

No Withholding

**AGGREGATE PUBLIC WORKS**  
**CONSTRUCTION CONTRACT**

THIS CONTRACT is between the County of Shasta, a political subdivision of the State of California, through its Facilities Management Division of the Department of Public Works ("County"), and Mikala Corp. dba A-1 Tree Service & Stump Removal, a California Corporation, ("Contractor") (collectively, the "Parties" and individually a "Party") for tree and vegetation management services.

**Section 1. THE WORK**

Contractor shall perform all the work required by the Contract Documents. The work is described generally as follows:

- 1.1 It is the intent of the parties that the Contractor shall undertake, at the County's written direction, a number of small public works projects ("Project") during the term of this Contract. The Contractor shall provide tree and vegetation management services, including, but not limited to, arborist assessments, tree removal, tree trimming and pruning, stump grinding, stump removal, brush removal and vegetation and wood chipping, as requested by County. Each such Project shall be negotiated between the Contractor and County. The scope of work, materials type, schedule, and Project price shall be agreed to in writing between the Contractor and County. A purchase order number shall be issued prior to the commencement of each Project and shall be considered a notice to proceed ("Notice to Proceed") with the work. Projects determined by the County to be time-sensitive or of an immediate nature shall be performed at the County's verbal direction. The scope of work, materials type, schedule, and the Project price for such work shall be memorialized in writing as soon thereafter as possible and a purchase order is not required. In no event shall the total sum payable for all Projects assigned under this Contract exceed the amount set forth in Section 3 of this Contract.
- 1.2 The work to be undertaken by Contractor with regard to each Project shall include all labor, equipment, parts, materials, and mobilization and be performed to the satisfaction of the County.
- 1.3 Contractor shall provide 24-hour/7-day per week Emergency Service. When Emergency Service is requested by County, Contractor shall respond to the request within one hour and shall arrive on-site at the service location within three hours of request.
- 1.4 County shall provide reasonable access to County's property and/or buildings as needed by Contractor to perform the work required for each Project.
- 1.5 No single Project cost may exceed \$75,000 and no single Project may be split into two or more separate parts in an attempt to bring each part under this \$75,000 limit. In determining whether any Project costs \$75,000 or less, all costs of labor and overhead must be included.

## **Section 2. COMMENCEMENT, COMPLETION AND TERMINATION**

- 2.1 The term of this Contract shall be for three years beginning as of the last date it has been signed by both Parties.
- 2.2 Notwithstanding the foregoing, County shall not be obligated for payments hereunder for any future County fiscal year unless or until County's Board of Supervisors appropriates funds for this Contract in County's budget for that County fiscal year. In the event that funds are not appropriated for this Contract, then this Contract shall end as of June 30 of the last County fiscal year for which funds for this Contract were appropriated. For the purposes of this Contract, the County fiscal year commences on July 1 and ends on June 30 of the following year. County shall notify Contractor in writing of such non-appropriation at the earliest possible date.
- 2.3 Each Project shall be commenced and completed in accordance with the schedule agreed to in writing by Contractor and County per Section 1.1, unless modified in writing by Contractor and County.
- 2.4 If Contractor materially fails to perform Contractor's responsibilities under this Contract to the satisfaction of County, or if Contractor fails to fulfill in a timely and professional manner Contractor's responsibilities under this Contract, or if Contractor violates any of the terms or provisions of this Contract, then County shall have the right to terminate this Contract for cause effective immediately upon the County giving written notice thereof to Contractor. If termination for cause is given by County to Contractor and it is later determined that Contractor was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to paragraph 2.5 of this section.
- 2.5 County may terminate this Contract without cause on 30 days written notice to Contractor.
- 2.6 County may terminate this Contract immediately upon oral notice should funding cease or be materially decreased during the term of this Contract.
- 2.7 County's right to terminate this Contract may be exercised by the Shasta County Board of Supervisors, the Shasta County Executive Officer or their designee or the County's Public Works Director.
- 2.8 If this Contract is terminated, Contractor shall only be paid for services satisfactorily completed and provided prior to the effective date of termination.

## **Section 3. CONTRACT SUM**

- 3.1 For all work provided for under this contract, Contractor shall be compensated in accordance with the Project price negotiated in accordance with Section 1.1 and the

Schedule of Rates and Fees shown in Exhibit A, attached hereto, and incorporated herein.

- 3.2 During the term of this agreement, the Public Works Director may approve, via Change Order, changes, including retroactive, to the rates shown in Exhibit A provided that the increase in any single rate shall not exceed 5 percent per year unless required for compliance with prevailing wage requirements. In no event shall such changes increase the maximum amount payable under this agreement. All such amendments shall be in substantially the same format as the County's standard format amendment contained in Administrative Policy 6-101, Shasta County Contracts Manual.
- 3.3 The Contract Sum is the total amount payable by County to Contractor for completion of all the work under this Contract. The Contract Sum shall not exceed \$220,000 unless otherwise modified in accordance with this Contract.
- 3.4 Contractor shall be paid via electronic invoice payment; automated clearing house ("ACH"), County credit card, or Commerce Bank virtual card. ACH payments require submission of the completed Auditor-Controller ACH/Direct Deposit authorization form within five days of execution of this Contract.

