

**CITY OF POMONA
MAINTENANCE SERVICES AGREEMENT**

1. PARTIES AND DATE.

This Agreement is made and entered into this 4th day of November, 2021 by and between the City of Pomona, a California charter city and municipal corporation organized under the laws of the State of California with its principal place of business at 505 South Garey Avenue, Pomona, California 91766, County of Los Angeles, State of California ("City") and West Coast Arborists, Inc. a California Corporation with its principal place of business at 2200 E. Via Burton Street, Anaheim CA 92806 ("Contractor"). City and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

2. RECITALS.

2.1 Contractor.

Contractor desires to perform and assume responsibility for the provision of certain maintenance services required by the City on the terms and conditions set forth in this Agreement. Contractor represents that it is experienced in providing tree trimming and maintenance services to public clients, that it and its employees or subcontractors have all necessary licenses and permits to perform the Services in the State of California, and that is familiar with the plans of City. Contractor shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

WHEREAS, Contractor represents that the principal representative stated below is authorized to act as such on behalf of Contractor.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Contractor promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional tree trimming and maintenance services maintenance services. The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be for an initial term of one year and seven months from November 4, 2021 through June 30, 2023, with (2) optional (1) one-year extension options at prices bid subject to written agreement by the Parties. Contractor shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Services.

3.2 Responsibilities of Contractor.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Contractor or under its supervision. Contractor will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Contractor on an independent contractor basis and not as an employee. Contractor retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Contractor shall also not be employees of City and shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Contractor shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Contractor represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Contractor's conformance with the Schedule, City shall respond to Contractor's submittals in a timely manner. Upon request of City, Contractor shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Contractor shall be subject to the approval of City.

3.2.4 City's Representative. The City hereby designates Danny Whaley or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Agreement. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.2.5 Contractor's Representative. Contractor hereby designates Nick Alago, or his or her designee, to act as its representative for the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent and act on behalf of the Contractor for all purposes under this Agreement. The Contractor's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.6 Coordination of Services. Contractor agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.2.7 Standard of Care; Performance of Employees. Contractor shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Services. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally,

Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Contractor shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Contractor's failure to comply with the standard of care provided for herein. Any employee of the Contractor or its sub-contractors who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Contractor and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.8 Period of Performance. Contractor shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Contractor shall perform the Services in strict accordance with the Scope of Work (Exhibit A) and Fee Schedule described in Exhibits "B-1" or "B-2" attached hereto, or which may be provided separately in writing to the Contractor.

3.2.9 Disputes. Should any dispute arise respecting the true value of any work done, of any work omitted, or of any extra work which Contractor may be required to do, or respecting the size of any payment to Contractor during the performance of this Contract, Contractor shall continue to perform the Work while said dispute is decided by the City. If Contractor disputes the City's decision, Contractor shall have such remedies as may be provided by law.

3.2.10 Laws and Regulations; Employee/Labor Certifications. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Services. If the Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Contractor shall be solely responsible for all costs arising therefrom. City is a public entity of the State of California subject to certain provisions of the Health & Safety Code, Government Code, Public Contract Code, and Labor Code of the State. It is stipulated and agreed that all provisions of the law applicable to the public contracts of a municipality are a part of this Agreement to the same extent as though set forth herein and will be complied with. These include but are not limited to the payment of prevailing wages, the stipulation that eight (8) hours' labor shall constitute a legal day's work and that no worker shall be permitted to work in excess of eight (8) hours during any one calendar day except as permitted by law. Contractor shall defend, indemnify and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.10.1 Employment Eligibility; Contractor. By executing this Agreement, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of the Contractor. Contractor also verifies that it has not committed a violation of any such law within the five (5)

years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the term of the Agreement. Contractor shall avoid any violation of any such law during the term of this Agreement by participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some other legally acceptable method. Contractor shall maintain records of each such verification, and shall make them available to the City or its representatives for inspection and copy at any time during normal business hours. The City shall not be responsible for any costs or expenses related to Contractor's compliance with the requirements provided for in Section 3.2.10 or any of its sub-sections.

3.2.10.2 Employment Eligibility; Subcontractors, Sub-subcontractors and Consultants. To the same extent and under the same conditions as Contractor, Contractor shall require all of its subcontractors, sub-subcontractors and consultants performing any work relating to the Project or this Agreement to make the same verifications and comply with all requirements and restrictions provided for in Section 3.2.10.1.

3.2.10.3 Employment Eligibility; Failure to Comply. Each person executing this Agreement on behalf of Contractor verifies that they are a duly authorized officer of Contractor, and understands that any of the following shall be grounds for the City to terminate the Agreement for cause: (1) failure of Contractor or its subcontractors, sub-subcontractors or consultants to meet any of the requirements provided for in Sections 3.2.10.1 or 3.2.10.2; (2) any misrepresentation or material omission concerning compliance with such requirements (including in those verifications provided to the Contractor under Section 3.2.10.2); or (3) failure to immediately remove from the Project any person found not to be in compliance with such requirements.

3.2.10.4 Labor Certification. By its signature hereunder, Contractor certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.2.10.5 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Contractor shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.2.10.6 Air Quality. Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the California Air Resources Board (CARB). Contractor shall specifically be aware of the CARB limits and requirements' application to "portable equipment", which definition is considered by CARB to include any item of equipment with a fuel-powered engine. Contractor shall indemnify City against any fines or penalties imposed by CARB or any other governmental or regulatory agency for

violations of applicable laws, rules and/or regulations by Contractor, its subcontractors, or others for whom Contractor is responsible under its indemnity obligations provided for in this Agreement.

3.2.10.7 Water Quality.

(A) Management and Compliance. To the extent applicable, Contractor's Services must account for, and fully comply with, all local, state and federal laws, rules and regulations that may impact water quality compliance, including, without limitation, all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §§ 1300); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); laws, rules and regulations of the Environmental Protection Agency, the State Water Resources Control Board and the Los Angeles Regional Water Quality Control Board; the City's ordinances regulating discharges of storm water; and any and all regulations, policies, or permits issued pursuant to any such authority regulating the discharge of pollutants, as that term is used in the Porter-Cologne Water Quality Control Act, to any ground or surface water in the State.

(B) Liability for Non-Compliance. Failure to comply with the laws, regulations and policies described in this Section is a violation of law that may subject Contractor or City to penalties, fines, or additional regulatory requirements. Contractor shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from and against any and all fines, penalties, claims or other regulatory requirements imposed as a result of Contractor's non-compliance with the laws, regulations and policies described in this Section, unless such non-compliance is the result of the sole established negligence, willful misconduct or active negligence of the City, its officials, officers, agents, employees or authorized volunteers.

(C) Training. In addition to any other standard of care requirements set forth in this Agreement, Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them without impacting water quality in violation of the laws, regulations and policies described in this Section. Contractor further warrants that it, its employees and subcontractors will receive adequate training, as determined by City, regarding the requirements of the laws, regulations and policies described in this Section as they may relate to the Services provided under this Agreement. Upon request, City will provide Contractor with a list of training programs that meet the requirements of this paragraph.

3.2.11 Indemnity and Insurance.

(A) Indemnity. Contractor hereby agrees to protect, indemnify and hold the City of Pomona including its elected or appointed officials, officers, directors, employees, agents and volunteers free and harmless from any and all losses, claims, liens, demands and causes of action of every kind and character including, but not limited to, the amounts of judgment, interests, court costs, legal fees, expert costs, expert fees and all other expenses incurred by the City to the maximum extent allowed by law arising in favor of any party, including claims, liens, debts, personal injuries including employees of the City, death or damages injuries, including employees of the City, death or damages to property (including property of the City) and without limitation by enumeration, all other claims or demands of every character occurring or arising directly out of or as a consequence of the performance of the work performed hereunder, except only such injury to persons or damage to property due or claimed to be due to the sole negligence of the City. This provision is not intended to create any cause of action in favor of any third party against Contractor or the City or to enlarge in any way the

Contractor's liability but is intended solely to provide for indemnification of the City for liability for damages or injuries to third persons or property arising from Contractor's negligent performance hereunder.

