

**AGREEMENT BETWEEN THE COUNTY OF PLACER AND
MARKIT! FORESTRY MANAGEMENT LLC**

CONTRACT NO: _____
 DEPARTMENT: AGRICULTURAL COMMISSIONER
 CONTRACTOR: MARKIT! FORESTRY MANAGEMENT LLC
 DESCRIPTION: MECHANICAL THINNING AND MATERIAL REMOVAL OPERATIONS
 FOR THE FRENCH MEADOWS FOREST RESTORATION PROJECT –
 2021 IMPLEMENTATION

This Agreement is entered into between the County of Placer, a political subdivision of the State of California (hereinafter “County”) and **Markit! Forestry Management LLC**, a Colorado limited liability company (hereinafter “Contractor”, collectively “Parties”).

Whereas, pursuant to California Government Code section 31000, the County may contract with independent contractors for the furnishing of such services to or for the County or any Department thereof; and

Whereas, it is necessary and desirable that Contractor be retained for the purpose of providing mechanical thinning and material removal services within the French Meadows Restoration Project – 2021 Implementation.

Therefore, it is agreed by the parties to this Agreement as follows:

1. Services

In consideration of the payments set forth in this Agreement and in Exhibit B, Contractor shall perform services for County in accordance with the terms, conditions, and specifications set forth in this Agreement and in Exhibit A.

2. Payments

County’s total fiscal obligation under this Agreement shall not exceed **Seven Hundred Sixty-Seven Thousand Nine Hundred and Thirty-Two Dollars (\$767,932.00)**.

In consideration of the services provided by Contractor and in accordance with the terms, conditions, and specifications set forth in this Agreement and in Exhibit A, County shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. County reserves the right to withhold payment if County determines the quantity or quality of the work performed is unacceptable. In the event County makes advance payments to Contractor, Contractor agrees to refund any amounts in excess of the amount owed by County at the time of termination or expiration of this Agreement. Contractor is not entitled to payment for work not performed as required by this Agreement.

3. Term

Subject to the terms and conditions herein, the term of this Agreement shall be from _____, 2021 to December 31, 2022.

4. Exhibits; Merger Clause; Amendments

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

- Exhibit A: Scope of Work
- Exhibit B: Price Table

This Agreement, including the Exhibits and Attachments, constitutes the sole Agreement between the Parties and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding.

All subsequent modifications or amendments to this Agreement shall be in writing and signed by the parties.

5. Termination

A. Termination for Convenience. Either Party may terminate this agreement without cause by providing 30 days advance written notice to the other party. The Agreement will terminate at the completion of the 30-day period. County will be entitled to receive services through the termination of the agreement, and Contractor shall be entitled to receive payment for services provided through the termination of the Agreement.

B. Termination for Cause. Either party may terminate this agreement for cause. To terminate for cause, the terminating party must give the other party written notice of the alleged breach. The responding party has five (5) business days after receipt of notice to respond and a total of ten (10) calendar days after receipt of such notice to cure the alleged breach. If the responding party fails to cure the breach within this period, the terminating party may immediately terminate this Agreement without further action.

C. Termination Based on Lack of Funding. County may terminate this Agreement or a portion of the services based upon the unavailability of federal, state, or county funds by providing written notice to Contractor as soon as reasonably possible after County learns of unavailability of outside funding.

6. Relationship of Parties

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent contractor and not as an employee of County and that neither Contractor nor its employees or agents acquire any of the rights, privileges, powers, or advantages of County employees.

Except as County may specify in writing Contractor shall have no authority, express or implied, to act on behalf of County in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied pursuant to this Agreement to bind County to any obligation whatsoever.

7. Hold Harmless & Indemnification

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code. As used in this Section, the term "County" means Placer County or its officers, agents, employees, and volunteers.

The Contractor shall save, keep, hold harmless, defend, and indemnify County from all damages, costs, or expenses in law or equity that may at any time arise or be set up because of damages to property or personal injury received by reason of or in the course of performing work which may be occasioned by any willful or negligent act or omissions of the Contractor, any of the Contractor's employees, or any subcontractors.

