

**CONTRACT SERVICES AGREEMENT FOR  
CITY OF MENIFEE  
CITYWIDE TREE TRIMMING AND MAINTENANCE SERVICES**

THIS CONTRACT SERVICES AGREEMENT (“Agreement”) is made and effective this \_\_\_\_\_ day of \_\_\_\_\_, 2023 by and between the CITY OF MENIFEE, a California municipal corporation, (“City”) and **WEST COAST ARBORISTS INC**, a California Corporation (“Contractor”). City and Contractor are sometimes hereinafter individually referred to as “Party” and hereinafter collectively referred to as the “Parties”.

**R E C I T A L S**

A. City has sought, by issuance of a Request for Proposals or Invitation for Bids, the performance of the services defined and described particularly in Article 1 of this Agreement.

B. Contractor, following submission of a proposal or bid for the performance of the services defined and described particularly in Article 1 of this Agreement, was selected by City to perform those services.

C. Pursuant to the City of Menifee’s Municipal Code, City has authority to enter into this Contract Services Agreement and the City Manager has authority to execute this Agreement.

D. The Parties desire to formalize the selection of Contractor for performance of those services defined and described particularly in Article 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

**OPERATIVE PROVISIONS**

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

**ARTICLE 1. SERVICES OF CONTRACTOR.**

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, Contractor shall provide those services specified in the “Scope of Services” attached hereto as Exhibit B” and incorporated herein by this reference, which services may be referred to herein as the “Services.” As a material inducement to City entering into this Agreement, Contractor represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the Services required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the Services contemplated herein. Contractor shall at all times faithfully, competently, and to the best of its ability, experience, and talent, perform all Services described herein. Contractor covenants that it shall follow the highest professional standards in performing the Services required hereunder and that all materials will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase “highest professional standards” shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

1.2 Contractor's Proposal. The "Scope of Services" shall include Contractor's scope of work or bid which is attached as incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

1.3 Compliance with Law. Contractor and any subcontractor shall comply with all applicable local, state, and federal laws and regulations applicable to the performance of the work hereunder. Contractor shall not hire or employ any person to perform work within City or allow any person to perform the Services required under this Agreement unless such person is properly documented and legally entitled to be employed within the United States. Any and all work subject to prevailing wages, as determined by the Director of Industrial Relations of the State of California, will be the minimum paid to all laborers, including Contractor's employee and subcontractors. It is understood that it is the responsibility of Contractor to determine the correct scale. The State Prevailing Wage Rates may be obtained from the California Department of Industrial Relations ("DIR") pursuant to California Public Utilities Code, Sections 465, 466, and 467 by calling 415-703-4774. Appropriate records demonstrating compliance with such requirement shall be maintained in a safe and secure location at all times, and readily available at City's request. Contractor shall indemnify, defend, and hold City and its elected and appointed boards, members, officials, officers, agents, representatives, employees, and volunteers harmless from and against any liability, loss, damage, cost or expenses (including but not limited to reasonable attorneys' fees, expert witness fees, court costs, and costs incurred related to any inquiries or proceedings) arising from or related to (i) the noncompliance by Contractor or any party performing the Services of any applicable local, state, and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, the requirement to pay state prevailing wages and hire apprentices); (ii) the implementation of Section 1781 of the Labor Code, as the same may be amended from time to time, or any other similar law; and/or (iii) failure by Contractor or any party performing the Services to provide any required disclosure or identification as required by Labor Code Section 1781, as the same may be amended from time to time, or any other similar law. It is agreed by the Parties that, in connection with performance of the Services, including, without limitation, any and all public works (as defined by applicable law), Contractor shall bear all risks of payment or non-payment of prevailing wages under California law and/or the implementation of Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar law. Contractor acknowledges and agrees that it shall be independently responsible for reviewing the applicable laws and regulations and effectuating compliance with such laws. Contractor shall require the same of all subcontractors.

1.4 Licenses, Permits, Fees and Assessments. Contractor shall obtain at its sole cost and expense such licenses, permits, and approvals as may be required by law for the performance of the Services required by this Agreement. Contractor and its employees, agents, and subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required for the performance of the Services required by this Agreement. Contractor shall have the sole obligation to pay for any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for Contractor's performance of the Services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes, penalties or interest levied, assessed, or imposed

against City hereunder. In addition to the foregoing, Contractor and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.

1.5 Familiarity with Work. By executing this Agreement, Contractor warrants that Contractor (i) has thoroughly investigated and considered the Scope of Services to be performed, (ii) has carefully considered how the Services should be performed, and (iii) fully understands the facilities, difficulties, and restrictions attending performance of the Services under this Agreement. If the Services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of the Services hereunder. Should Contractor discover any latent or unknown conditions, which will materially affect the performance of the Services hereunder, Contractor shall immediately inform City of such fact and shall not proceed until written instructions are received from the Contract Officer.

1.6 Care of Services. Contractor shall adopt reasonable methods during the life of this Agreement to furnish continuous protection to the Services, and the equipment, materials, papers, documents, plans, studies, and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the Services by City, except such losses or damages as may be caused by City's own negligence.

1.7 Warranty. Contractor warrants all work under this Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one (1) year (or the period of time specified elsewhere in this Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by City of any defect in the work or non-conformance of the work to this Agreement, commence and prosecute with due diligence all work necessary to fulfill the terms of the warranty at Contractor's sole cost and expense. Contractor shall act sooner as requested by City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the work (or work of other contractors) damaged by Contractor's defective work or which becomes damaged in the course of repairing or replacing defective work. For any work so corrected, Contractor's obligation hereunder to correct defective work shall be reinstated for an additional one (1) year period, commencing with the date of acceptance of such corrected work. Contractor shall perform such tests as City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of this Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of Contractor. All warranties and guarantees of subcontractors, suppliers, and manufacturers with respect to any portion of the work, whether express or implied, are deemed to be obtained by Contractor for the benefit of City, regardless of whether or not such warranties and guarantees have been transferred or assigned to City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of City. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of City, City shall have the right to correct and replace any defective or non-conforming work and

any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse City for any expenses incurred hereunder upon demand. This provision may be waived in Exhibit A if the services hereunder do not include construction of any improvements or the supplying of equipment or materials.

1.8 Prevailing Wages. Contractor is aware of the requirements of California Labor Code Sections 1720, *et seq.*, and 1770, *et seq.*, as well as California Code of Regulations, Title 8, Sections 1600, *et seq.*, ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "Public works" and "Maintenance" projects. If the Services are being performed as part of an applicable "Public works" or "Maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is ONE THOUSAND DOLLARS (\$1,000) or more, Contractor agrees to fully comply with such Prevailing Wage Laws including, but not limited to, requirements related to the maintenance of payroll records and the employment of apprentices. A copy of the general prevailing wage rate determination is on file in the Office of the City Clerk and is hereby incorporated in this Agreement. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at Contractor's principal place of business and at the project site. The statutory penalties for failure to pay prevailing wage or to comply with State wage and hour laws will be enforced. In accordance with the provisions of Labor Code Sections 1810 *et seq.*, eight (8) hours is the legal working day. Contractor must forfeit to City TWENTY FIVE DOLLARS (\$25.00) per day for each worker who works in excess of the minimum working hours when Contractor does not pay overtime. Contractor shall defend (with counsel selected by City), indemnify, and hold City, its elected officials, officers, employees, and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

1.9 Further Responsibilities of Parties. Both Parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both Parties agree to act in good faith to execute all instruments, prepare all documents, and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither Party shall be responsible for the service of the other.

1.10 Additional Services. City shall have the right at any time during the performance of the Services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to, or deducting from said work. No such extra work may be undertaken unless a written change order is first given by the Contract Officer to Contractor, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of Contractor. Any increase in compensation of up to five percent (5%) of the Contract Sum or TWENTY-FIVE THOUSAND DOLLARS (\$25,000), whichever is less; or in the time to perform of up to one hundred eighty (180) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by the City Council of City. It is expressly understood by Contractor that the provisions of this Section shall not apply to work specifically set forth in the Scope of Services or reasonably contemplated therein. Contractor hereby acknowledges that it accepts the risk that the Services to be provided pursuant to the Scope

of Services may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefore.

1.11 Special Requirements. Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the “Special Requirements” attached hereto as Exhibit A and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit A and any other provisions of this Agreement, the provisions of Exhibit A shall govern.

## ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.

2.1 Contract Sum. Subject to any limitations set forth in this Agreement, City agrees to pay Contractor the amounts specified in the Scope of Services and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed **One Hundred Seventy Six Thousand Four Hundred Two Dollars and Zero Cents (\$176,402.00)** (the “Contract Sum”), unless additional compensation is approved pursuant to Section 1.10.

2.2 Method of Compensation. The method of compensation may include: (i) a lump sum payment upon completion, (ii) payment in accordance with specified tasks or the percentage of completion of the Services, (iii) payment for time and materials based upon Contractor’s rates as specified in the “Schedule of Compensation” in the Scope of Services, if any and incorporated herein by this reference, provided that time estimates are provided for the performance of subtasks, but not exceeding the Contract Sum, or (iv) such other methods as may be specified in the Schedule of Compensation.

2.3 Reimbursable Expenses. Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses with advance written approval by the Contract Officer, or actual subcontractor expenses of an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Contractor at all project meetings reasonably deemed necessary by City. Coordination of the performance of the Services with City is a critical component of the Services. If Contractor is required to attend additional meetings to facilitate such coordination, Contractor shall not be entitled to any additional compensation for attending said meetings.

2.4 Invoices. Each month Contractor shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City’s Director of Finance. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and subcontractor contracts. Subcontractor charges shall also be detailed by such categories.

City shall independently review each invoice submitted by Contractor to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Contractor which are disputed by City, or as provided in Section 7.3, City will use its best efforts to cause Contractor to be paid within forty-five (45) days of receipt of Contractor’s correct and undisputed

invoice. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Contractor for correction and resubmission.

Invoices shall be submitted to:

City of Menifee  
Attn: Accounts Payable  
29844 Haun Road  
Menifee, CA 92586

2.5 Annual Appropriation of Funding. In accord with Article 16 Section 18 of the California Constitution, payment of compensation under this Agreement is contingent upon annual appropriation of funds by City for that purpose. Contractor acknowledges and agrees that to the extent that the Services provided under this Agreement extend beyond one (1) fiscal year, payment for such Services is expressly conditioned on City's annual appropriation of funds for such Services for each year. If no funds are appropriated then this Agreement shall be terminated. City pledges and agrees to process such appropriation requests annually and in good faith. Nothing in this Section shall be construed to limit the right of either Party to terminate this Agreement as provided herein.

2.6 Waiver. Payment to Contractor for Services performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Contractor.

### ARTICLE 3. PERFORMANCE SCHEDULE.

3.1 Time of Essence. Time is of the essence in the performance of this Agreement.

3.2 Schedule of Performance. Contractor shall commence the Services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all Services within the time period(s) established in Exhibit C "Schedule of Performance" and incorporated herein by this reference. When requested by Contractor, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

3.3 Force Majeure. The time period(s) specified in the Schedule of Performance for performance of the Services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including City, if Contractor shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the Services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the Parties to this Agreement. In no event shall Contractor be entitled to recover damages against City for any delay in the performance of this Agreement, however caused, Contractor's sole remedy being extension of this Agreement pursuant to this Section.

3.4 Inspection and Final Acceptance. City may inspect and accept or reject any of Contractor's work under this Agreement, either during performance or when completed. City shall reject or finally accept Contractor's work within forth five (45) days after submitted to City. City shall accept work by a timely written acceptance, otherwise work shall be deemed to have been rejected. City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud, and such gross mistakes as amount to fraud. Acceptance of any work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Article 5, pertaining to indemnification and insurance, respectively.

3.5 Term. The term of this Agreement shall begin on January 18, 2023. Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until June 30, 2023, whichever is later.

#### ARTICLE 4. COORDINATION OF WORK

4.1 Representatives and Personnel of Contractor. The following principals of Contractor ("Principals") are hereby designated as being the principals and representatives of Contractor authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

_____ (Name)	_____ (Title)
_____ (Name)	_____ (Title)
_____ (Name)	_____ (Title)

It is expressly understood that the experience, knowledge, capability, and reputation of the Principals were a substantial inducement for City to enter into this Agreement. Therefore, the Principals shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the Services hereunder. All personnel of Contractor, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the Principals may not be replaced nor may their responsibilities be substantially reduced by Contractor without the express written approval of City. Additionally, Contractor shall make every reasonable effort to maintain the stability and continuity of Contractor's staff and subcontractors, if any, assigned to perform the Services required under this Agreement. Contractor shall notify City of any changes in Contractor's staff and subcontractors, if any, assigned to perform the Services required under this Agreement, prior to and during any such performance.

4.2 Status of Contractor. Contractor shall have no authority to bind City in any manner, or to incur any obligation, debt, or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Contractor shall not at any time or in any manner represent that Contractor or any of Contractor's officers, employees, or agents are in any manner officials, officers, employees, or agents of City. City shall not be liable for compensation or

indemnification to Contractor for injury or sickness arising out of performing the Services hereunder. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Contractor and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (“PERS”) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits. Contractor expressly waives any claim Contractor may have to any such rights.

4.3 Contract Officer. The “Contract Officer” shall be such person as may be designated by the City Manager of City. It shall be Contractor’s responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the Services and Contractor shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of City required hereunder to carry out the terms of this Agreement.

4.4 Independent Contractor. Neither City nor any of its employees shall have any control over the manner, mode, or means by which Contractor, its agents, or employees, perform the Services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision, or control of Contractor’s employees, servants, representatives, or agents, or in fixing their number, compensation, or hours of service. Contractor shall perform all Services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venturer or a member of any joint enterprise with Contractor.

4.5 Prohibition Against Subcontracting or Assignment. The experience, knowledge, capability, and reputation of Contractor, its principals, and employees were a substantial inducement for City to enter into this Agreement. Therefore, Contractor shall not contract with any other entity to perform in whole or in part the Services required hereunder without the express written approval of City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated, or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release Contractor or any surety of Contractor of any liability hereunder without the express consent of City.

4.6 Utility Relocation. City is responsible for removal, relocation, or protection of existing main or trunkline utilities to the extent such utilities were not identified in the invitation for bids or specifications. City shall reimburse Contractor for any costs incurred in locating,



repairing damage not caused by Contractor, and removing or relocating such unidentified utility facilities. Contractor shall not be assessed liquidated damages for delay arising from the removal or relocation of such unidentified utility facilities.

4.7 Trenches or Excavations. Pursuant to California Public Contract Code Section 7104, in the event the work included in this Agreement requires excavations more than four (4) feet in depth, the following shall apply.

(a) Contractor shall promptly, and before the following conditions are disturbed, notify City, in writing, of any: (1) material that Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the 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; (2) subsurface or latent physical conditions at the site different from those indicated by information about the site made available to bidders prior to the deadline for submitting bids; or (3) unknown physical conditions at the 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 Agreement.

(b) City shall promptly investigate the conditions, and if it finds that the conditions 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 shall issue a change order per Section 1.10 of this Agreement.

(c) That, in the event that a dispute arises between City 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 any scheduled completion date provided for by this Agreement, but shall proceed with all work to be performed under this Agreement. Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting Parties.

4.8 Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out the Services, Contractor shall at all times be in compliance with all applicable local, state, and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

4.9 Covid-19 Safety. If Contractor or subcontractor(s) enters City property or meets in person with City employees during the performance of the Services, Contractor shall comply with all State, County, and local emergency orders, directives, protocols, and best practices related to the COVID-19 pandemic, including, but not limited to: (A) wearing facial coverings, (B)

maintaining adequate physical distancing when possible, (C) regular hand washing, and (D) regular hand sanitizing.

## ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS

### 5.1 Insurance Coverage.

Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees, and agents of City:

(a) Comprehensive General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury, and property damage. Claims-made, modified, limited, or restricted occurrence forms are not acceptable without prior written consent from City. The policy of insurance shall be in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, TWO MILLION DOLLARS (\$2,000,000.00) in the general aggregate, and TWO MILLION DOLLARS (\$2,000,000.00) products/completed operations aggregate. The general aggregate limit shall apply separately to the Services to be performed under this Agreement.

The policy definition of “insured contract” shall include assumptions of liability arising out of both ongoing operations and products-completed operations hazard as set forth in “F” definition in form CG 0001, or equivalent.

The policy must cover inter-insured suits and include a “Separation of Insureds” or “severability” clause which treats each insured separately.

The insurance must be maintained for at least one (1) year following the completion of the Services or the expiration or termination of this Agreement.