#### **Section 4. PAYMENT SCHEDULE**

- 4.1 If the Completion Date of this Contract as specified in Section 2 is 30 or fewer calendar days after the issuance of the Notice to Proceed, County shall make a lump sum payment of 95 percent of the Contract Sum upon substantial completion of the Project.
- 4.2 If the Completion Date of this Contract as specified in Section 2 is more than 30 calendar days after the issuance of the Notice to Proceed, Contractor shall submit to County on or before the fifth day of each month an application for payment ("Application for Payment") specifying in detail the labor and materials expended toward completion of the Project during the previous month. County's review of the Application for Payment and estimate of the value of labor and materials expended toward completion of the Project shall be final. County shall pay to Contractor, by the 20th of each month, 95 percent of the value, as determined by County in its sole discretion, of the labor and materials expended toward completion of the Project during the previous month. Upon substantial completion of the Project, County shall have paid to Contractor through monthly payments as set forth above, 95 percent of the Contract Sum. County shall make final payment of the remaining 5 percent (the "Retention") not later than 45 days after substantial completion of the Project, provided the Contract is then fully performed and the Project has been accepted by County, and subject to the provisions of Sections 5 and 8. The payment of progress payments shall not be construed as an absolute acceptance of the Project up to the time of such payments, the entire Project being subject to final inspection and approval of County.

- 4.3 If progress payments are to be made under this Contract, the provisions of Public Contract Code section 20104.50 apply. Section 20104.50 provides that:
- .1 If the County fails to make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from Contractor, County shall pay interest to Contractor thereon at the legal rate of Code of Civil Procedure Section 685.010;
  - .2 County shall review each payment request as soon as practicable after receipt to determine if it is proper;
  - .3 County shall return to the Contractor within seven days of its receipt by County any payment request that County determines to be improper together with a written statement of reasons why the request is not proper; and
  - .4 The number of days available to County to make a payment without incurring interest shall be reduced by the number of days by which County exceeds the seven-day return requirement.

A progress payment does not include any portion of the final payment designated as the Retention.

## **Section 5. PAYMENTS**

- 5.1 Except as provided in this Section, payments to Contractor shall be made as provided in Section 4.
- 5.2 Payments may be withheld on account of: (1) Defective work not remedied; (2) claims or stop notices filed; (3) failure of Contractor to make payments properly to subcontractors or for labor, materials, or equipment; (4) damage to another contractor; or (5) unsatisfactory prosecution of the work by Contractor.
- 5.3 Final payment shall not be due until Contractor has delivered to County a complete release of all stop notices arising out of this Contract or receipts in full covering all labor, materials, and equipment for which a lien could be filed, or a bond satisfactory to County indemnifying County against any such notice or lien.
- 5.4 No payment issued to Contractor by County or on behalf of County, shall be construed to be a waiver by County of its right to seek any remedy, or assert any cause of action, in law or equity for breach of any provision of this Contract.

## **Section 6. CONTRACT DOCUMENTS**

- 6.1 The Contract Documents shall consist of this Contract; any supplemental or special conditions to this Contract; any plans, specifications, and drawings; any addenda

and bulletins; and any other documents, including but not limited to change orders and modifications, signed by both Parties relating to the Project. The intention of the Contract Documents is to place on Contractor the obligation to provide all labor, materials, equipment, and other items necessary for the proper execution and completion of the Project and the terms and conditions of payment therefor, and also to perform all work which may be reasonably necessary to produce the intended results.

- 6.2 If specifications and drawings have been prepared for the Project, the specifications and drawings are intended to correlate so that any work exhibited in the drawings and not mentioned in the specifications, or vice versa, is to be executed the same as if both were mentioned in the specifications and set forth in the drawings.
- 6.3 The term "work" as used in the Contract Documents includes all labor necessary to complete the Project and all materials and equipment incorporated or to be incorporated in construction of the Project.

## **Section 7. CONTRACTOR**

- 7.1 Contractor acknowledges that Contractor (as well as Contractor's principals, employees, subcontractors, and suppliers) is an independent contractor and not an employee, agent, or representative of County and that nothing in this Contract is intended to alter Contractor's independent contractor status. Contractor acknowledges that Contractor shall be solely responsible for and shall indemnify and hold County harmless from all matters relating to payment of Contractor's employees, subcontractors, suppliers, and others, including compliance with Social Security, withholding and all other regulations governing such matters.
- 7.2 Contractor shall supervise and direct the work using Contractor's best skill and attention. Contractor shall be solely responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the work under this Contract. If the work of this Contract is part of a larger project, Contractor shall communicate and cooperate with County and any other contractors on the larger project to the extent necessary so that the performance and sequence of the larger project may be carried forward in good order and in a timely manner.
- 7.3 Unless otherwise specifically noted in a writing signed by County, Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Project.
- 7.4 Contractor shall at all times enforce strict discipline and good order among Contractor's employees, and shall not employ on the Project any unfit person or anyone not skilled in the task assigned.

- 7.5 Contractor represents and warrants to County that all materials and equipment incorporated in the Project will be new unless otherwise specified, and that all work will be of good quality, free from faults and defects, and in conformance with the Contract Documents. All work not so conforming to these standards may be considered defective. This warranty shall be in addition to any other warranty provided by law or contract.
- 7.6 Contractor shall pay all sales, consumer, use, and other similar taxes required by law and shall secure and pay for all permits, fees, and licenses necessary for the execution of the work and completion of the Project.
- 7.7 Contractor shall give all notices and comply with all laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of the work and completion of the Project, and shall notify County if any of the Contract Documents are at variance therewith.
- 7.8 Contractor shall be responsible for the acts and omissions of all Contractor's employees and all subcontractors, their agents, and employees, and all other persons performing any of the work toward completion of the Project under a contract with Contractor.
- 7.9 Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by Contractor's operations. Upon completion of the Project, Contractor shall remove all of Contractor's waste materials and rubbish from and about the Project as well as all of Contractor's tools, construction equipment, machinery, and surplus materials. If Contractor fails to comply with this provision (Section 7.9), County may clean up the premises and charge the costs to Contractor. County may, in its sole discretion, deduct such costs from any sums owing Contractor or County may send a bill for such costs to Contractor and Contractor shall pay the County's costs within 30 days of receipt of County's bill therefor.
- 7.10 Contractor acknowledges that Contractor has made an independent investigation of the Project site, including underground conditions and all other conditions that might affect the progress of the work and is satisfied as to those conditions.
- 7.11 Contractor acknowledges that Contractor has read and understands all of the Contract Documents.
- 7.12 Contractor acknowledges awareness of the provisions of subdivision (b) of Public Contract Code section 7103.5, which states as follows:

In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body all rights, title and interest in and to all causes of

action it may have under Article 4 of the Clayton Act (15 U.S.C. §. 15) or under the Cartwright Act (Chapter 2 (commencing with section 16700) of Part 2 Division 7 of the Business and Professions Code), arising from purchase of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the Parties.

