



**COUNTY OF EL DORADO  
COMMUNITY DEVELOPMENT SERVICES  
DEPARTMENT OF TRANSPORTATION**

**LICENSED TIMBER OPERATOR FOR THE TREE MORTALITY PROJECT  
PHASE III PW 17-31208/CONTRACT 2423**

**THIS AGREEMENT** made and entered into by and between the **COUNTY OF EL DORADO**, a political subdivision of the State of California, acting through the governing body or board thereof (hereinafter referred to as "County"), and **Joe Benigno Tree Service**, a Class A Licensed Timber Operator duly qualified to conduct business in the State of California, whose principal place of business and mailing address is 1460 Industrial Way, Gardnerville, Nevada 89410 (hereinafter referred to as "Contractor");

**RECITALS**

That for and in consideration of the mutual promises, covenants, agreements and conditions herein contained, the parties hereto agree with each other as follows:

**1. Contract Documents**

The complete Agreement (hereinafter "Contract") between the parties consists of and is set forth in the Contract Documents. The Contract Documents consist of: (a) this Agreement including any map or Exhibits hereto, and any amendments thereto in accordance with the provisions herein; (b) Notice to Bidders and all bid forms including accepted Proposal, Bid Price Schedule, and Total Bid; (c) an executed Subcontractors Listing Form, if applicable; (d) executed Section 10285.1 Statement, Section 10162 Questionnaire, Section 10232 Statement, Noncollusion Affidavit; (e) the Performance Bond and Payment Bond; (f) executed Certificate of Insurance forms; (g) an executed California Form 590; (h) an executed Department of the Treasury Internal Revenue Service Form W-9 or County Payee Data Record Form, whichever is applicable; and (i) all executed Change Orders. All obligations of the parties are contained in the Contract Documents, and by acceptance of this Agreement the parties hereto agree to be bound by the provisions of all of said documents. All of said documents are intended to cooperate so that any work called for in one and not mentioned in the other or vice versa, is to be executed the same as if mentioned in all of them. In the case of any conflict between this Agreement and any other contract document, this Agreement shall take precedence.

**2. The Work**

Contractor shall be a Class A Licensed Timber Operator and shall perform duties related to the falling and removal of designated dead and dying trees, as shown in Exhibit A, representing Phase III of the County's Tree Mortality Project in response to the statewide emergency caused by bark beetle infestations. Trees designated for removal shall be marked with a blue or fluorescent green painted "X" and marked with a tag identifying a tree number.

Contractor is required to obtain a no cost encroachment permit from the County of El Dorado. Contractor is also required to obtain an encroachment permit from Caltrans District 3 Permit Engineer, 703 B Street, Marysville, CA 95901. Any costs associated with obtaining the encroachment permits are included in the various items of work.

Contractor agrees to furnish all tools, equipment, apparatus, labor, materials, and all utility and services to perform and complete in a good and workmanlike manner the following:

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- Contractor shall use a crane for all tree removal work in the community of Camino (as shown on the Proposal Bid Price Schedule). Contractor must provide crane certification and operator certification.
  - Contractor shall submit a written tree removal plan within five (5) calendar days of Contract execution. Allow three (3) business days for review. Do not start any job site activities until your tree removal plan is approved and accepted by County.

Tree Removal Plan shall include a step by step process of the following components:

- Detailed, step-by-step process to remove trees safely and avoid property damage
  - Equipment
  - Labor
  - Crane Pick Plan
  - Traffic Control details
- Daily closures of Pony Express Trail will be allowed for performance of the tree removal work. Contractor may fully close Pony Express Trail between 4895 and 4915 Monday through Friday between 9:00 a.m. and 4:00 p.m. Transport bicyclists through the traffic-control work zone. A detour will be required for the full road closure. The Contractor is responsible for furnishing, installing, maintaining, and removing all traffic control devices required for the detour as shown on the attached Detour Plan.

Every Monday by noon, submit a closure schedule request for planned closures for the next week. If you do not open a closure to traffic by the specified time, suspend work and submit a work plan. No further closures are allowed until your work plan has been authorized.

The County may reschedule a closure that was canceled due to unsuitable weather. Contractor shall directionally fall timber away from roads, power lines, and buildings.

- Contractor shall furnish equipment and personnel capable of working in an urban setting (i.e., close proximity to homes and service infrastructure).
- Contractor shall fall, skid, load, and transport all timber products more than 8-inches (8") scaling end diameter inside bark (DIB) from the project area to the yard located at 2895 Industrial Blvd, West Sacramento, CA 95691. The log yard hours are 7:00 AM to 5:00 PM, Monday through Friday. The log yard is closed on National Holidays. Contractor is responsible for verifying log yard is open prior to delivering logs.
- After timber products have been removed, all timber 8-inches (8") diameter and smaller shall be stacked by Contractor at roadway locations agreed upon by County. The timber shall not be chipped by Contractor. All stacked timber and timber piles shall be free of soil and all branches shall be stacked with the largest end diameter facing towards the road.
- Contractor shall cut all logs 8" in diameter and greater into the following exact lengths: 26-feet (26'), 33-feet (33'), 36-feet (36'), 38-feet 10-inches (38' 10"). Any logs 8" scaling end DIB and greater cut into lengths less than 26' will be considered short logs. Any logs not meeting the exact lengths stated above may be subject to a \$25 per thousand board feet (MBF) penalty due to the log yard needing to re-handle and trim logs.

Contractor shall load truck with 75% total volume comprised of 38' 10" logs. Log truck volume cannot be comprised of greater than 5% short logs. Contractor shall not transport logs to log yard that are less than 13-feet (13') long.