The Contractor shall be responsible for any liability imposed by law and for death, injury, or damage to property of any person including, but not limited to, workmen, subcontractors, and the public, resulting from any cause whatsoever during the progress of the work or at any time before its completion and final acceptance.

If any judgment is rendered against County for any injury, death, or damage caused by Contractor as a result of work performed or completed, pursuant to this agreement, Contractor shall, at its own expense, satisfy and discharge any judgment.

As used above, the term County means PLACER COUNTY, its officers, agents, employees, and volunteers.

8. Assignability and Subcontracting

Unless provided in Exhibit B, Contractor shall not assign this Agreement or any portion of it to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without County's prior written consent shall give County the right to automatically and immediately terminate this Agreement without advance notice or penalty.

9. Insurance

Contractor shall file with County concurrently herewith a Certificate of Insurance, in companies acceptable to County, with a Best's Rating of no less than A-: VII showing.

A. Worker's Compensation and Employer's Liability Insurance

Workers' Compensation Insurance shall be provided as required by any applicable law or regulation. Employer's liability insurance shall be provided in amounts not less than one million dollars (\$1,000,000) each accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit for bodily injury by disease, and one million dollars (\$1,000,000) each employee for bodily injury by disease.

If there is an exposure of injury to PROVIDER'S employees under the U.S. Longshoremen's and Harbor Worker's Compensation Act, the Jones Act, or under laws, regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

Each Workers' Compensation policy shall be endorsed with the following specific language:

Cancellation Notice: "This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Placer."

Waiver of Subrogation: The workers' compensation policy shall be endorsed to state that the workers' compensation carrier waives its right of subrogation against the County, its officers, directors, officials, employees, agents, or volunteers, which might arise by reason of payment under such policy in connection with performance under this agreement by the Contractor.

Contractor shall require all subcontractors to maintain adequate Workers' Compensation insurance. Certificates of Workers' Compensation shall be filed forthwith with the County upon demand.

Sole Proprietor Language:

Workers' Compensation

Contractor represents they have no employees and therefore, not required to have Workers Compensation coverage.

Contractor agrees they have no rights, entitlements or claim against County for any type of employment benefits or workers' compensation or other programs afforded to County employees.

B. General Liability Insurance

- (i) Comprehensive General Liability or Commercial General Liability insurance covering all operations by or on behalf of Contractor, providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:
 - a. Products and completed operations;
 - b. Contractual liability insuring the obligations assumed by Contractor in this Agreement; and
 - c. Broad form property damage (including completed operations)

Except with respect to bodily injury and property damage included within the products and completed operations hazards, the aggregate limits, where applicable, shall apply separately to Contractor's work under the Contract.

- (ii) One of the following forms is required:
 - a. Comprehensive General Liability;
 - b. Commercial General Liability (Occurrence); or
 - c. Commercial General Liability (Claims Made).
- (iii) If Contractor carries a Comprehensive General Liability policy, the limits of liability shall not be less than a Combined Single Limit for bodily injury, property damage, and Personal Injury Liability of:
 - a. One million dollars (\$1,000,000) each occurrence
 - b. Two million dollars (\$2,000,000) aggregate
- (iv) If Contractor carries a Commercial General Liability (Occurrence) policy, the limits of liability shall not be less than:

- a. One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)
- b. One million dollars (\$1,000,000) for Products Completed Operations
- c. Two million dollars (\$2,000,000) General Aggregate

If the policy does not have an endorsement providing that the General Aggregate Limit applies separately, or if defense costs are included in the aggregate limits, then the required aggregate limits shall be two million dollars (\$2,000,000).

(v) **Special Claims Made Policy Form Provisions:**

Contractor shall not provide a Commercial General Liability (Claims Made) policy without the express prior written consent of COUNTY, which consent, if given, shall be subject to the following conditions:

- a. The limits of liability shall not be less than:
 - i. One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)
 - ii. One million dollars (\$1,000,000) aggregate for Products Completed Operations
 - iii. Two million dollars (\$2,000,000) General Aggregate
- b. The insurance coverage provided by Contractor shall contain language providing coverage up to one (1) year following the completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims-made policy.