(b) Worker’s Compensation Insurance. A policy of worker’s compensation insurance in such amount as will fully comply with the laws of the State of California, including Section 3700 of the California Labor Code, and which shall indemnify, insure, and provide legal defense for both Contractor and City against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by Contractor in the course of carrying out the Services contemplated in this Agreement. The worker’s compensation policy of insurance shall be in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident, ONE MILLION DOLLARS (\$1,000,000.00) disease per employee, and ONE MILLION DOLLARS (\$1,000,000.00) disease per policy.

(c) Automotive Insurance (Form CA 0001 (Ed 1/87) including “any auto” and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00). Said policy shall include coverage for owned, non-owned, leased, and hired cars.

(d) Professional Liability. Professional liability insurance appropriate to Contractor's profession. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of, or related to the Services performed under this Agreement. The insurance must be maintained for at least five (5) consecutive years following the completion of the Services or the expiration or termination of this Agreement. During this additional five (5)-year period, Contractor shall annually and upon request of City submit written evidence of this continuous coverage.

(e) Pollution Liability. A policy of pollution liability insurance written on a per occurrence for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per pollution incident and ONE MILLION DOLLARS (\$1,000,000.00) in the general aggregate. The policy shall apply to any incidents at or from any location on which Contractor performs the Services under this Agreement.

The insurance must be maintained for at least one (1) year following the completion of Contractor's services or the expiration or termination of this Agreement.

(f) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements in Exhibit A.

5.2 General Insurance Requirements. All of the above policies of insurance shall be primary insurance and shall name City, its elected and appointed officers, employees, agents, and authorized volunteers as additional insureds and any insurance maintained by City or its officers, employees, agents, or authorized volunteers shall apply in excess of, and not contribute with, Contractor's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against City, its officers, employees, agents, authorized volunteers, and their respective insurers.

Prior written consent from City is required if any of the said policies have a deductible or self-insured retention in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000).

Contractor shall provide written notice to City within ten (10) working days if: (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self insured retention is increased. In the event any of said policies of insurance are cancelled, Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer.

No Services under this Agreement shall commence until Contractor has provided City with original endorsements effecting coverage set forth in this Article 5. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsement is to be on forms provided by or approved by City. As an alternative to City-approved forms, Contractor may provide complete certified copies of all required insurance policies, including endorsements affecting the coverage. City reserves the right to inspect complete, certified copies of all required insurance policies at any time. Any failure to comply with the

reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

City and its officers, employees, agents, and authorized volunteers shall be covered as additional insureds with respect to each of the following: liability arising out of the Services performed by or on behalf of Contractor, including the insured's general supervision of Contractor; products and completed operations of Contractor, as applicable; premises owned, occupied, or used by Contractor; and automobiles owned, leased, or used by Contractor in the course of providing the Services pursuant to this Agreement. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, or authorized volunteers. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees, and volunteers or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses, and claims. Contractor agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which Contractor may be held responsible for the payment of damages to any persons or property resulting from Contractor's activities or the activities of any person or persons for which Contractor is otherwise responsible nor shall it limit Contractor's indemnification liabilities as provided in Section 5.3.

In the event Contractor subcontracts any portion of the Services in compliance with Section 4.5 of this Agreement, the contract between Contractor and such subcontractor shall require the subcontractor to maintain the same policies of insurance that Contractor is required to maintain pursuant to Section 5.1, and such certificates and endorsements shall be provided to City.

5.3 Indemnification. To the full extent permitted by law, Contractor agrees to indemnify, defend, and hold harmless City, its officers, employees, agents, and volunteers ("Indemnified Parties") from and against any and all actions, either judicial, administrative, arbitration, or regulatory, damages to persons or property, losses, costs, penalties, obligations, errors, omissions, or liabilities whether actual or threatened ("Claims or Liabilities") that may be asserted or claimed by any person, firm, or entity arising out of or in connection with the performance of the Services, operations, or activities provided herein of Contractor, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Contractor is legally liable ("Indemnors"), or arising from Contractor's reckless or willful misconduct, or arising from Contractor's or Indemnors' negligent performance of or failure to perform any term, provision, covenant, or condition of this Agreement, and in connection therewith:

(a) Contractor shall defend (with counsel selected by City) any action or actions filed in connection with any of said Claims or Liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Contractor will promptly pay any judgment rendered against City, its officers, agents, or employees for any such Claims or Liabilities arising out of or in connection

with the performance of or failure to perform such Services, operations or activities of Contractor hereunder; and Contractor agrees to save and hold City, its officers, agents, and employees harmless therefrom;

(c) In the event City, its officers, agents, or employees is made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising out of or in connection with the performance of or failure to perform the Services, operation or activities of Contractor hereunder, Contractor agrees to pay to City, its officers, agents, or employees, any and all costs and expenses incurred by City, its officers, agents, or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Contractor shall incorporate similar indemnity agreements with its subcontractors and if it fails to do so Contractor shall be fully responsible to indemnify City, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes Claims or Liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Contractor in the performance of professional services hereunder. The provisions of this Section do not apply to Claims or Liabilities occurring as a result of City's sole negligence or willful acts or omissions, but to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness, or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Contractor and shall survive termination of this Agreement.

**5.4 Payment and Performance Bond.** Concurrently with execution of this Agreement, Contractor shall deliver to City a payment (labor and materials) bond and a performance bond, each in the sum of the amount of this Agreement, in the forms provided by the City Clerk, which secures the faithful performance of this Agreement. The bonds shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bonds shall be unconditional and remain in force during the entire term of this Agreement and shall be null and void only if Contractor promptly and faithfully performs all terms and conditions of this Agreement. Payment and performance bonds shall be secured from a surety company rated Grade A or better in the most recent edition of Best Rating Guide, The Key Rating Guide, or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Contract Officer due to unique circumstances, and shall be authorized to write such bonds in the State of California. Contractor shall pay all bond premiums, costs, and incidentals.

**5.5 Sufficiency of Insurer or Surety.** Insurance or bonds required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide, or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Contract Officer due to unique circumstances. If this Agreement continues for more than three (3) years duration, or in the event the Contract Officer determines that the Services to be performed under this Agreement creates an increased or decreased risk of loss to City, Contractor agrees that the minimum limits of the insurance policies and the performance bond required by Section 5.4 may be changed accordingly upon receipt of written notice from the Contract Officer; provided that Contractor shall have the right to appeal a determination of

increased coverage by the Contract Officer to the City Council of City within ten (10) days of receipt of notice from the Contract Officer.

5.6 Substitution of Securities. Pursuant to Public Contract Code Section 22300, substitution of eligible equivalent securities for any moneys withheld to ensure performance under this Agreement may be permitted at the request and expense of Contractor.

#### ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION.

6.1 Records. Contractor shall keep, and require subcontractors to keep, such ledgers books of accounts, invoices, vouchers, canceled checks, reports (including but not limited to payroll reports), studies, or other documents relating to the disbursements charged to City and the Services performed hereunder (the "Books and Records"), as shall be necessary to perform the Services required by this Agreement and enable the Contract Officer to evaluate the performance of such Services. Any and all such Books and Records shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such Books and Records at all times during normal business hours of City, including the right to inspect, copy, audit, and make records and transcripts from such Books and Records. Such Books and Records shall be maintained for a period of three (3) years following completion of the Services hereunder, and City shall have access to such Books and Records in the event any audit is required. In the event of dissolution of Contractor's business, custody of the Books and Records may be given to City, and access shall be provided by Contractor's successor in interest. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), this Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of City, for a period of three (3) years after final payment under this Agreement.

6.2 Reports. Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the Services required by this Agreement as the Contract Officer shall require. Contractor hereby acknowledges that City is greatly concerned about the cost of the Services to be performed pursuant to this Agreement. For this reason, Contractor agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the Services contemplated herein or, if Contractor is providing design services, the cost of the project being designed, Contractor shall promptly notify the Contract Officer of said fact, circumstance, technique, or event and the estimated increased or decreased cost related thereto and, if Contractor is providing design services, the estimated increased or decreased cost estimate for the project being designed.