(B) Insurance. CONTRACTOR will procure and maintain at all times during the term of this AGREEMENT insurance as set forth in Exhibit "C" attached hereto.

3.2.11.1 Time for Compliance. Contractor shall not commence Work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this Section. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this Section.

3.2.11.2 Minimum Requirements. Contractor shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Contractor, its agents, representatives, employees or subcontractors. Contractor shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability:* Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability:* Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) *Workers' Compensation and Employer's Liability:* Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance. The policy shall not contain any exclusion contrary to the Agreement, including but not limited to endorsements or provisions limiting coverage for (1) contractual liability (including but not limited to ISO CG 24 26 or 21 29); or (2) cross liability for claims or suits by one insured against another.

(B) Minimum Limits of Insurance. Contractor shall maintain limits no less than: (1) *General Liability:* \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used including, but not limited to, form CG 2503, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability:* \$1,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability:* Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease. Defense costs shall be paid in addition to the limits.

(C) Notices: Cancellation or Reduction of Coverage. At least fifteen (15) days prior to the expiration of any such policy, evidence showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or materially reduced, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, the City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by the City will be

promptly reimbursed by Contractor or the City may withhold amounts sufficient to pay premium from Contractor payments. In the alternative, the City may suspend or terminate this Agreement.

(D) Additional Insured. The City of Pomona, its directors, officials, officers, employees, agents, and volunteers shall be named as additional insureds on Contractor's and its subcontractors' policies of commercial general liability and automobile liability insurance using the endorsements and forms specified herein or exact equivalents.

3.2.11.3 Insurance Endorsements. The insurance policies shall contain the following provisions, or Contractor shall provide endorsements on forms supplied or approved by the City to add the following provisions to the insurance policies:

(A) General Liability. The general liability policy shall include or be endorsed (amended) to state that: (1) using ISO CG forms 20 10 and 20 37, or endorsements providing the exact same coverage, the City of Pomona, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insured with respect to the Services or ongoing and complete operations performed by or on behalf of the Contractor, including materials, parts or equipment furnished in connection with such work; and (2) using ISO form 20 01, or endorsements providing the exact same coverage, the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor's scheduled underlying coverage. Any excess insurance shall contain a provision that such coverage shall also apply on a primary and noncontributory basis for the benefit of the City, before the City's own primary insurance or self-insurance shall be called upon to protect it as a named insured. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Contractor's insurance and shall not be called upon to contribute with it in any way. Notwithstanding the minimum limits set forth in Section 3.2.11.2(B), any available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as additional insureds pursuant to this Section 3.2.11.3(A).

(B) Automobile Liability. The automobile liability policy shall include or be endorsed (amended) to state that: (1) the City of Pomona including its elected or appointed officials, officers, directors, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Contractor or for which the Contractor is responsible; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Contractor's insurance and shall not be called upon to contribute with it in any way. Notwithstanding the minimum limits set forth in Section 3.2.11.2(B), any available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as additional insureds pursuant to this Section 3.2.11.3(B).

(C) Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Contractor.

(D) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days (10 days for nonpayment of premium) prior written notice by certified mail, return receipt requested, has been given to the City; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City of Pomona including its elected or appointed officials, officers, directors, employees, agents and volunteers. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officials, officers, employees, agents and volunteers, or any other additional insureds.

3.2.11.4 Separation of Insureds; No Special Limitations; Waiver of Subrogation. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City of Pomona including its elected or appointed officials, officers, directors, employees, agents and volunteers. All policies shall waive any right of subrogation of the insurer against the City, its officials, officers, employees, agents, and volunteers, or any other additional insureds, or shall specifically allow Contractor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against City, its officials, officers, employees, agents, and volunteers, or any other additional insureds, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

3.2.11.5 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Contractor shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City of Pomona including its elected or appointed officials, officers, directors, employees, agents and volunteers; or (2) the Contractor shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

3.2.11.6 Subcontractor Insurance Requirements. Contractor shall not allow any subcontractors to commence work on any subcontract relating to the work under the Agreement until they have provided evidence satisfactory to the City that they have secured all insurance required under this Section. If requested by Contractor, the City may approve different scopes or minimum limits of insurance for particular subcontractors. The Contractor and the City shall be named as additional insureds on all subcontractors' policies of Commercial General Liability using ISO form 20 38, or coverage at least as broad.

3.2.11.7 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A: VIII, licensed to do business in California, and satisfactory to the City.

3.2.11.8 Verification of Coverage. Contractor shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the City if requested. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.2.11.9 Reporting of Claims. Contractor shall report to the City, in addition to Contractor's insurer, any and all insurance claims submitted by Contractor in connection with the Services under this Agreement.

3.2.12 Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the 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 lifesaving 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.

3.2.13 Bonds.

3.2.13.1 Performance Bond. If required by law or otherwise specifically requested by City in Exhibit "C" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Agreement a Performance Bond in the amount of the total, not-to-exceed compensation indicated in this Agreement, and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.

3.2.13.2 Payment Bond. If required by law or otherwise specifically requested by City in Exhibit "C" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Agreement a Payment Bond in the amount of the total, not-to-exceed compensation indicated in this Agreement, and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.

3.2.13.3 Bond Provisions. Should, in City's sole opinion, any bond become insufficient or any surety be found to be unsatisfactory, Contractor shall renew or replace the affected bond within 10 days of receiving notice from City. In the event the surety or Contractor intends to reduce or cancel any required bond, at least thirty (30) days prior written notice shall be given to the City, and Contractor shall post acceptable replacement bonds at least ten (10) days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Agreement until any replacement bonds required by this Section are accepted by the City. To the extent, if any, that the total compensation is increased in accordance with the Agreement, the Contractor shall, upon request of the City, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the City. To the extent available, the bonds shall further provide that no change or alteration of the Agreement (including, without limitation, an increase in the total compensation, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor, will release the surety. If the Contractor fails to furnish any required bond, the City may terminate this Agreement for cause.

3.2.13.4 Surety Qualifications. Only bonds executed by an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, shall be accepted. The surety must be a California-admitted surety with a current A.M. Best's rating no less than A:VIII and satisfactory to the City. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to the City.

3.2.14 Accounting Records. Contractor shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Contractor shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.2.15 Work Sites.

3.2.15.1 Inspection Of Site. Contractor shall visit sites where Services are to be performed and shall become acquainted with all conditions affecting the Services prior to commencing the Services. Contractor shall make such examinations as it deems necessary to determine the condition of the work sites, its accessibility to materials, workmen and equipment, and to determine Contractor's ability to protect existing surface and subsurface improvements. No claim for allowances—time or money—will be allowed as to such matters after commencement of the Services.

3.2.15.2 Field Measurements. Contractor shall make field measurements, verify field conditions and shall carefully compare such field measurements and conditions and other information known to Contractor with the Contract Documents, including any plans, specifications, or scope of work before commencing Services. Errors, inconsistencies or omissions discovered shall be reported to the City immediately and prior to performing any Services or altering the condition.

3.2.15.3 Hazardous Materials and Differing Conditions. Except as set forth in the Special Conditions or Specifications, should Contractor encounter material reasonably believed to be polychlorinated biphenyl (PCB) or other toxic wastes, hazardous substance and hazardous materials as defined in California state or federal law at the Site which have not been rendered harmless, the Contractor shall immediately stop work at the affected area and shall report the condition to the City in writing. The City shall contract for any services required to directly remove and/or abate PCBs, hazardous substances, other toxic wastes and hazardous materials, and shall not require the Contractor to subcontract for such services. The Services in the affected area shall not thereafter be resumed except by written agreement of the City and Contractor.

