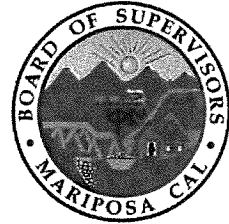




# MARIPOSA COUNTY

Administration • 966-3222



## RESOLUTION - ACTION REQUESTED 2019-476

MEETING: August 13, 2019  
TO: The Board of Supervisors  
FROM: Dallin Kimble, County Administrative Officer  
RE: RCD Forest Health Grant MOU

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### **RECOMMENDATION AND JUSTIFICATION:**

Approve a Memorandum of Understanding (MOU) with Mariposa County Resource Conservation District (MCRCD) to Provide Tree Mortality Services in an Amount Not to Exceed \$591,714; and Authorize the Board of Supervisors Chair to Sign the MOU.

In the early stages of the County's tree mortality mitigation effort, hazard trees were felled and cut to contour to maximize the impact of limited resources. Over time, additional state funds became available and costs dropped so that all felled trees could be removed; however funding sources stipulated that removal of previously felled trees would not be covered. These trees remain on the ground today unless a land owner has taken action to remove them.

MCRCD has recently received a CAL FIRE Forest Health Grant that includes a portion for removal of tree mortality trees that have already been felled. This MOU provides the County with up to \$591,714 for removal of those trees that were felled and left early in the County's project. Felled tree removal will be managed through an existing contract with Blue Ridge Services, invoiced separately and submitted to MCRCD for payment.

This MOU enables the County to complete its project and delivers a desirable benefit to our community. Future amendments to the Blue Ridge Services agreement may be needed to complete this project; this will be evaluated as the tree mortality project nears completion. Staff recommends approval of the MOU.

### **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.

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.,

## Resolution - Action Requested 2019-476

and directed staff to draft an agreement. The resulting agreement was approved 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 payment amount will come from the County General Fund.

### **ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

Do not approve. Felled trees will be left in place and MCRCD will reallocate these grant funds to other projects.

### **FINANCIAL IMPACT:**

**This MOU allows the County to complete up to \$591,714 for felled tree removal. All funds for this project will be provided by the CAL FIRE grant.**

### **ATTACHMENTS:**

**RCD Forest Health Grant MOU (DOCX)**

**Grant Agreement 8GG18650 - Executed Copy (PDF)**

**RESULT: ADOPTED [UNANIMOUS]**

**MOVER:** Marshall Long, District III Supervisor

**SECONDER:** Rosemarie Smallcombe, District I Supervisor

**AYES:** Smallcombe, Jones, Long, Cann, Menetrey

## MEMORANDUM OF UNDERSTANDING FOR TREE MORTALITY SERVICES

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made and entered into this 6<sup>th</sup> day of August 2019, by and between the County of Mariposa, a political subdivision of the State of California, (“MARIPOSA”), and the Mariposa County Resource Conservation District (“MCRCD”), is made upon the following considerations:

WHEREAS, MARIPOSA has been afflicted by catastrophic tree mortality that has threatened public and private property and vital infrastructure; and

WHEREAS, MARIPOSA and MCRCD have independently pursued mitigation measures aimed at limiting the damage and risk caused by dead and dying trees; and

WHEREAS, MARIPOSA and MCRCD now desire to collaborate on the implementation of a CAL FIRE Forest Health Grant targeted at removing previously felled trees to decrease fuels on the ground and carbon released into the atmosphere;

NOW, THEREFORE, MARIPOSA AND MCRCD mutually agree to the following:

### 1. TERM

The term of this MOU shall commence on July 1, 2019, and terminate on March 30, 2022, unless extended as provided by this MOU.

### 2. SERVICES

MARIPOSA will remove trees that were previously felled by MARIPOSA tree mortality projects on and adjacent to public infrastructure. MARIPOSA will be allowed to subcontract any or all of this scope of work. Removal will include transport to biomass or other approved facility in accordance with the Forest Health Grant scope of work. MARIPOSA and its contractors will make reasonable effort to do so in compliance with the documents set forth below.

- 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

### 3. COMPENSATION

MCRCD shall reimburse MARIPOSA for 100% of costs set forth in Attachment A CAL FIRE Grant Agreement 8GG18650 incurred to complete the services explained herein. Reimbursements will be made no more than thirty (30) days after MCRCD has received the associated funds from CAL FIRE. Total payments made by MCRCD to MARIPOSA under this MOU shall not exceed \$591,714, unless extended as provided by this MOU.