## **Section 8. LIQUIDATED DAMAGES**

- 8.1 The time limit specified in Section 2 is of the essence of this Contract. Contractor shall complete the Project by the Completion Date specified in Section 2 unless County agrees in writing to an extension of time.
- 8.2 The term “day” as used in the Contract Documents shall mean calendar day.
- 8.3 Failure to complete the Project within the time and in the manner provided for by the Contract Documents shall subject Contractor to liquidated damages.
- 8.4 The actual occurrence of damages and the actual amount of the damages which County would suffer if the Project were not completed within the specified time set forth are dependent upon many circumstances and conditions which could prevail in various combinations and it is impracticable and extremely difficult to fix the actual damages. Damages which County would suffer in the event of delay include, but are not limited to, loss of the use of the work product, costs of administration, inspection, supervision, and the loss suffered by the public by reason of the delay in the Project. Accordingly, the Parties agree that the amount herein set forth shall be presumed to be the amount of damages sustained by the failure of Contractor to complete the Project within the time specified. Contractor agrees that the liquidated damages are not manifestly unreasonable under the circumstances and agrees that such sum is not intended as a penalty against the Contractor.
- 8.5 The amount of liquidated damages to be paid by Contractor to County for failure to complete the Project as specified in this Contract will be \$250.00 for each day by which completion of the Project is delayed beyond the Completion Date, such amount being the actual cash value agreed upon as the loss to County resulting from Contractor's default.
- 8.6 In the event Contractor shall become liable for liquidated damages under this Section, County, in addition to all other remedies provided by law, shall have the right to withhold all or any part of the Retention which would otherwise be or become due Contractor, until the liability of Contractor under this Section has been fully satisfied. If the Retention is not sufficient to discharge all liabilities of Contractor incurred under this Section, Contractor and Contractor's sureties shall continue to remain liable to County until all such liabilities are fully satisfied.

## **Section 9. PROTECTION OF PERSONS AND PROPERTY**

Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work on the Project, or any part thereof. Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury, or loss to: (1) All employees on the Project and other persons who may be affected thereby; (2) all the work and all materials and equipment to be incorporated in the Project; and (3) other property at the Project site or adjacent thereto. In executing the work to complete the Project, or any part thereof, Contractor shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public authority having jurisdiction over the safety of persons or property or to protect them from damage, injury, or loss. With respect to the work to complete the Project, or any part thereof, all damages or loss to any property caused in whole or in part by Contractor, any subcontractor, any sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by Contractor, except damage or loss directly and solely attributable to the negligent acts or omissions of County.

## **Section 10. INDEMNITY**

To the fullest extent permitted by law, Contractor shall indemnify and hold harmless County, its elected officials, officers, employees, agents, and volunteers against all claims, suits, actions, costs, expenses, (including, but not limited to, reasonable attorney's fees of County Counsel and counsel retained by County, expert fees, litigation costs, and investigation costs), damages, judgments, or decrees arising from the work or the provision of services undertaken pursuant to this Contract by Contractor, or by any of Contractor's subcontractors, any person employed under Contractor, or under any subcontractor, or in any capacity, except when the injury or loss is caused by the sole negligence or intentional wrongdoing of County. Contractor shall also, at Contractor's own expense, defend the County, its elected officials, officers, employees, agents, and volunteers, against any claim, suit, action or proceeding brought against County, its elected officials, officers, employees, agents, and volunteers, arising from the work or the provision of services undertaken pursuant to this Contract by Contractor, or any of Contractor's subcontractors, any person employed under Contractor, or under any Subcontractor, or in any capacity. Contractor shall also defend and indemnify County for any adverse determination made by the Internal Revenue Service or the State Franchise Tax Board and/or any other taxing or regulatory agency and shall defend, indemnify, and hold harmless County with respect to Contractor's "independent contractor" status that would establish a liability on County for failure to make social security deductions or contributions or income tax withholding payments, or any other legally mandated payment. The provisions of this paragraph are intended to be interpreted as broadly as permitted by applicable law. This provision shall survive the termination, expiration, or cancellation of this Contract. The Indemnification provisions are independent of, and shall not in any way be limited by, Contractor's insurance coverage or lack of coverage, or by the insurance requirements of this Contract. County acknowledgement or approval of Contractor's evidence of insurance coverage required by this Contract does not in any way relieve Contractor from its obligations under this Section.



## Section 11. CONTRACTOR'S INSURANCE

Without limiting Contractor's duties of defense and indemnification:

11.1 Contractor and any subcontractor shall carry, from an insurance carrier authorized to transact business in the State of California, Commercial General Liability Insurance, and other coverage necessary to protect County and the public with limits of liability of not less than \$2 million per occurrence or claim. Such insurance shall:

- .1 Be equivalent to the current Insurance Services Office (ISO) form CG 00 01, assuring coverage for products and completed operations, property damage, bodily injury, and personal and advertising injury.
- .2 Include an endorsement, or an amendment to the policy of insurance, naming Shasta County, its elected officials, officers, employees, agents, and volunteers as additional insureds; the additional insureds coverage shall be equal to the current ISO forms CG 20 10 for ongoing operations, and CG 20 37 for completed operations.
- .3 Apply separately to this project and location(s); in the event of a general aggregate limit, the general aggregate limit shall be twice the required per occurrence limit.
- .4 Contain, or be endorsed to contain, a "separation of insureds" clause which shall read, or have the same effect as the following:

"Separation of Insureds.