3.2.16 Loss and Damage. Contractor shall be responsible for all loss and damage which may arise out of the nature of the Services agreed to herein, or from the action of the elements, or from any unforeseen difficulties which may arise or be encountered in the prosecution of the Services until the same is fully completed and accepted by City.

3.2.17 Warranty. Contractor warrants all Services under the Contract (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 year (or the period of time specified elsewhere in the Contract 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 the City of any defect in the Services or non-conformance of the Services to the Contract, commence and prosecute with due diligence all Services necessary to fulfill the terms of the warranty at its sole cost and expense. Contractor shall act sooner as requested by the 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 its defective Services 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 year period, commencing with the date of acceptance of such corrected work. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Contract. 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 the 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 the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Contract, to the reasonable satisfaction of the City, the 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 the City for any expenses incurred hereunder upon demand.

3.3 Fees and Payments.

3.3.1 Compensation. The City agrees to pay Contractor for the services set forth in the aforementioned Scope of Services. Contractor agrees that the fees charged for such services shall be in accordance with and not exceed the authorized cost for services as set forth in the fee schedule, attached hereto as Exhibit "B," unless the City has given specific advance approval in writing.

3.3.2 Payment of Compensation. Contractor shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Contractor. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Deductions. City may deduct or withhold, as applicable, from each progress payment an amount necessary to protect City from loss because of: (1) stop payment notices as allowed by state law; (2) unsatisfactory prosecution of the Services by Contractor; (3) sums representing expenses, losses, or damages as determined by the City, incurred by the City for which Contractor is liable under the Agreement; and (4) any other sums which the City is

entitled to recover from Contractor under the terms of the Agreement or pursuant to state law, including Section 1727 of the California Labor Code. The failure by the City to deduct any of these sums from a progress payment shall not constitute a waiver of the City's right to such sums.

3.3.4 Reimbursement for Expenses. Contractor shall not be reimbursed for any expenses unless authorized in writing by City.

3.3.5 Extra Work. At any time during the term of this Agreement, City may request that Contractor perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Contractor shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

3.3.6 Prevailing Wages. Contractor is aware of the requirements of California Labor Code Section 1720, *et seq.*, and 1770, *et seq.*, as well as California Code of Regulations, Title 8, Section 16000, *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 \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Moreover, as required by Labor Code 1860, Contractor shall secure the payment of compensation to Contractor's employees in accordance with the provisions of Labor Code Section 3700. Contractor shall obtain a copy of the prevailing rates of per diem wages at the commencement of the Agreement from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at www.dir.ca.gov/dlsr/. 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. Contractor shall defend, indemnify and hold the City, its officials, officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.3.7 Registration/DIR Compliance. If the Services are being performed as part of an applicable "public works" or "maintenance" project, and if the total compensation is \$15,000 or more, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Contractor and all subcontractors performing such Services must be registered with the Department of Industrial Relations. Contractor shall maintain registration for the duration of the Project and require the same of any subcontractors, as applicable. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Contractor's sole responsibility to comply with all applicable registration and labor compliance requirements. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor's performance of Services, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay and shall not be compensable by the City. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.

3.4 Termination of Agreement.

3.4.1 Grounds for Termination. City may, by written notice to Contractor, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Contractor of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Contractor shall be compensated only for those services which have been adequately rendered to City, and Contractor shall be entitled to no further compensation. Contractor may not terminate this Agreement except for cause.

3.4.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Contractor to provide all finished or unfinished Documents and Data and other information of any kind prepared by Contractor in connection with the performance of Services under this Agreement. Contractor shall be required to provide such document and other information within fifteen (15) days of the request.

3.4.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5 General Provisions.

3.5.1 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Contractor:

The principal representative of the CONTRACTOR is:

Nick Alago
West Coast Arborists, Inc.
2200 E. Via Burton St.
Anaheim, CA 92806
(714) 920-0558

City:

City of Pomona
505 South Garey Avenue
Pomona, CA 91766
Attn: Danny Whaley, Public Works Department

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.2 Indemnification.

3.5.2.1 Scope of Indemnity. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold the City, its officials, employees, agents and authorized volunteers free and harmless from any and all claims, demands, causes of action, suits, actions, proceedings, costs, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity, regardless of whether the allegations are false, fraudulent, or groundless, to property or persons, including wrongful death, (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Contractor, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Contractor's services, the Project or this Agreement, including without limitation the payment of all expert witness fees, attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent required by Civil Code section 2782, Contractor's indemnity obligation shall not apply to liability for damages for death or bodily injury to persons, injury to property, or any other loss, damage or expense arising from the sole or active negligence or willful misconduct of the City or the City's agents, servants, or independent contractors who are directly responsible to the City, or for defects in design furnished by those persons.

3.5.2.2 Additional Indemnity Obligations. Contractor shall defend, with counsel of City's choosing and at Contractor's own cost, expense and risk, any and all Claims covered by this section that may be brought or instituted against City or its officials, employees, agents and authorized volunteers. In addition, Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its officials, employees, agents and authorized volunteers as part of any such claim, suit, action or other proceeding. Contractor shall also reimburse City for the cost of any settlement paid by City or its officials, employees, agents and authorized volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorney's fees and costs, including expert witness fees. Contractor shall reimburse City and its officials, employees, agents and authorized volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the City, its officials, employees, agents and authorized volunteers.

3.5.3 Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California. Venue shall be in Los Angeles County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Contractor must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against the City.

3.5.4 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.5 City's Right to Employ Other Contractors. City reserves right to employ other contractors in connection with this Project.

3.5.6 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.5.7 Assignment or Transfer. Contractor shall not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.8 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Contractor include all personnel, employees, agents, and subcontractors of Contractor, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

3.5.9 Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.10 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

3.5.11 No Third Party Beneficiaries. Except to the extent expressly provided for in Section 3.5.7, there are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.12 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.13 Prohibited Interests. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Contractor further agrees to file, or shall cause its employees or subcontractors to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.14 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.15 Authority to Enter Agreement. Contractor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.16 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.5.17 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

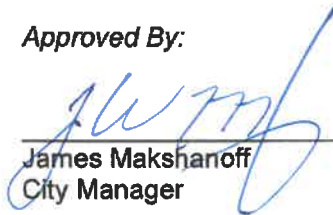
[SIGNATURES ON NEXT PAGE]

**SIGNATURE PAGE FOR MAINTENANCE SERVICES AGREEMENT
BETWEEN THE CITY OF POMONA
AND WEST COAST ARBORISTS, INC.**

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the 4th day of November, 2021.

CITY OF POMONA

Approved By:


James Makshanoff
City Manager

Approved as to Form:


Best Best & Krieger LLP
For City Attorney

Attested By:


for Rosalia Butler
City Clerk

West Coast Arborists, Inc.

[IF CORPORATION, TWO SIGNATURES,
PRESIDENT OR VICE PRESIDENT **AND**
SECRETARY OR TREASURER **REQUIRED**]

By: 

Its: President

Printed Name: Patrick Mahoney

By: 

Its: Secretary

Printed Name: Richard Mahoney

366764 C27, C31, C61/D49
Contractor's License Number and
Classification

1000000956
DIR Registration Number

EXHIBIT "A"

SCOPE OF SERVICES

TREE TRIMMING AND TREE MAINTENANCE SERVICES

The scope of work is complete, continuous, consistent and safe tree maintenance of a variety of species throughout the city. Tree maintenance may consist of pruning, removals, stump grinding, planting, staking, pest control, fertilizing, watering, emergency response, arborist services, inventory and banner hanging work.

