONTRACTOR to COUNTY shall also continue after said expiration date or early termination in relation to the obligations prescribed by Paragraphs 15 (Confidentiality), 20 (Taxes) and 21 (Access to Records/Retention).
2. **Scope of Services.** CONTRACTOR shall provide COUNTY those services set forth in Exhibit “A”, attached hereto.
3. **Compensation.**
 - (a) **Rates.** In consideration of CONTRACTOR's fulfillment of the promised work, COUNTY shall pay CONTRACTOR at the rates set forth in Exhibit “B”, attached hereto and incorporated by reference herein.
 - (b) **Expenses.** No travel or other expenses will be reimbursed by COUNTY
 - (c) **Maximum Amount.** Notwithstanding subparagraphs (a) and (b), the maximum payments under this Agreement shall be a total of SIX THOUSAND THREE HUNDRED

FIFTEEN (\$6,315) for professional services per fiscal year; provided, however, that such amounts shall not be construed as guaranteed sums, and compensation shall be based upon services actually rendered and reimbursable expenses actually incurred.

4. Method of Payment.

(a) Professional Services. All payments for compensation and reimbursement for expenses shall be made only upon presentation by CONTRACTOR to COUNTY of an itemized billing invoice in a form acceptable to the Napa County Auditor which indicates, at a minimum, CONTRACTOR's name, address, Social Security or Taxpayer Identification Number, itemization of the hours worked, a detailed description of the tasks completed during the billing period, the names of person(s) performing the services and the position(s) held by such person(s), and the approved hourly or task rate.

(b) Expenses. If the Agreement provides for expense reimbursement, requests for reimbursement shall describe the nature and cost of the expense, the date incurred. With the exception of per diem reimbursements, receipts must be attached.

(c) Fixed Price. If the Agreement provides for a fixed price, if CONTRACTOR presents interim invoices, CONTRACTOR must state the percentage of work completed, which must be verified by COUNTY, i.e., 35% design, 95% design, draft report, et cetera, at which time CONTRACTOR shall be paid the equivalent percentage of the fixed price.

(d) CONTRACTOR shall submit invoices not more often than monthly to the Agricultural Commissioner who, after review and approval as to form and content, shall submit the invoice to the Napa County Auditor no later than fifteen (15) calendar days following receipt. A sample invoice showing the level of detail required is attached as Exhibit "C".

(e) Legal status. So that COUNTY may properly comply with its reporting obligations under federal and state laws pertaining to taxation, if CONTRACTOR is or becomes a corporation during the term of this Agreement, proof that such status is currently recognized by and complies with the laws of both the state of incorporation or organization and the State of California, if different, shall be provided to the Agricultural Commissioner upon request in a form satisfactory to the Napa County Auditor. Such proof shall include, but need not be limited to, a copy of any annual or other periodic filings or registrations required by the state of origin or California, the current address for service of process on the corporation or limited liability partnership, and the name of any agent designated for service of process by CONTRACTOR within the State of California.

5. Independent Contractor. CONTRACTOR shall perform this Agreement as an independent contractor. CONTRACTOR and the officers, agents and employees of CONTRACTOR are not, and shall not be deemed, COUNTY employees for any purpose, including workers' compensation and employee benefits. CONTRACTOR shall, at CONTRACTOR's own risk and expense, determine the method and manner by which duties imposed on CONTRACTOR by this Agreement shall be performed; provided, however, that COUNTY may monitor the work performed by CONTRACTOR. COUNTY shall not deduct or withhold any amounts whatsoever from the compensation paid to CONTRACTOR, including, but not limited to amounts required to be withheld for state and federal taxes, unless required to do so by court order. As between the parties to this Agreement, CONTRACTOR shall be solely responsible for all such payments.

6. **Specific Performance.** It is agreed that CONTRACTOR, including the agents or employees of CONTRACTOR, shall be the sole providers of the services required by this Agreement. Because the services to be performed by CONTRACTOR under the terms of this Agreement are of a special, unique, unusual, extraordinary, and intellectual or time-sensitive character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action of law, COUNTY, in addition to any other rights or remedies which COUNTY may possess, shall be entitled to injunctive and other equitable relief to prevent a breach of this Agreement by CONTRACTOR.

7. **Insurance.** CONTRACTOR shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage:

(a) **Workers' Compensation Insurance.** To the extent required by law during the term of this Agreement, CONTRACTOR shall provide workers' compensation insurance for the performance of any of CONTRACTOR's duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide COUNTY with certification of all such coverages upon request by COUNTY's Risk Manager.