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each suit insured against whom a claim is made or suit is brought."

11.2 Contractor and any subcontractor shall carry Automobile Liability Insurance coverage any auto, unless Contractor has no owned autos then covering at minimum hired and non-owned autos, with limits of \$1 million per occurrence or claim. Such coverage shall:

- .1 Include, or be endorsed to contain, Additional Insured coverage in favor of Shasta County, its elected officials, officers, employees, agents, and volunteers.

- .2 Include, or be endorsed to contain, coverage for hazardous waste transportation, when appropriate to the work being performed.
- 11.3 Contractor and any subcontractor shall carry statutorily required Workers' Compensation Insurance, and Employer's Liability Insurance with limits of \$1 million per occurrence or claim, to cover Contractor, subcontractor, Contractor's partner(s), subcontractor's partner(s), Contractor's employees, and subcontractor's(s') employees covering the full liability for compensation for injury to those employed by Contractor or subcontractor. Contractor hereby certifies that Contractor is aware of the provisions of section 3700 of the Labor Code, which requires every employer to insure against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and Contractor shall comply with such provisions before commencing the performance of the work or the provision of services pursuant to this contract.
- 11.4 Contractor shall require its subcontractors, if any, to carry and maintain coverage and evidence that equals or exceeds the coverage requirements imposed upon Contractor by this Contract.
- 11.5 With regard to all insurance coverage required by this Contract:
  - .1 Any deductible or self-insured retention exceeding \$25,000 for Contractor or subcontractor shall be disclosed to and be subject to approval by the Shasta County Risk Manager prior to the effective date of this Contract; policy shall provide, or be endorsed to provide, that any self-insured retention or deductible may be satisfied by either the named insured or County, and must also provide that defense costs satisfy the self-insured retention or deductible. Any and all deductibles and self-insured retentions shall be the sole responsibility of Contractor or subcontractor who procured such coverage, and shall not apply to the Indemnified Additional Insured Parties. County may deduct from any amounts otherwise due Contractor to fund the self-insured retention or deductible.
  - .2 If any insurance coverage required hereunder is provided on a "claims made" rather than "occurrence" form, Contractor or subcontractor shall maintain such coverage with an effective date earlier or equal to the effective date of this Contract and continue coverage for a period of three years after the expiration of this Contract and any extensions thereof. In lieu of maintaining post-Contract expiration coverage as specified above, Contractor or subcontractor may satisfy this provision by purchasing tail coverage for the claims-made policy. Such tail coverage shall, at a minimum, provide coverage for claims received and reported three years after the expiration date of this Contract.

- .3 In the event coverage is reduced or canceled, or otherwise materially changed, a notice of said reduction or cancellation or change shall be provided to County within 24 hours.
- .4 Contractor hereby grants to Shasta County, its elected officials, officers, employees, agents, and volunteers, a waiver of any right to subrogation or recovery which any insurer of said Contractor may acquire against County by virtue of the payment of any loss under such coverage, and agrees to obtain any endorsement that may be necessary to affect this waiver; this provision applies regardless of whether or not County has received such a waiver or endorsement.
- .5 Any available insurance proceeds in excess of the specified minimum limits and insurance coverage pursuant to the terms of this contract shall be applicable to County.
- .6 Before the effective date of this contract, Contractor shall provide County with certificates of insurance, and all amendatory endorsements or policy amendments as evidence of meeting insurance coverage required of this contract; for purposes of verification of Contractor meeting insurance requirements of the contract, County reserves the right to require any policies, declarations, endorsements, and other documentation.
- .7 Coverage required herein shall be in effect at all times during the term of this Contract, and may be provided by programs of self-insurance when supported by adequate evidence meeting appropriate self-insurance and regulatory compliance. Insurance is to be placed with insurers authorized to transact business in California, with a current A.M. Best's rating of not less than A-VII, unless otherwise authorized by County.
- .8 In the event any insurance coverage expires at any time during the term of this Contract, Contractor shall provide County, at least 20 days prior to said expiration date, a new endorsement or policy amendment evidencing insurance coverage as provided for herein for not less than the remainder of the term of this Contract or for a period of not less than one year. In the event Contractor fails to keep in effect at all times insurance coverage as herein provided and a renewal endorsement or policy amendment is not provided within 10 days of the expiration of the endorsement or policy amendment in effect at inception of this Contract, County may, in addition to any other remedies it may have, terminate this Contract upon the occurrence of such event.
- .9 For any claims related to this agreement, Contractor's coverage shall be primary and non-contributory. Any coverage maintained by Shasta County, its elected officials, officers, employees, agents, and volunteers, shall be excess of the Contractor's coverage and shall not contribute with it.

- .10 Any failure to comply with reporting provisions of the policies shall not affect coverage provided to Shasta County, its elected officials, officers, employees, agents, or volunteers.

