RESOLUTION - ACTION REQUESTED 2020-8

MEETING: January 7, 2020

TO: The Board of Supervisors

FROM: Dallin Kimble, County Administrative Officer

RE: Blue Ridge Forest Health Agreement

RECOMMENDATION AND JUSTIFICATION:
Approve an Agreement with Blue Ridge Services for Tree Mortality Mitigation and Forest Health Activities ($591,714.39); and Authorize the Board of Supervisors Chair to Sign the Agreement.

The Mariposa County Resource Conservation District (RCD) recently received two large grants for forest health projects. Of the $3.4 million awarded, $591,714 has been designated for cleanup of trees that were felled but not removed as part of the County’s tree mortality mitigation efforts. There is no local match required to complete this work.

This agreement provides capacity and expertise to complete the assigned tasks in the most efficient and effective manner. Blue Ridge Services has managed tree mortality operations to this point and is uniquely qualified to complete this project. Staff recommends approval of the agreement.

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.

The Board approved an agreement with Blue Ridge Services, Inc. for tree mortality operations management services on February 7, 2017. As opportunities to expand the scope of the project have arisen, the Board has since amended the agreement with Blue Ridge Services on four separate occasions, with the last amendment occurring on June 25, 2019, for a total not-to-exceed amount of $5,500,000. Only up to $140,000 of the final payment amount will come from the County General Fund. At completion, this effort is anticipated to have felled nearly 10,000 hazardous trees in Mariposa County.

Early in the tree mortality mitigation project, when costs were higher and resources were fewer, the County only anticipated mitigating the most hazardous 15% of affected pine trees. To mitigate as much risk to public infrastructure as possible, resources were focused on felling hazardous trees that were then left on site. As prices fell and additional state resources were secured, the scope was expanded to include felling and
removal of 100% of trees of any species that threatened public infrastructure when owner approval could be obtained.

The Board approved a Memorandum of Understanding with Mariposa County Resource Conservation District for use of applicable grant funds with Resolution 2019-476 on August 13, 2019.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Do not approve. Logs that were felled previously will be left on site. RCD will work with their grantors to reallocate funds to other projects and the County may have a difficult time getting funds through RCD in the future.

FINANCIAL IMPACT:
This agreement will be entirely funded by the Mariposa County Resource Conservation District.

ATTACHMENTS:
Blue Ridge Forest Health Agreement-Updated (DOCX)

RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER: Rosemarie Smallcombe, District I Supervisor
SECONDER: Marshall Long, District III Supervisor
AYES: Smallcombe, Jones, Long, Cann, Menetrey
AGREEMENT FOR TREE MORTALITY MITIGATION AND FOREST HEALTH ACTIVITIES

THIS AGREEMENT ("Agreement") is made and entered into this 7th day of January, 2020, by and between the County of Mariposa, a political subdivision of the State of California, ("County"), and Blue Ridge Services, Inc., ("Contractor"), pursuant to the following terms and conditions.

WITNESSETH:

1. TERM

The term of this Agreement shall commence on the date first hereinafore written, and shall continue until all authorized work is approved by the County or June 30, 2020, whichever is earlier.

2. SERVICES

Contractor shall perform tree mortality mitigation and forest health activities as described in Exhibit A, “Scope of Work,” which is attached hereto and incorporated herein by reference. Contractor shall provide all staffing and materials necessary to perform the Scope of Work.

3. COMPENSATION

Contractor shall be compensated for services performed in an amount not to exceed $591,714.39. The Contractor’s hourly rates are listed in Exhibit B, “Cost Proposal.” The County shall pay Contractor within thirty (30) days of receipt of an approved invoice.

4. INSURANCE

Contractor shall procure and maintain for the duration of the agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees.

A. MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

(1) Commercial General Liability (CGL): Insurance Services Office (ISO)Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than $2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
(2) Automobile Liability: ISO Form Number CA 00 01 covering any auto, (Code 1), or if Contractor has no owned autos, hired (Code 8) and non-owned autos (Code 9), with limits no less than $1,000,000 per accident for bodily injury and property damage.