(b) **Liability Insurance.** CONTRACTOR shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverages, **issued by a company admitted to do business in California and having an A.M. Best rating of A:VII or better, or equivalent self-insurance:**

(1) **General Liability.** Commercial general liability [CGL] insurance coverage (personal injury and property damage) of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence, covering liability or claims for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of CONTRACTOR or any officer, agent, or employee of CONTRACTOR under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(2) Professional Liability/Errors and Omissions. [RESERVED]

(3) **Comprehensive Automobile Liability Insurance.** Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with CONTRACTOR's business of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence. Coverage shall be business auto insurance coverage using Insurance Services Office (ISO) form number CA 0001 06 92 including symbol 1 (any Auto) or the exact equivalent. If CONTRACTOR owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the General Liability Insurance described in subparagraph (b)(1) above. If CONTRACTOR or CONTRACTOR's employees, officers, or agents will use personal automobiles in any way in the performance of this Agreement, CONTRACTOR shall provide evidence of personal auto liability coverage for each such person upon request.

(c) **Certificates of Coverage.** All insurance coverages referenced in 7(b), above, shall be evidenced by one or more certificates of coverage or, with the consent of COUNTY's Risk Manager, demonstrated by other evidence of coverage acceptable to COUNTY's Risk Manager,

which shall be filed by CONTRACTOR with the Agricultural Commissioner prior to commencement of performance of any of CONTRACTOR's duties.

(1) The certificate(s) or other evidence of coverage shall reference this Agreement by its COUNTY number or title and department; shall be kept current during the term of this Agreement; shall provide that COUNTY shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

(2) Waiver of Subrogation and Additional Insured Endorsements. For the commercial general liability insurance coverage referenced in 7(b)(1) and, for the comprehensive automobile liability insurance coverage referenced in 7(b)(3) where the vehicles are covered by a commercial policy rather than a personal policy, CONTRACTOR shall also file with the evidence of coverage an endorsement from the insurance provider naming COUNTY, its officers, employees, agents and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, CONTRACTOR shall file an endorsement waiving subrogation with the evidence of coverage.

(3) The certificate or other evidence of coverage shall provide that if the same policy applies to activities of CONTRACTOR not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of COUNTY shall pertain only to liability for activities of CONTRACTOR under this Agreement, and that the insurance provided is primary coverage to COUNTY with respect to any insurance or self-insurance programs maintained by COUNTY. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94.

(4) Upon request by COUNTY's Risk Manager, CONTRACTOR shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(d) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, COUNTY's Risk Manager, which approval shall not be denied unless the COUNTY's Risk Manager determines that the deductibles or self-insured retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of CONTRACTOR by this Agreement. At the option of and upon request by COUNTY's Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects COUNTY, its officers, employees, agents and volunteers or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

(e) Inclusion in Subcontracts. CONTRACTOR agrees to require all subcontractors and any other entity or person who is involved in providing services under this Agreement to comply with the Workers Compensation and General Liability insurance requirements set forth in this Paragraph 7.

8. Hold Harmless/Defense/Indemnification.

(a) In General. To the full extent permitted by law, CONTRACTOR and COUNTY shall each defend, indemnify and hold harmless each other as well as their respective officers, agents, employees, volunteers or representatives from and against any and all liability, claims, actions, proceedings, losses, injuries, damages or expenses of every name, kind and description, including litigation costs and reasonable attorney's fees incurred in connection therewith, brought for or on account of personal injury (including death) or damage to property, arising out of or connected with any acts or omissions of that party or its officers, agents, employees, volunteers, or contractors or their subcontractors, when performing any activities or obligations required of that party under this Agreement. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

(b) Employee Character and Fitness. CONTRACTOR accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents or representatives) to provide the services required of CONTRACTOR under this Agreement, including completion of a satisfactory criminal/background check and period rechecks to the extent permitted by law. Notwithstanding anything to the contrary in this Paragraph, CONTRACTOR shall hold COUNTY and its officers, agents and employees harmless from any liability for injuries or damages resulting from a breach of this provision or CONTRACTOR's actions in this regard.

9. Termination for Cause. If either party shall fail to fulfill in a timely and proper manner that party's obligations under this Agreement or otherwise breach this Agreement and fail to cure such failure or breach within ten (10) days of receipt of written notice from the other party describing the nature of the breach, the non-defaulting party may, in addition to any other remedies it may have, terminate this Agreement by giving five (5) days prior written notice to the defaulting party in the manner set forth in Paragraph 13 (Notices). The Napa County Purchasing Agent or designee pursuant to Napa County Code section 2.36.050 is hereby authorized to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of COUNTY for cause.

10. Other Termination. This Agreement may be terminated by either party for any reason and at any time by giving prior written notice of such termination to the other party specifying the effective date thereof at least thirty (30) days prior to the effective date, as long as the date the notice is given and the effective date of the termination are in the same fiscal year; provided, however, that no such termination may be effected by COUNTY unless an opportunity for consultation is provided prior to the effective date of the termination. COUNTY hereby authorizes the Napa County Executive Officer to make all decisions and take all actions required under this Paragraph to terminate this Agreement on behalf of COUNTY for the convenience of COUNTY.