6.3 Ownership of Documents. All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents, and other materials plans, drawings, estimates, test data, survey results, models, renderings, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings, digital renderings, or data stored digitally, magnetically, or in any other medium (the "Documents and Materials") prepared or caused to be prepared by Contractor, its employees, subcontractors, and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the

expiration or termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the Documents and Materials hereunder. Any use, reuse or assignment of such completed Documents and Materials for other projects and/or use of uncompleted documents without specific written authorization by Contractor will be at City's sole risk and without liability to Contractor, and Contractor's guarantee and warranties shall not extend to such use, revise, or assignment. Contractor may retain copies of such Documents and Materials for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any Documents and Materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City for all damages resulting therefrom.

6.4 Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, rights of reproduction, and other intellectual property embodied in the Documents and Materials. Contractor shall require all subcontractors to agree in writing that City is granted a non-exclusive and perpetual license for the Documents and Materials the subcontractor prepares under this Agreement. Contractor represents and warrants that Contractor has the legal right to license any and all of the Documents and Materials. Contractor makes no such representation and warranty in regard to the Documents and Materials which were prepared by design professionals other than Contractor or provided to Contractor by City. City shall not be limited in any way in its use of the Documents and Materials at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

6.5 Confidentiality and Release of Information.

(a) All information gained or work product produced by Contractor in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Contractor. Contractor shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Contractor, its officers, employees, agents, or subcontractors, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered voluntary so long as Contractor gives City notice of such court order or subpoena.

(c) If Contractor, or any officer, employee, agent, or subcontractor of Contractor, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Contractor for any damages, costs, and fees, including attorneys' fees, caused by or incurred as a result of Contractor's conduct.

(d) Contractor shall promptly notify City should Contractor, its officers, employees, agents, or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery

request, court order, or subpoena from any party regarding this Agreement and the Services performed thereunder. City retains the right, but has no obligation, to represent Contractor or be present at any deposition, hearing, or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

#### ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION.

7.1 California Law. This Agreement shall be interpreted, construed, and governed both as to validity and to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Riverside.

7.2 Disputes; Default. In the event that Contractor is in default under the terms of this Agreement, City shall not have any obligation or duty to continue compensating Contractor for any of the Services performed after the date of default. Instead, City may give notice to Contractor of the default and the reasons for the default. The notice shall include the timeframe in which Contractor may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Contractor is in default, City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Contractor does not cure the default, City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of City to give notice of Contractor's default shall not be deemed to result in a waiver of City's legal rights or any rights arising out of any provision of this Agreement.

7.3 Retention of Funds. Contractor hereby authorizes City to retain and deduct from any amount payable to Contractor not exceeding five percent (5%) of the Contract Sum (whether or not arising out of this Agreement) as security for performance of this Agreement. The retained funds shall be paid to Contractor within sixty (60) days after final acceptance of the Services by the City Council of City and after Contractor has furnished City with full release of all undisputed payments under this Agreement. In the event there are any claims specifically excluded by Contractor from the operation of the release, City may retain proceeds of up to one hundred fifty percent (150%) of the amount in dispute. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of Contractor to insure, indemnify, and protect City as provided in this Agreement.

7.4 Waiver. Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Contractor shall not constitute a waiver



of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

7.5 Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

7.6 Legal Action. In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct, or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

7.7 Liquidated Damages. Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, Contractor and its sureties shall be liable for and shall pay to City the sum of FIVE HUNDRED DOLLARS (\$500.00) as liquidated damages for each working day of delay in the performance of any of the Services required hereunder, as specified in the Schedule of Performance. City may withhold from any monies payable on account of the Services performed by Contractor any accrued liquidated damages.

7.8 Termination Prior to Expiration of Term. This Section 7.8 shall govern any termination of this Agreement except as specifically provided in the following Section 7.9 for termination for cause. City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Contractor, except that where termination is due to the fault of Contractor, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, Contractor reserves the right to terminate this Agreement at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of City, the period of notice may be such shorter time as Contractor may determine. Upon receipt of any notice of termination, Contractor shall immediately cease all Services hereunder except such as may be specifically approved by the Contract Officer. Except where Contractor has initiated termination, Contractor shall be entitled to compensation for all Services rendered prior to the effective date of the notice of termination and for any Services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event Contractor has initiated termination, Contractor shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating Party need not provide the non-terminating Party with the opportunity to cure pursuant to Section 7.2.

7.9 Termination for Default of Contractor. If termination is due to the failure of Contractor to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the Services and prosecute the same to completion by contract or otherwise, and Contractor shall be liable to the extent that the total cost for completion of the

Services required hereunder exceeds the compensation herein stipulated (provided that City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to Contractor for the purpose of set-off or partial payment of the amounts owed City as previously stated.

7.10 Attorneys' Fees. If either Party to this Agreement is required to initiate or defend or made a Party to any action or proceeding in any way connected with this Agreement, the prevailing Party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees; provided, however, that the attorneys' fees awarded pursuant to this Section shall not exceed the hourly rate paid by City for legal services multiplied by the reasonable number of hours spent by the prevailing Party in the conduct of the litigation. Attorneys' fees shall include attorneys' fees on any appeal, and in addition a Party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery, and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment. The court may set such fees in the same action or in a separate action brought for that purpose.

7.11 Suspension of Services. The City Engineer of City ("Engineer") shall have the authority to suspend the Services, wholly or in part, for such period as the Engineer may deem necessary, due to unsuitable weather or to such other conditions as are considered unfavorable for the suitable prosecution of the Services, or for such time as the Engineer may deem necessary due to the failure on the part of Contractor to carry out orders given or to perform any provisions of the Services. Contractor shall immediately comply with the written order of the Engineer to suspend the Services wholly or in part and shall not resume the Services until ordered to do so in writing by the Engineer. Such suspension shall be without liability to Contractor on the part of City. In the event a suspension of work is ordered because of failure on the part of Contractor to carry out orders given or to perform any provisions of the Services, such suspension of the Services shall not relieve Contractor of responsibility to complete the Services within the time limit set forth herein and shall not be considered cause for extension of the time for completion and, further, such suspension of the Services shall not entitle Contractor to any additional compensation.

## ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

8.1 Non-liability of City Officers and Employees. No officer, official, employee, agent, representative, or volunteer of City shall be personally liable to Contractor, or any successor in interest, in the event of any default or breach by City or for any amount which may become due to Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest. Contractor covenants that neither it, nor any officer or principal of it, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Contractor's performance of the Services under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent, or subcontractor without the express written consent of the Contract Officer. Contractor

agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to this Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

8.3 Covenant Against Discrimination. Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any impermissible classification including, but not limited to, race, color, creed, religion, sex, marital status, sexual orientation, national origin, or ancestry in the performance of this Agreement. Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, sexual orientation, national origin, or ancestry.

8.4 Unauthorized Aliens. Contractor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, *et seq.*, as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Contractor so employ such unauthorized aliens for the performance of the Services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Contractor hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

## ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 Notices. Any notice, demand, request, document, consent, approval, or communication either Party desires or is required to give to the other Party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of City, to the City Manager and to the attention of the Contract Officer, CITY OF MENIFEE, 29844 Haun Road, Menifee, CA 92586 and in the case of Contractor, to the person at the address designated on the execution page of this Agreement. Either Party may change its address by notifying the other Party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

9.2 Unfair Business Practices Claims. In entering into this Agreement, Contractor offers and agrees to assign to City 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. § 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 related to this Agreement. This assignment shall be made and become effective at the time City renders final payment to Contractor without further acknowledgment of the Parties.

9.3 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

9.4 Article and Section Headings and Subheadings. The article and section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

9.5 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

9.6 Integration; Amendment. This Agreement including the attachments hereto is the entire, complete, and exclusive expression of the understanding of the Parties. It is understood that there are no oral agreements between the Parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements, and understandings, if any, between the Parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by Contractor and by the City Council of City. The Parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

9.7 Severability. In the event that any one or more of the articles, phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable, such invalidity or unenforceability shall not affect any of the remaining articles, phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the Parties hereunder unless the invalid provision is so material that its invalidity deprives either Party of the basic benefit of their bargain or renders this Agreement meaningless.

9.8 No Third Party Beneficiaries. With the exception of the specific provisions set forth in this Agreement, there are no intended third-party beneficiaries under this Agreement and no such other third parties shall have any rights or obligations hereunder.

9.9 Execution of Contract. The persons executing this Agreement on behalf of each of the Parties hereto represent and warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) that entering into this Agreement does not violate any provision of any other Agreement to which said Party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors, and assigns of the Parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date and year first-above written.