Contractor shall use the Bucking Reference Chart, below.

<b>Bucking Reference Chart</b>					
Segment Height to an 8" TOP (±2')	Target Number of Logs Under the Following Lengths With Trim Produced				
	38' 10"	36.0'	33.0'	26.0'	13.0'
~140'	2	1		1	
~130'	2			2	
~120'	3				
~110'	2		1		
~100'	1	1		1	
~90'	2				1
~80'	2				
72'	1		1		
66'			2		
62'		1		1	
59'			1	1	
52'				2	

- There shall be no storage of petroleum products allowed on or around the project areas.
- If nesting birds are found in a tree scheduled for removal, the Contract Administrator must be notified and the solution will be discussed and negotiated in the field. Trees containing nesting birds will not be removed.
- Contractor shall install erosion control devices, as needed after tree/slash removal is completed.
- Contractor shall maintain roads used during timber operations in a condition suitable for travel. Costs to repair roads damaged by Contractor shall be the responsibility of Contractor, unless waived by County. The County will determine pre-construction condition.
  - The County has made no representation as to the present or future conditions of public or private property or of the character of the traffic on any of the roads affected by timber operations or roads to be used for timber operations. Contractor assumes all risks of damage to any property, whether public or private, and assumes all risks of injury to any person in connection with Contractor's performance hereunder and the exercise of any rights hereunder.
  - Contractor shall at his own expense maintain all necessary roads, rights and facilities, and shall at the conclusion of the operations of Contractor return the roads to as good condition and repair as they were at the commencement of the logging operations.
- Contractor shall perform work such that all public and private utilities are protected. Any damage to the aforementioned facilities shall be the responsibility of the Contractor, unless waived by County.
- A pre-timber operation meeting shall be conducted with Contractor, County's Tree Mortality Coordinator, and County prior to commencement of timber operations. Contractor, County, and Tree Mortality Coordinator shall agree upon quality control procedures for the project and Contractor shall certify its compliance with quality control procedures when submitting monthly progress estimates for payment.

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- Once the project has been completed and slash has been stacked by the designated roadway, Contractor shall notify County's Tree Mortality Coordinator of its completion.
  - Contractor shall not complete additional work on private parcels, if requested by the surrounding landowners, as scope of work hereunder or in connection with the County's Tree Mortality Project.
  - All materials and application methods shall be in conformance with the 2015 Caltrans Standard Specifications including any amendments thereto. The Work includes mobilization and all necessary traffic control.
  - Contractor shall provide traffic control personnel and signage that complies with the Manual of Uniform Traffic Control Devices (MUTCD), including the most recent updates to the MUTCD, and the 2010 State Standard Plans.
  - Contractor shall familiarize itself and its employees with all applicable Forest Practice laws and regulations, and applicable provisions of the California Public Resources and General Safety Codes.
  - Contractor shall pay for all damage to County property and private property resulting directly or indirectly from any acts or omissions of Contractor hereunder and shall reimburse [respective] Owner for all costs reasonably incurred as a result of Contractor's acts or omissions hereunder.
  - Contractor shall log areas within the contract continuously, diligently, and without interruption and in a clean and progressive manner.
  - Contractor and its employees and agents shall:
    - Conform with all applicable rules and regulations for logging and timber operations, including the Forest Practice Act and rules enacted by the State Board of Forestry and Fire Protection.
    - Use proper equipment, coordination of personnel and communication with property Owners and others to safely fall any trees that might be a hazard to any improvements.
    - Brand logs before removal from the Location of Work in a manner prescribed by the County.
    - Prevent unnecessary damage to timber in the process of skidding, loading, and road construction.
    - Prevent unnecessary damage to streams and watersheds by logging debris, excessive earth moving, and failure to control drainage on roads.
    - Observe all traffic and safety regulations applicable to operations conducted on roads or property of Owners or others.
    - Observe all requirements of law relating to forest operations and fire protection, take every reasonable precaution to prevent the starting of fires, immediately notify the County and the appropriate public fire control agencies in the event of fire occurring on or near the Location of Work, and make every effort to extinguish fires started from any cause whatsoever. Contractor shall carry fire extinguishers in all vehicles.
    - Suspend operations over private roads when because of weather conditions such operations would cause excessive damage thereto. Any suspensions affecting Time of Completion shall be authorized in writing in accordance with a Change Order hereunder.

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- Maintain all roads used for timber operations in a condition suitable for travel.
  - Avoid damage to grasslands, fences, survey corner markings and other improvements; skid timber away from improvements and reserved trees; refrain from littering [respective] Owner's property or adjacent property with equipment, garbage, or mechanical debris.

**3. Location of Work**

Said work is to be performed in the locations shown in Exhibit B within the area of Camino, El Dorado County, California.

**4. Contract Price**

As compensation agreed upon for completion of said Work, in accordance with the Contract Documents and the contract prices named in Proposal Bid Price Schedule Tree Mortality Project Phase III, a copy of which is attached hereto as Exhibit A, including without limitation, all bonds and insurance, County agrees to pay Contractor upon the satisfactory completion and acceptance of the Work. Payment shall be made within thirty (30) days following County receipt and approval of itemized invoices detailing the services rendered, as described in item 6. County shall promptly pay Contractor in accordance with Public Contract Code section 20104.50.

The total amount of this Agreement shall not exceed **\$244,593.00** inclusive of all costs and expenses, which sum constitutes the Contract Price for the complete Project (the "Contract Price").