11. **Disposition of, Title to and Payment for Work Upon Expiration or Termination.**

(a) Upon expiration of this Agreement or termination for cause under Paragraph 9 or termination for convenience of a party under Paragraph 10:

(1) To the extent CONTRACTOR has provided services through Software and Applications materials licensed to COUNTY, COUNTY shall promptly return the Software and Application materials to CONTRACTOR. In addition, to the extent CONTRACTOR maintains COUNTY data on those portions of digital software hosted by CONTRACTOR and not controlled by COUNTY (“County data”), CONTRACTOR shall promptly return County data to COUNTY Information Technology Department (ITS) in a format designated by ITS and shall subsequently purge County data from CONTRACTOR’s systems upon confirmation from COUNTY that the copy of the data provided to COUNTY is comprehensive of the data previously hosted by CONTRACTOR.

(2) All finished or unfinished documents and other materials, if any, and all rights therein shall become, at the option of COUNTY, the property of and shall be promptly returned to COUNTY, although CONTRACTOR may retain a copy of such work for its personal records only, except as otherwise provided under Paragraph 15 (Confidentiality) of this Agreement. Unless otherwise expressly provided in this Agreement, any copyrightable or patentable work created by CONTRACTOR under this Agreement shall be deemed a “work made for hire” for purposes of copyright or patent law and only COUNTY shall be entitled to claim or apply for the copyright or patent thereof. Notwithstanding the foregoing and to the extent services under this Agreement involve the development of previously patented inventions or copyrighted software, then upon expiration or termination of this Agreement, title to, ownership of, and all applicable patents, copyrights and trade secrets in the products developed or improved under this Agreement, shall remain with CONTRACTOR or any other person or entity if such person previously owned or held such patents, copyrights, and trade secrets, and such persons shall retain complete rights to market such product; provided, however, that COUNTY shall receive, at no additional cost, a perpetual license to use such products for its own use or the use of any consortium or joint powers agency to which COUNTY is a party. If the product involves a source code, CONTRACTOR shall either provide a copy of the source code to COUNTY or shall place the source code in an escrow account, at CONTRACTOR's expense, from which the source code may be withdrawn and used by COUNTY for the sole purpose of maintaining and updating the system dependent upon such code when such use is necessary to prevent loss of service to COUNTY.

(b) CONTRACTOR shall be entitled to receive compensation for any satisfactory work completed prior to expiration or receipt of the notice of termination or commenced prior to receipt of the notice of termination and completed satisfactorily prior to the effective date of the termination; except that CONTRACTOR shall not be relieved of liability to COUNTY for damages sustained by COUNTY by virtue of any breach of the Agreement by CONTRACTOR whether or not the Agreement expired or otherwise terminated, and COUNTY may withhold any payments not yet made to CONTRACTOR for purpose of setoff until such time as the exact amount of damages due to COUNTY from CONTRACTOR is determined.

12. **No Waiver.** The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

13. **Notices.** All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or communication that either party desires to give the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

COUNTY

Agricultural Commissioner
1710 Soscol Ave., Suite 3
Napa, CA 94559

CONTRACTOR

Resource Conservation District
Lucas Patzek, Executive Director
1303 Jefferson St., Ste. 500B
Napa, CA 94559

14. **Compliance with COUNTY Policies on Waste, Harassment, Drug/Alcohol-Free Workplace, and Computer Use.** CONTRACTOR hereby agrees to comply, and require its employees and subcontractors to comply, with the following policies, copies of which are on file with the Clerk of the Board of Supervisors and incorporated by reference herein. CONTRACTOR also agrees that it shall not engage in any activities, or permit its officers, agents and employees to do so, during the performance of any of the services required under this Agreement, which would interfere with compliance or induce violation of these policies by COUNTY employees or contractors.

(a) Waste Source Reduction and Recycled Product Content Procurement Policy adopted by resolution of the Board of Supervisors on March 26, 1991.

(b) County of Napa “Policy for Maintaining a Harassment and Discrimination Free Work Environment” revised effective June 20, 2017.

(c) County of Napa Drug and Alcohol Policy adopted by resolution of the Board of Supervisors on June 25, 1991.

(d) Napa County Information Technology Use and Security Policy adopted by resolution of the Board of Supervisors on April 17, 2001. To this end, all employees and subcontractors of CONTRACTOR whose performance of services under this Agreement requires access to any portion of the COUNTY computer network shall sign and have on file with COUNTY’s ITS Department prior to receiving such access the certification attached to said Policy.

(e) Napa County Workplace Violence Policy, adopted by the BOS effective May 23, 1995 and subsequently revised effective November 2, 2004, which is located in the County of Napa Policy Manual Part I, Section 37U.

