

**PROFESSIONAL SERVICES AGREEMENT
BY AND BETWEEN
COUNTY OF HUMBOLDT
AND
WESLEY T. SMITH
COUNTY OF HUMBOLDT EXTRACTION REVIEW TEAM**

This Agreement, entered into this 5 day of November, 2019, by and between the County of Humboldt, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and **WESLEY T. SMITH**, appointee to the County of Humboldt Extraction Review Team, hereinafter referred to as "CONSULTANT," is made upon the following considerations:

WHEREAS, on May 14, 1996, the Humboldt County Board of Supervisors adopted Resolution No. 96-37 establishing the County of Humboldt Extraction Review Team ("CHERT"); and

WHEREAS, CONSULTANT has been appointed to the Humboldt County Extraction Review Team by the Humboldt County Board of Supervisors; and

WHEREAS, Humboldt County Code provides that CONSULTANT shall enter into a contract with COUNTY upon appointment to CHERT.

NOW THEREFORE BE IT AGREED:

1. DESCRIPTION OF SERVICES:

CONSULTANT agrees to furnish the services described in Exhibit A – CHERT Scope of Work, which is attached hereto and incorporated herein by reference. In providing such services and assistance, CONSULTANT agrees to fully cooperate with the Director of Planning and Building or designee thereof, hereinafter referred to as Director. CONSULTANT also agrees to fully cooperate with the Lead Scientist of CHERT.

2. TERM:

This Agreement shall begin upon execution by both parties and shall remain in full force and effect for five (5) year(s). This Agreement shall be automatically renewed for additional periods of one (1) year(s), up to a maximum of ten (10) years, unless sooner terminated as provided herein.

3. TERMINATION:

A. Breach of Contract. If, in the opinion of COUNTY, CONSULTANT fails to adequately perform the services required hereunder within the time limits specified herein, or otherwise fails to comply with the terms of this Agreement, or violates any ordinance, regulation, or other law applicable to its performance herein, COUNTY may terminate this Agreement immediately, upon notice.

B. Without Cause.

i. This Agreement may be terminated by COUNTY without cause upon thirty (30) days advance written notice. Such notice shall state the effective date of the termination.

ii. Upon CONSULTANT's Resignation. This Agreement may be terminated by CONSULTANT without cause upon notice of resignation from CHERT. The notice of resignation shall be submitted to the Director of the Planning and Building Department and the CHERT Lead Scientist thirty (30) days in advance of CONSULTANT's last day. Such notice shall state the effective date of the resignation/contract termination.

C. Insufficient Funding. COUNTY's obligations under this Agreement are contingent upon the availability of local, state and/or federal funds. In the event such funding is terminated, COUNTY shall, at its sole discretion, determine whether this Agreement shall be terminated. COUNTY shall provide CONSULTANT seven (7) days advance written notice of its intent to terminate this Agreement due to insufficient funding.

D. Compensation. In the event of any termination of this Agreement, CONSULTANT shall be entitled to compensation for uncompensated services rendered hereunder through and including the effective date of such termination. However, this provision shall not limit or reduce any damages owing to COUNTY resulting from a breach of this Agreement by CONSULTANT.

4. COMPENSATION:

CONTRACTOR shall be compensated at a rate of \$11.5 per hour. This rate may be increased from time to time to adjust for inflation at the discretion of the Director of the Planning and Building Department. Costs incurred by CHERT shall be payable by the operator of the site reviewed by CHERT as a part of their annual review activity which shall be collected by the Department on a cost-recovery basis. CONTRACTOR shall also be compensated for general CHERT duties such as attending meetings related to gravel management, consultations with COUNTY, federal and state agencies as required, etc., that are not incurred for a single operator, but rather a group of operators or in the performance of duties applicable to the entire gravel mining management program. CHERT shall submit billings to the Department of Planning and Building on a quarterly basis.

The COUNTY understands that CHERT is not obligated to provide services to any operators who refuse to pay for their services.

See Exhibit B hereto – CHERT Billing Procedure.

5. PAYMENT:

CONSULTANT (through CHERT) shall submit to COUNTY quarterly invoices itemizing all work completed. Invoices shall be in a format approved by, and shall include backup documentation as specified by, Director and the Humboldt County Auditor-Controller. CONSULTANT shall submit a final undisputed invoice for payment no more than thirty (30) days following the expiration or termination date of this Agreement. Payment for work performed will be made within thirty (30) days after the receipt of approved invoices.

6. NOTICES:

Any and all notices required to be given pursuant to the terms of this Agreement shall be in writing and either served personally or sent by certified mail, return receipt requested, to the respective addresses set forth below. Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

COUNTY: Humboldt County Planning and Building Department
Attn: Supervising Planner, Current Planning
3015 H Street
Eureka, CA 95501

CONSULTANT: **WESLEY T. SMITH**
P.O. Box 4485
Arcata, CA 95518
(707) 834-7897
floodkayaker@gmail.com

7. REPORTS:

CONSULTANT agrees to provide COUNTY with any and all reports, which may be required by local, state or federal agencies for compliance with this Agreement. Reports shall be submitted no later than fifteen (15) days after the end of each calendar quarter using the format required by the State of California as appropriate.

8. RECORD RETENTION AND INSPECTION:

- A. Maintenance and Preservation of Records. CONSULTANT agrees to timely prepare accurate and complete financial, performance and payroll records relating to the services provided hereunder, and to maintain and preserve said records for at least three (3) years from the date of final payment under this Agreement, except that if any litigation, claim, negotiation, audit or other action is pending, the records shall be retained until completion and resolution of all issues arising therefrom. The books and records shall be original entry books with a general ledger itemizing all debits and credits for the work performed.
- B. Inspection of Records. Pursuant to California Government Code Section 8546.7, all records, documents, conditions and activities of CONSULTANT, and its subcontractors, related to the services provided hereunder, shall be subject to the examination and audit of the California State Auditor and other duly authorized agents of the State of California for a period of three (3) years after final payment under this Agreement. CONSULTANT hereby agrees to make such records available during normal business hours to inspection, audit and reproduction by any duly authorized agents of the State of California or COUNTY. CONSULTANT further agrees to allow interviews of any of its employees who might reasonably have information related to such records by any duly authorized agents of the State of California or COUNTY. All examinations and audits conducted under this section shall be strictly confined to those matters connected with the performance of this Agreement, including, but not limited to, the costs of administering this Agreement.

- C. Audit Costs. In the event of an audit exception or exceptions, the party responsible for not meeting the program requirements shall be responsible for the deficiency and for the cost of the audit. If the allowable expenditures cannot be determined because CONSULTANT's documentation is nonexistent or inadequate, according to generally accepted accounting practices, the questionable cost shall be disallowed by COUNTY.

9. MONITORING:

CONSULTANT agrees that COUNTY has the right to monitor all activities related to this Agreement, including the right to review and monitor CONSULTANT's records, programs or procedures, at any time, as well as the overall operation of CONSULTANT's programs in order to ensure compliance with the terms and conditions of this Agreement. However, COUNTY is not responsible, and will not be held accountable, for overseeing or evaluating the adequacy of the results of services performed by CONSULTANT pursuant to the terms of this Agreement.

10. NUCLEAR FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE:

CONSULTANT certifies by its signature below that it is not a Nuclear Weapons Contractor, in that CONSULTANT is not knowingly or intentionally engaged in the research, development, production or testing of nuclear warheads, nuclear weapons systems or nuclear weapons components as defined by the Nuclear Free Humboldt County Ordinance. CONSULTANT agrees to notify COUNTY immediately if it becomes a Nuclear Weapons Contractor as defined above. COUNTY may immediately terminate this Agreement if it determines that the foregoing certification is false or if CONSULTANT becomes a Nuclear Weapons Contractor.

11. INDEMNIFICATION:

Because CHERT shall perform certain tasks defined in the Final Program EIR on Gravel Removal from the Lower Mad River, the Interim Monitoring Program for the Lower Eel and Van Duzen Rivers, more particularly described in sections 2 and 3 of Exhibit A, hereto, the COUNTY agrees to indemnify and hold harmless, including any and all attorney fees, the CHERT for performing these tasks. Notwithstanding any provision of this Agreement to the contrary, the COUNTY shall not assume liability for any CHERT recommendations used by any state or federal agency to issue permits or other authorizations for surface mining activities on rivers. CHERT shall indemnify and hold harmless the County from all acts or omissions arising out of the sole active negligence of CHERT, their agents, operators, employees or subcontractors, for any action related from acts incidental to performance of work under this Agreement, such as, but not limited to; incidents involving automobiles or negligent use of equipment.

12. INSURANCE:

COUNTY shall procure insurance for CHERT through the Special Liability Insurance Program (SLIP) so long as it is practical to do so. The cost of the insurance premium shall be billed to the gravel operators pro-rated on a quarterly basis.

13. RELATIONSHIP OF PARTIES:

It is understood that this is an Agreement by and between two independent contractors and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture, or any other similar association. Both parties further agree that CONSULTANT shall not be entitled to any benefits to which COUNTY employees are entitled, including, but not limited to, overtime, retirement benefits, leave benefits or workers' compensation.

14. CONFLICT OF INTEREST:

If CONSULTANT has a conflict of interest on a particular project, the conflict of interest shall be disclosed to the Director of the Planning and Building Department for review in accordance with Departmental policies and procedures. A conflict of interest occurs when CONSULTANT has professional or personal interests that compete with his or her services to the County as a CHERT member. Such competing interests may make it difficult for CONSULTANT to fulfill his or her duties impartially. Should a conflict of interest exist be found to exist, CONSULTANT shall not participate in the particular project for which a conflict of interest exists.

15. COMPLIANCE WITH LAWS:

CONSULTANT agrees to comply with all applicable local, state and federal laws and regulations, including, but not limited to, the Americans with Disabilities Act. CONSULTANT further agrees to comply with all applicable local, state and federal licensure and certification requirements, such as business license requirements.

16. 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.

17. ASSIGNMENT:

CONSULTANT shall not delegate its duties or assign its rights hereunder, either in whole or in part, without COUNTY's prior written consent. Any assignment by CONSULTANT in violation of this provision shall be void, and shall be cause for immediate termination of this Agreement.

18. AGREEMENT SHALL BIND SUCCESSORS:

All provisions of this Agreement shall be fully binding upon, and inure to the benefit of, the parties and to each of their heirs, executors, administrators, successors and assigns.

19. WAIVER OF DEFAULT:

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. In no event shall any payment by COUNTY constitute a waiver of any breach of this Agreement or any default which may then exist on the part of CONSULTANT. Nor shall such payment impair or prejudice any remedy available to COUNTY with respect to any breach or

default. COUNTY shall have the right to demand repayment of, and CONSULTANT shall promptly refund, any funds disbursed to CONSULTANT, which in the judgment of COUNTY were not expended in accordance with the terms of this Agreement.

20. NON-LIABILITY OF COUNTY OFFICIALS AND EMPLOYEES:

No official or employee of COUNTY shall be personally liable for any default or liability under this Agreement.

21. AMENDMENT:

No addition to, or alteration of, the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.

22. STANDARD OF PRACTICE:

CONSULTANT warrants that CONSULTANT has the degree of learning and skill ordinarily possessed by reputable professionals practicing in similar localities in the same profession and under similar circumstances. CONSULTANT's duty is to exercise such care, skill and diligence as professionals engaged in the same profession ordinarily exercise under like circumstances.

23. TITLE TO INFORMATION AND DOCUMENTS:

It is understood that any and all documents, information, and reports concerning the subject matter of this Agreement prepared and/or submitted by CONSULTANT shall become the property of COUNTY. However, CONSULTANT may retain copies of such documents and information for its records. In the event of termination of this Agreement, for any reason whatsoever, CONSULTANT shall promptly turn over all information, writings and documents to COUNTY without exception or reservation.

24. JURISDICTION AND VENUE:

This Agreement shall be construed in accordance with the laws of the State of California. Any dispute arising hereunder, or relating hereto, shall be litigated in the State of California and venue shall lie in the County of Humboldt unless transferred by court order pursuant to California Code of Civil Procedure Sections 394 or 395.

25. SUBCONTRACTS:

CONSULTANT shall obtain prior written approval from COUNTY before subcontracting any of the services to be delivered hereunder. Any and all subcontracts will be subject to all applicable provisions of this Agreement. CONSULTANT shall remain legally responsible for the performance of all terms and conditions of this Agreement, including work performed by third parties under subcontracts, whether approved by COUNTY or not.

Should CHERT subcontract any portion of the work to be performed under this Agreement, said SUBCONTRACTOR(S) shall be required to:

A. Enter into a written contract with the Lead Scientist of CHERT acknowledging that no employee/employer relationship exists between CHERT and SUBCONTRACTOR and that no Workers' Compensation, unemployment benefits or other personnel benefits are required by or available to SUBCONTRACTOR through CHERT or COUNTY.

B. Hold Harmless and to indemnify, defend and save harmless CHERT and COUNTY, its Board of Supervisors, officers, agents, employees and volunteers, from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, material men, laborers and any other person, firm or corporation who may be injured or damaged by SUBCONTRACTORS in the performance of this Agreement.

26. INTERPRETATION:

This Agreement, as well as its individual provisions, shall be deemed to have been prepared equally by both of the parties hereto, and shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

27. INDEPENDENT CONSTRUCTION:

The titles of the sections, subsections, and paragraphs set forth in this Agreement are inserted for convenience of reference only, and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

28. FORCE MAJEURE:

Neither party hereto shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include, but not be limited to, acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism or other disasters, whether or not similar to the foregoing.

29. ENTIRE AGREEMENT:

This Agreement contains all of the terms and conditions agreed upon by the parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties hereto. In addition, this Agreement shall supersede in its entirety any and all prior agreements of the parties.

30. AUTHORITY TO EXECUTE:

Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such party's obligations hereunder have been duly authorized.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date written above.

[CONSULTANT]

By: Wesley Smith

Date: 10/2/2019

Name: WESLEY T. SMITH

Title: Geomorphologist
Wesley Smith

COUNTY OF HUMBOLDT

By: Rep Bolz
Chair Board of Supervisors

Date: 11/5/19

EXHIBIT A
Schedule of Annual CHERT Tasks

- January 1 Review biological monitoring data submitted by operators.
- January 30 Submit annual cost estimate for services to COUNTY.
- February 1 Submit annual report to assigned Planning staff for distribution of annual report to Corps of Engineers, Department of Fish & Game, County Planning Director, Public Works Director, CalTrans, and County Library.
- Place a Public Notice in the Times-Standard announcing the availability of the Annual Report and open the Annual Report for public review for 30-days. If Substantial problems arise, a public meeting will be held the first week of May.
- May 15 (or as soon as spring photos are available)
 Begin the review of gravel extraction plans submitted by the operators and Submit them to Corps of Engineers with recommendations. In order to perform this task, CHERT will:
- A) Make pre-extraction site visits to each proposed extraction site with the operator or his consultant to discuss appropriate mining strategies and concepts.
 - B) Recommend the volume, location and method of extraction for each site.
 - C) Provide supporting facts and reasoning for their recommendations.
 - D) Make an annual report to the Board of Supervisors consisting of CHERT's recommendations and reasoning, and recommend that the Board make a finding that cumulative impacts have been minimized.
- Late seasonal rains or other restrictions may delay this task. If so, it will be carried out in a timely fashion as weather and river conditions permit.
- November 1 Review post-extraction data submitted by operators. For sites on Mad River, CHERT should include a post-extraction compliance chapter in their Annual Report on the Mad River.

Exhibit B – Chert Billing Procedures

The steps for CHERT team compensation are:

1. CHERT members perform related activities and record their hours on time sheets.
2. Each quarter, CHERT uses the time sheets to determine how much each member will be paid and how the various individual operators will share the member charges.
3. CHERT submits this information in a quarterly invoice to the Humboldt County Planning & Building Department.
4. The Humboldt County Planning & Building Department pays CHERT members and subcontractors, if any.
5. Gravel extraction operators reimburse the Humboldt County Planning & Building Department based on invoices from the County office.