**5. Time of Completion**

Time is of the essence. The Work under the Contract shall commence on the date specified in the Notice to Proceed issued by County, and the Work shall be completed within 15 working days, unless an extension of time or suspension of Work is authorized in writing in accordance with a Contract Change Order.

It is agreed by the parties to this Contract that in case all the Work called for under the Contract in all parts and requirements is not finished or completed within the number of calendar days specified in the Notice to Proceed, as extended or suspended in writing in accordance with a Change Order hereunder, damage will be sustained by County, and that it is and will be impracticable and extremely difficult to ascertain and determine the actual damage which County will sustain in the event of and by reason of the delay; and it is therefore agreed that Contractor will pay to County the sum of **\$1,900.00** per calendar day, as liquidated damages and not as a penalty, for each and every calendar day's delay in finishing the work in excess of the number of calendar days prescribed herein; and Contractor agrees to pay the liquidated damages herein provided for, and further agrees that County may deduct the amount thereof from any moneys due or that may become due Contractor under the Contract.

**6. Payment**

Payment shall be made to Contractor as follows:

County will pay you based on monthly progress estimates. Each estimate shall reflect:

1. The total work completed during the pay period
2. Change order bills if:
  - 2.1. Submitted by the 15th day of a month AND
  - 2.2. Approved by the 20th day of a month

3. Payment adjustments

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Contractor shall submit a certification stating the work complies with the agreed upon quality control procedures. County will not process a progress estimate without a signed certification.

Retention of 5% of the total Contract Price will be held at the option of County unless retention has been secured pursuant to section 22300 of the Public Contract Code. Payment by County as herein provided shall not be construed as any acceptance of defects in the Work or improper materials.

**7. Performance Bond**

As a part of the execution of this Contract, Contractor shall furnish a bond of a surety company authorized to do business in the State of California and acceptable to County, conditioned upon the faithful performance of all covenants and stipulations under this Contract. The amount of this bond shall be one hundred percent (100%) of the total Contract Price and shall be executed upon the form provided by County.

**8. Payment Bond**

As a part of the execution of this Contract, Contractor shall furnish a bond of a surety company authorized to do business in the State of California and acceptable to County, conditioned upon the payment in full of all claims for labor and materials in accordance with the provisions of the law of the State of California. The amount of this bond shall be one hundred percent (100%) of the total Contract Price and shall be executed upon the form provided by County.

**9. Notification of Surety Company**

The surety company shall familiarize itself with all of the conditions and provisions of this Contract, and shall waive the right of special notification of any change or modifications of this Contract or extension of time, or of decreased or increased work, or of the cancellation of the Contract, or of any other act or acts by County or its authorized agents, under the terms of this Contract; and failure to so notify the aforesaid surety company of changes shall in no way relieve the surety company of its obligation under this Contract.

**10. Payment of Prevailing Wages**

Contractor shall pay and require payment of wages according to a scale of prevailing wage rates determined by California law, which scale is on file at County's Transportation Division's principal office and shall comply with all applicable wage requirements, as set forth in Labor Code Sections 1770 et seq., 1773.2, 1775, 1776, 1810 and 1813. In accordance with the provisions of Labor Code Section 1810, eight (8) hours of labor shall constitute a legal day's work upon all work done hereunder, and Contractor and any subcontractor employed under this Contract shall also conform to and be bound by the provisions of Labor Code Sections 1810 through 1815.

**11. Apprentices**

Attention is directed to Sections 1777.5, 1777.6 and 1777.7 of the California Labor Code and Title 8, California Code of Regulations Section 200 et seq. To ensure compliance and complete understanding of the law regarding apprentices, and specifically the required ratio thereunder, each Contractor or subcontractor should, where some question exists, contact the Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, CA 94102, or one of its branch offices prior to commencement of work on the public works contract. Responsibility for compliance with this section lies with Contractor.

It is County policy to encourage the employment and training of apprentices on public works contracts as may be permitted under local apprenticeship standards.

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**12. Certified Payroll**

Not Applicable

**13. Records Examination and Audit Requirements**

Contractor and its subcontractors, if any are authorized hereunder, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Contract, including but not limited to, the costs of administering the various aspects of the Contract. In accordance with Government Code Section 8546.7, all of the above-referenced parties shall make such materials available at their respective offices at all reasonable times during the contract period and for four (4) years from the date that final payment by County and all other pending matters are closed. Representatives of County, the State Auditor, and any duly authorized representative of other government agencies shall have access to any books, documents, papers and records that are pertinent to the Contract for audit, examination, excerpts, and transactions and copies thereof shall be furnished upon request.

**14. Payment of all Federal, State or City Taxes**

Any federal, state or city tax payable on the articles furnished by Contractor under the Contract shall be included in the Contract Price and paid by Contractor.

**15. Compliance with all Applicable Laws**

Contractor shall comply with all Federal and State laws applicable to timber removal, including but not limited to the Forest Practice Act, Water Code, Endangered Species Act, Public Resources Code, and Air Quality restrictions. Contractor shall conform to and abide by all Federal, State and local building, labor and safety laws, ordinances, rules and regulations. All Work and materials shall be in full accordance with the latest rules and regulations of the State Fire Marshal, safety orders of the Division of Industrial Safety, California Electrical Code, California Building Code, California Plumbing Code, applicable provisions of the State Public Resources Code, and any and all other applicable laws and regulations. Nothing in the Contract Documents, including but not limited to the plans and specifications, is to be construed to permit work not conforming to these codes, laws and regulations.