15. **Confidentiality.**

(a) Maintenance of Confidential Information. Confidential information is defined as all information disclosed to CONTRACTOR which relates to COUNTY's past, present, and future activities, as well as activities under this Agreement. CONTRACTOR shall hold all such information as CONTRACTOR may receive, if any, in trust and confidence, except with the prior written approval of COUNTY, expressed through its Agricultural Commissioner. Upon

cancellation or expiration of this Agreement, CONTRACTOR shall return to COUNTY all written and descriptive matter which contains any such confidential information, except that CONTRACTOR may retain for its files a copy of CONTRACTOR's work product if such product has been made available to the public by COUNTY.

(b) Protection of Personally Identifiable Information and Protected Health Information.

(1) To the extent CONTRACTOR is provided, creates, or has access to, Protected Health Information (PHI), Personally Identifiable Information (PII), or any other legally protected confidential information or data in any form or matter (collectively referred to as "Protected Information"), CONTRACTOR shall adhere to all federal, state and local laws, rules and regulations protecting the privacy of such information. CONTRACTOR shall adhere to all existing and future federal, state and local laws, rules and regulations regarding the privacy and security of Protected Information, including, but not limited to, laws and regulations requiring data encryption or policy and awareness programs for the protection of COUNTY Protected Information provided to, or accessed or created by, CONTRACTOR. Additionally, CONTRACTOR shall only access, use or disclose County Protected Information if such access, use, or disclosure is expressly permitted by the terms of its agreement with County. Any other access, use or disclosure of County Protected Information is prohibited. Examples of prohibited accesses, uses and disclosures include, but are not limited to: the removal of confidential files, documents or devices containing County Protected Information from a County facility; the unauthorized transmission of County Protected Information via email, fax or other means; and the discussion of such information with other individuals (including other CONTRACTOR or County employees) who do not have a County approved business reason to obtain the information.

(2) CONTRACTOR shall ensure that its staff and any third party organizations or individuals that it engages to perform services in conjunction with the terms of this agreement are trained to its privacy and security policies, as well as Paragraph 15 of this agreement; and procedures and that appropriate physical, technological and administrative safeguards are in place to protect the confidentiality of COUNTY's Protected Information. Upon request, CONTRACTOR shall make available to COUNTY its policies and procedures, staff training records and other documentation of compliance with this Paragraph 15.

(3) CONTRACTOR agrees to notify COUNTY immediately of any unauthorized access to or disclosure of Protected Information that it becomes aware of. This includes instances wherein CONTRACTOR encounters unsecured Protected Information in areas where CONTRACTOR employees are performing services.

(4) CONTRACTOR will be responsible for all costs associated with CONTRACTOR's breach of the security and privacy of COUNTY's Protected Information, or its unauthorized access to or disclosure of COUNTY's Protected Information, including, but not limited to, mitigation of the breach, cost to the County of any monetary sanctions resulting from breach, notification of individuals affected by the breach, and any other action required by federal, state, or local laws, rules or regulations applicable at the time of the breach.

16. No Assignments or Subcontracts.

(a) In General. A consideration of this Agreement is the personal reputation of CONTRACTOR; therefore, CONTRACTOR shall not assign any interest in this Agreement or subcontract any of the services CONTRACTOR is to perform hereunder without the prior written consent of COUNTY, which shall not be unreasonably withheld. The inability of the

assignee to provide personnel equivalent in experience, expertise, and numbers to those provided by CONTRACTOR, or to perform any of the remaining services required under this Agreement within the same time frame required of CONTRACTOR shall be deemed to be reasonable grounds for COUNTY to withhold its consent to assignment. For purposes of this subparagraph, the consent of COUNTY may be given by the Agricultural Commissioner.

(b) Effect of Change in Status. If CONTRACTOR changes its status during the term of this Agreement from or to that of a corporation, limited liability partnership, limited liability company, general partnership, or sole proprietorship, such change in organizational status shall be viewed as an attempted assignment of this Agreement by CONTRACTOR. Failure of CONTRACTOR to obtain approval of such assignment under this Paragraph shall be viewed as a material breach of this Agreement.

17. **Amendment/Modification.** Except as specifically provided herein, this Agreement may be modified or amended only in writing and with the prior written consent of both parties. Failure of CONTRACTOR to secure such authorization in writing in advance of performing any extra or changed work shall constitute a waiver of any and all rights to adjustment in the contract price or contract time and no compensation shall be paid for such extra work.

18. **Interpretation; Venue.**

(a) Interpretation. The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

(b) Venue. This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration any dispute arising under this Agreement.

