

## **HERBICIDE AND INSECTICIDE SERVICES AGREEMENT**

THIS AGREEMENT, is entered into this \_\_\_\_\_ day of July, 2018 by and between the Lake County Sanitation District (LACOSAN), hereinafter "District", and California Exterminators Alliance, hereinafter "Contractor".

### **RECITALS**

WHEREAS, the Lake County Sanitation District is in need of professional herbicide and insecticide services for weed and insect control within LACOSAN; and,

WHEREAS, Contractor is a properly trained service provider, currently licensed in the State of California and has heretofore provided satisfactory services; and

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

### **I. CONTRACTOR'S RESPONSIBILITIES**

Contractor shall provide the herbicide and insecticide services for the areas specified in the scope of work attached hereto as Exhibit "C" and Contractor's proposal dated July 9, 2018 attached hereto as Attachment "C".

Contractor shall provide all of the supplies and equipment necessary for the performance of the specified work. Only proper and lawful materials shall be used in these provided services.

Contractor shall meet and/or coordinate with the Area Superintendent or his designee prior to starting work at each designated location to review the work which will be performed and discuss any concerns that either party may have.

Contractor shall not proceed with additional work unless an estimate of additional costs is documented and approved in writing by the Special Districts Administrator.

### **II. COUNTY'S RESPONSIBILITIES**

For Services performed, per Exhibit "C", the total amount paid under this Agreement shall not exceed twenty-nine thousand three hundred forty-eight dollars (\$29,348.00), unless specifically authorized in writing by the Special Districts Administrator.

Partial payments are allowed in this Agreement, and the District shall pay Contractor the amount which bears the same ratio as the services actually performed within 30 days of invoices being submitted and approved by the Special Districts Administrator.

### **III. TERM**

This Agreement shall commence on the date hereinabove entered into and shall terminate on June 30, 2019, unless earlier terminated as hereinafter provided. District and Contractor may, upon mutual agreement, extend this Contract for additional one (1) year periods on the same terms and conditions.

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

#### **V. TERMINATION**

This Agreement may be terminated as follows:

- A. By mutual written consent of the parties; or
- B. By the District upon 30 days written notice to Contractor; or
- C. By evidence of an invalid or expired Pest Control Business or Individual Applicator's license issued by the State of California, Department of Pesticide Regulation.

Upon termination prior to the full and satisfactory completion of Contractor's performance under this Agreement, District 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.

#### **CONTRACTOR'S 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 canceled until at least twenty days (20) 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 section, or to comply with any of the requirements of this section, shall constitute a material breach of the entire Agreement.

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

(A) Workers' Compensation Insurance: Contractor shall procure and maintain, at Contractor's own expense, during the term hereof, Workers' Compensation Insurance and Employer's Liability Insurance as required by the State of California, for all employees to be engaged in work. In case

any such work is sublet, Contractor shall require subcontractor similarly to provide Employer's Liability 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 Contractor's Workers' Compensation Insurance. Employer's Liability Insurance shall be in an amount not less than \$1,000,000 per occurrence.

(B) Commercial General Liability: Contractor shall procure and maintain, at Contractor's 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) combined single-limit coverage per occurrence including but not limited to endorsements for the following coverages: Premises-operations, Products and completed operations, Blanket contractual, Independent contractor's liability, and Explosion, collapse and underground hazards.

(C) Automobile Liability Insurance: Contractor shall procure and maintain, at Contractor's 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 Contractor's business in an amount of not less than One Million dollars (\$1,000,000) combined single-limit coverage per occurrence.

(D) Subcontractors: Contractor shall include all subcontractors as insureds under the aforesaid policies or shall furnish separate certificates and endorsements for each subcontractor to County for review and approval. All coverages for subcontractors shall be subject to all of the requirements hereinabove and contain the additional insured endorsement required by Contractor hereinafter.

(E) Other Insurance Provisions

1. The Commercial General Liability and automobile policies are to contain, or be endorsed to contain, the following provisions:

(a) The following are to be covered as additional insureds and shall be added in a form of an endorsement to Contractor's insurance on Form CG 20 10 11 85:

1. County of Lake, its officers, employees, agents or volunteers  
230 N. Main Street  
Lakeport, CA 95453
2. Lake County Sanitation District, their officers, employees, agents or volunteers  
230 N. Main Street  
Lakeport, CA 95453

Contractor shall not commence work under this Contract until he has had delivered to County the Additional Insured Endorsements required herein.

(b) 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 Section 2782 of the Civil Code.

(c) For any claims related to this project, the Contractor's insurance coverage shall be primary insurance. Any insurance or self-insurance maintained by:

1. County of Lake, its officers, employees, agents or volunteers  
230 N. Main Street  
Lakeport, CA 95453

2. Lake County Sanitation District, their officers, employees, agents or volunteers  
230 N. Main Street  
Lakeport, CA 95453

shall be excess of the Contractor's insurance and shall not contribute with it.

(2) The following provisions shall apply to all of the insurance coverages hereinabove:

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 expenses.

(b) Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII.

(c) 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 actions as is available to it under any other provision of the Agreement or 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.

#### **VII. INDEMNIFICATION-HOLD HARMLESS**

To the fullest extent permitted by laws and regulations, Contractor shall indemnify and hold harmless the County of Lake and their officers, employees and agents from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting from but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or for anyone for whose acts any of them may be liable. Contractor's obligations under this Section shall survive the termination of the Agreement.

#### **VIII. 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 according to generally accepted practices of the 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 Cal OSHA requirements in performing work pursuant to this Agreement. Contractor agrees that in the performance of work under this Agreement, Contractor will provide for the 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.

#### **IX. 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 District, except that claims for money due or to become due the Contractor from District 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 District. 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.

#### **X. 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 District. Contractor is not entitled to any employee benefits. District agrees that Contractor shall have the right to control the manner and means of accomplishing the result contracted for herein.

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).

#### **XI. 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 District executed by the Special Districts Administrator.

#### **XII. 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.

### **XIII. 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 District. 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 District without exception or reservation.

### **XIV. 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.

### **XV. 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.

### **XVI. RESIDENCY**

All contractors providing services to District for compensation must file 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.

### **XVII. 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.

### **XVIII. SEVERABILITY**

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

**XIX. NON-APPROPRIATION**

In the event District is unable to obtain funding at the end of each fiscal year for services required during the next fiscal year, District shall have the right to terminate this Agreement, without incurring any damages or penalties, and shall not be obligated to continue performance under this Agreement. To the extent any remedy in this Agreement may conflict with Article XVI of the California Constitution or any other debt limitation provision of California law applicable to District, Contractor hereby expressly and irrevocably waives its right to such remedy.

**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.

District/County: Lake County Special Districts Administration  
230 N. Main Street  
Lakeport, California 95453

Contractor: California Exterminators Alliance  
P.O. Box 449  
3582 A North Main St.  
Kelseyville, CA 95451

**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.

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

LAKE COUNTY SANITATION DISTRICT

California Exterminators Alliance

\_\_\_\_\_  
Chair, Board of Directors

\_\_\_\_\_  
Contractor Signature

APPROVED AS TO FORM  
Anita L. Grant  
County Counsel

ATTEST  
Carol J. Huchingson  
Clerk to the Board of Directors

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

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