**16. Nondiscrimination**

- A. County may require Contractor's services on projects involving funding from various state and/or federal agencies, and as a consequence, Contractor shall comply with all applicable nondiscrimination statutes and regulations during the performance of this Agreement including but not limited to the following: Contractor and its employees and representatives shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, or sex; Contractor shall, unless exempt, comply with the applicable provisions of the Fair Employment and Housing Act (Government Code, Sections 12900 et seq.) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 7285.0 et seq.); the applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations incorporated into this Agreement by reference and made a part hereof as if set forth in full; and Title VI of the Civil Rights Act of 1964, as amended. Contractor and its employees and representatives shall give written notice of their obligations under this clause as required by law.
- B. Where applicable, Contractor shall include these nondiscrimination and compliance provisions in any of its agreements that affect or are related to the services performed herein.

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- C. Contractor's signature shall provide any certifications necessary under the federal laws, the laws of the State of California, including but not limited to Government Code Section 12990 and Title 2, California Code of Regulations, Section 8103.

**17. Reporting Accidents**

Contractor shall prepare and submit (within 24 hours of such incidents) reports of accidents at the site and anywhere else the work is in progress in which bodily injury is sustained or property loss in excess of Five Hundred Dollars (\$500.00) occurs.

**18. Workers' Compensation**

Contractor shall comply with Labor Code Sections 3700 et seq., requiring it to obtain Workers' Compensation Insurance, and sign a certificate of knowledge thereof.

**CERTIFICATE OF KNOWLEDGE - LABOR CODE SECTION 3700**

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this Contract.

Signed: Joe Benjamin Dated: 3/22/18

**19. Deviation from Plans and Specifications**

No deviation shall be made from Contract Documents, if any, without the prior written approval of County.

**20. Unity of Plans and Specifications**

The plans and specifications, if any, are one document, and any work shown or mentioned, in one and not in the other, or vice versa, shall be furnished or performed as though mentioned or shown in both.

**21. Notice of Discovery of Hazardous Waste or Unusual Conditions**

- A. Contractor shall promptly, and before the following conditions are disturbed, notify County in writing, in the event Contractor encounters, after excavating to a depth of greater than four (4) feet, any of the following:

1. Material that Contractor believes may be hazardous waste, as defined in section 25117 of the Health and Safety Code, which is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; or
2. Subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents; or
3. Unknown physical conditions at the site of any unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract.



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- B. County shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for performance of any part of the Work, an adjustment, excluding loss of anticipated profits, will be made and the Contract will be modified by a Change Order. County will notify Contractor of County's determination as to whether or not an adjustment of the Contract is warranted.
- C. In the event a dispute arises between County and Contractor as to whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the Work, Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between Contractor and County.

**22. Subcontracting**

The provisions of Sections 4100-4114, inclusive, of the Public Contract Code regarding subcontracting shall apply to this Contract, and Contractor represents that it will comply with all provisions therein.

**23. Additional Work**

County reserves the right to make such alterations, deviations, additions to or deletions from the plans and specifications, including the right to increase or decrease the quantity of any item or portion of work or to delete any items or portion of work, as may be deemed by the Contract Administrator or Project Manager to be necessary or advisable, and to require such additional work to be required for the proper completion of the whole Work contemplated.

Any such changes will be set forth in a Contract Change Order (Change Order) which will specify the additional work, adjustment of performance time, if any, and basis for additional compensation, if any. Any Change Order shall not become effective until approved by the Director of Transportation, or where required, by the Board of Supervisors.

**24. Termination by County for Convenience**

County reserves the right to terminate the Contract at any time upon determination by County's representative that termination of the Contract is in the best interest of County. County shall issue Contractor a written notice specifying that the Contract is to be terminated.

Upon receipt of said written notice, Contractor shall stop all work under the Contract except: (1) work specifically directed to be completed prior to termination, (2) work County's representative deems necessary to secure the Project for termination, (3) removal of equipment and plant from the site of the Work, (4) action that is necessary to protect materials from damage, (5) disposal of materials not yet used in the Work as directed by County, and (6) clean up of the site.

If the Contract is terminated for County's convenience as provided herein, all finished or unfinished work and materials previously paid for shall, at the option of County, become its property. Contractor shall be paid an amount which reflects costs incurred for work provided to the date of notification of termination. In addition, Contractor shall be paid the reasonable cost, as solely judged by County, and without profit, for all work performed to secure the Project for termination.

25. **Termination by County for Cause**

If Contractor is adjudged as bankrupt or insolvent, or makes a general assignment for the benefit of its creditors or if a trustee or receiver is appointed for Contractor or for any of its property, or if Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws, or on more than one occasion fails to supply sufficient skilled workmen or suitable material or equipment, or on more than one occasion fails to make prompt payments to subcontractors for labor, materials, or equipment, or disregards the authority of County's representative, or the Engineer, if one is appointed, or otherwise violates any provision of the Contract Documents, then County may, without prejudice to any other right or remedy and after giving Contractor and its Surety a minimum of ten (10) days from delivery of a written termination notice, terminate the services of Contractor and take equipment and machinery thereon owned by Contractor and finish the Work by whatever method County may deem expedient. In such case, Contractor shall not be entitled to receive any further payment until the Work is finished.

Without prejudice to other rights or remedies County may have, if Contractor fails to begin delivery of materials and equipment, to commence Work within the time specified, to maintain the rate of delivery of material, to execute the Work in the manner and at such locations as specified, or fails to maintain a work program which will ensure County's interest, or, if Contractor is not carrying out the intent of the Contract, County's written notice may be served upon Contractor and the Surety on its faithful performance bond demanding satisfactory compliance with the Contract. If Contractor or its Surety does not comply with such notice within five (5) days after receiving it, or after starting to comply, fails to continue, County may exclude it from the premises and take possession of all material and equipment, and complete the Work by County's own forces, by letting the unfinished Work to another Contractor, or by a combination of such methods.