19. **Compliance with Laws.** CONTRACTOR shall observe and comply with all applicable Federal, State and local laws, ordinances, and codes. Such laws shall include, but not be limited to, the following, except where prohibited by law:

(a) Non-Discrimination. During the performance of this Agreement, CONTRACTOR and its subcontractors shall not deny the benefits thereof to any person on the basis of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age, mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), or political affiliation or belief, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age (over 40), mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), use of family care leave, or political affiliation or belief. CONTRACTOR shall ensure that the evaluation and treatment of employees

and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to CONTRACTOR services or works required of COUNTY by the State of California pursuant to agreement between COUNTY and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and CONTRACTOR and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

(b) Documentation of Right to Work. CONTRACTOR agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of CONTRACTOR performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. CONTRACTOR shall make the required documentation available upon request to COUNTY for inspection.

(c) Inclusion in Subcontracts. To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include all of the provisions of this Paragraph 19 in all such subcontracts as obligations of the subcontractor.

(d) Prevailing Wages. [RESERVED]

20. **Taxes.** CONTRACTOR agrees to file federal and state tax returns or applicable withholding documents and to pay all applicable taxes or make all required withholdings on amounts paid pursuant to this Agreement and shall be solely liable and responsible to make such withholdings and/or pay such taxes and other obligations including, without limitation, state and federal income and FICA taxes. CONTRACTOR agrees to indemnify and hold COUNTY harmless from any liability it may incur to the United States or the State of California as a consequence of CONTRACTOR's failure to pay or withhold, when due, all such taxes and obligations. In the event that COUNTY is audited for compliance regarding any withholding or other applicable taxes or amounts, CONTRACTOR agrees to furnish COUNTY with proof of payment of taxes or withholdings on those earnings.

21. **Access to Records/Retention.** COUNTY, any federal or state grantor agency funding all or part of the compensation payable hereunder, the State Controller, the Comptroller General of the United States, or the duly authorized representatives of any of the above, shall have access to any books, documents, papers and records of CONTRACTOR which are directly pertinent to the subject matter of this Agreement for the purpose of making audit, examination, excerpts and transcriptions. Except where longer retention is required by any federal or state law, CONTRACTOR shall maintain all required records for at least seven (7) years after COUNTY

makes final payment for any of the work authorized hereunder and all pending matters are closed, whichever is later.

22. **Authority to Contract.** CONTRACTOR and COUNTY each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

23. **Conflict of Interest.**

(a) **Covenant of No Undisclosed Conflict.** The parties to the Agreement acknowledge that they are aware of the provisions of Government Code section 1090, et seq., and section 87100, et seq., relating to conflict of interest of public officers and employees. CONTRACTOR hereby covenants that it presently has no interest not disclosed to COUNTY and shall not acquire any interest, direct or indirect, which would conflict in any material manner or degree with the performance of its services or confidentiality obligation hereunder, except as such as COUNTY may consent to in writing prior to the acquisition by CONTRACTOR of such conflict. CONTRACTOR further warrants that it is unaware of any financial or economic interest of any public officer or employee of County relating to this Agreement. CONTRACTOR agrees that if such financial interest does exist at the inception of this Agreement, COUNTY may terminate this Agreement immediately upon giving written notice without further obligation by COUNTY to CONTRACTOR under this Agreement.

(b) **Statements of Economic Interest.** CONTRACTOR acknowledges and understands that COUNTY has developed and approved a Conflict of Interest Code as required by state law which requires CONTRACTOR to file with the Elections Division of the Napa County Assessor-Clerk Recorder “assuming office”, “annual”, and “leaving office” Statements of Economic Interest as a “consultant”, as defined in section 18701(a)(2) of Title 2 of the California Code of Regulations, unless it has been determined in writing that CONTRACTOR, although holding a “designated” position as a consultant, has been hired to perform a range of duties so limited in scope as to not be required to fully comply with such disclosure obligation.

24. **Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create such rights.

25. **Attorney's Fees.** In the event that either party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

26. **Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

27. **Entirety of Contract.** This Agreement, including any documents expressly incorporated by reference whether or not attached hereto, constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

28. **Special Terms and Conditions.** CONTRACTOR shall adhere to the special terms and conditions set forth in Exhibit “D”, attached hereto and incorporated by reference herein.

IN WITNESS WHEREOF, this Agreement was executed by the parties hereto as of the date first above written.