## **Section 12. CHANGES IN THE WORK**

- 12.1 Contractor and County agree that changes in this Contract or in the work shall become effective only when written in the form of a Supplemental Contract or Change Order and approved and signed by County and Contractor. If this Contract has been executed by County's Board of Supervisors or Executive Officer, and if the Supplemental Contract or change order does not result in raising the level of compensation above the Contract Sum as defined in Section 3, the County's Public Works Director may sign the Supplemental Contract or Change Order, including retroactive, for County. It is specifically agreed that County shall have the right to request any alterations, deviations, reductions, or additions to the Contract Documents, including without limitation the plans and specifications or any of them, and the amount of the cost thereof shall be added to or deducted from the amount of the Contract Sum by fair and reasonable valuations. This Contract shall be held to be completed when the work is completed in accordance with the original plans and specifications as amended by any Supplemental Contract(s) or Change Order(s). If a Supplemental Contract or Change Order requires an extension of time, time for completion of the work shall be extended to the date specified in the Supplemental Contract or Change Order. Contractor shall not be subject to any claims for liquidated damages for such period of time, but Contractor shall have no claim for any other compensation for any such delay. No Supplemental Contract or Change Order shall release or exonerate any surety upon any guarantee or bond given in connection with this Contract.
- 12.2 If any portion of the work involves digging trenches or other excavations that extend deeper than four feet below the surface, then:
- .1 Contractor shall promptly, and before the following materials or conditions are disturbed, notify County in writing of any:
- a. material that Contractor believes may be material that is hazardous waste, as defined in section 25117 of the California Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; and
  - b. subsurface or latent physical conditions at the Project site differing from those anticipated by the Parties; and
  - c. unknown physical conditions at the Project site of any unusual nature, different materially from those ordinarily encountered and

generally recognized as inherent in work of the character provided for in this Contract.

- .2 County shall promptly investigate, and if County finds that the physical conditions at the Project site do materially so differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the work, and shall prepare for execution a Supplemental Contract or issue a Change Order under the procedures prescribed in the Contract Documents.
- .3 In the event that a dispute arises between County and Contractor 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 the scheduled Completion Date provided for by the Contract Documents, but shall proceed with all work to be performed under this Contract. Contractor shall retain any and all rights provided either by this Contract or by law which pertain to the resolution of disputes and protests between contracting Parties.

### **Section 13. PROSECUTION OF WORK DESPITE DISPUTES**

In the event of a dispute between County and Contractor as to an interpretation of any of the Contract Documents, or as to the quality or sufficiency of material or workmanship, the decision of County shall for the time being prevail and Contractor, without delaying the Project, shall proceed as directed by County without prejudice to a final determination by negotiation, arbitration, or litigation (subject to subsection 21.2 herein) in accordance with the provisions of the Contract Documents. Should Contractor be finally determined to be either wholly or partially correct, County shall reimburse Contractor to that extent for added costs Contractor may have incurred by reason of work done or material supplied beyond the terms of this Contract as a result of complying with County's directions.

### **Section 14. DEFAULT BY CONTRACTOR**

- 14.1 Contractor shall prosecute the work diligently to completion and in all events within the time specified in Section 2. If Contractor fails to achieve satisfactory progress or fails to supply a satisfactory number of skilled workers and adequate equipment and materials for the efficient execution of the work and completion of the Project, or any part thereof, or if Contractor disregards laws, ordinances, or instructions of County, then County may give Contractor a written notice requiring correction of the problem(s). If Contractor fails to correct the problem(s) or fails to make satisfactory arrangements for the correction of the problem(s) within five days of receipt of County's written notice, Contractor shall be deemed in default and County may terminate this Contract effective immediately upon written notice to Contractor. If Contractor files for bankruptcy, is adjudged bankrupt, makes a general assignment for the benefit of Contractor's creditors, has a receiver

appointed on account of Contractor's insolvency, Contractor shall be deemed in default and County may terminate this Contract effective immediately upon written notice to Contractor. Contractor and Contractor's surety on the performance bond, if any, shall remain liable for liquidated damages and other damages should the work be delayed beyond the Completion Date.

- 14.2 In the event of default by Contractor, and if the surety elects not to take over and perform this Contract, County may take over the Project or hire the work out to another contractor and prosecute the Project to completion at Contractor's expense by any method County deems, in its sole discretion, advisable. Contractor and Contractor's surety shall be liable to County for any excess incurred by County in excess of the Contract Sum. If County elects to perform the work itself, County may, without liability, take possession of and utilize in completing the Project, such equipment, materials, appliances, plants, and other property belonging to Contractor as is located on the Project site and necessary for completion of the Project or any part thereof. All subcontracts shall automatically be assigned to County and County may terminate any subcontract for County's convenience. If the expense of completing the Project exceeds the unpaid balance of the Contract Sum, Contractor shall pay the difference to the County, including but not limited to, rent paid to third parties and increased or additional labor costs incurred by County.

## **Section 15. PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND**

- 15.1 If the price for an individual Project assigned under this Contract is \$25,000 or less, Contractor may make a written request for waiver of the performance bond requirement and the County may, in its sole discretion, grant such waiver request; alternatively, in the absence of a waiver request from Contractor, the County may, in its sole discretion, choose to approve waiver of the performance bond requirement for any Project that is \$25,000 or less. Unless waived by County in writing, Contractor shall provide County with a performance bond. The performance bond shall be in an amount of 100 percent of the individual Project quotation insuring the faithful performance of the Project under the provisions of this Contract.
- 15.2 If the price for an individual Project assigned under this Contract is \$25,000 or less, Contractor may make a written request for waiver of the labor and material payment bond requirement and the County may, in its sole discretion, grant such waiver request; alternatively, in the absence of a waiver request from Contractor, the County may, in its sole discretion, choose to approve waiver of the labor and material payment bond requirement for any Project that is \$25,000 or less. Unless waived by County in writing, Contractor shall provide County with a labor and materials payment bond. The labor and materials payment bond shall be in an amount of 100 percent of the Project quotation to insure the payment of all obligations incurred by Contractor in connection with the work covered by this Contract.