Where Contractor's services have been so terminated by County, said termination shall not affect any right of County against Contractor then existing or which may thereafter accrue. Any retention or payment of monies by County due Contractor will not release Contractor from compliance with the Contract Documents.

If the unpaid balance of the Contract Price exceeds the direct and indirect costs of completing the Work, including compensation for additional professional services, such excess shall be paid to Contractor. If the sums under the Contract are insufficient for completion, Contractor or Surety shall pay to County within five (5) days after the completion, all costs in excess of the Contract Price. In any event, the cost of completing the Work shall be charged against Contractor and its Surety and may be deducted from any money due or becoming due from County.

The provisions of this Article shall be in addition to all other rights and remedies available to County under law.

If after notice of termination, it is determined for any reason that Contractor was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had not been issued. The Contract shall be equitably adjusted to compensate for such termination.

26. **Successors and Assigns**

This Agreement shall bind and inure to the heirs, devisees, assignees, and successors in interest of Contractor and to the successors in interest of County in the same manner as if such parties had been expressly named herein.

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**27. Assignment of Contract**

Neither the Contract, this Agreement, nor any part thereof, or any monies due or to become due hereunder, may be assigned by Contractor without the written approval of County, nor without the consent of the Surety unless the Surety has waived its right to notice of assignment in writing. County may assign this Contract to a lender, or any third party that assumes the obligations of County hereunder.

**28. Amendments**

This Agreement may be amended by mutual consent of the parties hereto. Said amendment shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

**29. Separate Contracts**

County reserves the right to let other contracts in connection with the Work. Contractor shall afford all other such contractors reasonable opportunity for storage of their materials, shall provide that the execution of its work properly connects and coordinates with theirs, and shall cooperate with them to the end of facilitating the Work.

**30. Indemnity**

To the fullest extent allowed by law, Contractor shall defend, indemnify, and hold County and its officers, directors, and employees harmless against and from any and all claims, suits, losses, damages, and liability for damages, including attorney's fees and other costs of defense brought for or on account of injuries to or death of any person, including but not limited to, workers and the public, or on account of injuries to or death of County employees, or damage to property, or any economic, consequential or special damages which are claimed or which shall in any way arise out of or be connected with Contractor's services, operations or performance hereunder, regardless of the existence or degree of fault or negligence on the part of County, Contractor, subcontractors or employees of any of these, except for the active, or sole negligence of County, its officers, directors, and employees, or where expressly prescribed by statute.

The duty to indemnify and hold harmless County specifically includes the duties to defend set forth in Section 2778 of the Civil Code. The insurance obligations of Contractor are separate, independent obligations under the Contract Documents, and the provisions of this defense and indemnity are not intended to modify nor should they be construed as modifying or in any way limiting the insurance obligations set forth in the Contract Documents.

**31. Insurance**

**GENERAL INSURANCE REQUIREMENTS:** Contractor shall provide proof of a policy of insurance satisfactory to County's Risk Management Division and documentation evidencing that Contractor maintains insurance that meets the following requirements:

1. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Contractor as required by law in the State of California.
2. Commercial General Liability Insurance of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage, including but not limited to endorsements for the following coverage: premises, personal injury, operations, products and completed operations, blanket contractual, and independent contractors' liability and a \$2,000,000 aggregate limit.
3. Automobile Liability Insurance of not less than One Million Dollars (\$1,000,000) is required in the event motor vehicles are used by Contractor in performance of the Contract.

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4. In the event Contractor is a licensed professional and is performing professional services under this Contract, Professional Liability Insurance is required with a limit of liability of not less than One Million Dollars (\$1,000,000).
  5. Explosion, Collapse and Underground coverage is required when the scope of work includes XCU exposures.

**PROOF OF INSURANCE REQUIREMENTS:**

1. Contractor shall furnish proof of coverage satisfactory to County's Risk Management Division as evidence that the insurance required herein is being maintained. The insurance will be issued by an insurance company acceptable to County's Risk Management Division, or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
2. The County of El Dorado, its officers, officials, employees, and volunteers shall be included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to all general and excess liability insurance policies. Proof that County is named additional insured shall be made by providing the Risk Management Division with a certified copy, or other acceptable evidence, of an endorsement to Contractor's insurance policy naming County as additional insured.
3. In the event Contractor cannot provide an occurrence policy, Contractor shall provide insurance covering claims made as a result of performance of this Contract for not less than three (3) years following completion of performance of this Contract.
4. Any deductibles or self-insured retentions must be declared to and approved by County. At the option of County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects County, its officers, officials, employees and volunteers; or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
5. Contractor shall require each of its subcontractors to procure and maintain Commercial General Liability Insurance, Automobile Liability Insurance and Workers' Compensation Insurance of the types and in the amounts specified above, or shall insure the activities of its subcontractors in its own policy in like amounts. Contractor shall also require each of its subcontractors to name Contractor and the County of El Dorado as additional insureds on each subcontractor's general and excess liability insurance policies. Upon request by County Contractor shall furnish proof of coverage satisfactory to County as evidence that the subcontractor insurance required herein is being maintained.

**INSURANCE NOTIFICATION REQUIREMENTS:**

1. Contractor agrees that no cancellation or material change in any policy shall become effective except upon prior written notice to Community Development Services, Contract Services Unit, 2850 Fairlane Court, Placerville, California 95667.
2. Contractor agrees that the insurance required herein shall be in effect at all times during the term of this Agreement, inclusive of the guarantee/warranty period specified herein below. In the event said insurance coverage expires at any time or times during the term of this Contract, Contractor shall immediately provide a new certificate of insurance as evidence of the required insurance coverage. In the event Contractor fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Contract upon the occurrence of such event. New certificates of insurance are subject to the approval of County's Risk Management Division.