AGENCY:

CITY OF MENIFEE

\_\_\_\_\_  
Armando G. Villa, City Manager

CONTRACTOR:

WEST COAST ARBORISTS INC

By: \_\_\_\_\_  
Patrick Mahoney, President

By: \_\_\_\_\_  
Richard Mahoney, Assistant Secretary

039148  
Contractor's City Business License

# 366764, Class C-61, D-49, C-27  
State Contractor License No. & Class

Address:

2200 E Via Burton Street  
Anaheim, CA 92806

ATTEST:

\_\_\_\_\_  
Kay Vinson, Acting City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Jeffrey T. Melching, City Attorney

Two signatures are required if a corporation.

NOTE: APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONTRACTOR'S BUSINESS ENTITY.

## **EXHIBIT A**

### **SPECIAL REQUIREMENTS**

Section 5.4 (Payment and Performance Bond) and Section 7.3 (Retention of Funds) are hereby intentionally omitted from the Agreement and shall not apply to the Services provided hereunder.

## **EXHIBIT B**

### **SCOPE OF SERVICES**

#### **CITY OF MENIFEE**

#### **CITYWIDE TREE TRIMMING AND MAINTENANCE SERVICES**

One Hundred Seventy Six Thousand Four Hundred Two Dollars and Zero Cents (\$176,402.00).

The Contract Sum for performing all Services described in the Scope of Services, including labor, materials, services and equipment is the total amount of all lump sum items and of all unit price sums, determined by multiplying the unit price for each item times the actual quantity of each such item, as determined by the City. The Scope of Services is further detailed on the following pages.

The contractor shall furnish all labor, equipment, materials, tools, services, and required licenses necessary for performing tree maintenance according to the specifications in this agreement. Contractor shall possess a D-49 California State Contractors license as required to perform the landscape tree trimming as set forth in this specification and in keeping with the highest standards of quality performance. All tree trimming to be performed according to the American National Standards Institute 300 (ANSI 300) and/or Tree Care Industry Association (TCIA) Standards.

#### TREE TRIMMING REQUIREMENTS

1. Regular tree trimming of the landscape shall include but not be limited to crown, prune, and thin, all trees as needed to no more than 25% to increase air and light penetration unless directed by the City arborist or designee.
2. Trees with spreads greater than nineteen feet (19') or greater than seventeen feet (17') in height are to be trimmed by Contractor.
3. The Contractor shall perform minor tree surgery.
4. Tree limbs shall be trimmed back to maintain a two (2) feet clearance from buildings and tree limbs shall be trimmed back when overhanging building above the roof line.
5. Trees shall be trimmed to maintain a three-to-four-foot clearance around power lines.
6. Trees shall be trimmed to maintain a two (2) foot clearance around security lights.
7. Trees shall be trimmed to maintain a two (2) foot clearance around cameras. The Contractor shall remove limbs and entire trees as requested by the City to specifically improve visibility of security cameras.
8. Trees shall be pruned as required and as necessary to remove broken or diseased branches, or for safety. It shall be the Contractor's prime responsibility related to pruning to conduct a pruning program which will ultimately develop proper tree scaffolding, strength, and appearance consistent with the intended use. Before any

work commences, the Contractor will prune one typical tree of each different species scheduled for pruning as an example. All major pruning operations shall be scheduled and approved by the City's designee ("Contracting Officer") before work begins.

9. Topping trees will not be allowed without approval of the City Arborist or designee. Pruning shall be done by those experienced and skilled in pruning techniques. All cuts shall be done using proper horticultural practices. Dressing wounds will not be allowed.
10. Ailing or stunted trees which fail to meet expected growth expectations shall be brought to the attention of the City arborist or designee.
11. Lower branches can be cut flush with trunk only after tree is able to stand erect without staking or other support.
12. The Contractor shall be responsible to contact a City representative regarding adjacent property owners' tree limbs, shrubs, etc. infringing on City property.



10. The Contractor shall comply with limitations on use of public streets and with other requirements of authorities having jurisdiction.
11. Noise, Vibration, and Odors: The Contractor shall coordinate operations that may result in high levels of noise and vibration, odors, or other disruption with Owner. Use of audible radios and music players is prohibited.
12. While conducting services, Contractor staff must wear recognizable company shirts, vests, or uniforms.
13. Controlled Substances: Use of tobacco products and other controlled substances on project site is not permitted.

#### **CITY RESPONSIBILITIES**

All City trees are recorded within the GIS City Tree Inventory. The tree inventory along with the maintenance schedule will be provided to the Contractor. The inventory includes the location, species, and height of the tree.

#### **CONTRACT MODIFICATIONS**

City reserves the right to add additional units to the current tree inventory as new parks, facilities, and right of ways are added to the City. The City reserves the right to add or delete City locations from this contract.

#### **EMERGENCY SERVICES/WORK**

Emergency response work may be required to mitigate safety hazards outside of normal working hours. Contractor to provide normal and emergency after hourly rates for tree trimming in accordance with this scope of work.

- a) Emergency response work will not be performed without prior approval by a city representative unless condition exists wherein it appears there is a danger of injury to persons or property.
- b) Payment of emergency response work shall be in accordance with the hourly emergency rates provided.
- c) Emergency response work is work performed after normal working hours or anytime during a 24-hour period that a city Representative deems as an emergency.

#### **DAMAGES**

The Contractor shall be responsible for the repair of any damage caused by the Contractor and shall at no cost and to the satisfaction of the Commission, restore all areas to their original condition including, but not limited to, structures, grass, plant materials, and ground areas.

#### **SAFETY MEASURES**

1. The Contractor shall obey and adhere to Cal OSHA requirements for worker safety, and ANSI Z133.1 Safety Requirements.

The contractor shall furnish all labor necessary to complete the tree trimming services with the specifications and provisions of the contract.

Normal work hours (at the site) shall be Monday through Friday 7:00am – 5:00pm. All work is to be scheduled and coordinated with written approval from City Designee.

**CONTRACTOR RESPONSIBILITIES/REQUIREMENTS:**

1. Standards of Conduct. Contractor is responsible for maintaining standards of employee competence, conduct, courtesy, appearance, honesty, and integrity satisfactory to the city.
2. Supervision. Contractor shall provide adequate and competent supervision at all times during the Contract term. Contractor shall be readily available to meet with the City. Contractor shall provide the telephone numbers where its representative(s) can be reached.
3. City Premises. Contractor's employees and agents shall comply with all City rules and regulations while on City premises.
4. Removal of Employee. City may request Contractor immediately remove from assignment to the city any employee found unfit to perform duties at the city. Contractor shall comply with all such requests.
5. Communication Skills. Contractor shall ensure that onsite employees can communicate in English both verbally and in writing.
6. Local Office. If possible, the Contractor shall maintain a local office with a competent company representative who can be reached during normal working hours, 8:00 a.m. to 5:00 p.m. and who is authorized to discuss matters pertaining to this contract with the Technical Representative. A local office is one that can be reached by telephone within the 951 area code. An answering service or mobile telephone may fulfill the requirement for a local office, provided that all calls from the City are returned within a one (1) hour time period. Please specify where your office is located in your proposal submittal.
7. Equipment. The Contractor shall be responsible for provisions of all equipment required to execute the work. All equipment must be in compliance with the applicable inspection requirements. The Contractor shall be responsible for daily mobilization & de-mobilization of equipment and resources to specific work.
8. Traffic control must meet Manual on Uniform Traffic Control Devices (MUTCD)
9. Disposal. The Contractor shall be responsible for daily disposal of chips, limbs, and debris in an approved manner. The Contractor shall clean the area of all debris and trash remaining each day.

2. Any person working in proximity to electrical conductors shall be properly trained in electrical hazard recognition and avoidance, and possess the appropriate qualifications required by the State of California.
3. Any dead tree, tree with excessive decay, or tree with a substantial defect such as a split, crack, or unstable root system, shall be reported immediately to the City arborist or representative.
4. The Contractor shall postpone any tree maintenance activity wherein a vehicle is in proximity and such activity has the likelihood of causing damage to vehicle. In such instances, it is the responsibility of the Contractor to immediately notify the vehicle owner and request to have the vehicle moved to a safe location. Any abandoned vehicle shall be reported to the Menifee Police Dept.
5. Contractor shall provide and assure compliance in using personal protective equipment such as hard hats, gloves, goggles, harnesses, and safety shoes to Contractor's workers and personnel.

