RESOLUTION - ACTION REQUESTED 2017-207

MEETING: April 18, 2017

TO: The Board of Supervisors

FROM: Dallin Kimble, Interim CAO

RE: Tree Mortality ROE - Blue Ridge

RECOMMENDATION AND JUSTIFICATION:
Authorize Blue Ridge Services, Inc., Staff to Sign the Right of Entry Form for Use with Tree Mortality Operations on Behalf of the County.

In order to effectively mitigate hazard trees located on private property, the County needs permission from landowners to enter and work on their property. The appropriate legal form for obtaining required permissions has been developed in cooperation with County Counsel and the California Office of Emergency Services. Because Mariposa County has contracted with Blue Ridge Services, Inc to perform this work, and in order to make operations as efficient as possible, it is requested that Blue Ridge Services, Inc be authorized to sign this form on behalf of the County.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
The Board of Supervisors declared a State of Emergency related to tree mortality with Resolution 2015-446 and has regularly renewed this action for each of the last twelve (12) months. On July 19, 2016, the Board directed staff to prepare an RFQ for a Tree Mortality Operations Manager, which was approved with Resolution 16-500 on September 20, 2016. On December 20, 2016, the Board approved the selection of Blue Ridge Services, Inc., and directed staff to draft an agreement, which was amended with Resolution 2017-73 to provide additional funds. Blue Ridge Services, Inc has been seeking funds and developing a plan of action and, pending the progress on those steps, will soon be prepared to begin felling hazardous trees.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Do not approve. The County will be unable to perform work on private property.

ATTACHMENTS:
Mariposa County Right of Entry (DOC)
Mariposa County Right of Entry (revised) (DOC)

CAO RECOMMENDATION
Requested Action Recommended
RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER: Merlin Jones, District II Supervisor
SECONDER: Rosemarie Smallcombe, District I Supervisor
AYES: Smallcombe, Jones, Long, Cann, Menetrey
Mariposa County
Tree Mortality Emergency Program
Right of Entry Permit

ADDRESS:

APN:

DATE:

COUNTY OF MARIPOSA
COUNTY ADMINISTRATOR'S OFFICE
5100 BULLION STREET,
P.O. BOX 784
MARIPOSA, CA 95338

I/We __________________________, the owner(s) ("Owner") of the above-referenced property ("Premises"), do hereby freely and without coercion agree as follows:

1. Grant of Right-of-Entry

Owner hereby grants to the County of Mariposa ("County") and Blue Ridge Services, Inc. ("BRS"), and their respective agents, officials, employees, volunteers, contractors and subcontractors, a right-of-entry ("Permit") over the Premises for the purpose of inspecting the Premises for dead and/or dying trees, testing materials on the Premises, falling, removing and/or clearing trees, and hauling and/or disposing of trees, all subject to the terms and conditions set forth in this Permit. This Permit is subject to all licenses, easements, encumbrances, and claims of title affecting the Premises. It is fully understood this Permit does not create any obligation on County or BRS to perform inspection, testing or tree removal or clearance. Owner understands neither County nor BRS will undertake removal or clearance of trees or any related action until this Permit is signed and returned to BRS. Owner shall make Owner’s best efforts to mark any sewer lines, utilities, septic tanks and water lines located on the Premises.

2. Hold Harmless

Owner shall indemnify and hold harmless County, BRS, the State of California, Cal OES, and any of their respective officers, agencies, agents, contractors, subcontractors, employees and volunteers, against any and all claims, deductibles, self-insured retentions, demands, liability, judgments, awards, fines, mechanics’ liens or other liens, labor disputes, attorneys’ fees and court costs (hereinafter collectively referred to as “Claims”), which arise out of or are in any way connected to actions arising out of this Permit, and hereby release, discharge and waive any Claims and the right to bring any action, in law or equity, arising therefrom.
3. **No County Assumption of Liability for Remediation**

In consideration of the assistance County is providing to Owner under this Permit, at no cost to Owner, County assumes no liability or responsibility, and Owner shall not seek to recover from County, BRS, the State of California, Cal OES or any of their officers, agencies, agents, contractors, subcontractors, employees or volunteers, the cost of any remediation of damages to the Premises incurred due to actions taken pursuant to this Permit. Owner agrees and understands County and/or its agents may sell the felled trees and hereby waives any and all rights, actions, and claims, whether in law or equity, as to the value of said trees in exchange for the services provided pursuant to this Permit.

4. **County's Agents**

Any person, firm or corporation authorized to work upon the Premises by County shall be deemed to be County's agent, including but not limited to BRS, Cal OES, Cal Fire, California Conservation Core and California Department of Corrections and Rehabilitation, and shall be subject to all applicable terms hereof.

5. **Authority**

Owner represents and warrants that Owner has full power and authority to execute and fully perform Owner's obligations under this Permit, without the need for any further action, and the person(s) executing this Permit on behalf of Owner are duly authorized to do so, and that fee title to the Premises vests solely in Owner.

6. **Entire Agreement**

This Permit constitutes the entire agreement between the parties with respect to the subject matter hereof, and all prior or contemporaneous agreements, understandings and representations, oral or written, are superseded.

7. **Modification**

The provisions of this Permit may not be modified, except by written instrument signed by both parties.

8. **Partial Invalidity**

If any provision of this Permit is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Permit shall not be affected thereby. Each provision shall be valid and enforceable to the fullest extent permitted by law.

9. **Successors & Assigns**

This Permit shall bind and benefit the parties and their successors and assigns, except as may otherwise be provided herein.
10. **Notices** Any notice required hereunder shall be provided as follows:

To the County:
Blue Ridge Services, Inc.
5065 Highway 140, Suite C, P.O. Box 2398
Mariposa, CA 95338

To the Owner:
Name:
Mailing Address:
Phone:

**RELEASE:** IN CONSIDERATION FOR THE COUNTY'S PROVISION OF TREE MORTALITY EMERGENCY PROGRAM ASSISTANCE, AS SET FORTH ABOVE, I HEREBY AGREE TO ACCEPT ANY AND ALL RISKS OF DEATH, INJURY, OR DAMAGE TO MYSELF OR MY PROPERTY DURING THE PROVISION OF TREE MORTALITY EMERGENCY PROGRAM ASSISTANCE. I FURTHER AGREE THAT NEITHER THE COUNTY, BRS, NOR THEIR RESPECTIVE AGENTS, OFFICIALS, EMPLOYEES, VOLUNTEERS, CONTRACTORS AND SUBCONTRACTORS ("RELEASEES") SHALL INCUR ANY FINANCIAL RESPONSIBILITY OR LIABILITY WHATSOEVER FOR ANY DEATH, INJURY OR DAMAGE SUFFERED OR INCURRED BY ME OR MY PROPERTY ARISING OUT OF THE PROVISION OF PROGRAM ASSISTANCE AS SET FORTH ABOVE. ACCORDINGLY, I HEREBY RELEASE RELEASEES FROM ALL ACTIONS, CLAIMS OR DEMANDS THAT MY SUCCESSORS, HEIRS, ASSIGNS OR I MAY HAVE FOR DEATH, INJURY, OR DAMAGE SUFFERED OR INCURRED BY ME OR MY PROPERTY DUE TO PROVISION OF TREE MORTALITY PROGRAM ASSISTANCE AS SET FORTH ABOVE.

By their signatures below, Owner and County have executed this Permit effective as of ____________, 2017.

**OWNER**

Signed: ___________________________ Date ___________________________

Print Name: _______________________

**COUNTY OF MARIPOSA**

Signed: ___________________________ Date ___________________________

Print Name: _______________________

Title: ___________________________