C. Conformity of Coverages

If more than one policy is used to meet the required coverages, such as a separate umbrella policy, such policies shall be consistent with all other applicable policies used to meet these minimum requirements. For example, all policies shall be Occurrence Liability policies or all shall be Claims Made Liability policies, if approved by the County as noted above. In no case shall the types of policies be different.

D. Endorsements

Each Comprehensive or Commercial General Liability policy shall be endorsed with the following specific language:

- (i) "The County of Placer, its officers, agents, employees, and volunteers are to be covered as an additional insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement."
- (ii) "The insurance provided by the Contractor, including any excess liability or umbrella form coverage, is primary coverage to the County of Placer with respect to any insurance or self-insurance programs maintained by the County of Placer and no insurance held or owned by the County of Placer shall be called upon to contribute to a loss."

(iii) “This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Placer.”

E. Automobile Liability Insurance

Automobile Liability insurance covering bodily injury and property damage in an amount no less than one million dollars (\$1,000,000) combined single limit for each occurrence. Covered vehicles shall include owned, non-owned, and hired automobiles/trucks.

F. Additional Insurance Requirements

(i) Premium Payments: The insurance companies shall have no recourse against the County and funding agencies, its officers, and employees or any of them for payment of any premiums or assessments under any policy issued by a mutual insurance company.

(ii) Policy Deductibles: The Contractor shall be responsible for all deductibles in all of the Contractor’s insurance policies. The maximum amount of allowable deductible for insurance coverage required herein shall be \$25,000.

(iii) Contractor’s Obligations: Contractor’s indemnity and other obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this agreement.

(iv) Verification of Coverage: Contractor shall furnish the County with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

(v) Material Breach: Failure of the Contractor to maintain the insurance required by this agreement, or to comply with any of the requirements of this section, shall constitute a material breach of the entire agreement.

(vi) Certificate Holder –Placer County subscribes to a service that monitors insurance certificates for compliance with the above requirements. The Certificate Holder on insurance certificates and related documents should read as follows:

County of Placer
c/o EXIGIS LLC
PO Box 4668 ECM #35050
New York, NY 10168-4668
Fax: 888-355-3599
Email: certificates-placer@riskworks.com

Upon initial award of a contract to your firm, Exigis will contact you with further instructions for providing insurance certificates which meet the terms of the contract.

Certificates which amend or alter the coverage during the term of the contract, including updated certificates due to policy renewal, should be sent directly to Exigis via fax or email as indicated above.

10. Compliance with Laws; Nondiscrimination

A. Compliance with Laws. All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable federal, state, and local laws, rules, regulations, and ordinances, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable); the Americans with Disabilities Act of 1990, as amended; Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving any federal or county financial assistance; and the Fair Employment and Housing Act.

B. Nondiscrimination. Contractor shall not unlawfully discriminate against employees, applicants, or clients because of race, sex, sexual orientation, color, ancestry, religion or religious creed, national origin or ethnic group identification, mental disability, physical disability, medical condition (including cancer, HIV and AIDS), age (over 40), marital status, or use of Family and Medical Care Leave and/or Pregnancy Disability Leave in regard to any position for which the employee or applicant is qualified.

C. Reporting. Contractor shall report to County the filing in any court or with any administrative agency of any complaint or allegation of a violation of the provisions included in this Section during the term of the Agreement. Contractor must make the required report in writing within 30 days of such filing with a general description of the circumstances involved and the violation(s) alleged.

D. County Policies. Contractor shall comply with applicable County policies, including but not limited to the "Use of Private Devices and Accounts for County Business and the Public Records Act Policy."

In the event of a conflict between the terms of this Agreement and any applicable law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement.

11. Contract Materials

At the end of this Agreement, or in the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials prepared by Contractor or subcontractors under this Agreement (collectively, "contract materials") shall become the property of County and shall be promptly delivered to County. The Contractor shall retain titles, rights, and interests in any underlying template documents and may make and retain copies of contract materials.