**PRESERVATION OF WILDLIFE**

Reasonable efforts shall be taken to protect and preserve the nests, or nesting cavities, of beneficial birds and other beneficial animals, unless in-so doing would create hazardous conditions.

## Implementation Plan

To ensure the quality of work and the level of service expected, WCA abides by a well-defined quality control plan that incorporates the following:

- Certified personnel
- Safety
- Pruning specifications and guidelines
- Sound equipment
- Public relations
- Proper traffic control
- State-of-the-art communication systems

*Special shifts including weekends and evenings can be arranged in accordance with the Agency's specifications.*

### **Area Manager: Martin Cortez**

ISA Certification #: WE-8689A

TCIA CTSP #3312

ISA Tree Risk Assessment Qualified

The project Area Manager will be the central point of contact and will work cooperatively with Agency staff, local residents and business owners, etc. The Area Manager will provide overall field supervision and crew management.

### **Daily Management**

Daily management will consist of, but not be limited to:

- Email notification complete with location, crew, equipment type, and work description
- Supervise crew personnel to insure proper pruning standards are followed in a safe manner
- Traffic control setup and maintenance of work zone
- Ensure work area is left free of debris at the end of shift
- Maintain record of work completed each day
- Maintain good public relations at all times
- Provide immediate notification to Agency Inspector upon damage of personal property including a plan for corrective measures to take place within 48 hours

### **Weekly Management**

- Weekly management will consist of, but is not limited to:
- Weekly inspection of work completed
- Meet with the Agency to review work schedule and progress
- Insure standards of pruning are performed in accordance with Agency specifications
- Maintain open communication



### **Scheduling of Work**

The Area Manager is responsible for scheduling work which shall conform to the Agency's schedule of performance. We recommend equal distribution of work throughout the course of the fiscal year. Notifications will be provided to residents prior to the start of pruning operations in said area. All work will be performed in a cooperative manner as to cause the least amount of interference or inconvenience.



### **Public Notification**

Upon Agency staff approval, WCA will post a door hanger notice prior to commencement of grid pruning (within 24-48 hours). After tree plantings, door hangers will be provided to residents instructing them on the proper care for their newly planted tree. For more comprehensive outreach we can also submit a press release for special projects or routine maintenance. The Agency may modify the procedures and materials to which we notify residents.

### **Scheduling of Work**

The Area Manager is responsible for scheduling work which shall conform to the Agency's schedule of performance. We recommend equal distribution of work throughout the course of the fiscal year. Notifications will be provided to residents prior to the start of pruning operations in said area. All work will be performed in a cooperative manner as to cause the least amount of interference or inconvenience.

### **Communication Systems**

Our use of modern and reliable communication systems affect our daily job performance by increasing our efficiency. Management and Field Personnel utilize smart phones as both navigational and communication devices in the field. Smart phones have proven to be a convenient method to input data as related to tree inventories, daily work records, timesheets, photos, and billing information; eliminating the need to handwrite data and improving customer service by minimizing response time.

### **Permits and Licensing**

WCA will procure a City Business License as necessary, and any "no-fee" permits prior to commencement of work. Permits (i.e., encroachment, traffic control, etc.) requiring fees will be charged back to the Agency.

### **Right-of-Way**

All work will be performed in the public right-of-way. Employees will not utilize private property for eating, breaks or any other reason or use water or electricity from such property without prior written permission of owner.

### **Cooperation and Collateral Work**

WCA will give right to operate within the project to the Agency workers and/or contractors, utility companies, street sweepers, and others as needed in a cooperative effort to minimize interference in daily operations.

## Workflow Timelines

### GRID PRUNING FLOWCHART

(30-day Completion)



### REMOVAL FLOWCHART

(15-day Completion)



### PLANTING FLOWCHART

(15-day Completion)



### SERVICE REQUEST FLOWCHART

(15-day Completion)



### EMERGENCY FLOWCHART

(1-hour Response / 24-hour Completion)





### **Customer Service Department**

As we work with, or near, the public, we are mindful that we will most likely be the first person the public contacts. We have a full-time Customer Service Department with each Customer Service Representative (CSR) trained in addressing concerned residents and bystanders.

### **Complaints & Damage Resolution**

Should there be any property damage, we adhere to specific procedures to resolve the problem. The Foreman on the job site will notify the resident and the Inspector immediately.

If the resident is not at home, then we will leave a WCA card with instructions to call our Claims Coordinator in our corporate office. The ultimate goal at each work site is to leave the property in the same condition as before we entered it. We will notify the Agency Representative immediately upon damage of personal property including plans for corrective measures to take place within 48 hours.

All WCA vehicles are equipped with an Accident Kit should anything happen during the workday. Each kit has an Incident Report, an Accident Report, an Injury Report, a camera, First Aid instructions and protocol for contacting the corporate office. A computerized log of all incidents is maintained to include the date, time of occurrence, location, problem and action to be taken pursuant thereto or reasoning for non-action.

Any activities found by the Agency to be unacceptable will be rectified immediately. All other complaints will be abated or resolved within twenty-four (24) hours of the occurrence. We have teams specifically assigned for handling damage to properties, both private and public. Through our communication system, we have the ability to dispatch either of these teams and have them respond immediately to the site for proper repair. We pride ourselves on professional workmanship to avoid these types of incidents, however, should one occur, we take all appropriate measures to resolve the matter in a timely and efficient manner.

## **Safety**

### **Safety Program**

Safety standards are top priority at West Coast Arborists, Inc. Our line of work demands that all work is performed in a manner that provides the maximum safety to the general public as well as our employees. Our crews are instructed to follow the safety standards of ANSI Z133.1 as well as Cal-OSHA requirements. We have one of the most extensive safety training programs in the industry. We provide our employees with state-of-the-art training tools and instructional sessions company wide. Our insurance carriers and Cal-OSHA have recognized us repeatedly for outstanding safety training efforts.

We have a full time Safety & Training Manager, Dane Jensen, that is professionally trained in the field of horticulture. As WCA's Training Manager, Dane is responsible for staying up to date on all tree-related industry standards as related to safety and the wellness of our employees and the public in which we serve. Training materials are regularly reviewed and updated to ensure WCA employees receive the proper education, instruction and hands on experience needed to perform their day-to-day activities safely and efficiently. Training topics include a full circle from proper pruning techniques, arboriculture, to customer service and everything in between.

- ISA Certified Utility & Municipal Arborist #WE-12014A

- ISA Skills Test Evaluator—TW Climber
- TCIA Certified Treecare Safety Professional #3303
- ISA Tree Risk Assessment Qualification #E4068
- American Heart Association BLS and First Aid Instructor



*Our line of work demands that all work is performed in a manner that provides the maximum safety to the general public as well as our employees.*

#### **Protection of Public and Private Property**

WCA will provide all safety measures necessary to protect the public and worker within the work area. We will maintain good public relations at all times. The work will be conducted in a manner which will cause the least disturbance.

#### **Public Convenience and Safety**

WCA will comply with any and all local sound control and noise level rules, regulations, and ordinances which apply to any work performed in the contracted area. All work will cease by 5:00 pm or as directed by the Agency (excluding emergency services).

#### **Traffic Control**

Traffic control procedures will be set-up in accordance with the Work Area Traffic Control Handbook (WATCH) and State of California Manual of Traffic Controls as well as the Agency Traffic and Safety Operating Rules. WCA will make adequate provisions to insure the normal flow of traffic over the public streets and park roads. Every effort will be made to keep commercial driveways and passageways open to the public during business hours. High visibility arrowboard(s) will be used when needed. Prior to use, the Agency will approve traffic safety equipment and devices. Pedestrian and vehicular traffic shall be allowed to pass through the work areas only under conditions of safety and with as little inconvenience and delay as possible. Unless the work area is totally barricaded or otherwise kept safe, at least one worker will serve to coordinate safe operations on the ground at all times when work operations are in progress.





### **Grid Tree Pruning**

Grid tree pruning is based on pruning in pre-designed districts, or grids on a set cycle and in its entirety. This includes pruning all trees (small, medium and large-sized.) Pruning will include structural pruning, crown raising, and slight crown cleaning in accordance with the standards set forth by the International Society of Arboriculture Pruning Standards (Best Management Practices) and shall have no more than 15% of the live foliage removed at a given time.