The contractor shall provide all equipment, labor and materials necessary for performing tree maintenance according to the specifications in this agreement. The equipment shall be clean and well-maintained, of the latest and most efficient design. Maintenance personnel shall be uniformed professional and well trained.

Selective pruning shall be employed always based solely on the standards prescribed by the international society of arboriculture and according to the ANSI a300 pruning standards.

The intent and purpose of this agreement is to provide a level of tree maintenance to the areas such that each will present a safe, pleasing, and desirable appearance always within the limitations of the contracted service requirements. The contractor agrees to maintain all the designated areas covered by this agreement at such levels. The city engineer, or his designated representative, shall be the sole judge as to the adequacy and quality of the tree maintenance.

The work shall be done in accordance with "the 'green book' standard specifications for public works construction" 2018 edition including subsequent amendments, supplements and/or additions. Copies are available from the publisher, building news, incorporated, 1612 so. Clementine Street, Anaheim, California 92802, telephone (714) 517-0970.

Where the City Engineer is mentioned in these provisions, it shall be noted that his designated representative may act on his behalf regarding administration of this agreement.

The term "tree" is used about both woody trees and palms in the language of this agreement, unless otherwise specified.

Complete pruning includes: raising the canopy height for building and right of way clearance, eliminating deadwood, crossing branches, and other safety concerns; shaping and thinning for the health for the health of the tree and for aesthetics.

The exact number of trees to be pruned at any one time will be determined when specific addresses and locations are provided.

Contractor is to provide all labor and equipment necessary to perform pruning operations as described in this contract.

All tools used on a tree known to contain an infectious tree disease shall be properly disinfected immediately before and after completing work on such tree, following procedures of current industry standards, or as instructed by the City. All major pest problems shall be reported to the City Contract Supervisor within 24 hours from the initial identification via email.

1.1. SUPERVISION & STAFF

The Contractor shall assign a supervisor to be on site each working day, working regular working hours, for the duration of this contract. The contractor and its staff shall have skills, expertise, and experience in arboriculture; including pest control, soils, fertilizers and plant identification. The supervisor must be fluent in the English language. The supervisor shall be thoroughly knowledgeable of the General and Special Provisions of this Agreement, as set forth in the West Covina Cooperative Agreement RFP (Exhibit D).

1.2. WORK LISTS

a) **Grid Pruning** - The Public Services Department Representative will identify pruning locations by highlighting the corresponding streets on the map, which will be provided to the Contractor, along with a specific pruning assignment such as full trim, clean, raise, or palm trimming. The Contractor shall document all work onto a City Contractor Work List (West Covina Cooperative Agreement RFP, Exhibit D); and record the location, species, size, work type, quantity, unit costs and lump sum amounts for each tree trimmed. The price paid for grid pruning shall be as specified in Section 7.12(C) of the RFP.

b) **Removals and Plantings** - The Public Works Department Representative will provide a work list consisting of location, tree species, size, work type, quantity, unit costs and lump sum amounts.

c) **Inspection** - The Contractor shall notify the Public Works Department Representative upon completion of each work list and shall not process any work list for invoicing until all sites on the list have been inspected by the Public Works Department Representative. Also, daily, or as required, the Contractor or its supervisor may walk the project with the Public Works Department Representative for determining compliance with the specifications or to discuss required work. Any tree(s), which in the opinion of the Public Works Department Representative have not been pruned, removed or planted according to the conditions of the specifications set forth herein shall be brought to the attention of the Contractor and, if not corrected, payment to the Contractor will not be made until the condition is corrected.

d) **Service Requests and Location Lists** - The Contractor could be given additional service requests and location lists each day, in addition to the weekly or grid schedule list. This work will be considered as normal work and not subject to emergency work cost or crew rental costs.

1.3. TREE INVENTORY AND WORKSHEETS

All trees that are in the tract, in which the Contractor is working, shall be recorded onto a City Tree Inventory List (West Covina Cooperative Agreement RFP, Exhibit D). The Tree Inventory along with the list of trees pruned/removed shall be given to the Public Works Department Representative monthly. Each field on the inventory sheet should be filled in as follows:

a) **Right of Way**- This is the public right of way (and/or tree maintenance easement) as recorded in the development plans. The measurement will be the width of the parkway, or in areas in which there is no parkway, the designated footage beginning from the curb face.

b) **Address** - Consists of the house number and complete street name. If the tree is on the side of a corner house, the name of the intersecting street shall be included.

c) **Species** - Including hybrids, varieties and cultivars.

d) **Diameter at Breast Height (DBH)** - The measurement of the trunk diameter at 4.5 feet from the base, as described in section 7.12(f) of the West Covina Cooperative Agreement RFP (Exhibit D). Multi-trunk trees shall be recorded by using the DBH of the largest trunk followed by the letter M and the total amount of the trunks.

1.4. CREW RENTAL

The standard crew is three (3) workers, one (1) chipper truck, and one (1) chipper and all necessary hand tools. The crew equipment can be modified to complete any type of miscellaneous tasks including special projects that may consist of extraordinary work.

1.5. EMERGENCY RESPOND WORK SCHEDULE

Emergency response work may be required to mitigate safety hazards outside of normal working hours.

a) Emergency response work will not be performed without prior approval by the Public Works Department Representative unless a 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 rates and unit prices in the Emergency Response Work Schedule.

c) The City reserves the right to cause any emergency response work deemed necessary by the Public Works Department Representative to be performed by the City crews, other contractors, or day labor, at no cost to the Contractor.

d) Emergency response work is work performed after normal working hours or anytime during a 24- hour period that the Public Works Department Representative deems an emergency. Emergency response work does not include service requests and location lists assigned during normal working hours (7:30 a.m. to 6 p.m. Monday through Thursday, not including Holidays)

e) Emergency Response and Crew Rental rates begin when the crew arrives on site and begins work, and end at the completion of the work requested by the City. Portal to Portal pay is not allowed.

1.6. SAFETY MEASURES

a) The Contractor shall obey and adhere to Cal OSHA requirements for worker safety, and ANSI 2133.1 Safety Requirements.

b) 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.

c) 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 Public Works Department Representative.

d) 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 Pomona Police Department.

1.7. PRESERVATION OF PROPERTY

a) The Contractor shall carefully protect from damage all trees, shrubs, ground covers, turf irrigation, water service, fences, sidewalk, buildings, automobiles, street lights, street signs, or any other facilities located on or adjacent to the job site.

b) Should any direct or indirect damage or injury result to any public or private property by or because of any act, omission, neglect or misconduct in the execution of work, on the part of the Contractor or the Contractor's employees, such property shall be restored by the Contractor, to a condition equivalent to that existing before damage occurred.

c) The Contractor shall be responsible for the complete removal and replacement of trees lost due to the Contractor's faulty maintenance or negligence, as determined by the Public Works Department Representative. Replacement shall be made by the Contractor in the kind and size of trees as determined by the Public Works Department Representative. Where there is a difference in value between the trees lost and the replacement of trees, this difference will be deducted from the contract payment. In all cases, the value of the trees lost will be determined by the Public Works Department Representative, using the latest Council of Tree and Landscape Appraisers - Guide for Plant Appraisal.

1.8. 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 a hazardous condition.

1.9. QUALITY OF WORK

The Contractor shall be committed to retaining the value of all trees in its care, and at no time under this contract agreement shall the Contractor decrease the value of any tree without written authorization from the Public Works Department Representative.

The Contractor shall be skilled in arboriculture and have the expertise necessary to perform all duties to the highest standard, as required in this agreement.

The Public Works Department Representative shall be the sole judge as to the adequacy and quality of maintenance.

