

**FIRST AMENDMENT TO AGREEMENT BY AND BETWEEN \_\_\_\_\_  
PROTECTION DISTRICT AND THE COUNTY OF SONOMA FOR HAZARDOUS  
VEGETATION PROGRAM**

This First Amended Agreement (“Agreement” or “First Amended Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between \_\_\_\_\_ Fire Protection District, a public entity (“District”), and the County of Sonoma, a political subdivision of the State of California (“County”).

**RECITALS**

WHEREAS, the County has adopted Chapter 13A of its code entitled, “Duty to Maintain Defensible Space and Abate Hazardous Vegetation and Combustible Material” (“Ordinance”); and

WHEREAS, pursuant to authority conferred in Chapter 13A, Sections 13A-3, 13A-4 13A-5 and 13A-7 of the Sonoma County Code, the County Fire Warden/Fire Marshal delegated to the Chief of District the authority to conduct inspections for compliance with the Ordinance within District’s territory (“Delegation”); and

WHEREAS, pursuant to the Delegation, on April 15, 2019 the County and District entered into the Agreement by and between \_\_\_\_\_ and the County of Sonoma for Hazardous Vegetation Program (“Original Agreement”); and

WHEREAS, the Delegation and the Agreement conferred on the Chief of District the authority to conduct inspections of properties within the territory of District for compliance with the Ordinance pursuant to Sections 13A-4 and 13A-5, and to issue Notices of Violation and Orders to Abate pursuant to Sections 13A-7 of the County of Sonoma Code; and

WHEREAS, if additional abatement actions are needed, the County Fire Marshal/Fire Warden will consider whether to initiate additional enforcement actions pursuant to Sonoma County Code Chapter 13A, such as an administrative citation;

WHEREAS, the parties to the Original Agreement desire to enter into this First Amended Agreement to facilitate the continuation of the effective vegetation management inspection program through fiscal year 2022-23; and

WHEREAS, pursuant to this First Amended Agreement, the provision of the vegetation management inspection services will continue through the fiscal year 2022-23, and the invoicing and payment for those services will be finalized pursuant to the terms of this agreement prior to the termination of the contract on November 1, 2023.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

**AGREEMENT**

1. **RECITALS.**

All of the foregoing recitals are true and correct.

2. **AGREEMENT SUPERCEDED.**

Upon the execution of this Amendment by both parties, this First Amended Agreement hereby replaces and supersedes the Agreement dated April 15, 2019 in its entirety.

3. **DISTRICT'S RESPONSIBILITIES.**

DISTRICT shall complete the following:

3.1 **Scope of Work.** District agrees to conduct inspections of properties within the territory of District for compliance with the County's Hazardous Vegetation Ordinance pursuant to Sections 13A-3, 13A-4 and 13A-5 of the County of Sonoma Code, and to issue Notices of Violation and Orders to Abate pursuant to Sections 13A-7 of the County of Sonoma Code.

Additionally, District agrees as part of conducting inspections of properties within the territory of District for compliance with the Ordinance, it will perform the following tasks:

1. District shall use the data collection platform (Esri Collector App) implemented by County to ensure consistency in collecting inspection data.
2. Complete data entry related to the Hazardous Vegetation Program, including inspection results, daily to ensure information is updated in the database for "real time" data collection for the processing of violation letters to non-compliant property owners.
3. If/When data errors are forwarded to District, error shall be corrected within 3 business days to ensure county records are up to date and ensure violation letters are processed for non-compliant property owners.
4. If the County receives a complaint about a property located within the District's territory, County shall notify the District and request an inspection of that property. District shall conduct the inspection in compliance with the Ordinance within 4 business days. District shall complete an inspection report, and issue a Notice of Violation and Order to Abate on the form provided by Sonoma County Fire Prevention. Sonoma County Fire Prevention will coordinate the re-inspection and maintain responsibility for issuing the Administrative Citation if that becomes necessary.
5. District shall designate a representative to work with the County to coordinate the program to ensure customer service and follow-up.

County and District shall collaboratively work to develop a work program to proactively identify priority parcels for inspection prior to the District inspecting properties or expending funds. All work shall be performed in accordance with the requirements of applicable federal, state, and local laws.

3.2 **Services Not Included.** The Scope of Work of this Agreement *does not* include conducting summary abatements of any public nuisance pursuant to Section 13A-6 of the County of Sonoma Municipal Code. If District determines a violation of the County's Hazardous Vegetation Ordinance constitutes a public nuisance, District shall refer that violation to County immediately and the County will determine the need to utilize the summary abatement proceeding. If the County determines summary abatement proceedings are warranted, those proceedings will be conducted by the County.

Additionally, County will perform the re-inspection and if the violation continues to exist, issue an Administrative Citation in accordance with Sonoma County Code Sections 1-7.6 and 13A-7.