NAPA COUNTY RESOURCE CONSERVATION
DISTRICT, a special district of the State of California

DocuSigned by:
By Lucas Patzek
0477C4FDDDD7455...
Lucas Patzek, Executive Director

"CONTRACTOR"

NAPA COUNTY, a political subdivision of
the State of California

By _____
RYAN GREGORY, Chair
Board of Supervisors

"COUNTY"

APPROVED AS TO FORM
Office of County Counsel

By: *Wendy M. Dau*, Deputy
County Counsel
District Counsel

Date: Aug. 3, 2022
Doc: No. 74700

<p>APPROVED AS TO FORM Office of County Counsel By: : <i>Chris R.Y. Apallas</i> County Counsel Date: July 6, 2022 Doc. No. 74544</p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS Date: _____ Processed By: _____ Deputy Clerk of the Board</p>	<p>ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors By: _____</p>
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EXHIBIT “A”

SCOPE OF WORK

CONTRACTOR shall provide COUNTY with the following services to satisfy 2021 Noxious Weed Grant requirements:

I. DESCRIPTION OF SERVICES

CONTRACTOR’S Weed Management Area will provide meeting support, implement good land stewardship, and raise public awareness of the impacts of invasive plants.

II. COMPLIANCE WITH GOVERNMENT CODE SECTION 7550. As required by Government Code section 7550, each document or report prepared by CONTRACTOR for or under the direction of COUNTY pursuant to this Agreement shall contain the numbers and dollar amounts of the Agreement and all subcontracts under the Agreement relating to the preparation of the document or written report. The Agreement and subcontract dollar amounts shall be contained in a separate section of the document or written report. If multiple documents or written reports are the subject of the Agreement or subcontracts, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.

EXHIBIT “B”**COMPENSATION AND EXPENSE REIMBURSEMENT**

The budget for labor and expenses for the 2021 grant shall not exceed \$6,315.

Hourly Rates for Compensation:

Position Title	Hourly Rate
Conservation Program Manager	\$119.24
Conservation Project Manager	\$86.41
Coordinator	\$61.87
Environmental Scientist II	\$91.30
Environmental Scientist III	\$113.60
Executive Director	\$119.73
Forestry Program Manager II	\$89.67
Office Manager II	\$96.45
Principal Program Manager, Forestry	\$107.14
Program Director	\$115.75
Project Manager	\$83.32
Project Manager	\$87.69
Sustainable Agriculture Program Manager II	\$90.55

CONTRACTOR billable rates include direct and indirect costs. CONTRACTOR adjusts its billable rates annually on July 1 and whenever there is a change in an employee’s underlying direct pay rate. Whenever there is any other change to any of these rates or when new positions are added, CONTRACTOR will notify COUNTY immediately, and with the approval of COUNTY’s Ag Commissioner’s Office, which shall not be unreasonably withheld, CONTRACTOR may implement such adjusted rates. In any case, CONTRACTOR must still adhere to the budget limitations under “BUDGET” above.

Expenses

Expenses related to fulfilling the scope of work in Exhibit “A” may include but are not limited to mileage, meeting supplies, weed removal equipment, printing, and field GIS/mapping tools.

EXHIBIT "C"

[Company Name]
 [Street Address]
 [City, ST ZIP Code]
 Phone [phone] Fax [fax]
 Taxpayer ID #

**SAMPLE
 INVOICE**

INVOICE # _____
 DATE: _____

TO:

FOR:

[Customer Name]
 [Street Address]
 [City, ST ZIP Code]

[Project or service description]
 Contract No.

Date	DESCRIPTION	Employee & Title	HOURS	RATE	AMOUNT
1/1/15	Site visit/investigation 123 Main St, Napa. Conf w/Owner AutoCad, Bldg X, 3 rd Floor	Smith, Engineer	1.5	\$165.00	247.50
1/1/15		Smith, Engineer	1	\$165.00	165.00
1/1/15		Smith, Engineer	4	\$165.00	660.00
1/2/15	Rev plans, phone conf w/Owner	Jones, PE	1.75	\$195.00	341.25
1/2/15	AutoCad Bldg X, 3 rd Floor Conf w/Owner re 2 nd Floor	Smith, Engineer	4	\$165.00	660.00
1/2/15		Smith, Engineer	.5	\$165.00	82.50
1/3/15	Mtg w/Jones re 2 nd Floor; conf w/Owner Mtg w/Smith; conf w/Owner re 2 nd Floor	Smith, Engineer	1.5	\$165.00	247.50
1/3/15		Jones, PE	1.5	\$195.00	292.50
TOTAL					

EXHIBIT “D”

2021 NOXIOUS WEED GRANT PROGRAM – AMENDMENT 1

(see attached)

**AMENDED COOPERATIVE AGREEMENT
SIGNATURE PAGE**

AGREEMENT NUMBER 20-0978-000-SA
AMENDMENT NUMBER 1

- This Agreement is entered into between the State Agency and the Recipient named below:
STATE AGENCY'S NAME
DEPARTMENT OF FOOD AND AGRICULTURE (CDFA)
RECIPIENT'S NAME
COUNTY OF NAPA
- The term of this Agreement is: January 15, 2021 through June 30, 2023
- The maximum amount of this Agreement is: \$64,000.00
- The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement:

Paragraph two (2) of the Agreement is hereby amended to extend the expiration date from June 30, 2022 to a new expiration date of June 30, 2023.