(3) Workers’ Compensation insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than $1,000,000 per accident for bodily injury or disease.

*Note: Not required if Contractor provides written verification it has no employees.*

(4) Professional Liability (Errors and Omissions): Insurance appropriate to the Contractor’s profession, with limit no less than $2,000,000 per occurrence or claim, $2,000,000 aggregate. [DELETE (4) AND NOTE BELOW IF NOT APPLICABLE].

*Note: Professional liability insurance coverage is normally required if the Contractor is providing a professional service regulated by the state. (Examples of service providers regulated by the state are insurance agents, professional architects and engineers, doctors, certified public accountants, lawyers, etc.). However, other professional Contractors, such as computer or software designers, and service providers such as claims administrators, should also have professional liability. If in doubt, consult with the Human Resources Director/Risk Manager.*

If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

**B. OTHER INSURANCE PROVISIONS**

The insurance policies are to contain, or be endorsed to contain, the following provision:

(1) Additional Insured Status: The County, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor’s insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 forms if a later edition is used).

(2) Primary Coverage: For any claims related to this Agreement, the Contractor’s insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Contractor’s insurance and shall not contribute with it.

(3) Notice of Cancellation: Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the County.
(4) Waiver of Subrogation: Contractor hereby grants to County a waiver of any right to subrogation which any insurer of said Contractor may acquire against the County by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

(5) Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by the County. The County may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

(6) Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A: VII, unless otherwise acceptable to the County.

(7) 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’s 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.

(8) Subcontractors: Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that County is an additional insured on insurance required from subcontractors.

(9) Special Risks or Circumstances: County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

5. HOLD HARMLESS/INDEMNIFICATION

Contractor shall hold harmless, defend and indemnify County and its officers, employees, agents, and volunteers, from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with Contractor’s performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of County.

6. INDEPENDENT CONTRACTOR

It is the expressed intention of the parties that Contractor is an independent contractor and not an employee, agent, joint venturer or partner of County. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between County and Contractor or any employee or agent of Contractor. Both parties
acknowledge that Contractor is not an employee for state or federal tax purposes. Contractor shall retain the right to perform services for others during the term of this Agreement.

7. PUBLIC EMPLOYEES RETIREMENT SYSTEM (CALPERS)

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the Public Employees Retirement System (CalPERS) to be eligible for enrollment in CalPERS as an employee of the County, Contractor shall indemnify, defend, and hold harmless County for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of County.

8. STATE AND FEDERAL TAXES

As Contractor is not County’s employee, Contractor is responsible for paying all required state and federal taxes. In particular:

   a. County will not withhold FICA (Social Security) from Contractor’s payments;
   b. County will not make state or federal unemployment insurance contributions on behalf of Contractor;
   c. County will not withhold state or federal income tax from payment to Contractor;
   d. County will not make disability insurance contributions on behalf of Contractor;
   e. County will not obtain workers’ compensation insurance on behalf of Contractor.

9. ASSIGNMENT

It is understood and agreed that this Agreement contemplates personal performance by the Contractor and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Contractor under this Agreement will be permitted only with the express written consent of the County.

10. NOTICE

Any and all notices, reports or other communications to be given to County or Contractor shall be given to the persons representing the respective parties at the following addresses:

CONTRACTOR:  
Neal Bolton  
Blue Ridge Services  
P.O. Box 2398  
Mariposa, CA 95338

COUNTY:  
County Administrative Officer  
County of Mariposa  
5100 Bullion Street, 2nd Floor  
P.O. Box 784  
Mariposa, CA 95338
11. COMPLIANCE

Contractor shall comply with all federal, state and local laws, codes, ordinance and regulations applicable to Contractor’s performance under this Agreement, including, but not limited to, laws related to prevailing wages. Specifically, Contractor shall not engage in unlawful employment discrimination, including, but not limited to, discrimination based upon a person’s race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, citizenship or sexual orientation, as prohibited by state or federal law.