1.10. DISEASE CONTROL

Any monocot or dicot species that is known to transmit an infectious disease prevalent in the landscape shall be pruned with handsaws, pole saws or reciprocating saws only. Prior to pruning, all saw blades must be sterilized by a ten (10) minute immersion in a bucket of water containing twenty-five (25) percent chlorine bleach. A fresh solution shall be mixed daily. Each tree shall be pruned utilizing a blade that has been sterilized in this fashion, thereby preventing tree-to-tree

disease transmission via the saw blade. After a tree has been pruned, the saw blade shall not be utilized again until it has been sterilized by the ten (10) minute immersion method described above.

1.11. PRUNING – GENERAL REQUIREMENTS

a) Pruning shall be in strict accordance with all standards and methods as prescribed by the International Society of Arboriculture (West Covina Cooperative Agreement RFP, Exhibit D).

b) The Contractor shall prune to retain the natural structure of each tree species, unless otherwise directed by the Public Works Department Representative, and have the knowledge and ability to determine each tree species response to pruning. Pruning patterns shall be consistent so that visual continuity is maintained, and the value of all City trees pruned is increased.

c) The use of chain saws shall be restricted to those cuts that cannot be made with hydraulic, pneumatic, or manually operated lopping shears. All blades, chains and other cutting devices shall be kept sharpened, to make a clean final cut, with the bark intact and free from stripping or shredding. Wound dressings are not permitted.

d) Pruning cuts shall be made carefully and at the proper location; this will be back to the parent branch or trunk, just to the outside of the branch collar and branch bark ridge.

e) Branch cuts shall be kept as small as possible to prevent excessive decay. No live branch greater than eight (8) inches in diameter (measured at the base of the branch) shall be removed without authorization from the Public Works Department Representative, unless said branch is weakly attached or has other significant defect.

f) Limbs, measuring two (2) inches or greater in diameter, shall be removed using the three-cut method (West Covina Cooperative Agreement RFP, Exhibit D).

g) When pruning mature trees, no more than twenty-five (25) percent of the leaf bearing canopy should be removed. Live Oaks are limited to ten (10) percent.

h) When reducing the length of a limb back to a lateral branch, the lateral should be at least one-third the diameter of the portion removed.

i) Young trees shall be pruned primarily to improve structure (West Covina Cooperative Agreement RFP, Exhibit D).

j) Private trees encroaching upon a City sidewalk or street, and are not providing proper height clearance requirements, shall be raised on the street-side only to mitigate nuisance or hazard. The cost shall be adjusted to one half that for complete raise.

k) The use of climbing spurs, gaffs, or any other climbing devise that causes puncture wounds is prohibited, except for aerial rescue efforts, or during removals.

l) The Contractor shall not prune any tree(s), which have been pruned by a resident or homeowner and have been trained, cut, or sheared in such a way to form a hedge, espalier, or picturesque shape, and have not been trained in the normal landscape shade tree standard of

pruning. Such trees shall not be recorded on the work list. These trees are to be noted, and the Contractor shall inform the Public Works Department Representative of them by address.

m) Any inappropriate piece of metal, wire, rubber, wood, or other material that is damaging the growing tissue of a tree or predisposes the tree to irreparable damage in the future, shall be removed. If it is determined that the material cannot be removed without further damage to the growing tissue of the tree, it shall not be removed, but necessary actions shall be taken to reduce the impact of this material to the tree by cutting out as much of the exposed surface of it as possible.

n) Vines that are entwined on the trunk or throughout the limb structure shall be removed with caution, avoiding injury to tree.

1.12. PRUNING - WORK TYPE DESCRIPTIONS

The following four work type descriptions may be assigned to the Contractor. All general requirements for pruning shall be followed.

a) **Grid Pruning** - Grid pruning means routine tree pruning per pre-designated districts/grids on a scheduled cycle or any grouping of seven (7) or more trees near one another, within an approximate 200-yard radius, and shall be paid as grid pruning even when off the regularly scheduled district/grid plan.

b) **Full Pruning** - The objective is to improve tree structure, reduce wind sail effect, allow for improved light penetration, provide proper clearances, and to remove dead or other undesirable limbs.

Selective pruning shall be implemented; any or all pruning techniques shall be applied depending on the requirements of each tree. These include, structural pruning, crown cleaning, crown thinning, crown reduction, crown raise and crown restoration.

c) **Crown Raise** - In areas where raises are specified, no other type of pruning shall be done. A crown raise is removal of lower branches only, to provide proper height clearance. Fourteen and one-half (14.5) feet clearance is required over streets, where applicable. Nine (9) feet clearance is required over parkways and sidewalks. Eleven (11) feet clearance is required over equestrian trails. To avoid destroying the natural structure of small trees, they shall not be raised to the afore mentioned specifications. Instead, such trees shall be pruned to reduce the length of the obstructing limbs.

d) **Crown Cleaning** - In areas where cleaning is specified, no other type of pruning shall be done. Crown cleaning is the removal of dead, dying, diseased, broken and weakly attached branches. Crown cleaning shall also include crown raise, when needed to provide proper clearance.

e) **Crown Reduction** - In areas where height issues are specified, no other type of pruning shall be done. Crown reduction is used to reduce the height and/or spread of a tree. Thinning cuts are most effective in maintaining the structural integrity and natural form of a tree and in delaying the time when it will need to be pruned again. The lateral to which a branch or trunk is cut should be at least one-half the diameter of the cut to be made.

f) **Palm Pruning** - Palm fronds are to be removed so that a 90-degree angle is

achieved. The angle shall be measured from the horizontal axis of the growing point base.

All dead fronds, flower stalks and fruit stalks shall be removed and cut as close to their base as possible without damaging adjacent fronds or trunk tissue. Loose petioles from previous pruning operations shall be removed carefully.

When pruning palms in the Phoenix genus it is imperative to sterilize all pruning equipment to avoid possible tree-to-tree transmission of the disease *Fusarium oxysporum*.

1.13. SELECTIVE PRUNING

When performing any of the four pruning work types, mentioned in section 7.31 (West Covina Cooperative Agreement RFP, Exhibit D), it is imperative to employ selective pruning to prevent over pruning. If any tree in an assigned area requires a lesser amount of pruning than what has been assigned, only that which is necessary will be performed.

1.14. TREE REMOVALS

a) All tree removal operations shall be in strict accordance with the methods prescribed by the International Society of Arboriculture.

b) Trees designated for removal by the Public Works Department Representative will be marked with a DOT, using white paint, on the trunk, just above the root collar of the tree. If for any reason there is doubt regarding the trees(s) to be removed, the Public Works Department Representative will be contacted before work commences.

c) Felling is permitted providing it can be safely achieved without endangering surrounding property and will not interfere with vehicular traffic. A tag line(s) shall be used to direct fall always. All bystanders shall be kept at a safe distance from the work site.

d) Trees too large to fell shall be removed in sections. Each section shall be cut into a size that can be handled easily and safely by one tree worker. If section is too heavy for one worker, it shall be rigged and lowered to the ground. The means of lowering shall be acceptable to the Public Works Department Representative.

e) Stump grinding shall be incorporated with the removal of the tree and performed on the same day. The underground service alert regional notification center (Dig Alert) must be called prior to the start of the removal list, to allow enough time for each site to be marked before work begins.

f) The depth of stump grind shall be no less than eighteen (18) inches below lowest surface grade. The grind shall comprise the entire stump below soil surface and any uplifted portion of the soil caused by the root flare. Exposed roots, whether in the public right of way or private property, shall be traced and ground or chopped out to a depth of no less than eight (8) inches below the lowest surface grade. If irrigation is damaged it shall be repaired immediately. The site shall be backfilled with a mix of 60% soil and 40% of the remaining wood chips; then firmly tamped down to allow for as little settling as possible. All excess wood chips and soil shall be hauled away. When complete, the work site shall be level and at the original soil grade of the surrounding area.