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**ADDITIONAL STANDARDS:** Certificates shall meet such additional standards as may be determined by County's Department of Transportation either independently or in consultation with County's Risk Management Division, as essential for protection of County.

**COMMENCEMENT OF PERFORMANCE:** Contractor shall not commence performance of this Agreement unless and until compliance with each and every requirement of the insurance provisions is achieved.

**MATERIAL BREACH:** Failure of Contractor to maintain the insurance required herein, or to comply with any of the requirements of the insurance provisions, shall constitute a material breach of the entire Agreement.

**REPORTING PROVISIONS:** Any failure to comply with the reporting provisions of the policies shall not affect the coverage provided to County, its officers, officials, employees or volunteers.

**PRIMARY COVERAGE:** Contractor's insurance coverage shall be primary insurance as respects County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees or volunteers shall be in excess of Contractor's insurance and shall not contribute with it.

**PREMIUM PAYMENTS:** The insurance companies shall have no recourse against County, its officers, agents, employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.

**CONTRACTOR'S OBLIGATIONS:** Contractor's indemnity and other obligations shall not be limited by the insurance required herein and shall survive the expiration of this Agreement.

**32. Independent Contractor/Liability**

Contractor is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement. Contractor exclusively assumes responsibility for acts of its employees, associates, and subcontractors, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

Contractor shall be responsible for performing the work under this Agreement in a safe, professional, skillful, and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. County shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Contractor or its employees.

**33. Interest of Public Official**

No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Contractor under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

**34. Interest of Contractor**

Contractor covenants that Contractor presently has no personal interest or financial interest, and shall not acquire same in any manner or degree in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Contractor further covenants that in the performance of this Agreement no person having any such interest shall be employed by Contractor.

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**35. Conflict of Interest**

The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and Section 87100 relating to conflict of interest of public officers and employees. Contractor attests that it has no current business or financial relationship with any County employee(s) that would constitute a conflict of interest with provision of services under this contract and will not enter into any such business or financial relationship with any such employee(s) during the term of this Agreement. County represents that it is unaware of any financial or economic interest of any public officer or employee of Contractor relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement either party may immediately terminate this Agreement by giving written notice as detailed in Article 27, Termination by County for Cause, hereto.

**36. Licenses**

Bidders must be properly licensed to perform the Work pursuant to the Contractors' State License Law (Business and Professions Code Section 7000 et seq.). Bidders must have either a Class A license or one of the following Class C licenses: C-61, D-49. Bidders must be a Class A Licensed Timber Operator. Bidders must possess any additional licenses and classifications required by the categories and type of Work included in the Contract Documents and Plans at the time bids are submitted, and must maintain a valid license through completion and acceptance of the Work, including the guarantee and acceptance period. Failure of the successful Bidder to obtain proper adequate licensing will constitute a failure to execute the Contract and will result in the forfeiture of the Bidder's security.

**37. Business License**

County's Business License Ordinance provides that it is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of County of El Dorado without possessing a County business license unless exempt under County Ordinance Code Section 5.08.070. Contractor warrants and represents that it shall comply with all of the requirements of County's Business License Ordinance, where applicable, prior to beginning work under this Agreement and at all times during the term of this Agreement.

**38. Cleaning Up**

Contractor shall not allow the site of the Work to become littered with trash, rubbish or waste material, but shall maintain the site of Work in a neat and orderly condition throughout the performance of the Work. At the end of each work day, Contractor shall clean up all debris and waste materials generated by the Work and shall properly dispose of all trash, rubbish and waste materials off site at no additional cost to County.

**39. Access to the Work**

County, and any state or local authorities having jurisdiction over the Project, shall at all times have access to the Work.

**40. Acceptance of Work**

The Work will be accepted by County in writing in the form of a recorded Notice of Acceptance signed by the Director of Transportation when the whole shall have been completed satisfactorily, as determined by County or its duly authorized representative. Acceptance of the Work shall not constitute an acceptance of latent defects nor relieve Contractor of responsibility for any act or omission which is a violation of the Contract. County will release retention withheld, if any, thirty-five (35) days after the Notice of Acceptance is recorded.

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**41. Resolution of Claims**

Contractor's attention is directed to California Public Contract Code section 9204, which describes procedures for the resolution of claims on public works projects. Among other things, section 9204 requires the claimant to furnish reasonable documentation to support a claim, requires the public entity to respond to the claim within 45 days of receipt of the claim, and allows for the claimant to demand an informal meet and confer conference for settlement of the issues in dispute. For any portion of a claim that remains in dispute, section 9204 requires submission of the claim to nonbinding mediation. Additionally, section 9204 requires the public entity to make any payment due on an undisputed portion of the claim within 60 days of the public entity's written response and to pay interest at the rate of 7 percent per annum on any amounts not paid in a timely manner. The provisions of sections 20104 et seq. also apply to the resolution of claims under this Contract to the extent those sections are not in conflict with section 9204.

**42. Environmental and Toxic Warranty**

Contractor warrants that its operations concerning the Project are not and will not be in violation of any applicable federal, state, or local environmental statute, law, or regulation dealing with hazardous materials substances or toxic substances.