- 3.3 Indemnification. District agrees to accept all responsibility for loss or damage to any person or entity, including the County of Sonoma , and to indemnify, hold harmless, and release the County of Sonoma and its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including District, that arise out of, pertain to, or relate to District's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. District agrees to provide a complete defense for any claim or action brought against the County of Sonoma based upon a claim relating to District's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. District's obligations under this Paragraph apply whether or not there is concurrent or contributory negligence on the part of the County of Sonoma, but, to the extent required by law, excluding liability due to conduct of the County of Sonoma. The County of Sonoma shall have the right to select its legal counsel at District's expense, subject to District's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for District or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.
- 3.4 Statutory Compliance/Living Wage Ordinance. District agrees to comply, and to ensure compliance by its subconsultants or subcontractors, with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, District expressly acknowledges and agrees that this Agreement may be subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.
- 3.5 Insurance. With respect to performance of work under this Agreement, District shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Exhibit A, which is attached hereto and incorporated herein by this reference.

4. **PAYMENT AND TERM.**

- 4.1 District shall be paid on a time and material/expense basis at the rate of \$53.00 per hour, provided, however, that total payments to District shall not exceed \$ \_\_\_\_\_ without the prior written approval of County. District shall submit its bills in arrears on a monthly basis in a form approved by County's Auditor and the Fire Warden/Fire Marshal.

4.2 Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice. The invoice shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. Expenses not expressly authorized by the Agreement shall not be reimbursed.

4.3 Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the COUNTY shall withhold seven percent of the income paid to DISTRICT for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if DISTRICT does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.

If District does not qualify, County requires that a completed and signed Form 587 be provided by the District in order for payments to be made. If District is qualified, then the County requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the District agrees to promptly notify the County of any changes in the facts. Forms should be sent to the County pursuant to Paragraph 5.10. To reduce the amount withheld, District has the option to provide County with either a full or partial waiver from the State of California.

4.4 Term of Agreement. The term of this Agreement shall be from July 1, 2020 to November 1, 2023, or upon exhaustion of the funds described in Paragraph 3.1, whichever occurs earlier, unless terminated earlier in accordance with the provisions of Article 5 below.

4.5 Invoicing. Invoices to the County shall include the following information:

- a. Be on the District Letterhead;
- b. Date/Invoice No.;
- c. Description of charges -Task(s) performed;
- d. Hours spent on per task in quarter of an hour increments;
- e. Rate per Hour;
- f. Total Due;
- g. To whom the check is payable; and
- h. Contact Information.

## 5. TERMINATION.

5.1 Termination Without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, County shall have the right, in its sole discretion, to terminate this Agreement by giving 5 days written notice to District.

5.2 Termination for Cause. Notwithstanding any other provision of this Agreement, should

DISTRICT fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, County may immediately terminate this Agreement by giving District written notice of such termination, stating the reason for termination.

**5.3 Payment Upon Termination.** Upon termination of this Agreement by County, District shall be entitled to receive as full payment for all services satisfactorily rendered and reimbursable expenses properly incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by District bear to the total services otherwise required to be performed for such total payment; provided, however, that if services which have been satisfactorily rendered are to be paid on a per-hour or per-day basis, District shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked prior to the termination times the applicable hourly or daily rate; and further provided, however, that if County terminates the Agreement for cause pursuant to Section 4.2, County shall deduct from such amount the amount of damage, if any, sustained by County by virtue of the breach of the Agreement by District.

**5.4 Authority to Terminate.** The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, Fire Warden/Fire Marshal, in consultation with County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

## **6. MISCELLANEOUS REQUIREMENTS**

- 6.1. **Authority to Amend Agreement.** Changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties.
- 6.2. **No Waiver of Breach.** The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or promise or any subsequent breach of the same or any other term or promise contained in this Agreement.
- 6.3. **Construction.** To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. District and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. District and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.
- 6.4. **No Third-Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.
- 6.5. **Applicable Law and Forum.** This Agreement shall be construed and interpreted according to the substantive law of California excluding the law of conflicts. Any

action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the County of Sonoma.

- 6.6. Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.
- 6.7. Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure section 1856. Each Party acknowledges that, in entering into this Agreement, it has not relied on any representation or undertaking, whether oral or in writing, other than those which are expressly set forth in this Agreement. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.
- 6.8. Survival of Terms. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- 6.9. Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.
- 6.10 Notices. Method and Place of Giving Notice, Submitting Bills and Making Payments. All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

TO: COUNTY:

Sonoma County Fire Prevention  
2300 County Center Drive Ste. 220B  
Santa Rosa, Ca. 95403  
fire.prevention@sonoma-county.org

TO: DISTRICT:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[DISTRICT name, address and email  
Facsimile Number may be included]

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and

addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

- 6.11 Assignment and Delegation. Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.
- 6.12 Authority. The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of District.
- 6.13 Nondiscrimination. Without limiting any other provision hereunder, District shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.
- 6.14 Records Maintenance. District shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County for inspection at any reasonable time. District shall maintain such records for a period of four (4) years following completion of work hereunder.
- 6.15 Status of District. The parties intend that District, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. District is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement, County expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed.

FIRE  
PROTECTION DISTRICT

COUNTY OF SONOMA

By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Fire Marshal/Fire Warden

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Deputy County Counsel