1.15. TREE PLANTING AND STAKING

a) Trees purchased by the Contractor shall comply with the specifications set forth in the Standards for Purchasing Container-Grown Landscape Trees.

b) All trees shall be planted according to the Standards prescribed by the International Society of Arboriculture. The standard plan for tree planting, as per Standard Plans for Public Works Construction (SPPWC), Std. Plan No 518-3, Sheet 2, shall be followed (West Covina Cooperative Agreement RFP, Exhibit D).

c) The Contractor shall follow the requirements in section 7.11 (West Covina Cooperative Agreement RFP, Exhibit D), UNDERGROUND ALERT of this contract before the excavation of any tree-planting site.

d) Prior to planting, the natural root flare must be identified. Any soil that may be covering the root flare must be removed. The planting hole shall be dug to a size of two times the width of the root ball, leaving the bottom firm, to prevent the tree from settling. The container shall be removed carefully to prevent root or stem damage; the tree shall not be pulled by the stem. If the container does not come off easily, it shall be cut on one or more sides, from top to bottom, to allow its removal. Circling roots shall be separated and spread outward. Densely matted roots that cannot be teased apart shall be cut cleanly in two places.

e) The tree shall be lifted by the root ball only and carefully placed in the planting hole. The root ball shall be oriented so that the tree stands vertical, with the top of the root ball approximately one to two inches higher than the soil grade. Backfill shall be native soil only with no rocks greater than three inches diameter. Soil shall not be placed on top of the root ball. Displace air pockets in the backfill by moderately tamping with shovel handle and watering in. Check for settling and add backfill if necessary. To avoid compaction of the soil, do not tamp the backfill with excessive pressure or use broad, heavy objects.

f) Any tree that can stand upright without support and would be able to withstand prevailing winds along with yearly Santa Ana wind occurrences shall not be staked.

g) If upon determining a tree cannot support itself, two stakes of good quality treated lodge pole pine not exceeding eight feet in length and no more than two and one-half inches in diameter, shall be used. The stakes shall be placed in a northwest/southeast configuration to give maximum support during heavy wind conditions and placed outside the root ball, avoiding any damage to roots. Stakes shall be pounded down until sufficiently stable. The top of the stakes interfering with branch structure shall be cut off below the lowest branch where the tree's growth habit permits.

h) Trees shall be tied to stakes using rubber cinch ties, thirty-two inches in length, attached by a method of a figure eight loop between the tree trunk and each stake. Ties shall be attached to stakes with galvanized nails driven into the stakes. A minimum of two ties shall be used, placed high enough on the trunk to support the crown. Additional ties shall be placed lower on the trunk if needed to straighten. Ties shall be taught enough to prevent trunk from rubbing against the stakes, but with a modest amount of slack to allow movement of the tree. Ties shall not be placed in branch crotches.

i) A plastic guard shall be placed loosely around the base of the trunk.

j) A watering basin shall be placed around the outer edge of the root ball in areas where run-off will occur. The basin shall be in the form of a tightly compacted soil berm, three inches in height. A watering basin is not required on turf or dense groundcover.

1.16. STAKING ONLY

The Contractor shall stake any tree that is unable to stand upright on its own, whether the existing stakes have become loosened, damaged, incorrectly installed, or where the stakes are absent. This work shall be performed in any area where the contractor is pruning or where otherwise directed by the Public Works Department Representative. All the standards shall be followed.

1.17. STAKE REMOVAL

The Contractor shall remove stakes from trees that have achieved enough stability and grown to at least three (3) inches diameter at breast height (DBH). The stakes should be pulled completely out of the ground when possible; otherwise, the stakes shall be cut down below grade and backfilled with soil.

All undamaged tree stakes that are suitable for re-use shall be returned to the City. The Contractor shall dispose of all damaged tree stakes.

Stake removal shall be performed in any area where the contractor is pruning, and there shall be no extra charge incurred.

1.18. REMOVAL OF BRUSH AND DEBRIS

The Contractor shall be responsible for the removal and disposal of all debris, i.e. wood, branches, brush, chippings, and any other material resulting from tree maintenance operations.

a) Contractor must comply with all state, county and local laws and ordinances applicable to and governing such disposal.

b) Disposal of all Eucalyptus wood infested with the larvae of the Eucalyptus Long Horned Borer shall follow the State of California Public Resources Code, Article 5, and Section 4714.5.

1.19. TREE WATERING

Watering is to be performed by a one-man crew with a water truck. Contractor shall include the pricing to water newly planted trees for the first year after initial planting. Watering will occur along various routes including landscape medians, parkways, parks, and City facilities. At the discretion of the Public Works Department Representative, older trees will be included on a watering schedule.

1.20. ARBORIST SERVICES

On occasion, the City requires tree evaluations including written reports. The Contractor shall provide an hourly rate for an Arborist that can respond to the City's request(s) for the preparation of detailed arborist reports, tree risk assessment reports, tree evaluations and site inspections. Reporting can be generated on as little as one tree to an entire urban forest population and is handled on a case-by-case basis.

1.21. MILLING

On occasion, the City may request for some of the removed Urban Forest material be milled down for special projects. The Contractor shall provide a per foot milling cost of this material. Milling can be performed on or off site.

EXHIBIT "B-1"

FEE SCHEDULE

ITEM	DESCRIPTION	QTY	UNIT	UNIT COST
Grid Pruning				
1	Flat rate price per tree to prune city trees in the grid.		EA	\$66.00
2	Flat rate price per tree to prune palm trees in the grid.		EA	\$66.00
3	Flat rate price per tree to prune city trees in Landscape Maintenance Districts ("LMD").		EA	\$144.00
SUBTOTAL (not to exceed annual cost)				
Full Prune per Service Request				
4	0"-12" Diameter Standard Height		EA	\$ 80.00
5	13"-18" Diameter Standard Height		EA	\$ 80.00
6	19"-24" Diameter Standard Height		EA	\$ 120.00
7	25"-30" Diameter Standard Height		EA	\$ 120.00
8	31"-36" Diameter Standard Height		EA	\$ 144.00
9	36"+ Diameter Standard Height		EA	\$ 144.00
Crown Raise per Service Request - Hardwood Tree				
10	0"-12" Diameter Standard Height		EA	\$ 59.00
11	13"-18" Diameter Standard Height		EA	\$ 59.00
12	19"-24" Diameter Standard Height		EA	\$ 59.00
13	25"-30" Diameter Standard Height		EA	\$ 59.00
14	31"-36" Diameter Standard Height		EA	\$ 59.00
15	36"+ Diameter Standard Height		EA	\$ 59.00
Crown Cleaning per Service Request - Hardwood Tree				
16	0"-12" Diameter Standard Height		EA	\$ 80.00
17	13"-18" Diameter Standard Height		EA	\$ 80.00
18	19"-24" Diameter Standard Height		EA	\$ 120.00
19	25"-30" Diameter Standard Height		EA	\$ 120.00
20	31"-36" Diameter Standard Height		EA	\$ 144.00
21	36"+ Diameter Standard Height		EA	\$ 144.00
Crown Reduction per Service Request - Hardwood Tree				
22	0"-12" Diameter Standard Height		EA	\$ 90.00
23	13"-18" Diameter Standard Height		EA	\$ 90.00
24	19"-24" Diameter Standard Height		EA	\$ 144.00
25	25"-30" Diameter Standard Height		EA	\$ 144.00
26	31"-36" Diameter Standard Height		EA	\$ 184.00
27	36"+ Diameter Standard Height		EA	\$284.00