12. Records; Right to Monitor and Audit

Contractor shall maintain, at all times during the Agreement and for a period of three (3) years following, complete detailed records of the work performed under this Agreement. County and state and federal agencies shall have the right to monitor all work performed under this Agreement to assure that all applicable state and federal regulations are met. County and state

and federal agencies shall have the right to audit all work, records, and procedures related to this Agreement to determine the extent to which the program is achieving its purposes and performance goals. County will have the right to review financial and programmatic reports and will notify Contractor of any potential federal and/or state exception(s) discovered during such examination. County will follow-up and ensure that the Contractor takes timely and appropriate action on all deficiencies.

13. General Health Measures and Conduct

Contractor shall be solely responsible for ensuring that the Contractor's employees or subcontractors are physically capable of performing the services described herein on County premises. The Contractor shall take all necessary measures to ensure that the Contractor's employees and sub-contractors receive sufficient training regarding contagious and infectious diseases and preventative measures to be taken within the workplace to protect the Contractor's employees and sub-contractors from exposure to or exposing others (including but not limited to County personnel and the public) to contagious and infectious diseases. Should the County or the Contractor observe any of their employees or sub-contractors exhibiting symptoms of a contagious and/or infectious disease (including but not limited to COVID-19) either prior to or during the performance of services on County premises, the Contractor shall immediately take measures to minimize or prevent exposure to County employees and/or the public consistent with government guidance and best practices. Such removal of the Contractor's employee(s) or subcontractor(s) shall not be considered a basis for the removed employee's claim for compensation or damages against the County, or any of its officers or agents. The employee shall not return to work on County premises until Contractor determines that the situation is resolved.

14. Governing Law; Jurisdiction; Venue

The Parties enter into this Agreement in the County of Placer, California. The laws of the State of California shall govern its interpretation and effect. The parties agree that Placer County Superior Court is the proper venue for any dispute related to the Agreement.

15. Notices

Any notice, request, demand, or other communication required or authorized under this Agreement shall be deemed to be properly given when:

- A. Delivered personally to the person below, as of the date of delivery; or
- B. Mailed to the physical address listed below by U.S. Mail or similar service, with postage prepaid and properly addressed, as of the date of postmark; or
- C. Emailed to the email address(es) below, as of the date a read receipt, an acknowledgement from the recipient, or other proof of delivery is received by the sender.

In the case of County, to:

Name, Title: Kerri Timmer, Principal Management Analyst
Address: 175 Fulweiler Avenue, CEO Office
Auburn, CA 95603
Telephone: (530) 889-7369
Email: ktimmer@placer.ca.gov

In the case of Contractor, to:

Name, Title: Alyssa Priest

Address: 2424 Garden of the Gods Road, Suite 290
Colorado Springs, CO 80919
Telephone: 719-593-2365
Email: alyssapriest@markitforestry.com

16. Conflicts of Interest

Contractor certifies that it has no current business or financial relationship with any County employee or official, or other County contract provider that could create a conflict with this Agreement and will not enter into any such business or financial relationships during the period of this Agreement. Contractor attests that its employees and the officers of its governing body shall avoid any actual or potential conflicts of interest, and that no officer or employee who exercises any functions or responsibilities in connection with this Agreement shall have any legally prohibited personal financial interest or benefit which either directly or indirectly arises out of this Agreement. Contractor shall establish safeguards to prohibit employees or officers from using their positions for a purpose which could result in legally prohibited private gain, or gives the appearance of being motivated for legally prohibited private gain for themselves or others, particularly those with whom they have family, business, or other ties. Contractor certifies that no official or employee of the County, nor any business entity in which an official of the County has an interest, has been employed or retained to solicit or aid in the procuring of this Agreement. In addition, Contractor agrees that no such person will be employed in the performance of this Agreement without immediately notifying the County.

17. Licenses, Permits

Contractor represents and warrants to County that it has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for Contractor and/or its employees to practice its/their profession. Contractor represents and warrants to County that Contractor shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for County and/or its employees to practice its/their profession at the time the services are performed.

Any agreements to subcontract services under this Agreement will contain this provision.

18. Non-Exclusivity

Nothing herein creates any exclusive arrangement between the Parties. This Agreement does not restrict County from acquiring similar, equal, or like goods or services from other sources.

19. Counterparts; Electronic Signature

This Agreement may be executed in duplicate counterparts. Each counterpart shall be an original and both together shall constitute but one and the same document. This Agreement shall not be deemed executed unless and until at least one counterpart bears the signatures of all parties' designated signatories.

In addition, this Agreement and future documents relating to this Agreement may be digitally signed in accordance with California law. Any party to this Agreement may revoke such agreement to permit electronic signatures at any time in relation to all future documents by providing notice pursuant to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Agreement as of the day first above stated:

**MARKIT! FORESTRY MANAGEMENT LLC
("CONTRACTOR")***

_____ Signature
_____ Print Name
<input type="checkbox"/> Chair of the Board, <input type="checkbox"/> President, or <input type="checkbox"/> Vice President
Date: _____

COUNTY OF PLACER ("COUNTY")

_____ Todd Leopold County Executive Officer
Date: _____

_____ Signature
_____ Print Name
<input type="checkbox"/> Secretary, <input type="checkbox"/> Asst. Secretary, <input type="checkbox"/> Chief Financial Officer, or <input type="checkbox"/> Asst. Treasurer
Date: _____

Approved as to Form Office of Placer County Counsel
_____ Date: _____

EXHIBITS:

- Exhibit A: Scope of Work
- Exhibit B: Price Table

*If Contractor is a corporation, the Agreement must be signed by two corporate officers, one from each category above. (See California Corporations Code § 313.) One signature will suffice, if the corporation's board of directors has passed a resolution that gives one person authority to sign. In that case, a copy of the most recent resolution must be attached to this Agreement.

If Contractor is another type of business entity, such as a partnership or limited liability company, the Agreement must be signed by an officer possessing the legal authority to bind the entity. A copy of a resolution, partnership agreement, operating agreement, or other evidence of authority must be attached to this Agreement.

EXHIBIT A – SCOPE OF WORK

Treatment type

Service Work – Units 68, 92, 70

Thinning and whole tree logging of marked sawtimber-sized trees along with thinning of biomass-sized trees with cut trees being removed to a landing/processing area and utilized as sawtimber and biomass.

Pile Mastication – Unit 74

Track-chipping of small piles within the unit to reduce the fuel profile.

Logging - Unit 92

Thinning and whole tree logging and hauling of sawtimber sized trees, marked by Placer County's forestry consultant.

Hauling

Saw log removal including felling, yarding, processing, and hauling costs (stump to mill) for hauling to two locations:

- 1) Sierra Pacific Industries, Lincoln CA (Large Cedar 25 inches and greater big end and all other species)
- 2) Sierra Pacific Industries, Oroville CA (Cedar 24 inches and less big end)

Verification of treated acres

For items where payment is based on an acreage rate, acres completed will be verified by Placer County's forestry consultant.

Timeframe

This is a two-year contract in recognition of the potential work restrictions that may occur in the remainder of this work season resulting from weather and fire risk conditions, with operations to be completed by December 31, 2022.

EXHIBIT B – PRICE TABLE

Markit! Forestry Management French Meadows Mechanical Thinning & Material Removal Price Table

Markit! Forestry Management French Meadows Mechanical Thinning Price Table

Service Items					
Line Item	Description	UOM	Qty	Price/Each	Total Price
1	Unit 68 Service Work	Acre	40.00	\$1,750.00	\$70,000.00
2	Unit 92 Service Work	Acre	84.00	\$1,500.00	\$126,000.00
3	Unit 70 Service Work	Acre	8.00	\$1,750.00	\$14,000.00
4	Unit 74 Mastication of Piles	Acre	58.40	\$1,900.00	\$110,960.00
Total			190.40		\$320,960.00

Logging Items					
Line Item	Description	UOM	Qty	Price/Each	Total Price
5	Unit 92 Logging	Acre	84.00	\$2,333.00	\$195,972.00
Total			84.00		\$195,972.00

Hauling Cost					
Line Item	Description	UOM	Qty	Price/Each	Total Price
6	Lincoln, CA	MBF	800.00	\$235.00	\$188,000.00
7	Oroville, CA	MBF	200.00	\$315.00	\$63,000.00
Total			1,000.00		\$251,000.00

Mechanical Thinning Grand Total					\$767,932.00
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