**43. Guarantee**

**Final Guarantee:** Contractor shall guarantee all materials and equipment furnished and work performed for a period of six (6) months. Contractor warrants and guarantees for a period of six (6) months from the date of Acceptance of the Work that the Work is free from all defects due to faulty materials or workmanship and Contractor shall promptly make such corrections as may be necessary, including repairs of any damage to other parts of the Work resulting from such defects. County will give notice of observed defects with reasonable promptness. In the event that Contractor should fail to make such repairs, adjustments, or other work that may be made necessary by such defects, County may do so and charge Contractor the cost thereby incurred.

**Extended Guarantees:** If a guaranty exceeding one (1) year is provided by the supplier or manufacturer of any equipment or materials used in this Project, then the guarantee for such equipment or materials shall be extended for such term. Contractor expressly agrees to act as co-guarantor of such equipment and materials, and Contractor shall supply County with all warranty and guaranty documents relative to equipment and materials incorporated in the job and guaranteed by its suppliers or manufacturers.

**Warranty:** Contractor warrants to County that materials and equipment furnished under the Agreement will be of good quality and new, unless otherwise required or permitted by the Agreement, that the Work will be free from defects or flaws and is of the highest quality of workmanship and that the Work will conform with the requirements of the Agreement. Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective.

If within six (6) months from the date of the Acceptance of the Work or such longer period of time as may be prescribed by law or regulations or by the terms of any applicable special guarantee required by the contract documents, any work is found to be defective, Contractor shall promptly, without cost to County and in accordance with County's written instruction, correct such defective work. If work is rejected by County, defective material or work will be removed from site and replaced with non-defective materials or work. If Contractor is unable to promptly and properly correct any defective work, County may at its option have the work corrected by such other means as County deems appropriate and hold Contractor liable for all direct, indirect and consequential costs caused by such defective work. Said warranty shall apply to all work found to be "defective" which is attributable to the quality or quantity of the materials used, the quality of the workmanship or for performance of the Agreement.

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**44. Notice**

Any notice or other correspondence required to be given under this Agreement by either party to the other may be affected by personal delivery in writing or by mail, postage prepaid. Notices personally delivered during normal business hours shall be deemed received on the actual date of delivery; mailed notices shall be deemed received one (1) day after affixed postmark. Notices and correspondence to County shall be in duplicate and shall be delivered to it as follows:

To County:

County of El Dorado  
Community Development Services  
Department of Transportation  
2441 Headington Road  
Placerville, California 95667

Attn.: John Kahling  
Deputy Director, Engineering  
Headington Engineering Unit

With a copy To:

County of El Dorado  
Community Development Services  
Administration and Finance Division  
2850 Fairlane Court  
Placerville, California 95667

Attn.: Michele Weimer  
Administrative Services Officer  
Contracts & Procurement Unit

Notices and correspondence to Contractor shall be delivered when personally delivered to, or if mailed, addressed to Contractor at:

Joe Benigno Tree Service  
1460 Industrial Way  
Gardnerville, Nevada 89410

Either party may change its address for notices or for its principal place of business by giving written notice pursuant to this Article.

**45. Change of Address**

In the event of a change in address for Contractor's principal place of business, Contractor's Agent for Service of Process, or Notices to Contractor, Contractor shall notify County in writing as provided in Article 46, Notice. Said notice shall become part of this Agreement upon acknowledgment in writing by County's Contract Administrator, and no further amendment of the Agreement shall be necessary provided that such change of address does not conflict with any other provisions of this Agreement.

**46. Drug-Free Workplace**

Contractor shall comply with Government Code section 8355.

**47. California Residency (Form 590)**

All independent Contractors providing services to County must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certifying that they have a permanent place of business in California. Contractor will be required to submit a Form 590 prior to execution of an Agreement or County shall withhold seven (7) percent of each payment made to Contractor during the term of this Agreement. This requirement applies to any Agreement/Contract exceeding \$1,500.00.

**48. County Payee Data Record Form**

All independent contractors or corporations providing services to County who do not have a Department of the Treasury Internal Revenue Service Form W-9 (Form W-9) on file with County must file a County Payee Data Record Form with County.



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**49. Taxes**

Contractor certifies that as of today's date, it is not in default on any unsecured property taxes or other taxes or fees owed by Consultant to County. Contractor agrees that it shall not default on any obligations to County during the term of this Agreement.

**50. Venue**

The Contract Documents and all provisions thereto shall be governed by the laws of the State of California. Any litigation arising herein shall be brought in the County of El Dorado.

**51. Contract Administrator**

The County Officer or employee with responsibility for administering this Agreement is John Kahling, Deputy Director, Engineering, Headington Engineering Unit, Department of Transportation, Community Development Services, or successor.

**52. Authorized Signatures**

The parties to this Agreement warrant and represent that the undersigned individuals executing this Agreement on their respective behalves are fully authorized to do so by law or other appropriate instrument and to bind upon said parties the obligations set forth herein.

**53. Partial Invalidity**

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

**54. No Third Party Beneficiaries**

Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this Agreement.

**55. Counterparts**

This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

**56. Entire Agreement**

This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral agreements or understandings.


**57. Assignment of Antitrust Actions**

In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, Contractor offers and agrees and will require all of its subcontractors and suppliers to agree to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become

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effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the parties.

**Contract Administrator Concurrence:**

By:   
John Kahling  
Deputy Director, Engineering  
Headington Engineering Unit  
Department of Transportation  
Community Development Services

Dated: 04/06/18

**Requesting Division Concurrence:**

By:   
Rafael Martinez, Director  
Department of Transportation  
Community Development Services

Dated: 4/6/18

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.