Paragraph three (3) of the Agreement is hereby amended to increase the Agreement by \$32,000.00 for a new total not to exceed \$64,000.00. A revised Budget for the increased amount is attached (1 Page), which replaces the Budget in the original Agreement, and is hereby incorporated into the Agreement effective January 15, 2021.

A revised Scope of Work is attached (3 Pages), which replaces the original Scope of Work, and is hereby incorporated into the Agreement effective January 15, 2021.

Sections of the Cooperative Agreement, Exhibit B, Terms and Conditions are hereby amended by removing clause #9 "Property Damage" effective January 15, 2021.

Removing:

9. Property Damage

~~Should a property owner claim damages arising under, related to or involving this Agreement, the Recipient agrees to indemnify, defend, and hold harmless the CDFA, its officers, agents and employees from any and all claims and losses.~~

The time extension and increase in funds is required because new funding became available to assist the counties on their projects allowing them additional time to continue control efforts and follow-up on monitoring.

All other terms and conditions of this Agreement shall remain the same.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

RECIPIENT

RECIPIENT'S NAME (Organization's Name) COUNTY OF NAPA	Approved as to Form: <i>[Signature]</i> May 14, 2021
--	--

BY (Authorized Signature) <i>[Signature]</i>	DATE SIGNED (Do not type) June 8, 2021
---	---

PRINTED NAME AND TITLE OF PERSON SIGNING
Alfredo Pedroza, Chair, BOS

ADDRESS
1710 Soscol Avenue, Suite 3, Napa, CA 94559-1315

STATE OF CALIFORNIA

AGENCY NAME
DEPARTMENT OF FOOD AND AGRICULTURE (CDFA)

BY (Authorized Signature) <i>[Signature]</i>	DATE SIGNED (Do not type) 6/23/21
---	--------------------------------------

PRINTED NAME AND TITLE OF PERSON SIGNING
CRYSTAL MYERS, BRANCH CHIEF, OFFICE OF GRANTS ADMINISTRATION

ADDRESS
1220 N STREET, ROOM 120
SACRAMENTO, CA 95814

APPROVED
 NAPA COUNTY BOARD OF SUPERVISORS
 CLERK OF THE BOARD

PROJECT APPLICATION
County of Napa Agricultural Commissioner

I. Project Overview (FAC 7272.5)

Project Goals and Objectives (check all that apply):

- Increase the profitability and value of crop land and rangeland
- Decrease the costs of roadside, park, and waterway maintenance
- Reduce the fire hazard and fire control costs in the state
- Protect the biodiversity of native ecosystems
- Maintain the recreational and aesthetic value of open space, recreational, and public areas
- Increase water supply and flow

Project Activities (check all that apply):

- Operation of programs by the county agricultural commissioner for control of noxious weeds along county roads and other local government owned property
- Matching funds for control of noxious weeds on city owned streets, parks, rights-of-way, and other public areas
- Disseminating biological control agents by the county agricultural commissioner for the long-term control of yellow starthistle or other noxious weeds
- Abatement of noxious weed infestations on land vital to the success of the program

II. Project Plan

Weed Species to be Controlled:

A. Napa County Agricultural Commissioner's Office will be conducting a survey and mapping project for red sesbania (*Sesbania punicea*) in the creek adjacent to Highway 29 and First Street in the city of Napa. Red sesbania is a deciduous shrub found in riparian areas, which can outcompete native plants and contribute to bank erosion and flooding.

B. This project is primarily focused on the mechanical control of French broom (*Genista monspessulana*) at Moore Creek Park, owned, and operated by the Napa County Regional Park and Open Space District ("District"), a special district of the State of California. Moore Creek Park is adjacent to the communities of Angwin and Deer Park, some of the highest fire hazard severity zones in Napa County, near Pacific Union College and St. Helena Hospital. Minimizing wildfire risk in this wildland-urban interface area with many residents and visitors and restricted road access is critical.

French broom is aggressively invasive. It excludes native habitat and has abundant seed production and a long-lasting seedbank. Its dense stands produce a large amount of dry matter, increasing fire hazard, and quickly blocks trails and roadsides, decreasing recreational value and reducing visibility. The District has made great progress reducing the area of infestation over the years, but a substantial core area of infestation needs ongoing and concerted attention.

APPROVED June 8, 2021
 NAPA COUNTY BOARD OF SUPERVISORS
 BY: [Signature] CLERK OF THE BOARD
 Deputy

WITNESSED:
 Napa County Clerk of the Board of Supervisors
 By: [Signature] Deputy

Removal of French broom is vital as fire risk increases in California. Napa County has experienced repeated severe fires in recent years, with significant portions of the District's lands burning. This summer the LNU Complex Fire burned to the edges of this area. The District is involved in efforts by CalFire and Angwin's Fire Safe Council to replicate around Angwin the broom removal demonstrated at Moore Creek Park. Partner agency Napa County Resource Conservation District ("Napa RCD") is developing French broom removal volunteer training materials with funding from the 2020 Noxious Weed Grant Program, to be leveraged in this project.

