

PROFESSIONAL SERVICES AGREEMENT

BY AND BETWEEN

COUNTY OF HUMBOLDT

AND

JOHN BAIR

AND

MCBAIN ASSOCIATES (dba Applied River Sciences)

FOR FISCAL YEARS [2022-2023] THROUGH [2026-2027]

This Agreement, entered into this 10 day of January, 2023 by and between the County of Humboldt, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and John Bair of McBain Associates (dba Applied River Sciences), appointee to the County of Humboldt Extraction Review Team, hereinafter referred to as "CONSULTANT," and McBain Associates (dba Applied River Sciences), hereinafter referred to as "MCBAIN," collectively "the Parties," 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; and

WHEREAS, CONSULTANT is employed by MCBAIN and CONSULTANT's ability to serve on CHERT is conditioned on MCBAIN's approval for this participation during his employment with MCBAIN; and

WHEREAS, the Parties wish to detail their rights and responsibilities with respect to CONSULTANT's service on CHERT and, therefore, to allow for CONSULTANT's participation in CHERT; and

WHEREAS COUNTY, by and through its Planning and Building Department – Current Planning Division, desires to retain a qualified professional to appoint to CHERT. CONSULTANT, as a contractor to the County, will review gravel mining proposals submitted each year by gravel operators as part of a multi-agency review process. CHERT appointee(s) shall advise gravel operators and regulatory agencies on mining methods and volumes that minimize adverse impacts to riparian plant and animal species, their habitats, and river infrastructure.

NOW THEREFORE, the parties hereto mutually agree as follows:

1. DESCRIPTION OF SERVICES:

CONSULTANT agrees to provide the services described in Exhibit A – CHERT Scope of Work, which is attached hereto and incorporated herein by reference as if set forth in full. In

providing such services, CONSULTANT agrees to fully cooperate with the Director of Planning and Building, or a designee thereof, hereinafter referred to as "Director." CONSULTANT also agrees to fully cooperate with the CHERT Lead Scientist and other CHERT members. John Bair (Senior Riparian Ecologist) is specifically identified as CHERT member. Other staff members of MCBAIN will not participate in CHERT activities without written approval from the Director of Planning and Building and CHERT Lead Scientist.

2. TERM:

This Agreement shall begin upon execution by both parties and shall remain in full force and effect for five (5) years. This Agreement shall be automatically renewed for additional periods of one (1) year, 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. Termination for Cause. COUNTY may, in its sole discretion, immediately terminate this Agreement, if CONSULTANT fails to adequately perform the services required hereunder, fails to comply with the terms or conditions set forth herein, or violates any local, state or federal law, regulation or standard applicable to its performance hereunder.
- C. Termination Without Cause.
 - i. The COUNTY may terminate this Agreement without cause upon thirty (30) days advance written notice which states the effective date of the termination.
 - ii. Upon CONSULTANT's Resignation. This Agreement may be terminated by CONSULTANT/MCBAIN 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,
- D. Termination due to 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 reduced or eliminated, 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.
- E. Compensation Upon Termination. In the event this Agreement is terminated, CONSULTANT/MCBAIN 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 owed to COUNTY due to a breach of this Agreement by CONSULTANT/MCBAIN.

4. COMPENSATION:

- A. CONSULTANT shall be compensated at a rate of \$115 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. As agreed to by the parties and requested by CONSULTANT and MCBAIN, payments shall be made to MCBAIN and MCBAIN's W-9 shall be used to facilitate payment of this contract. CONSULTANT shall notify COUNTY if CONSULTANT's employment relationship with MCBAIN changes.

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/MCBAIN (through CHERT) shall submit to COUNTY quarterly invoices itemizing all work completed by CONSULTANT. Invoices shall be in a format approved by, and shall include backup documentation as specified by, Director and the Humboldt County Auditor-Controller. CONSULTANT/MCBAIN shall submit a final invoice for payment within thirty (30) days following the expiration or termination date of this Agreement. Payment for work performed shall 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: McBain Associates (dba Applied River Sciences)
Attention: John Bair, Senior Riparian Ecologist
980 7th Street