- 15.3 All bonds shall be in such form as County may prescribe and with such sureties as may be agreeable to the Parties. Contractor shall deliver all required bonds at the time of the execution of a written notice to proceed with the work.

## **Section 16. SUBSTITUTION OF SECURITIES**

- 16.1 Consistent with California Public Contract Code section 22300, Contractor may substitute securities for any moneys withheld by County to ensure performance under this Contract. At the request and expense of Contractor, securities equivalent to the amount to be withheld shall be deposited with County, or with a state or federally chartered bank in California as the escrow agent, which shall then pay those moneys to Contractor. Upon satisfactory completion of this Contract, the securities shall be returned to Contractor.
- 16.2 Alternatively, Contractor may request and County shall make payment of any Retention directly to the escrow agent at the expense of Contractor. At the expense of Contractor, Contractor may direct the investment of the payments into securities and Contractor shall receive the interest earned on the investments upon the same terms provided for in this Section for securities deposited by Contractor. Upon satisfactory completion of the Project, Contractor shall receive from the escrow agent all securities, interest, and payments received by the escrow agent from County, pursuant to the terms of this Section. Contractor shall pay to each subcontractor, not later than 20 days of receipt of the payment, the respective amount of interest earned, net of costs attributed to retention withheld from each subcontractor, on the amount of retention withheld to insure the performance of Contractor.
- 16.3 Securities eligible for investment under this Section shall include those listed in Government Code section 16430, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by Contractor and County. Contractor shall be the beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon.

## **Section 17. PREVAILING WAGE RATES**

- 17.1 If the Contract Sum is \$1,000 or more, Contractor shall pay, and shall require any subcontractor to pay, not less than the specified prevailing rates of per diem wages to all laborers, workers, and mechanics employed by them in the execution of this Contract in accordance with the provisions of Article 2 (commencing with section 1770) of Chapter 1 of Part 7 of Division 2 of the Labor Code. Copies of the prevailing rate of per diem wages are on file at County's Department of Public Works, located at 1855 Placer Street, Redding, California, and are available to Contractor upon request. Contractor shall also pay, and shall require each subcontractor to pay, travel and subsistence payments to each laborer, worker, and mechanic needed to execute the work.

- 17.2 If the Contract Sum is \$1,000 or more, Contractor shall comply with Labor Code section 1775. In accordance with Labor Code section 1775, Contractor shall forfeit as a penalty to County such amount as is determined by the Labor Commissioner, or otherwise \$50.00, for each calendar day or portion thereof for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for such work or craft in which such worker is employed for any work done under this Contract or by any subcontractor under this Contract. In addition to such penalty and pursuant to section 1775, the difference between prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by Contractor.
- 17.3 If the Contract Sum is \$1,000 or more, Contractor shall keep, and shall require each subcontractor to keep, an accurate payroll record showing the name, address, social security number, work classification, the straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor and any subcontractors in connection with the execution of this Contract or any subcontract under this Contract. Such records shall be certified and shall be open at all reasonable hours to inspection by County, its officers and agents, and to the representatives of the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the State Department of Industrial Relations and to the public through request to the County, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. Contractor shall comply fully with the provisions of Labor Code section 1776 in connection with the keeping and disclosure of payroll records and shall also require all subcontractors to comply therewith.
- 17.4 The Department of Industrial Relations (DIR) has launched an online application at: <https://efiling.dir.ca.gov/PWCR/ActionServlet?action=displayPWCRegistrationForm> for public works contractors to meet the requirements of Senate Bill 854. Contractors must register and meet requirements using the new online application before performing work on public works contracts in California. The application also provides agencies that administer public works programs with a searchable database of qualified contractors at <https://efiling.dir.ca.gov/PWCR/Search>.

## **Section 18. WORKING HOURS**

In accordance with the provisions of sections 1810 to 1815 of the Labor Code, eight hours labor shall constitute a day's work, and no worker in the employ of Contractor, or any subcontractor, doing any part of the work contemplated by this Contract, shall be required or permitted to work more than eight hours in one calendar day or 40 hours in one calendar week, unless such worker is paid for all hours worked in excess thereof at not less than 1-1/2 times the basic rate of pay. Contractor and each subcontractor shall keep an accurate record showing the persons so employed and actual hours worked each calendar day and each calendar week by all workers employed in connection with the work contemplated by



this Contract, which records shall be open at all reasonable hours to the inspection of County and the Division of Labor Standards Enforcement. It is hereby further agreed that Contractor shall forfeit as a penalty to County the sum of \$25.00 for each worker employed in the execution of this Contract by Contractor or any subcontractor for each calendar day during which said worker is required or permitted to labor more than eight hours in any one calendar day or 40 hours in any one calendar week in violation of sections 1810 to 1815 of the Labor Code.

## **Section 19. EMPLOYMENT OF APPRENTICES**

Contractor agrees to comply with Labor Code sections 1777.5, 1777.6, and 3070, *et seq.*, each of which is incorporated by reference into this Contract. In summary, those statutory provisions require that contractors and subcontractors employ apprentices (as that term is defined in section 3077 of the Labor Code) in apprenticeable occupations in the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates, but in no case shall the ratio be less than one hour worked by an apprentice for each five hours worked by a journeyman, unless an exemption is granted, and that contractors and subcontractors shall not discriminate among otherwise qualified employees as indentured apprentices on any public works on the ground of race, religious creed, color, national origin, ancestry, sex, or age. Only apprentices who are in training underwritten apprenticeship agreements shall be employed on public works in apprenticeable occupations. The responsibility for compliance with these provisions for all apprenticeable occupations rests with Contractor.