#### **4. RELATIONSHIP OF PARTIES**

MARIPOSA and MCRCD are independent contractors with respect to each other. This MOU is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture, or any other similar association. Nothing in this MOU shall be construed to create an employment relationship between MARIPOSA and any employee of MCRCD, or between MCRCD and any employee of MARIPOSA. Each Party shall be solely responsible for the acts or omissions of its officers, agents, employees, and subcontractors. Neither Party's employees shall be entitled to any employee benefits from the other Party.

#### **5. AUTHORITY OVER PERSONS PROVIDING SERVICES**

Authority to direct the duties and functions of MARIPOSA employees and subcontractors providing services, supplies and information to MCRCD as required by this MOU shall continue to reside with MARIPOSA. It is mutually understood and agreed that MARIPOSA employees and subcontractors assigned to provide services, supplies or information to MCRCD as required by this MOU shall be acting as MARIPOSA employees or subcontractors. MARIPOSA and MCRCD agree to require their respective employees and/or contractors to respond in a timely manner to requests for services and information related to this MOU.

#### **6. MUTUAL INDEMNIFICATION**

MCRCD agrees to indemnify, defend and hold harmless MARIPOSA, its Board of Supervisors, officers, employees, agents and assigns from and against any and all claims, demands, liability, judgments, awards, interest, attorney's fees, costs, experts' fees and expenses of whatsoever kind or nature, at any time arising out of or in any way connected with services rendered to MCRCD.

MARIPOSA agrees to indemnify, defend and hold harmless MCRCD, its Board of Directors, officers, employees, agents and assigns from and against any and all claims, demands, liability, judgments, awards, interest, attorney's fees, costs, experts' fees and expenses of whatsoever kind or nature, at any time arising out of or in any way connected with services rendered to MARIPOSA.

#### **7. INSURANCE COVERAGE**

Without limiting the Parties' indemnification obligations provided for herein, each Party will maintain in full force and effect, at its own expense, comprehensive general liability and property damage insurance, comprehensive automobile insurance, workers' compensation and professional liability insurance throughout the term of this MOU.

#### **8. DISPUTE RESOLUTION**

Disputes between MCRCD and MARIPOSA in connection with any matter relating to the terms or provisions of this MOU shall first be considered jointly by the Executive Director of MCRCD and the County Administrative Officer of MARIPOSA.

Prior to taking any judicial action to interpret or enforce provisions of this MOU, the Parties agree to first submit the matter to a mediator, to be mutually agreed upon by the Parties hereto, in concert with a representative of each Party.

However, pending resolution, the existence of any dispute (except for disputed charges for which notice was timely provided as required herein) will not absolve either Party of the responsibility for making timely payments for provided services nor will such disputes absolve either Party of the responsibility for timely performance of its agreed upon services to the other.

## **9. RECORD RETENTION AND INSPECTION**

Each Party agrees to timely prepare accurate and complete financial and performance records relating to the services provided hereunder, and to maintain and preserve said records for at least three (3) years from the date of final payment under this MOU, except that if any litigation, claim, negotiation, audit or other action is pending, the records shall be retained until completion and resolution of all issues arising therefrom.

Pursuant to California Government Code Section 8546.7, all records, documents, conditions and activities of either Party, related to the services provided hereunder, shall be subject to the examination and audit of the California State Auditor and other duly authorized agents of the State of California for a period of three (3) years after final payment under this MOU. Each Party hereby agrees to make such records available during normal business hours for inspection, audit and reproduction by any duly authorized agents of the State of California or the federal government. Each Party further agrees to allow interviews of any of its employees who might reasonably have information related to such records by any duly authorized agents of the State of California or the federal government. All examinations and audits conducted under this section shall be strictly confined to those matters connected with the performance of this MOU, including the costs of administering this MOU.

## **10. DISCONTINUANCE OF SERVICES**

In the event notice is given by MARIPOSA that a service, in whole or in part, will no longer be provided, or notice is given by MCRCD that a certain service will no longer be utilized, MCRCD shall pay for all services utilized up to the date of termination of the services.