7. REPORTS:

CONSULTANT/MCBAIN agree to provide COUNTY with any and all reports that may be required by any local, state and/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/MCBAIN agree to timely prepare accurate and complete financial, performance and payroll records, documents and other evidence relating to the services provided pursuant to the terms and conditions of this Agreement, and to maintain and preserve said records for at least three (3) years from the date of final payment hereunder, 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. Such records shall be original entry books with a general ledger itemizing all debits and credits for the services provided pursuant to the terms and conditions of this Agreement.
- B. Inspection of Records. Pursuant to California Government Code Section 8546.7, all records, documents, conditions and activities of CONSULTANT/MCBAIN, and its subcontractors, related to the services provided pursuant to the terms and conditions of this Agreement, shall be subject to the examination and audit of the California State Auditor and any other duly authorized agents of the State of California for a period of three (3) years after the date of final payment hereunder. CONSULTANT/MCBAIN hereby agrees to make all such records available during normal business hours to inspection, audit and reproduction by COUNTY and any other duly authorized local, state and/or federal agencies. CONSULTANT/MCBAIN further agrees to allow interviews of any of its employees who might reasonably have information related to such records by COUNTY and any other duly authorized local, state and/or federal agencies. All examinations and audits conducted hereunder shall be strictly confined to those matters connected with the performance of this Agreement, including, without limitation, the costs of administering this Agreement.
- C. Audit Costs. In the event of an audit exception or exceptions related to the services provided pursuant to the terms and conditions of this Agreement, the party responsible for not meeting the requirements set forth herein shall be responsible for the deficiency and for the cost of the audit. If the allowable expenditures cannot be determined because CONSULTANT/MCBAIN's documentation is nonexistent or inadequate, according to generally accepted accounting practices, the questionable cost shall be disallowed by COUNTY.

9. MONITORING:

CONSULTANT/MCBAIN agree that COUNTY has the right to monitor all activities related to this Agreement, including, without limitation, the right to review and monitor CONSULTANT/MCBAIN's records, policies, procedures and overall business operations, at

any time, in order to ensure compliance with the terms and conditions of this Agreement. CONSULTANT/MCBAIN will cooperate with a corrective action plan, if deficiencies in CONSULTANT/MCBAIN's records, programs or procedures are identified by COUNTY. However, COUNTY is not responsible, and will not be held accountable, for overseeing or evaluating the adequacy of CONSULTANT/MCBAIN's performance hereunder.

10. CONFIDENTIAL INFORMATION:

- A. Disclosure of Confidential Information. In the performance of this Agreement, CONSULTANT/MCBAIN may receive information that is confidential under local, state or federal law. CONSULTANT/MCBAIN hereby agrees to protect all confidential information in conformance with any and all applicable local, state and federal laws, regulations, policies, procedures and standards, including, without limitation: California Welfare and Institutions Code Sections 827, 5328, 10850 and 14100.2; California Health and Safety Code Sections 1280.15 and 1280.18; the California Information Practices Act of 1977; the California Confidentiality of Medical Information Act ("CMIA"); the United States Health Information Technology for Economic and Clinical Health Act ("HITECH Act"); the United States Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and any current and future implementing regulations promulgated thereunder, including, without limitation, the Federal Privacy Regulations contained in Title 45 of the Code of Federal Regulations ("C.F.R.") Parts 160 and 164, the Federal Security Standards contained in 45 C.F.R. Parts 160, 162 and 164 and the Federal Standards for Electronic Transactions contained in 45 C.F.R. Parts 160 and 162, all as may be amended from time to time.
- B. Continuing Compliance with Confidentiality Requirements. The parties acknowledge that local, state and federal laws, regulations and standards pertaining to confidentiality, electronic data security and privacy are rapidly evolving and that amendment of this Agreement may be required to ensure compliance with such developments. Each party agrees to promptly enter into negotiations concerning an amendment to this Agreement embodying written assurances consistent with the requirements of HIPAA, the HITECH Act, the CMIA and any other applicable local, state and federal laws, regulations or standards.

11. NON-DISCRIMINATION COMPLIANCE:

- A. Professional Services and Employment. In connection with the execution of this Agreement, CONSULTANT/MCBAIN, and its subCONSULTANTS, shall not unlawfully discriminate in the provision of professional services or against any employee or applicant for employment because of: race; religion or religious creed; color; age, over forty (40) years of age; sex, including, without limitation, gender identity and expression, pregnancy, childbirth and related medical conditions; sexual orientation, including, without limitation, heterosexuality, homosexuality and bisexuality; national origin; ancestry; marital status; medical condition, including, without limitation, cancer and genetic characteristics; mental or physical disability, including, without limitation, HIV status and AIDS; political affiliation; military service; denial of family care leave; or any other classifications protected by local, state, or federal laws or regulations. Nothing herein shall be construed to require the employment of unqualified persons.
- B. Compliance with Anti-Discrimination Laws. CONSULTANT/MCBAIN further assures that it, and its subCONSULTANTS, will abide by the applicable provisions of: Title VI and Title VII of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the

Age Discrimination Act of 1975; the Food Stamp Act of 1977; Title II of the Americans with Disabilities Act of 1990; the California Fair Employment and Housing Act; California Civil Code Sections 51, *et seq.*; California Government Code Sections 4450, *et seq.*; California Welfare and Institutions Code Section 10000; Division 21 of the California Department of Social Services Manual of Policies and Procedures; United States Executive Order 11246, as amended and supplemented by United States Executive Order 11375 and 41 C.F.R. Part 60; and any other applicable local, state and/or federal laws and regulations, all as may be amended from time to time. The applicable regulations of the California Fair Employment and Housing Commission implementing California Government Code Section 12990, set forth in Sections 8101, *et seq.* of Title 2, of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

12. NUCLEAR-FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE:

By executing this Agreement, CONSULTANT/MCBAIN certifies that it is not a Nuclear Weapons contractor, in that CONSULTANT/MCBAIN 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/MCBAIN 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/MCBAIN subsequently becomes a Nuclear Weapons contractor.

14. INDEMNIFICATION:

- A. Hold Harmless, Defense and Indemnification. MCBAIN shall hold harmless, defend and indemnify COUNTY and its agents, officers, officials, employees and volunteers from and against any and all claims, demands, losses, damages, liabilities, expenses and costs of any kind or nature, including, without limitation, attorney's fees and other costs of litigation, arising out of, or in connection with, MCBAIN and/or CONSULTANT's negligent performance of, or failure to comply with, any of the duties and/or obligations contained herein, except such loss or damage which was caused by the sole negligence or willful misconduct of COUNTY.
- B. Effect of Insurance. Acceptance of the insurance required by this Agreement shall not relieve MCBAIN from liability under this provision. This provision shall apply to all claims for damages related to CONSULTANT/MCBAIN's performance hereunder regardless of whether any insurance is applicable or not. The insurance policy limits set forth herein shall not act as a limitation upon the amount of indemnification or defense to be provided hereunder.

15. 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.

16. RELATIONSHIP OF PARTIES:

It is understood that this Agreement is by and between three (3) independent entities 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 between COUNTY and CONSULTANT or COUNTY and MCBAIN. The parties further agree that CONSULTANT/MCBAIN shall not be entitled to any benefits to which COUNTY employees are entitled, including, without limitation, overtime, retirement, leave or workers' compensation benefits.

17. COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS AND STANDARDS:

- A. General Legal Requirements. CONSULTANT/MCBAIN agree to comply with any and all local, state and federal laws, regulations, policies, procedures and standards applicable to the services provided pursuant to the terms and conditions of this Agreement.
- B. Licensure Requirements. CONSULTANT/MCBAIN agree to comply with any and all local, state and federal licensure, certification and accreditation requirements and standards applicable to the services provided pursuant to the terms and conditions of this Agreement.
- C. Accessibility Requirements. CONSULTANT/MCBAIN agree to comply with any and all applicable accessibility requirements set forth in the Americans with Disabilities Act, Section 508 of the Rehabilitation Act of 1973, as amended, California Government Code Section 1135 and any current and future implementing regulations, policies, procedures and standards promulgated thereunder, including, without limitation, the federal accessibility standards set forth in 36 C.F.R. Section 1194.1, all as may be amended from time to time.
- D. Conflict of Interest Requirements. CONSULTANT/MCBAIN agree to comply with any and all applicable conflict of interest requirements set forth in the California Political Reform Act and any current and future implementing regulations, policies, procedures and standards promulgated thereunder, including, without limitation, COUNTY's Conflict of Interest Code, all as may be amended from time to time. During the term of this contract, MCBAIN/CONSULTANT agrees to avoid entering into any professional service agreements with gravel operators, resource agencies, or other organizations that would create a conflict of interest with CHERT activities described in this professional services agreement.

18. PROVISIONS REQUIRED BY LAW:

This Agreement is subject to any additional local, state and federal restrictions, limitations or conditions that may affect the terms, conditions or funding of this Agreement. This Agreement shall be read and enforced as though all legally required provisions are included herein, and if for any reason any such provision is not included, or is not correctly stated, the parties agree to amend the pertinent section to make such insertion or correction.

19. REFERENCE TO LAWS, REGULATIONS AND STANDARDS:

In the event any law, regulation or standard referred to herein is amended during the term of this Agreement, the parties agree to comply with the amended provision as of the effective

date thereof.

20. 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.

21. ASSIGNMENT:

CONSULTANT/MCBAIN shall not delegate its duties nor assign its rights hereunder, either in whole or in part, without the COUNTY's prior written consent. Any assignment by CONSULTANT/MCBAIN in violation of this provision shall be void, and shall be cause for immediate termination of this Agreement.

22. 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 permitted assigns.

23. WAIVER OF DEFAULT:

The waiver by either party of any breach 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 which may then exist on the part of CONSULTANT/MCBAIN. Nor shall such payment impair or prejudice any remedy available to COUNTY with respect to the breach or default. COUNTY shall have the right to demand repayment of, and MCBAIN shall promptly refund, any funds disbursed to MCBAIN which COUNTY determines were not expended in accordance with the terms of this Agreement.

24. AMENDMENT:

This Agreement may be amended at any time during the term of this Agreement upon the mutual consent of both parties. No addition to, or alteration of, the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.

25. 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.

26. STANDARD OF PRACTICE:

CONSULTANT warrants that it 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.

27. 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, information and reports for its records. In the event this Agreement is terminated, CONSULTANT shall promptly turn over all such documents, information and reports to COUNTY without exception or reservation.

28. 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.

29. SUBCONTRACTS:

CONSULTANT shall obtain prior written approval from COUNTY before subcontracting any of the services to be provided pursuant to the terms and conditions of this Agreement. Any and all subcontracts shall be subject to all applicable terms and conditions of this Agreement. CONSULTANT shall remain legally responsible for the performance of all terms and conditions of this Agreement, including, without limitation, any and all services provided 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 COUNTY 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.

31. ATTORNEYS' FEES:

If either party shall commence any legal action, including, without limitation, an action for declaratory relief, against the other by reason of the alleged failure of the other to perform any of its obligations hereunder, the party prevailing in said action shall be entitled to recover court costs and reasonable attorneys' fees, including, but not limited to, the reasonable value of services rendered by the Humboldt County Counsel's Office, to be fixed by the court, and such recovery shall include court costs and attorneys' fees on appeal, if applicable. As used herein, "prevailing party" means the party who dismisses an action in exchange for payment

of substantially all sums allegedly due, performance of provisions allegedly breached, or other considerations substantially equal to the relief sought by said party, as well as the party in whose favor final judgment is rendered.

32. SURVIVAL OF PROVISIONS:

The duties and obligations of the parties set forth in Section [3-E] – Compensation Upon Termination, Section [8] – Record Retention and Inspection, Section [10] – Confidential Information and Section [14] – Indemnification shall survive the expiration or termination of this Agreement.

33. CONFLICTING TERMS OR CONDITIONS:

In the event of any conflict in the terms or conditions set forth in any other agreements in place between the parties hereto and the terms and conditions set forth in this Agreement, the terms and conditions set forth herein shall have priority.

34. 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 (1) party on the basis that the other party prepared it.

35. INDEPENDENT CONSTRUCTION:

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

36. FORCE MAJEURE:

Neither party hereto shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control, and without the fault or negligence, of such party. Such events shall include, without limitation, 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.

37. 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 their entirety any and all prior agreements of the parties.

38. COUNTERPART EXECUTION:

This Agreement, and any amendments hereto, may be executed in one (1) or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to be one (1) and the same agreement. A signed copy of this

Agreement, and any amendments hereto, transmitted by email or by other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement and any amendments hereto.

39. 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.

[Signatures on Following Page]

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

[JOHN BAIR]:

By: [Signature]

Date: Nov 30, 2022

Name: JOHN H. BAIR

Title: SENIOR RIPARIAN Ecologist

[MCBAIN ASSOCIATES, dba Applied River Sciences]:

By: [Signature]

Date: 11/30/2022

Name: REBECCA MCBAIN

Title: CEO

COUNTY OF HUMBOLDT:

By: Steve Madrone

Date: 1-10-23

[Steve Madrone]
Chair, Humboldt County Board of Supervisors

INSURANCE AND INDEMNIFICATION REQUIREMENTS APPROVED:

By: Phillips, Amanda
Risk Management

Date: 12/07/2022

LIST OF EXHIBITS:

- Exhibit A – Schedule of Annual CHERT Tasks
- Exhibit B – CHERT Billing Procedures

EXHIBIT A

SCHEDULE OF ANNUAL CHERT TASKS

JOHN BAIR/MCBAIN

FISCAL YEARS [2022-2023] THROUGH [2026-2027]

1. SERVICES:

CHERT appointees shall, as individual contractors to the County, review gravel mining proposals submitted each year by gravel operators as part of a multi-agency review process. CHERT shall advise gravel operators and regulatory agencies on mining methods and volumes that minimize adverse impacts to riparian plant and animal species, their habitats, and river infrastructure.

CHERT shall be responsible for the following duties:

1. For each extraction year, CHERT shall furnish the County annual cost estimates for services in the Humboldt County gravel mining management program no later than January 30th.
2. Assume the duties of the Scientific Design and Review Committee for all gravel extraction operations on the Mad River that are covered by the Final Program EIR on Gravel Removal from Lower Mad River (certified May 31, 1994) and the Supplemental Programmatic EIR for Gravel Extraction on the Lower Mad River (certified December 16, 2014).
3. Perform CHERT duties as described in the Interim Monitoring Program for the Lower Eel and Van Duzen Rivers adopted July 2, 1996, and amended April 1, 1997.
4. Perform CHERT duties as described in the U.S. Army Corps of Engineers Letter of Permission Procedure adopted September 18, 2015, and as described in any future amendments.
5. Prepare an annual post-extraction compliance report as required in the Final Program EIR on Gravel Removal from the Lower Mad River certified on May 31, 1994, and a post-extraction report on the Lower Eel and Van Duzen Rivers as required in the Interim Monitoring Program and Adaptive Management Practices for Gravel Removal from the Lower Eel and Van Duzen Rivers adopted July 2, 1996, and revised April 1, 2007.
6. Draft post-extraction reports shall be submitted on or before February 1st of each year to the County Planning Director, California Department of Fish and Wildlife, U.S. Army Corps of Engineers, and National Marine Fisheries Service. The draft report shall be made available for public comment. If no comments are received, then the draft becomes the final report. If comments are received, CHERT shall draft responses and submit these along with a final report to the County for review and posting to the County's SMARA web page.
7. Other gravel-mining related tasks that are not part of the annual review process at the direction of the Department of Planning and Building.

Legal Relationship with County:

CHERT is not an agency, board, commission, or department of the county of Humboldt, and CHERT members (and any employees or staff) are not employees or agents of the county of Humboldt. CHERT members are independent contractors.

Conflict of Interest:

If a CHERT member 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 a CHERT member 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 a CHERT member to fulfill his or her duties impartially. Should a conflict of interest be found to exist, the CHERT member shall not participate in the particular project for which a conflict of interest exists.

2. SCHEDULE:

| | |
|---|--|
| January 1 st | Review biological monitoring data submitted by operators. |
| January 30 th | Submit annual cost estimate for services to County |
| February 1 st | <p>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.</p> <p>COUNTY will 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.</p> |
| May 15 (or as soon as spring photos are available) | <p>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:</p> <ul style="list-style-type: none">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 |

| | |
|--------------------------|---|
| | <p>minimized.</p> <p>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.</p> |
| November 1 st | 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. |

3. RESTRICTIONS:

CONSULTANT shall not drive an automobile in the performance of the services provided pursuant to the terms and conditions of this Agreement. If CONSULTANT's responsibilities are changed in such a way that driving will be required during the performance of the services required hereunder, CONSULTANT shall take out and maintain Automobile/Motor Liability Insurance with a limit of liability not less than One Million Dollars (\$1,000,000.00) combined single limit coverage prior to the commencement of any such driving. Such insurance shall include coverage of all owned, hired and non-owned vehicles, and be at least as broad as Insurance Service Offices Form Code 1 (any auto).

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.