### **Special Request Tree Pruning**

Special Request Tree Pruning includes tree maintenance services on designated tree(s) as ordered by the City's Arborist or designee. This category of pruning may include structural pruning, crown raising, crown cleaning and/or pruning to restore the crown. Whichever work type is ordered by the City, pruning will be performed in accordance with the standards set forth by the International Society of Arboriculture Pruning Standards and the Best Management Practice, Tree Pruning Guidelines. Trees that are identified for a Special Request Tree Prune shall have approximately 25% of the live foliage removed at a given time.

Pruning to reduce the tree's crown (or Crown Reduction Pruning) may be performed when conditions within the crown of a hardwood tree are such that the overall canopy mass and excessive wood weight needs to be reduced. This type of prune is performed when the City's primary objective is to maintain or improve tree health and structure and will be charged at the Crew Rental rate as agreed upon by the City and WCA.

### **Line Clearance**

Trees that interfere or have the possibility of interfering with utility lines will be trimmed in a manner to achieve the required clearances as specified and in accordance with the California Public Utilities Commission. It is our goal to protect the current health and condition of the tree and to maintain its symmetry and direct growth away from the utility lines.

### **Small Tree Care (Optional)**

Proper pruning and care during the early stages of the tree's life will save money in the future, and create a safer, more beautiful, healthy, easy-to-maintain tree. We believe that tree care that is performed early will affect its shape, strength and life span. Our specialized small tree care team consists of certified personnel trained to perform the following under the hourly rate:

- Selective structural pruning
- Removal of dead, interfering, split and/or broken limbs
- Pre-conditioning the water retention basin built around the tree
- Staking or re-staking
- Adjusting tree ties
- Adjusting trunk protectors
- Weed abatement

#### **Palm Trunk Skinning (Optional)**

Palm tree skinning consists of the removal of dead frond bases (only), at the point they make contact with the trunk without damage to the live trunk tissue. This is performed under the hourly rate.

#### **Root Pruning**

We strongly recommend against any root pruning, however, should the City elect to proceed, we recommend that it be done no closer than 3 times the diameter of the trunk. Roots will be pruned to a depth of approximately 12 inches by cleanly slicing through the roots, so as not to tear or vibrate the root causing damage to the tree. The excavated area will be backfilled with native soil and debris will be hauled away. This is performed under the hourly rate.

#### **Tree Removal Operations**

With a minimum of 48 hours advanced notice, WCA will inform Underground Service Alert (USA) of the location of work for the purpose of identifying any and all utility lines. The removal process consists of lowering limbs delicately onto the ground to prevent any hardscape damage. Immediately following the removal, the stump will be ground down, if ordered to do so and with proper USA notification. Tree removal and stump removal are to be charged separately in accordance with the contract.



#### **Tree Planting (Optional)**

We can replace trees that have been removed and plant new trees in accordance with the City's specifications. We are prepared financially and logistically to acquire and purchase selected tree species for tree planting. At a minimum of 48 hours in advance we will inform Underground Service Alert (USA) of the location of work for the purpose of identifying any and all utility lines. A well-trained planting team will perform the soil preparation and installation of the tree.

#### **Tree Watering**

Tree watering will be performed by a full-time, WCA team member on various routes, when requested by the Agency. This team will also be responsible for reporting special care needs to the small tree care team. This could include reporting weeds, soil that has settled, and/or staking and tying needs. WCA currently provides tree watering in the cities of Culver City, Santa Clarita and Santa Monica as part of their regular tree maintenance services.

#### **Emergency Response**

We are prepared for emergency calls 24 hours a day, 7 days a week, including holidays. The toll free number is 866-UMB-DOWN (866-546-2369). This number will be provided to the Agency, Police Department and/or Fire Department. Our emergency response team will do what is necessary to render the hazardous tree or tree-related condition safe until the following workday.

### Crew Rental

Due to our vast amount of resources, including our specialty equipment and qualified personnel we are able to extend our commitment to our customers by providing various miscellaneous services outside of the most common tree maintenance services:

- Misc. use of aerial towers and cranes (including equipment rental)
- Crown reduction
- Crown restoration

### Arborist Reports

We have full-time Certified Arborists on staff that can prepare detailed arborist reports, tree evaluations and site inspections based on your specific needs. Reporting can be generated for one tree or an entire selection and is handled on a case-by-case basis.



*WCA provides the technology, management, and civic experience that makes it the preferred tree management partner across the West.*

### Plant Health Care

**Tim Crothers, Plant Health Care Manager**

ISA Board Certified Master Arborist WE-7655 BUM

DPR Qualified Pest Control Applicator #145321, QAL Category B & D

Our PHC program managed by Tim goes beyond standard chemical applications. We have developed an efficient Integrated Pest Management Program (IPM) that requires diagnosis before treatment. WCA is staffed with licensed applicators and advisors that are environmentally conscious as well as compliant with the California Department of Pesticide Regulation. This service allows us to provide you with:

- Proper diagnosis based on on-site inspection with laboratory testing when necessary
- Proactive and preventative recommendations that reduce the amount of potential pest and disease issues
- Follow-up evaluations to ensure that the recommended treatments result in a healthy and balanced urban forest





#### Shot Hole Borer

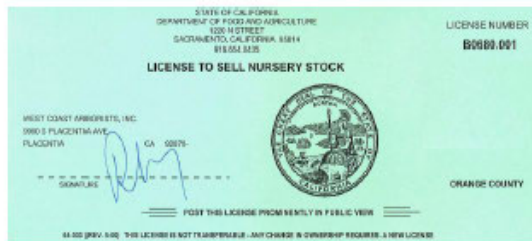
The Polyphagous Shot Hole Borer (PSHB) is a relatively new pest in Southern California. This boring beetle drills into trees and brings with it a pathogenic fungus (*Fusarium euwallacea*), as well as other fungal species. When heavily infested, the resulting *Fusarium* causes the decline and death of trees. Over 120 different tree species are affected in Southern California and over 30 reproductive hosts are of high concern. As tree care professionals, we have a responsibility to understand and report when we see a tree we are working on infested with PSHB.

### Ability To Acquire, Purchase & Stage Trees

Cities expect the highest quality of new trees, proven varieties and an organization with the knowledge and skills to provide them with the latest and most reliable information available related to tree planting. By meeting these expectations, we're able to contribute to the success of reforestation projects within communities. In order to complete successful tree planting programs, cities can rely on us to locate, acquire and purchase different tree species.

As part of our Corporate Capability, we are financially able to purchase large quantities of trees for planting projects. Being familiar with over 50 nurseries in California, allows us to obtain the best tree available from a broad and plentiful stock. The process by which we obtain trees is quite simple: First, we utilize our database of nurseries, and contact several of them requesting specific trees with their prices.

Upon locating the availability of trees, we then perform a tree pre-inspection at the nursery. When time is of the essence, nurseries will provide us with photos either by mail or by e-mail for our review. Once the trees are purchased, and depending on the size of the project, we have them delivered to our facility in Placentia, Brea, or if possible, at a staging area within the City of Agency. It is through this process that we have planted an average of 14,000 trees for all of our customers each year during the past three years.



### Wildlife Protection

We have a full-time Biologist, Lissette Rios, on staff whose responsibilities include writing reports, pre-work bird assessments, and training crews on current bird nesting laws as well as BMPs for tree maintenance. The protection of birds, especially during nesting season, is critical to providing responsible tree maintenance and her experience, training and skilled eye have proven to be a great asset to our team. Our safety and training department has committed to working with wildlife preservation associations and played a key role in the establishment of the Tree Care for Birds and Other Wildlife BMP that is used in the tree care industry.



### Green Waste

WCA's commitment to be a socially responsible corporate partner to our customers and communities is exemplified in our Recycling Program. With the steadily increasing concern for the ecological health of our communities, WCA has embarked on a landfill diversion process where all material is taken to recycling facilities where it is used in the production of soil amendments. We are committed to taking all recyclable materials removed from the trees trimmed for the duration of this project to a recycling center for processing. Verification of amounts recycled will be obtained and reported by WCA via ArborAccess for the purpose of meeting the goals of the State for reducing landfill usage.

**MULCH** is made from coarse ground branches and leaves. It should be spread on the ground at a rate of six to twelve inches for best effect. Fresh mulch will deplete nitrogen from the surface of the soil which will reduce unwanted weeds. Once the mulch has decayed, it returns nitrogen which helps build the quality of soil for plants. A large amount of tree debris is processed by WCA and used in large scale mulching projects for establishing native plants in open space areas.