If MARIPOSA discontinues services as described in this MOU and the discontinuation results in a CAL FIRE demand for repayment of grant funds, MARIPOSA shall return the grant funds demanded to MCRCD for repayment to CAL FIRE.

## **11. STRICT COMPLIANCE**

The failure of either Party to insist on strict compliance with any provision of this MOU shall not be considered a waiver of any right to do so, whether for that breach or any subsequent

breach. The acceptance by either Party of either performance or payment shall not be considered a waiver of any preceding breach of the MOU by the other Party.

## **12. COMPLIANCE WITH LAWS**

Both Parties hereto agree to observe and comply with all applicable local, state, and federal laws and regulations. Both parties further agree to comply with all applicable local, state and federal licensure and certification requirements at all times during the term of this MOU.

## **13. SEVERABILITY**

This MOU is subject to all applicable laws and regulations. If any provision of this MOU is found by any court or other legal authority, or is agreed upon by the Parties to be in conflict with any code or regulation, the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of this MOU to either Party is lost, this MOU may be terminated at the option of the affected Party. In all other instances, the remainder of this MOU shall remain in full force and effect.

## **14. TERMINATION AND RIGHTS UPON TERMINATION**

This MOU 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 MOU, MARIPOSA shall immediately be paid all fees earned as of the effective date of termination.

Either party may terminate this MOU for convenience upon thirty (30) calendar days' written notice to the other party. Upon termination for convenience, MARIPOSA shall be entitled to compensation for services performed acceptably up to the effective date of termination.

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

## **15. NOTICES**

Any notice required to be given pursuant to the terms and provisions herein shall be in writing and shall be sent by First Class Mail to:

Mariposa County Resource  
Conservation District  
President of the Board  
PO Box 746

County of Mariposa  
County Administrative Officer  
5100 Bullion Street, 2<sup>nd</sup> Floor  
Post Office Box 784

5039 Fairgrounds Road  
Mariposa, CA 95338

Mariposa, CA 95338

**16. AMENDMENT**

No addition to, or alteration of, the terms of this MOU shall be valid unless made in writing and signed by the Parties.

**17. BINDING EFFECT**

All provisions of this MOU shall be fully binding upon, and inure to the benefit of, the Parties and to each of their heirs, executors, administrators, successors and assigns.

**18. INTERPRETATION**

This MOU, as well as its individual provisions, shall be deemed to have been prepared equally by both of the Parties hereto, and shall not be construed or interpreted more favorably for one Party on the basis that the other Party prepared it.

**18. FORCE MAJEURE**

Neither Party hereto shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such Party and without fault or negligence of such Party. Such events shall include, without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism or other disasters, whether or not similar to the foregoing.

**19. ENTIRE AGREEMENT**

This MOU shall constitute the entire agreement between the Parties regarding the subject matter of this MOU, and shall supersede any previous agreements, promises, representations, understandings or negotiations, whether oral or written, concerning the same subject matter.

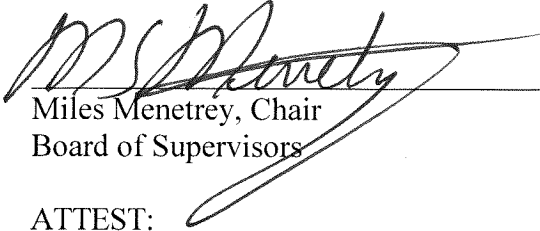
**20. AUTHORITY TO EXECUTE**

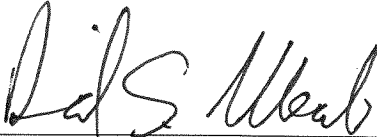
Each person executing this MOU represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this MOU. Each Party represents and warrants to the other that the execution of delivery of this MOU and the performance of such Party's obligations hereunder have been duly authorized.

IN WITNESS WHEREOF, the Parties hereto have entered into this MOU as of the day and year first written above:

COUNTY OF MARIPOSA


MARIPOSA COUNTY RCD


  
Miles Menetrey, Chair  
Board of Supervisors

  
David Mecchi, President  
Board of Directors

ATTEST:

APPROVED AS TO FORM:

  
Danielle Bondshu, Deputy  
Rene LaRoche  
Clerk of the Board

  
Steven W. Dahlem  
County Counsel