-- COUNTY OF EL DORADO --

By: 

Dated: 4/4/18

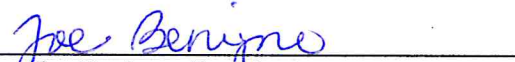
Board of Supervisors  
"County"

Attest:  
James S. Mitrisin  
Clerk of the Board of Supervisors

By:   
Deputy Clerk

Dated: 4/4/18

-- CONTRACTOR'S NAME --

By:   
Joe Benigno, President  
"Contractor"

Dated: 3/22/18

**EXHIBIT A**  
**CONTRACTOR'S BID AND BID PRICE SCHEDULE**  
**TREE MORTALITY PROJECT**  
**PHASE III**  
**CONTRACT NO. 2423**

<b>ITEM NO</b>	<b>PARCEL ADDRESS</b>	<b>COMMUNITY</b>	<b>TREE UNIQUE ID</b>	<b>ITEM DESCRIPTION</b>	<b>APPROXIMATE DIAMETER AT BREAST HEIGHT (INCHES)</b>	<b>APPROXIMATE TREE HEIGHT (FEET)</b>	<b>UNIT PRICE (IN FIGURES)</b>
1	4895 Pony Express Trail	Camino	4099	POND	39	124	\$7,096.00
2	4895 Pony Express Trail	Camino	4098	POND	50	133	\$7,096.00
3	4895 Pony Express Trail	Camino	4097	POND	47	137	\$7,096.00
4	4895 Pony Express Trail	Camino	4096	POND	29	119	\$7,096.00
5	4895 Pony Express Trail	Camino	4095	POND	32	125	\$7,096.00
6	4881 Pony Express Trail	Camino	4744	POND	26	121	\$7,096.00
7	4881 Pony Express Trail	Camino	6427	POND	29	131	\$7,096.00
8	4881 Pony Express Trail	Camino	6428	POND	42	147	\$7,096.00
9	4881 Pony Express Trail	Camino	6422	POND	36	135	\$7,096.00
10	4881 Pony Express Trail	Camino	6429	POND	39	134	\$7,096.00

ITEM NO	PARCEL ADDRESS	COMMUNITY	TREE UNIQUE ID	ITEM DESCRIPTION	APPROXIMATE DIAMETER AT BREAST HEIGHT (INCHES)	APPROXIMATE TREE HEIGHT (FEET)	UNIT PRICE (IN FIGURES)
11	4881 Pony Express Trail	Camino	6423	POND	38	132	\$7,096.00
12	4881 Pony Express Trail	Camino	6408	POND	12	17	\$2,503.00
13	4881 Pony Express Trail	Camino	6435	POND	5	12	\$2,503.00
14	4881 Pony Express Trail	Camino	6412	POND	17	43	\$2,503.00
15	4881 Pony Express Trail	Camino	6411	POND	16	43	\$7,096.00
16	4881 Pony Express Trail	Camino	6404	WF	13	55	\$7,096.00
17	4881 Pony Express Trail	Camino	6403	POND	7	20	\$2,503.00
18	4881 Pony Express Trail	Camino	6417	POND	30	120	\$7,096.00
19	4881 Pony Express Trail	Camino	6409	POND	17	40	\$2,503.00
20	4881 Pony Express Trail	Camino	6189	POND	34	128	\$7,096.00
21	4881 Pony Express Trail	Camino	6190	POND	31	130	\$7,096.00
22	4875 Pony Express Trail	Camino	6188	POND	31	119	\$7,096.00
23	4918 Cedar Drive	Camino	6186	CEDAR	27	75	\$7,096.00
24	4918 Cedar Drive	Camino	6187	CEDAR	24	90	\$7,096.00

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ITEM NO	PARCEL ADDRESS	COMMUNITY	TREE UNIQUE ID	ITEM DESCRIPTION	APPROXIMATE DIAMETER AT BREST HEIGHT (INCHES)	APPROXIMATE TREE HEIGHT (FEET)	UNIT PRICE (IN FIGURES)
25	4918 Cedar Drive	Camino	6178	POND	41	130	\$7,096.00
26	4918 Cedar Drive	Camino	6177	POND	35	120	\$7,096.00
27	4918 Cedar Drive	Camino	6176	POND	20	65	\$7,096.00
28	4918 Cedar Drive	Camino	6171	POND	16	68	\$7,096.00
29	4918 Cedar Drive	Camino	6175	POND	16	50	\$7,096.00
30	4918 Cedar Drive	Camino	6174	POND	23	70	\$7,096.00
31	4926 Cedar Drive	Camino	6172	CEDAR	34	85	\$7,096.00
32	4926 Cedar Drive	Camino	6173	CEDAR	32	100	\$7,096.00
33	4910 Cedar Drive	Camino	6185	CEDAR	18	75	\$2,503.00
34	4910 Cedar Drive	Camino	6184	POND	33	110	\$7,096.00
35	4910 Cedar Drive	Camino	6183	POND	45	130	\$7,096.00
36	4910 Cedar Drive	Camino	6182	CEDAR	15	50	\$2,503.00
37	4910 Cedar Drive	Camino	6181	POND	32	120	\$7,096.00
38	4910 Cedar Drive	Camino	6180	POND	32	120	\$7,096.00

ITEM NO	PARCEL ADDRESS	COMMUNITY	TREE UNIQUE ID	ITEM DESCRIPTION	APPROXIMATE DIAMETER AT BREAST HEIGHT (INCHES)	APPROXIMATE TREE HEIGHT (FEET)	UNIT PRICE (IN FIGURES)
39	4910 Cedar Drive	Camino	6179	POND	16	25	\$7,096.00
<b>TOTAL BID</b>							<b>\$244,593.00</b>