

## EXHIBIT A

### AGREEMENT FOR TREE MORTALITY OPERATIONS MANAGEMENT SERVICES

THIS AGREEMENT (“Agreement”) is made and entered into this 7<sup>th</sup> day of February, 2017, by and between the County of Mariposa, a political subdivision of the State of California, (“County”), and Blue Ridge Services, Inc., a solid waste consulting company, (“Contractor”), pursuant to the following terms and conditions.

#### WITNESSETH:

#### 1. TERM

The term of this Agreement shall commence on the date first hereinabove written, and shall continue until all authorized work is approved by the County or June 30, 2018, whichever is earlier.

#### 2. SERVICES

Contractor shall perform tree mortality operations management services 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 authorized services performed in an amount not to exceed \$160,000. 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 subcontractors, 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 one and one half (1 ½) times 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.

(4) Professional Liability (Errors and Omissions) Insurance appropriate to the Contractor's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate. 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 in 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 30 days prior 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 Entity. The Entity 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**

To the fullest extent permitted by law, Contractor shall hold harmless, defend at its own expense, and indemnify the County, its officers, employees, agents, and volunteers, against any and all liability, claims, losses, damages, or expenses, including reasonable attorney's fees, arising from all acts or omissions to act of contractor or its officers, agents, or employees in rendering services under this contract; excluding, however, such liability, claims, losses, damages, or expenses arising from the County's sole negligence or willful acts.

## **6. INDEPENDENT CONTRACTOR**

It is the expressed intention of the parties that Contractor is an independent contractor and not an employee, agent, joint venture 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

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 Contract 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 Contract 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  
PO Box 2398  
Mariposa, CA 95338

**COUNTY:**

Deputy County Administrative Officer  
County of Mariposa  
5100 Bullion Street, 2<sup>nd</sup> 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 enforce any of the provisions hereof, 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 be of no further force and effect. In this event, the County shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement 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, or offer an Agreement amendment to Contractor to reflect the reduced amount.

Contractor shall provide a proposed task and cost estimate for each month by the 20<sup>th</sup> of the prior month. For example, the information for March shall be provided no later than February 20<sup>th</sup>.

If the proposed cost estimate for any month exceeds the current approved project budget, Contractor will adjust the task/cost estimate or County will issue an addendum to increase the project budget. The County shall have sole discretion regarding this decision.

### **30. EQUAL OPPORTUNITY**

During the performance of this contract, the contractor agrees as follows:

A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

B. The Contractor will, 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, religion, sex, sexual orientation, gender identity, or national origin.

C. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

D. The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

E. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.



F. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

G. In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

H. The contractor will include the provisions of paragraphs (A) through (H) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

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

COUNTY OF MARIPOSA

CONTRACTOR

\_\_\_\_\_  
Marshall Long, Chair  
Board of Supervisors

\_\_\_\_\_  
Neal Bolton, President  
Blue Ridge Services, Inc.

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Rene LaRoche  
Clerk of the Board

\_\_\_\_\_  
Steven W. Dahlem  
County Counsel

## Exhibit A SCOPE OF WORK

Contractor will perform management and facilitation duties related to the mitigation of tree mortality hazards including the coordination of resources, collaboration with partner agencies, strategic identification and prioritization of tasks, procurement of subcontractors to perform work, securing and maximizing available funding, ensuring completed work is done in accordance with established criteria and guidelines, and public relations and education. Specifically, Contractor will be expected to perform the following tasks:

- Develop a Tree Mortality Hazard Mitigation Plan with input from stakeholders and partner agencies that identifies priority risk areas, standard operating procedures, work timelines and cost estimates. Update the plan as necessary but no less than bi-annually.
- Secure funding from non-County sources to implement the Tree Mortality Hazard Mitigation Plan. Manage all grants received to ensure compliance with established requirements. Collaborate with County Office of Emergency Services to ensure requirements and paperwork for California Disaster Assistance Act (CDAA) reimbursements are completed and that appropriate records retention practices are followed.
- Obtain rights of entry for properties where work is to be completed in accordance with established CDAA guidelines.
- Collaborate with a Register Professional Forester (RPF) or Certified Arborist to mark and map trees that are deceased and felled. Mapping should be coordinated with CAL FIRE as necessary, compatible with County GIS software and submitted for CDAA reimbursement as work is completed.
- Coordinate efforts with the Deputy County Administrative Officer (CAO), the Mariposa Fire Safe Council, the Mariposa County Tree Mortality Disaster Mitigation Committee and other partner agencies to maximize cooperation, report expenses, recommend operational efficiencies and maximize project effectiveness. Coordination may not require attendance at all meetings, but shall require regular updates for the Deputy CAO and other appropriate County representatives and submission of work plans for approval and spending authorization.
- Identify and subcontract with Licensed Timber Operators (LTOs), RPFs and other professional services needed to complete approved work. Supervise subcontractors to ensure each possesses appropriate general and professional insurance and that all work is performed within the provisions of this Agreement. Authorize work to be done as approved by the County.
- Ensure all work is performed in compliance with all applicable guidelines and regulations including, but not limited to, Federal Emergency Management Association (FEMA) Public Assistance Fund reimbursement requirements, the California Environmental Quality Act (CEQA), the National Environmental

Protection Act (NEPA) and federal, state and local laws. 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 authorized by the County. Coordinate efforts with the county landfill, CalRecycle and other stakeholders as necessary.
- 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 \$160,000. 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.



CLASSIFICATION	RATES
<b>LABOR</b>	<b>Per Hour</b>
Principal Engineer - Neal	\$255.00 USD
Operations Consultant III	\$175.00 USD
Operations Consultant II	\$160.00 USD
Operations Consultant I	\$120.00 USD
Engineering Consultant III	\$175.00 USD
Engineering Consultant II	\$160.00 USD
Engineering Consultant I	\$120.00 USD
Technical Support IV	\$175.00 USD
Technical Support III	\$125.00 USD
Assistant Project Director	\$105.00 USD
Forester	\$105.00 USD
Technical Support II	\$100.00 USD
Project Coordinator	\$90.00 USD
Technical Support I	\$75.00 USD
Secretary	\$54.00 USD
Intern	\$45.00 USD
<b>EXPENSES</b>	<b>Per Unit</b>
Per Diem	\$50.00 (USD)/day
Mileage	\$0.75/mile