12. PUBLIC RECORDS ACT

Contractor is aware that this Agreement and any documents provided to the County may be subject to the California Public Records Act and may be disclosed to members of the public upon request. It is the responsibility of the Contractor to clearly identify information in those documents that it considers to be confidential under the California Public Records Act. To the extent that the County agrees with that designation, such information will be held in confidence whenever possible. All other information will be considered public.

13. ENTIRE AGREEMENT AND MODIFICATION

This Agreement contains the entire agreement of the parties relating to the subject matter of this Agreement and supersedes all prior agreements and representations with respect to the subject matter hereof. This Agreement may only be modified by a written amendment hereto, executed by both parties; however, matters concerning the scope of services which do not affect the agreed price may be modified by mutual written consent of the Contractor and the County Administrative Officer. If there are exhibits attached hereto, and a conflict exists between the terms of this Agreement and any exhibit, the terms of this Agreement shall control.

14. ENFORCEABILITY AND SEVERABILITY

The invalidity or enforceability of any term or provisions of this Agreement shall not, unless otherwise specified, affect the validity or enforceability of any other term or provision, which shall remain in full force and effect.

15. TERMINATION AND RIGHTS UPON TERMINATION

A. This Agreement may be terminated upon mutual written consent of the parties, or as a remedy available at law or in equity. In the event of the termination of this Agreement, Contractor shall immediately be paid all fees earned as of the effective date of termination.

B. Either party may terminate this Agreement for convenience upon 90 calendar days’ written notice to the other party. Upon termination for convenience, Contractor shall be entitled to compensation for services performed acceptably up to the effective date of termination, as set forth in Exhibit B.

C. Should Contractor default in the performance of this Agreement or materially breach any of its provisions, County, at its option, may terminate this Agreement by giving written notification to Contractor. The termination date shall be the effective date of the notice.
For the purposes of this subsection, default or material breach of this Agreement shall include, but not be limited to, any of the following: failure to perform required services in a timely manner, willful destruction of County property, dishonesty, or theft.

16. NO WAIVER

The failure to exercise any right to enforce any remedy contained in this Agreement shall not operate as to be construed to be a waiver or relinquishment of the exercise of such right or remedy, or of any other right or remedy herein contained.

17. DISPUTES

Should it become necessary for a party to this Agreement to bring an action in connection with this Agreement, the prevailing party in any claim or action shall be entitled to reimbursement for all expenses so incurred, including reasonable attorney’s fees.

It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a court of competent jurisdiction in the County of Mariposa, State of California.

18. CAPTIONS

The captions of this Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

19. NUMBER AND GENDER

In this Agreement, the neutral gender includes the feminine and masculine, the singular includes the plural, and the word “person” includes corporations, partnerships, firms or associations, wherever the context so requires.

20. MANDATORY AND PERMISSIVE

“Shall” is mandatory. “May” is permissive.

21. SUCCESSORS AND ASSIGNS

All representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

22. COUNTERPARTS

This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.
23. OTHER DOCUMENTS

The parties agree that they shall cooperate in good faith to accomplish the object of this Agreement and, to that end, agree to execute and deliver such other and further instruments and documents as may be necessary and convenient to the fulfillment of these purposes.

24. CONTROLLING LAW

The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

25. AUTHORITY

Each party and each party’s signatory warrant and represent that each has full authority and capacity to enter into this Agreement in accordance with all requirements of law. The parties also warrant that any signed amendment or modification to the agreement shall comply with all requirements of law, including capacity and authority to amend or modify the Agreement.

26. NEGOTIATED AGREEMENT

This Agreement has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this Agreement within the meaning of California Civil Code section 1654. Each party represents and warrants that in executing this Agreement it does so with full knowledge of the rights and duties it may have with respect to the other party. Each party also warrants and represents that it has received independent legal advice from its attorney with respect to the matters set forth in this Agreement and the rights and duties arising out of this Agreement, or that such party willingly foregoes any such consultation.