Palm Pruning				
28	Prune Date Palm (Phoenix spp.)	EA	\$ 200.00	\$ 200.00
29	Clean Trunk for Date Palm (Phoenix spp.)	EA	\$ 200.00	\$ 200.00
30	Prune Fan Palm (Washingtonia spp.)	EA	\$ 84.00	\$ 84.00
31	Clean Trunk for Fan Palm (Washingtonia spp.)	EA	\$ 104.00	\$ 104.00
32	Prune all other Palm Species	EA	\$ 66.00	\$ 66.00
Tree and Stump Removal				
33	0"-12" Diameter Standard Height	EA	\$ 280.00	\$ 280.00
34	13"-18" Diameter Standard Height	EA	\$ 680.00	\$ 680.00
35	19"-24" Diameter Standard Height	EA	\$ 940.00	\$ 940.00
36	25"-30" Diameter Standard Height	EA	\$1,220.00	\$1,220.00
37	31"-36" Diameter Standard Height	EA	\$1,450.00	\$1,450.00
38	36"+ Diameter Standard Height	EA	\$1,890.00	\$ 1,890.00
Tree Removal Only. No Stump Removal.				
39	0"-12" Diameter Standard Height	EA	\$ 240.00	\$ 240.00
40	13"-18" Diameter Standard Height	EA	\$ 620.00	\$ 620.00
41	19"-24" Diameter Standard Height	EA	\$ 870.00	\$ 870.00
42	25"-30" Diameter Standard Height	EA	\$ 1,100.00	\$ 1,100.00
43	31"-36" Diameter Standard Height	EA	\$ 1,370.00	\$ 1,370.00
44	36"+ Diameter Standard Height	EA	\$ 1,720.00	\$ 1,720.00
Stump Removal				
45	Stump Removal per Stump Diameter Inch at Grade	INCH	\$ 20.00	\$ 20.00
Tree Planting and Staking				
46	15 Gallon (double staked per specs) - Labor, Equipment, Tree and Materials	EA	\$ 180.00	\$ 180.00
47	24 inch Box (double staked per specs) - Labor, Equipment, Tree and Materials	EA	\$ 360.00	\$ 360.00
48	36 inch Box (double staked per specs)- Labor, Equipment, Tree and Materials	EA	\$ 1,000.00	\$ 1,000.00
General Labor Rates				
49	Hourly Rate for 1 Ground-person	HR	\$ 89.00	\$ 89.00
50	Hourly Rate for 1 Equipment Operator	HR	\$ 89.00	\$ 89.00
51	Hourly Rate for 1 Trimmer	HR	\$ 89.00	\$ 89.00
Day Rate				
52	Day Rate Service Crew	DAY	\$ 2,403.00	\$ 2,403.00
53	Specialty Equipment Day Rate	DAY	\$1,000.00	\$ 1,000.00
Emergency Services				
54	During normal business hours	HR	\$ 109.00	\$ 109.00
55	After hours, weekends and/or holidays	HR	\$ 129.00	\$ 129.00
General Arborist Services				
56	Arborist Reports	HR	\$ 150.00	\$ 150.00
57	Level 1, 2, and 3 Risk Assessments	HR	\$ 150.00	\$ 150.00

EXHIBIT "B-2"

City of West Covina RFP for Tree Trimming and Tree Maintenance Services (Spec No. 61-007)

ADDITIONAL SERVICES PRICING

DESCRIPTION	UNIT	UNIT PRICE
Specialty Equipment Pay Rate (ATV)	Per Day	\$500.00
GPS Tree Inventory Add-on's	Tree Site	\$5.00
Plant 48" box tree	Each	\$1,950.00
Plant 60" box tree	Each	\$5,950.00

PLANT HEALTH CARE SERVICES

DESCRIPTION	UNIT	UNIT PRICE
Tree Canopy Spraying from ground level	Per diameter inch	\$ 6.00
Tree Canopy Spraying from aerial tower Per diameter inch Description: Foliar hydraulic spraying of recommended material.	Per diameter inch	\$ 8.00
Insecticide or Fungicide Trunk Banding Description: Trunk spray of recommended material.	Per diameter inch	\$ 6.00
PGR Trunk Banding Description: Trunk spray of recommended material to regulate plant growth.	Per diameter inch	\$ 6.00
Insecticide or PGR Soil Application (Cambistat) Description: Recommended insecticide soil injection or drench material to regulate plant growth.	Per diameter inch	\$ 6.00
Insecticide or Fungicide Soil Application Description: Soil applied drench of recommended material.	Per diameter inch	\$ 6.00
Soil Injection Fertilization Description: Soil applied injection of recommended material.	Per diameter inch	\$ 6.00
Soil Drenching Fertilization Description: Soil application of recommended material.	Per diameter inch	\$ 6.00
Trunk Injection (Insecticide/Miticide) Description: Trunk injected recommended material.	Per diameter inch	\$ 8.00
Trunk Injection (Fungicide) Description: Trunk injected recommended material.	Per diameter inch	\$ 6.00
Trunk Injection (Insecticide & Fungicide Combo) Description: Combination of one time trunk injection of two recommended materials.	Per diameter inch	\$ 8.00
Avermectin Class Insecticide Injection Description: Recommended trunk injection of Enamectin benzoate active ingredient.	Per diameter inch	\$6.00

*Prices may vary subject to the recommended rate of application, material availability, and best management practices.

EXHIBIT "C"

INDEMNITY AND INSURANCE

Contractor will maintain throughout the duration of the term of the Agreement, Liability Insurance covering Contractor and designating City, including its elected or appointed officials, directors, officers, authorized agents, and employees, as additional insureds against claims resulting in injury or damage to persons or property (both real and personal) caused by any aspect of Contractor's work, in amounts no less than the following, and with such deductibles as are ordinary and reasonable in keeping with industry standards. It must be stated, in the Additional Insured Endorsement, that Contractor's insurance policies must be primary with respect to any claims related to or as the result of Contractor's work. Any insurance, pooled coverage, or self-insurance maintained by City, its elected or appointed officials, directors, officers, authorized agents, and employees must be non-contributory. The Additional Insured Endorsement does not apply to the Professional Liability or Workers' Compensation Insurance requirement.

Professional Liability Insurance:

- a. General Aggregate

\$2,000,000 per claim and in the aggregate

General Liability:

- | | | |
|----|----------------------------------|-------------|
| a. | General Aggregate | \$2,000,000 |
| b. | Products Comp/Op Aggregate | \$2,000,000 |
| c. | Personal & Advertising Injury | \$1,000,000 |
| d. | Each Occurrence | \$1,000,000 |
| e. | Fire Damage (any one fire) | \$50,000 |
| f. | Medical Expense (any one person) | \$5,000 |

Workers' Compensation:

- | | | |
|----|----------------------------|------------------|
| a. | Workers' Compensation | Statutory Limits |
| b. | EL Each Accident | \$1,000,000 |
| c. | EL Disease - Policy Limit | \$1,000,000 |
| d. | EL Disease - Each Employee | \$1,000,000 |

Automobile Liability

- a. Any vehicle, combined single limit \$1,000,000

Contractor will provide thirty (30) days advance notice to City in the event of cancellation of any coverage. Certificates of insurance and additional insured endorsements must be furnished to City thirty (30) days prior to the effective date of this Agreement. Refusal to submit such certificates constitutes a material breach of this Agreement entitling City to any and all remedies at law or in equity, including termination of this Agreement. If proof of insurance required under this Agreement is not delivered as required or if such insurance is canceled and not adequately replaced, City has the right but not the duty to obtain replacement insurance and to charge the Contractor for any premium due for such coverage. City has the option to deduct any such premium from the sums due to the Contractor.

Insurance is to be placed with insurers authorized and admitted to write insurance in California and with a current A.M. Best's rating of A-: VII or better. Acceptance of insurance from a carrier with a rating lower than A-: VII is subject to approval by City's Risk Manager. Contractor shall immediately advise the City of any litigation that may affect these insurance policies.