## **Section 20. GUARANTY**

20.1 Contractor guarantees all equipment, materials, supplies, and labor used in completing the Project. Should any of the materials or equipment prove defective or should the Project as a whole or any part thereof prove defective, due to faulty workmanship, material furnished, or methods of installation, or should the Project or any part thereof fail to operate properly as originally intended and in accordance with any plans and specifications, due to any of the above causes within 12 months (or such longer period of time as may be prescribed by law, the supplier, or the manufacturer) after the date on which the Project is accepted by County, Contractor agrees to reimburse County, upon demand, for County's expenses incurred in restoring the Project to the condition contemplated, including, but not limited to, the cost of any such equipment or materials replaced, the cost of removing and replacing any other work necessary to make such replacement or repairs, and the cost of testing the repaired or restored work, or, upon demand by County, to replace any such material and to repair said work completely without cost to County so that the Project will function successfully as originally contemplated. Contractor expressly agrees to act as co-guarantor of all equipment and materials incorporated in the Project, and Contractor shall supply County with all warranty and guarantee documents relative to such equipment and materials which are guaranteed or warranted by their suppliers or manufacturers. The provisions of this Section apply to work done by any subcontractors of Contractor as well as to work done by Contractor.

- 20.2 County shall have the unqualified option to make any needed replacement or repairs to the Project or any part thereof or to have such replacements or repairs done by Contractor. In the event County elects to have said work performed by Contractor, Contractor agrees that said work shall be accomplished and such materials as are necessary shall be furnished and installed and any testing of repaired and replaced materials or work shall be done within 45 days (or such other time period as County and Contractor may agree upon in writing), after the receipt of demand from County and at no additional cost to County. If Contractor shall fail or refuse to comply with Contractor's obligations under this Section, County shall be entitled to all costs and expenses, including attorneys' fees, reasonably incurred by reason of the said failure or refusal.

## **Section 21. MISCELLANEOUS PROVISIONS**

- 21.1 Utility Relocation. County shall comply with Government Code section 4215, regarding responsibility for the removal, relocation, or protection of existing main or trunk-line utility facilities located on the Project site, if such utilities are not identified by the County in the Contract Documents.

County shall compensate Contractor for the costs of locating, repairing damage not due to the failure of the contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Contract Documents with reasonable accuracy, and for equipment on the Project site necessarily idled during such work.

Contractor shall not be assessed liquidated damages for delay in completion of the Project when such delay was caused by the failure of County or the owner of the utility to provide for removal or relocation of such utility facilities.

- 21.2 Claims, Arbitration, Governing Law and Venue. Any claim or demand, arising under or relating to the performance of this Contract, as defined in Public Contract Code section 9204(c)(1)(A-C) shall be subject to the procedures set forth in Public Contract Code section 9204 (A copy is attached hereto and made a part hereof). Any claim or demand for monetary compensation or damages, arising under or relating to the performance of this Contract, not defined in Public Contract Code section 9204(c)(1)(A-C) shall be resolved through arbitration through the rules and procedures contained in California Public Contracts Code section 10240 et seq. and of the California Public Works Contract Arbitration (PWCA) Program. This Contract shall be governed by and construed in accordance with the laws of the State of California. The Parties also agree that, in the event of litigation, venue shall be in the proper court located in Shasta County, California.
- 21.3 Non-Discrimination. Contractor shall not unlawfully discriminate in employment practices or in the delivery of services on the basis of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, medical condition (including cancer, HIV, and AIDS) physical or mental disability, use of family care

leave under either the Family & Medical Leave Act or the California Family Rights Act, or on the basis of any other status or conduct protected by law.

21.4 Assignment of Contract. Contractor shall not assign or transfer by operation of law or otherwise any or all of Contractor's rights, burdens, duties, or obligations under this Contract without the prior written consent of the surety on the performance bond, if any, and County.

21.5 Notices.

.1 Any notice required to be given pursuant to the terms and provisions of this Contract shall be in writing and shall be sent by first-class mail to the following address:

If to County                      Shasta County Department of Public Works  
Facilities Management Division  
1958 Placer Street  
Redding, CA 96001  
530-225-5659; Fax: 530-225-5420

If to Contractor                Mikala Corp.  
dba A-1 Tree Service & Stump Removal  
P.O. Box 493512  
Redding, CA 96049  
530-221-9427; Cell 530-941-5292

.2 Notice shall be deemed effective two days after mailing.

21.6 Document or Report Prepared by Contractor. As required by Government Code Section 7550, each document or report prepared by Contractor for or under the direction of County pursuant to this Contract shall contain the numbers and dollar amount of the Contract and all subcontracts under the Contract relating to the preparation of the document or written report. If multiple documents or written reports are the subject of the Contract or subcontracts, the disclosure section may also contain a statement indicating that the total Contract amount represents compensation for multiple documents or written reports. Contractor shall label the bottom of the last page of the document or report as follows: department name, Contract number, and dollar amount. If more than one document or report is produced under this Contract, Contractor shall add: "This [document or report] is one of [number] produced under this Contract."

21.7 Binding Effect. This Contract shall inure to the benefit of and shall be binding upon Contractor and County and their respective successors and assigns.

21.8 Severability. If any portion of this Contract or application thereof to any person or circumstance is declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal or state statute or regulation or County ordinance, the remaining provisions of this Contract, or the application thereof, shall not be

invalidated thereby and shall remain in full force and effect to the extent that the provisions of this Contract are severable.

- 21.9 Amendments. Except as provided in Section 12, the terms of this Contract shall not be waived, altered, modified, supplemented, or amended in any manner whatsoever except by written agreement signed by the Parties.
- 21.10 Entire Contract. This Contract and the other Contract Documents as defined in Section 6 hereof constitute the entire Contract between the Parties. There are no understandings, agreements, representations, or warranties, express or implied, not specified in this Contract or the other Contract Documents. Contractor shall be entitled to no other benefits other than those specified herein. Contractor, by the execution of this Contract, acknowledges that Contractor has read this Contract and all other Contract Documents, understands them, and agrees to be bound by their terms and conditions.
- 21.11 Contract Preparation. It is agreed and understood by the Parties hereto that this Contract has been arrived at through negotiation and that neither Party is to be deemed the Party which created any uncertainty in this Contract within the meaning of Civil Code Section 1654.
- 21.12 Property Taxes. Contractor represents and warrants that Contractor, on the date of execution of this Contract, (1) Has paid all property taxes for which Contractor is obligated to pay, or (2) is current in payments due under any approved property tax payment arrangement. Contractor shall make timely payment of all property taxes at all times during the term of this Contract.
- 21.13 Counterparts/Electronic, Facsimile, and PDF Signatures. This Contract may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one instrument. Each Party of this Contract agrees to the use of electronic signatures, such as digital signatures that meet the requirements of the California Uniform Electronic Transactions Act (“CUETA”) Cal. Civ. Code §§ 1633.1 to 1633.17), for executing this Contract. The Parties further agree that the electronic signatures of the Parties included in this Contract are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record pursuant to the CUETA as amended from time to time. The CUETA authorizes use of an electronic signature for transactions and contracts among Parties in California, including a government agency. Digital signature means an electronic identifier, created by computer, intended by the Party using it to have the same force and effect as the use of a manual signature, and shall be reasonably relied upon by the Parties. For purposes of this section, a digital signature is a type of "electronic signature" as defined in subdivision (h) of Section 1633.2 of the Civil Code. Facsimile signatures or signatures transmitted via pdf document shall be treated as originals for all purposes.

***SIGNATURE PAGE FOLLOWS***

**IN WITNESS WHEREOF** the Parties have executed this Contract on the date shown below. By their signatures below, each signatory represents that they have the authority to execute this Contract and to bind the Party on whose behalf their execution is made.

**COUNTY OF SHASTA**

Date: \_\_\_\_\_

\_\_\_\_\_  
KEVIN W. CRYE, CHAIR  
Board of Supervisors  
County of Shasta  
State of California

ATTEST:

DAVID J. RICKERT  
Clerk of the Board of Supervisors

By: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:

JOSEPH LARMOUR  
County Counsel

RISK MANAGEMENT APPROVAL

DocuSigned by:  
By: Alan Cox 04/21/2025 | 3:16 PM PDT  
9CB40F4332224BB...  
Alan B. Cox  
Senior Deputy County Counsel

Signed by:  
By: Dolyene Lane 04/21/2025 | 8:19 AM PDT  
83C541BCE38944C...  
Dolyene Lane  
Risk Manager

**CONTRACTOR**

**MIKALA CORP DBA A-1 TREE SERVICE & STUMP REMOVAL**

DocuSigned by:  
By: Michael J. Bertell  
3ED77AB38DE74A8...

Signed by:  
By: Sativa Bertell  
853C7D730E30418...

Print Name: Michael Bertell

Print Name: Sativa Bertell

Title: Secretary

Title: CEO, CFO

Date: 04/17/2025 | 2:44 PM PDT

Date: 04/18/2025 | 11:57 AM PDT

Contractor's License No: 1020617

Tax I.D. #: 82-3206407

\*See next page for Public Contract Code section 9204.



**State of California**

**PUBLIC CONTRACT CODE**

**Section 9204**

9204. (a) The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.

(b) Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.

(c) For purposes of this section:

(1) "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

(A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.

(B) Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.

(C) Payment of an amount that is disputed by the public entity.

(2) "Contractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.

(3) (A) "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(B) "Public entity" shall not include the following:

(i) The Department of Water Resources as to any project under the jurisdiction of that department.

(ii) The Department of Transportation as to any project under the jurisdiction of that department.

(iii) The Department of Parks and Recreation as to any project under the jurisdiction of that department.

(iv) The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.

(v) The Military Department as to any project under the jurisdiction of that department.

(vi) The Department of General Services as to all other projects.

(vii) The High-Speed Rail Authority.

(4) "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

(5) "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier subcontractor.

(d) (1) (A) Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

(B) The claimant shall furnish reasonable documentation to support the claim.

(C) If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

(D) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

(2) (A) If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(B) Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on

an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

(C) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(D) Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

(E) This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

(3) Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

(4) Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

(5) If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on their own behalf or on behalf of a lower tier subcontractor, that the contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.



(e) The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

(f) A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

(g) This section applies to contracts entered into on or after January 1, 2017.

(h) Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

(i) This section shall remain in effect only until January 1, 2027, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2027, deletes or extends that date.

(Amended by Stats. 2019, Ch. 489, Sec. 1. (AB 456) Effective January 1, 2020. Repealed as of January 1, 2027, by its own provisions. )

**Exhibit A**  
**Schedule of Rates and Fees**

<b>DESCRIPTION</b>	<b>Weekdays (M-F)</b>	<b>Overtime (M-F)</b>	<b>Overtime (Saturday)</b>	<b>Overtime (Sunday/Holiday)</b>
Apprentice	\$36.09	\$46.26	\$46.26	\$56.41
Journeyman	\$66.66	\$85.04	\$85.04	\$103.85
Foreman	\$67.66	\$86.74	\$86.74	\$105.78
Arborist Inspections and Reports	\$250	\$250	\$250	\$350
<i>All rates set forth herein are hourly rates and are billed in quarter hour increments rounded to the nearest quarter hour.</i>				

**Material and Equipment Markup:** The markup for materials and equipment shall not exceed 10%.