**COMPOST** is made from fine ground branches, leaves or other organic material. When mixed with oxygen and water, the organic material will decay or "compost." A finished compost is excellent for turning into the top layer of soil and will add nitrogen and increase the water holding capacity of soil. You can make compost at home in a pile in your yard or in a bin that you make or purchase. Large scale composting is done at regional recycling facilities.

**FIREWOOD** is traditionally the most common use of large branches and logs. Firewood is used to heat homes during winter months. WCA takes logs to our yard, and these are then chopped into usable firewood.



All trees have a life cycle, so we are making every effort to save the trees we can from ending up in landfills. When trees need to be removed from the Urban Forest, we preserve their natural beauty and also limit carbon emissions by salvaging trees lost during storms, disease, or normal senescence and recycling this wood into usable raw lumber.



### **ArborAccess**

Our tree management program sets us apart from other companies. With nearly 2,000 active users, ArborAccess and our mobile app will help you easily manage your urban forest with ease and convenience. Tree site attributes include location (utilizing GPS coordinates), species type, and parkway size. Features allow you to view and edit work history records and create work orders directly from the field, all from our secure cloud.

The information contained in ArborAccess is live data that can also be linked directly to a GIS program, such as ArcView, for geo-coding purposes and can assist your Agency in meeting GASB34 requirements. ArborAccess provides an unlimited resource of information regarding your urban forest.

### **ArborAccess Features**

**Ease of use**  
**Create work orders**  
**View tree site details**  
**View work history**  
**View invoices**  
**Mobile app**  
**Live data**  
**GIS/GPS mapping**

### **Software Training**

Our IT Department is based out of our corporate office in Anaheim, CA with regional offices located throughout California and Arizona. Each office has the ability to provide software training to our customers. We are also available to provide training sessions on-site at the customer's discretion. On-site training is proven to be effective as it provides a guided hands-on experience.

We offer periodic tree maintenance and management workshops each year. These free workshops are provided to our customers regionally and educate over 250 people annually. They have proven to be a great round-table and networking opportunity for the different agencies in attendance. Presentations are provided by WCA management staff and complimented with guest speakers in the industry. Certified Arborists and Tree Workers who attend are eligible to receive continuing education credits (CEU's) from the International Society of Arboriculture.

The success of any urban forest program depends on the proper management of information. Unlimited telephone and/or email support is available to answer technical questions and aid staff in the use of the software system. Software training and support is included in the cost associated with the inventory data collection.

### **List Tracking System**

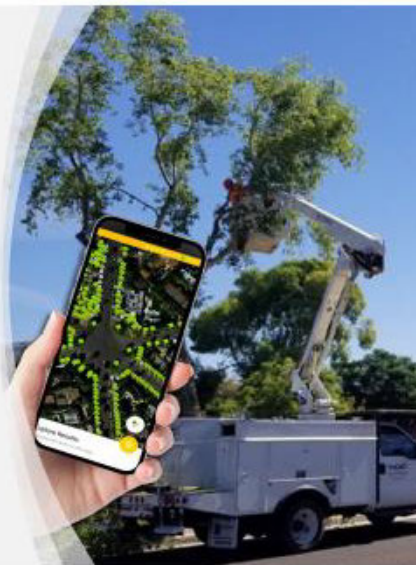
The List Tracking Report in ArborAccess is a useful tool in the management of incoming work. This report allows both parties to track specific jobs as they are ordered by the Agency. Proper use of this system enables the Agency and WCA to track the completion of work that is ordered.

### **Billing**

WCA, Inc. operates a modern invoicing system that is updated on a daily basis. Progress billings will be submitted to the Customers on a bi-weekly basis, unless otherwise requested. Invoices will reflect an amount complete for the billing period, along with a year-to-date total for that job. Each billing will include a listing of completed work by address, tree species, work performed and appropriate data acceptable to the customer. This information will be supplied in hardcopy and immediately accessible on ArborAccess. Job balances reflecting the percent of completion for each job can be viewed on ArborAccess.

### **Sample Management Tools: Detailed Tree Site Characteristics**

The advanced technology provides a valuable tool to urban forestry professionals by displaying specific tree site information along with a representative photograph of the species type and a recommended maintenance field. ArborAccess' built-in quality control features assist in data accuracy. As maintenance is performed, the work history is updated and accompanied with bi-weekly invoices. This process eliminates the need for dual-inputting and helps keep the tree inventory current and accurate.



### **Maintenance Records**

Accurate maintenance records for each location oftentimes can assist the Agency with liability claims. Maintaining a detailed history of the work performed at each location demonstrates good faith in preserving its urban forest. It is imperative that work requests are pulled from the system prior to the work being performed, otherwise inventory accuracy is not guaranteed.



### Fee Proposal

Tree Height	Rate per Tree (Normal Hours)	Rate per Tree (Emergency Services)
01-15'	\$ 65.00	\$ 500.00
15-30'	\$ 135.00	\$ 500.00
30-45'	\$ 195.00	\$ 500.00
45-60'	\$ 295.00	\$ 500.00
> 60'	\$ 350.00	\$ 500.00
<b>Additional Services</b>		
Cost per tree to add/remove from the City's tracking GPS system		\$ 10.00
Cost per Tree Removal per diameter inch		\$ 40.00
Cost per Stump Removal per diameter inch		\$ 20.00

\*The City reserves the right to add or remove services over the contract term.

<b>GRID TREE PRUNING SERVICES (Optional)</b>	per tree	\$94.00
At the direction of City staff, tree pruning per pre-designed districts or grids on a set cycle to include <u>all</u> trees regardless of size. Pruning will include structural pruning, crown raising, and slight crown cleaning in accordance with the standards set forth by the International Society of Arboriculture Pruning Standards (Best Management Practices) and the ANSI A300 Standards. Also includes pruning dead, dying, diseased, and/or crossing limbs. Special projects that are difficult to access by equipment, require the need for specialty equipment (i.e., 95-foot tower), or pruning to reduce and/or pruning to restore will fall under Crew Rental.		
<b>TREE AND STUMP REMOVAL (Optional)</b>	Per diameter inch	\$55.00
Caliper of trees to be measured at approximately 4 feet above soil level. City prepares list of trees to be removed, marks tree, notifies homeowners and submits lists to WCA. WCA calls U.S.A. and prepares internal work order. Crew removes tree and hauls all debris. Crew grinds stumps to a depth of 18 inches. All holes will be backfilled; as well as all debris cleaned up and hauled away. Special projects that are difficult to access with equipment or require the need for a crane or 95-foot tower would fall under Crew Rental rates.		
<b>TREE PLANTING</b>	BASED ON SIZE	
Planting includes the tree, stakes, ties, and complete installation. Planting lists should be compiled by the Inspector and submitted monthly or as needed. WCA will guarantee the life of the tree for a period of THIRTY (30) calendar days, excluding vandalism and extreme weather conditions. After THIRTY (30) days, the tree will be the responsibility of the City and/or resident.		
15-GALLON	Each	\$195.00
24-INCH BOX	Each	\$465.00
36-INCH BOX	Each	\$1,250.00
<b>CREW RENTAL</b>	Per man hour	\$ 100.00
The crew and equipment can be modified to complete any type of miscellaneous tasks including special projects that may consist of extraordinary work.		
<b>EMERGENCY CREW RENTAL</b>	per man hour	\$135.00
WCA will respond to emergency calls on a 24-hour basis using our toll-free number (866) LIMB-DOWN or <a href="mailto:LIMBDOWN@wcainc.com">LIMBDOWN@wcainc.com</a> . Emergency work will begin on-site within ninety (90) minutes from the time of notification from the City. The standard crew is three men, one chipper truck, one chipper, one aerial tower and all necessary hand tools. The crew and equipment can be modified to complete any type of tree-related emergency. The crew will do what is necessary to render the hazardous tree or tree-related condition safe. No minimum call-out required.		
<b>ARBORIST SERVICES</b>	per hour	\$160.00
Includes site visit, tree evaluation and/or report writing upon request.		
<b>SPECIALTY EQUIPMENT</b>	per hour	\$200.00
Specialty equipment includes 95-foot aerial tower and/or crane. Includes operator.		

## **EXHIBIT C**

### **SCHEDULE OF PERFORMANCE**

The services to be performed pursuant to this Agreement are to be completed on a timely basis, with an estimated completion date of no later than June 30, 2023.