27. NO RELIANCE ON REPRESENTATIONS

Each party warrants and represents that it is not relying and has not relied upon any representation or statement made by the other party with respect to the facts involved or its rights or duties. Each party understands and agrees that the facts relevant, or believed to be relevant to this Agreement, have been independently verified. Each party further understands that it is responsible for verifying the representations of law or fact provided by the other party.

28. WARRANTY

County has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby warrants that all work shall be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by County shall not operate as a waiver or release.

29. FUNDING AVAILABILITY

It is mutually agreed that if the County budget of the current fiscal year and/or any subsequent fiscal years covered under this Agreement does not appropriate sufficient funds for this
Agreement, this Agreement shall terminate and be of no further force and effect upon the day notice is provided by County to Contractor of such event. Upon termination of this Agreement, the County shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement except for services rendered prior to such termination and Contractor shall not be obligated to perform any provisions of this Agreement. Contractor’s assumption of risk of possible non-appropriation is part of the consideration for this Agreement. County budget decisions are subject to the discretion of the Board of Supervisors.

If funding for any fiscal year is reduced or deleted by the County budget for purposes of this Agreement, the County shall have the option to either cancel this Agreement with no liability occurring to the County, except County must reimburse Contractor for services rendered prior to such reduction or modification of the County budget, or offer an Agreement amendment to Contractor to reflect the reduced amount.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

COUNTY OF MARIPOSA

Kevin Cann, Chair
Board of Supervisors

CONTRACTOR

Neal Bolton, President
Blue Ridge Services, Inc.

ATTEST:

Rene LaRoche
Clerk of the Board

APPROVED AS TO FORM:

Steven W. Dahlem
County Counsel
Exhibit A
SCOPE OF WORK

Contractor will remove trees that were previously felled by County tree mortality projects on and adjacent to public infrastructure. This project will be completed entirely using grant funds provided by the Mariposa County Resource Conservation District. Removal of felled trees will include transport to biomass or other approved facility in accordance with grant requirements. Reasonable effort will be made to do so in compliance with the following documents:

a. CAL FIRE Grant Agreement 8GG18650
b. California Climate Investments Department of Forestry and Fire Protection Forest Health Program Grant Guidelines 2018-2019
c. California Air Resources Board Quantification Methodology for the Department of Forestry and Fire Protection (CAL FIRE) Forest Health Program Greenhouse Gas Reduction Fund Fiscal Year 2018-2019

Contractor may further be expected to perform the following:

- Collaboration with Mariposa County Resource Conservation District and other partner agencies.
- Strategic identification and prioritization of tasks
- Procurement of subcontractors to perform work
- Obtain rights of entry for properties where work is to be completed.
- Map trees that have been collected, as required by grant sources, in coordination with CAL FIRE and County GIS programs as necessary.
- Coordinate efforts with County Administration including reporting financial data, recommending opportunities for greater project effectiveness and providing project updates.
- Ensure all work is performed in compliance with all applicable guidelines and regulations including, but not limited to, all requirements of granting agencies.
- Minimize environmental impacts as possible by taking steps to preserve sensitive habitats, prevent unnecessary encounters with wildlife, protect against wildfire and erosion and limit carbon emissions.
- Plan and execute appropriate disposal of wood waste as allowable under the terms of the grant and authorized by the County.
- Provide quality customer service and ongoing public outreach and education. Stay informed of tree mortality mitigation efforts statewide and advise the County on an ongoing basis where process improvements could be implemented.
Exhibit B
COST PROPOSAL

Contractor shall be compensated at their standard billing rates as published below for authorized services performed in an amount not to exceed $591,714.39. All work performed by the Principal Engineer/Consultant shall be donated at the standard rate of $255.00 per hour. The County shall pay the Contractor within thirty (30) days of receipt of an approved invoice.

### Vegetation Management Billing Rates

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<td><strong>LABOR</strong></td>
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(Effective 7/19)