A small portion of this project involves coordination of the nascent Napa Weed Management Area led by the Napa RCD. Meeting support is needed to coordinate efforts to advance knowledge and skills, implement good land stewardship, and raise public awareness of the impacts of invasive plants. A portion of the grant will be used to control any weed species on the California Noxious Weed list (CCR 4500) and weeds identified by CDFA as being A,Q or B rated

Methodology:

A. Survey and mapping project for red sesbania will be completed using GPS and GIS mapping software to determine the distribution of infestation.

B. French broom infestations have been preliminarily mapped on foot by the District. Refinement of these maps is needed using GPS and GIS software, pre- and post-removal. As cost-share to this grant, Napa RCD's Forestry Program Manager will assist with this mapping. The District will be performing removal, which it is authorized to do on its properties (no other permits are required).

A Notice of Exemption will be filed for the project in order to comply with CEQA. The project is exempt under *State CEQA Guidelines* Section 15304 (Class 4, Minor Alterations to Land), specified in Appendix B of the District's *Local Procedures for Implementing the California Environmental Quality Act*, which exempts control of invasive plants and vegetation management to reduce wildfire hazard. The project will not have a significant effect on the environment due to its location or other unique circumstances, and therefore qualifies for these exemptions.

Location(s): Please see attached preliminary maps. Additional mapping will be performed as part of this project to refine locations, and track removal.

Weed Removal/Control Techniques(s): Removal will be performed mechanically primarily by hand. Herbicides will not be used. French broom can be pulled without tools from wet soil, although in drier conditions weed wrenches are required. No significant challenges have been identified in previous years of work on these infestations.

III. Revised Reporting/Invoicing Schedule

Grant recipients will be required to submit a mid-year report to CDFA documenting a visual representation of the project's progress on September 15, 2021.

Important dates:

First Progress Report	September 15, 2021
Second Progress Report	September 1, 2022
Final Date to Expend March 31, 2023 funding portion identified on budget	March 31, 2023
Final Invoice for March 31, 2023 funding portion identified on budget	April 30, 2023
Final Date to Complete Field Work and expend remaining funds per budget	June 30, 2023
Final Report	July 31, 2023
Final Invoice Due	August 15, 2023

Final project reports are required 30 days after project completion, no later than July 31, 2023. Final project reports should include detailed information on project results and include photos of field work showing progress (before/after photos).

Noxious Weed Grant Program Budget
 County of Napa
 January 15, 2021 - June 30, 2023

	CDFA Funding	Cost Share
Personnel Services - Weed Control		
Title: Ag/W&M Inspector I-III	\$5,303.98	\$0.00
Title: Ag/W&M Inspector IV	\$373.80	\$0.00
Title: Deputy	\$894.76	\$0.00
Title:	\$0.00	\$0.00
Subtotal	\$6,572.54	\$0.00
Operating Expenses		
Supplies: (must be Itemized)		
Office Supplies - Ink, paper, binders	\$0.00	\$200.00
	\$0.00	\$0.00
Equipment: (must be Itemized)		
	\$0.00	\$0.00
	\$0.00	\$0.00
Herbicides: (must be Itemized)		
Type:	\$0.00	\$0.00
Amount: Cost:		
Type:	\$0.00	\$0.00
Amount: Cost:		
Type:	\$0.00	\$0.00
Amount: Cost:		
Contractor/ Consultant		
Napa Open Space District	\$49,470.00	\$0.00
WMA	\$6,314.32	\$0.00
Mileage for Weed Control \$0.575 x (30 Miles)	\$0.00	\$17.25
Subtotal	\$55,784.32	\$217.25
Allowable Costs: (Not more than 10% of the award may be used for meetings, travel, administration, and		
<i>Meetings</i>	\$0.00	\$0.00
<i>Travel</i>	\$0.00	\$0.00
<i>Administration</i>	\$0.00	\$0.00
<i>Coordination</i>	\$0.00	\$0.00
Mileage for Meetings, Training, Coordination \$0.575 x (Miles)	\$0.00	\$0.00
Subtotal	\$62,356.86	\$217.25
Indirect* (Max 25% of	\$1,643.14	\$0.00
Total	\$64,000.00	\$217.25
Amount must be fully expended by March 31, 2023 or sooner	\$32,000.00	
Amount must be expended by June 30, 2023 or sooner	\$32,000.00	
Grant Total CDFA Funding	\$64,000.00	
Grant Total Cost Share	\$217.25	

* If claiming less than 25% max Indirect Cost Rate please check this box: