

# AGREEMENT TO ABATE PROPERTY

9661 Elliot Street, Upper Lake CA

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THIS AGREEMENT, is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017 by and between the County of Lake, hereinafter "COUNTY" and *Coleman Environmental Engineering, Inc.*, hereinafter, "CONTRACTOR".

## RECITALS

WHEREAS, COUNTY is in need of professional property clean-up services; and

WHEREAS, CONTRACTOR is a licensed contractor in the State of California and is qualified and willing to provide said services.

NOW, THEREFORE, based on the foregoing recitals, the parties hereto agree as follows:

### I.

#### CONTRACTOR'S RESPONSIBILITIES

For the property at the above referenced location, the awarded Contractor is to provide all labor, equipment and disposal fees to completely remove all Asbestos Containing Building Materials (ACBM) identified in the report that was previously provided to the contractor in the bid package. All ACBM removed from the property is to be disposed of at a lawful facility. All ACBM is to be removed, transported and disposed of following all applicable laws. Contractor is to then completely demolish and remove the substandard dwelling including all debris, dispose of the debris at a lawful facility, per contractor estimate dated May 24, 2017.

### II.

#### COUNTYS RESPONSIBILITIES

The County's responsibilities will include the payment for the Contractor's services

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and the time period within which payment must be made. Additionally, the County may agree to provide certain information, documents, work space, and/or materials.

### III.

#### TERM

This Agreement shall commence on the date hereinabove entered into and shall terminate on September 30, 2017, unless earlier terminated as hereinafter provided.

### IV.

#### COMPENSATION

COUNTY agrees to pay CONTRACTOR the total sum of *thirty-two thousand, four hundred, fifty-two dollars (\$32,452.00)* once all work specified in Section I. of this agreement has been completed.

### V.

#### DUE PERFORMANCE - DEFAULT

Each party to this Agreement undertakes the obligation that the other's expectation of receiving the performance due under the terms of this Agreement will not be impaired. Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default. If the party in default does not cure the default within 30 days of the date of that notice (i.e. the time to cure) then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice. Any extension of time to cure shall be in writing executed by both parties and must specify the reason(s) for the extension and the date the extension of time to cure expires. Notice given under this provision shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable time period. No such notice shall be deemed a termination of this Agreement, unless the party giving notice so elects in that notice, or so

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elects in a subsequent written notice after the time to cure has expired.

### VI.

#### TERMINATION

This Agreement may be terminated as follows:

- A. By mutual written consent of the parties; or
- B. By County upon (10) days written notice to Contractor.

Upon termination prior to the full and satisfactory completion of Contractor=s performance under this Agreement, County shall not be liable to pay Contractor the total compensation set forth in provision II of this Agreement, but Contractor shall be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Contractor covered by this Agreement.

### VII.

#### INSURANCE

Contractor shall not commence work under this Agreement until he has obtained all the insurance required herein, certificates of insurance have been submitted to County, and said insurance has been approved by County. The certificates of insurance shall contain a provision that coverage afforded under the policies will not be cancelled until at least twenty (20) days prior written notice has been given to County.

Contractor shall not allow any subcontractor to commence work on his subcontract until the insurance required of the subcontractor has been obtained.

Any failure of Contractor to maintain the insurance required by this provision, or to comply with any of the requirements of this provision, shall constitute a material breach of the entire Agreement.

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Certificates evidencing the issuance of the following insurance shall be filed with County within ten (10) days after the date of execution of this Agreement by Contractor and prior to commencement of work hereunder.

A. **Compensation Insurance.** Contractor shall procure and maintain, at Contractors own expense during the term hereof, Workers Compensation Insurance and Employers Liability Insurance as required by the State of California, for all employees to be engaged in work. In any case of such work sublet, Contractor shall require subcontractor similarly to provide Employers Liability Insurance and Workers Compensation Insurance for all of the latter's employees to be engaged in such work, unless such employees are covered by the protection afforded by Contractors Workers Compensation Insurance and Employers Liability Insurance. Employers Liability Insurance shall be in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence.

B. **Commercial General Liability.** Contractor shall procure and maintain, at Contractors own expense during the term hereof, upon himself and his employees at all times during the course of this Agreement, Commercial General Liability Insurance (Occurrence Form CG 0001) for bodily injury, personal injury, and broad form property damage, in an amount of not less than One Million dollars (\$1,000,000.00) combined single limit coverage per occurrence, including but not limited to endorsements for the following coverage's: Personal and advertising injury, Premises, operations, Products and completed operations, Blanket contractual, and Independent contractors liability.

C. **Automobile Liability Insurance.** Contractor shall procure and maintain, at Contractors own expense during the term hereof, Comprehensive Automobile Liability Insurance, both bodily injury and property damage, on owned, hired, leased, and non-owned vehicles used in connection with Contractors business in an amount not less than One Million Dollars (\$1,000,000.00) combined single limit coverage per occurrence.

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D. **Professional Liability Insurance.** Contractor shall procure and maintain, at Contractor's own expense during the term hereof, Professional Liability Insurance for protection against claims arising out of the performance of services under this Agreement caused by errors, omissions, or other acts for which Contractor, its employees, subcontractors, and agents are liable. Said insurance shall be written with limits of not less than One Million Dollars (\$1,000,000.00). If said insurance is written on a claims made form, insurance shall be maintained and evidence of insurance must be provided for at least one (1) year after completion of the work under this Agreement.

E. **Subcontractors.** Contractor shall include all subcontractors as insured under the aforesaid policies or shall furnish separate certificates and endorsements to the County for each subcontractor which shall be subject to review and approval by County. All insurance coverage's for subcontractors shall be subject to each of the requirements hereinabove and contain the additional insured endorsements required of Contractor described with particularity herein below.

F. **Additional Insured Endorsement.** The Commercial General Liability and Automobile Liability Insurance must each contain, or be endorsed to contain, the following provision:

The County, its officers, officials, employees, agents, and volunteers are to be covered as additional insured's and shall be added in the form of an endorsement to Contractor's insurance on Form CG 20 10 11 85. Contractor shall not commence work under this Agreement until he has had delivered to County the Additional Insured Endorsements required herein.

Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under subdivision (b) of California Civil Code Section 2782.

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G. **Other Insurance Provisions.** For any claims related to the work performed under this Agreement, the Contractors insurance coverage shall be primary insurance as to the County, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees, agents or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.

Any deductibles or self-insured retentions must be declared to and approved by County. At the option of County, either Contractor shall reduce or eliminate such deductibles or self-insurance retentions or Contractor shall provide a financial guarantee satisfactory to County guaranteeing payment of losses and related investigations, claim administration, and defense and defense-related expenses.

Insurance coverage required of Contractor under this Agreement shall be placed with insurers with a current A.M. Best rating of no less than A

Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the Contractor for liability in excess of such coverage, nor shall it preclude County from taking other action as is available to it under any other provision of this Agreement or applicable law. Failure of County to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at a later date.

If any insurance coverage required by this Agreement is provided on a Claims Made, rather than an occurrence form, Contractor agrees to maintain required coverage for a period of three years after the expiration of this Agreement. Contractor may maintain the required Post Agreement Coverage by renewal or purchase of prior acts or tail coverage. This subprovision is contingent upon Post Agreement Coverage being both available and reasonably affordable in relation to the coverage provided during the term of this

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Agreement. For purposes of interpreting this requirement, a cost not exceeding 100% of the last annual policy premium during the term of this Agreement in order to purchase prior acts or tail coverage for Post Agreement Coverage shall be deemed to be reasonable.

Contractor agrees to waive all rights of subrogation against County, its officers, officials, employees, agents, and volunteers for losses arising from work performed by Contractor under this Agreement.

### VIII.

#### INDEMNIFICATION - HOLD HARMLESS

Contractor shall indemnify and defend County and its officers, employees, and agents against and hold them harmless from any and all claims, losses, damages, and liability for damages, including attorney's fees and other costs of defense incurred by County, whether for damage to or loss of property, or injury to or death of person, including properties of County and injury to or death of County officials, employees or agents, arising out of, or connected with Contractor's operations hereunder or the performance of the work described herein, unless such damages, loss, injury or death is caused solely by the negligence of County

### IX.

#### CONTRACTOR'S WARRANTIES

Contractor hereby makes the following representations and warranties:

- A. **Standard of Care.** Contractor represents that it is specially trained, licensed, experienced, and competent to perform all the services, responsibilities, and duties specified herein and that such services, responsibilities, and duties shall be performed, whether by Contractor or designated subcontractors, in a manner

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according to generally accepted practices of the licensed contracting profession.

- B. **Non-Discrimination in Employment.** In the performance of the work authorized under this Agreement, Contractor shall not unlawfully discriminate against any qualified worker because of race, religious creed, color, sex, sexual orientation, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or age.

Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, sex, sexual orientation, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or age.

- C. **Adherence to Applicable Disability Law.** Contractor shall be responsible for knowing and adhering to the requirements of Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, (42 U.S.C. Sections 12101, et seq.). California Government Code Sections 12920 et seq., and all related state and local laws.
- D. **HIPAA Compliance.** Contractor will adhere to Titles 9 and 22 and all other applicable Federal and State statutes and regulations, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and will make his best efforts to preserve data integrity and the confidentiality of protected health information.
- E. **Safety Responsibilities.** Contractor will adhere to all applicable CalOSHA requirements in performing work pursuant to this Agreement. Contractor agrees that in the performance of work under this Agreement, Contractor will provide for the

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safety needs of its employees and will be responsible for maintaining the standards necessary to minimize health and safety hazards.

- F. **Interest of Contractor.** Contractor hereby covenants that he has, at the time of the execution of this Agreement, no interest, direct or indirect, and that he shall not acquire any interest in the future, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Contractor further covenants that in the performance of this work, no person having such interest shall be employed.

### X.

#### ASSIGNMENT

Contractor shall not assign any interest in this Agreement and shall not transfer any interest in the same without the prior written consent of County, except that claims for money due or to become due the Contractor from County under this Agreement may be assigned by the Contractor to a bank, a trust company, or other financial institution without such approval. Written notice of any such transfer shall be furnished promptly to the County. Any attempt at assignment of rights under this Agreement except for those specifically consented to by both parties or as stated above shall be void.

### XI.

#### INDEPENDENT CONTRACTOR

It is specifically understood and agreed that, in the making and performance of this Agreement, Contractor is an independent contractor and is not an employee, agent or servant of County. Contractor is not entitled to any employee benefits. County agrees that Contractor shall have the right to control the manner and means of accomplishing the result contracted for herein.

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Contractor is solely responsible for the payment of all federal, state, and local taxes, charges, fees, or contributions required with respect to Contractor and Contractor's officers, employees, and agents who are engaged in the performance of this Agreement (including without limitation, unemployment insurance, social security, and payroll tax withholding).

### XII.

#### MODIFICATION

This Agreement may only be modified by a written amendment thereto, executed by both parties. However, matters concerning scope of services which do not affect the agreed price may be modified by mutual written consent of Contractor and County executed by the Community Development Department Director.

### XIII.

#### ATTORNEY'S FEES AND COSTS

If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which such party may be entitled.

### XIV.

#### OWNERSHIP OF DOCUMENTS

All non-proprietary reports, drawings, renderings, information, and/or other documents or materials prepared by and/or submitted to Contractor hereunder shall become the property of County. In the event of the termination of this Agreement for any reason whatsoever, Contractor shall promptly turn over all said reports, drawings, renderings, information, and/or other documents or materials to County without exception

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or reservation.

### XV.

#### RECORDS - AUDIT

Contractor shall maintain on a current basis complete books and records relating to this Agreement. Such records shall include, but not be limited to, documents supporting all bids [if applicable], all income, and expenditures. These documents and records shall be retained by Contractor for at least five (5) years from the completion of this Agreement. Contractor will permit County to audit all books, accounts, and/or records relating to this Agreement and/or all accounts or records of any business entities controlled by Contractor who participated in this Agreement. An audit may be conducted on Contractor=s premises, or at County's option, Contractor shall provide all books and records within a maximum of fifteen (15) days of Contractor=s receipt of written notice to do so from the County. Contractor shall refund any moneys erroneously charged.

### XVI.

#### JURISDICTION AND VENUE

This Agreement shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue of any action or proceeding regarding this Agreement or performance thereof shall be in Lake County, California. Contractor waives any right of removal it might have under California Code of Civil Procedure Section 394.

### XVII.

#### RESIDENCY

All independent contractors providing services to County for compensation must file

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a State of California Form 590, certifying California residency or, in the case of a corporation, certifying that they have a permanent place of business in California.

### XVIII.

#### 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 or for the benefit of third parties.

### XIX.

#### SEVERABILITY

If any provision of this Agreement is held to be unenforceable, the remainder of this Agreement shall be severable and not affected thereby.

### XX.

#### NOTICES

All notices that are required to be given by one party to the other under this Agreement shall be in writing and shall be deemed to have been given if delivered personally or enclosed in a properly addressed envelope and deposited with the United States Post Office for delivery by registered or certified mail addressed to the parties at the following addresses, unless such addresses are changed by notice, in writing, to the other party.

County of Lake  
255 North Forbes Street  
Lakeport, California 95453  
Attn: Robert J. Massarelli, Community Development Director

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Coleman Construction  
PO Box 1020  
Upper Lake, CA 95485

XXI.

### ADDITIONAL PROVISIONS

This Agreement shall be governed by the laws of the State of California. It constitutes the entire Agreement between the parties regarding its subject matter. This Agreement supersedes all proposals, oral and written, and all negotiations, conversations or discussions heretofore and between the parties related to the subject matter of this Agreement.

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COUNTY and CONTRACTOR have executed this Agreement on the day and year first written above.

COUNTY OF LAKE

CONTRACTOR

\_\_\_\_\_  
Chair, Board of Supervisors

\_\_\_\_\_  
Coleman Construction

ATTEST: Carol J. Huchingson  
Clerk of the Board  
of Supervisors

APPROVED AS TO FORM:  
ANITA L. GRANT  
County Counsel

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

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