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the City of Pomona (hereinafter referred to as "City") has awarded to _____, (hereinafter referred to as the "Contractor") _____ an agreement for _____ (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, _____, the undersigned Contractor and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the City in the sum of _____ DOLLARS, (\$ _____), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one-year guarantee of all materials and workmanship; and shall indemnify and save harmless the City, its officers and agents, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by City, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the City from loss or damage resulting from or caused by defective materials or faulty workmanship, Surety shall undertake and faithfully fulfill all such obligations. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the City's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

Whenever Contractor shall be, and is declared by the City to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the City's option:

- (1) Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or
- (2) Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the City, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.
- (3) Permit the City to complete the Project in any manner consistent with local, California and federal law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the City may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if the City, when declaring the Contractor in default, notifies Surety of the City's objection to Contractor's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project, including but not limited to the provisions of sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

(Corporate Seal)

Contractor/ Principal

By _____

Title _____

(Corporate Seal)

Surety

By

Attorney-in-Fact

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached.

(Attach Attorney-in-Fact Certificate)

Title

The rate of premium on this bond is _____ per thousand. The total amount of premium charges, \$ _____.

(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety)

(Name and Address of Agent or Representative for service of process in California, if different from above)

(Telephone number of Surety and Agent or Representative for service of process in California)

NOTE: A copy of the Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public _____

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document

and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual
☐ Corporate Officer

Title(s)

Title or Type of Document

- ☐ Partner(s) ☐ Limited
 ☐ General

Number of Pages

- ☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Date of Document

Signer is representing:
Name Of Person(s) Or Entity(ies)

Signer(s) Other Than Named Above

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS That

WHEREAS, the City of Pomona (hereinafter designated as the "City"), by action taken or a resolution passed _____, 20____ has awarded to _____ hereinafter designated as the "Principal," a contract for the work described as follows:

_____ (the "Project"); and

WHEREAS, the work to be performed by the Principal is more particularly set forth in the Contract Documents for the Project dated _____ ("Contract Documents"), the terms and conditions of which are expressly incorporated by reference; and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and _____ as Surety, are held and firmly bound unto the City in the penal sum of _____ Dollars (\$ _____) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 9100 of the Civil Code, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Section 18663 of the Revenue and Taxation Code, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified.

This bond shall inure to the benefit of any of the persons named in Section 9100 of the Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or

attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or City and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 9100 of the Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned and the provisions of sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

(Corporate Seal)_____

Contractor/ Principal

By_____

Title_____

(Corporate Seal)

Surety

By_____

Attorney-in-Fact

Title_____

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached. A Power-of-Attorney authorizing the person signing on behalf of the Surety to do so much be attached hereto.

NOTE: A copy of the Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public _____

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document

and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual
☐ Corporate Officer

Title(s)

Title or Type of Document

- ☐ Partner(s) ☐ Limited
 ☐ General

Number of Pages

- ☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Date of Document

Signer is representing:
Name Of Person(s) Or Entity(ies)

Signer(s) Other Than Named Above

CITY OF POMONA

FIRST AMENDMENT TO MAINTENANCE SERVICES AGREEMENT

This First Amendment to the Maintenance Services Agreement for ("FIRST AMENDMENT") is entered into on the 1st day of July 2023, by and between the City of Pomona (the "CITY") and West Coast Arborists, Inc., a California corporation, ("CONTRACTOR"), hereinafter referred to collectively as the "Parties."

RECITALS

Whereas, on November 4, 2021, the Parties entered into an agreement for professional tree trimming and maintenance services (the "AGREEMENT").

Whereas, the AGREEMENT was for a term of 3 years and seven months, commencing November 4, 2021, to June 30, 2023.

Whereas, the Parties now wish to enter into this FIRST AMENDMENT in order to extend the AGREEMENT through June 30, 2024, pursuant to City's first extension option as outlined in Section 3.1.2 of the AGREEMENT.

AMENDMENTS

1. **Incorporation of Recitals.** The recitals listed above are true and correct and are hereby incorporated herein by this reference.

2. **Term.** The term of the AGREEMENT shall be extended through June 30, 2024, unless earlier terminated.

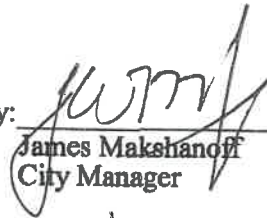
3. **No Other Changes.** Except as amended by this FIRST AMENDMENT, all provisions of the AGREEMENT shall remain in full force and effect and shall govern the actions of the Parties under this FIRST AMENDMENT.

4. **Counterparts.** A manually signed copy of this FIRST AMENDMENT which is transmitted by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this FIRST AMENDMENT for all purposes.

5. **Severability.** If any part of this FIRST AMENDMENT is held to be unlawful or void, all other parts of this FIRST AMENDMENT shall remain effective.

Now, therefore, the Parties hereto have executed this FIRST AMENDMENT as of the date set forth below:

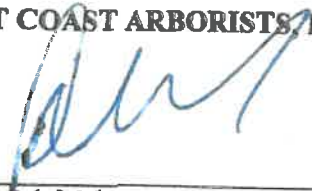
CITY OF POMONA

By: 
James Makshanoff
City Manager

7/20/23

DATE:

WEST COAST ARBORISTS, INC.

By: 
Patrick Mahoney
President

Patrick Mahoney

PRINT

07/18/23

DATE

ATTEST:

By: 

Rosalia Butler, City Clerk 7/20/23

APPROVED AS TO FORM:

By: 

Best, Best, & Krieger LLP
City Attorney

By: 
Richard Mahoney
Secretary

Richard Mahoney

PRINT

07/18/23

DATE

366764 C27, C31, C61/D49
CONTRACTOR'S LICENSE NUMBER &
CLASSIFICATION

1000000956
DIR REGISTRATION NUMBER

CITY OF POMONA

SECOND AMENDMENT TO MAINTENANCE SERVICES AGREEMENT

This SECOND AMENDMENT to the Maintenance Services Agreement for Professional Tree Trimming and Maintenance Services ("SECOND AMENDMENT") is entered into on the 1st day of July 2024, by and between the City of Pomona (the "CITY") and West Coast Arborists, Inc., a California corporation ("CONSULTANT"), hereinafter referred to collectively as the "Parties."

RECITALS

Whereas, on November 4, 2021, the Parties entered into Agreement for Professional Tree Trimming and Maintenance Services (the "AGREEMENT").

Whereas, the Agreement was for a term of 1 year and seven months, commencing November 4, 2021, to June 30, 2023.

Whereas, on July 1, 2023, the Parties entered into the First Amendment to the AGREEMENT in order to extend the AGREEMENT through June 30, 2024, pursuant to the City's first extension option as outlined in Section 3.1.2 of the AGREEMENT.

Whereas, the Parties now wish to enter into this SECOND AMENDMENT in order to extend the AGREEMENT through June 30, 2025, pursuant to the City's second extension option as outlined in Section 3.1.2 of the AGREEMENT and implement a fee increase based on the Consumer Price Index for the region.

AMENDMENTS

1. Incorporation of Recitals. The recitals listed above are true and correct and are hereby incorporated herein by this reference.

2. Term. The term of the AGREEMENT shall be extended through June 30, 2025, unless earlier terminated.

3. Rate Adjustment. Effective July 1, 2024, the fees for existing services as outlined in Exhibit "B" of the AGREEMENT, shall be increased by 3.90% based on the Consumer Price Index for the region as documented by the Department of Labor's Bureau of Labor Statistics.

4. No Other Changes. Except as amended by this SECOND AMENDMENT, all provisions of the AGREEMENT, as previously amended, shall remain in full force and effect and shall govern the actions of the Parties under this SECOND AMENDMENT.

5. Counterparts. A manually signed copy of this SECOND AMENDMENT which is transmitted by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this SECOND AMENDMENT for all purposes.

6. Severability. If any part of this SECOND AMENDMENT is held to be unlawful

Now, therefore, the Parties hereto have executed this SECOND AMENDMENT as of the date set forth below:

CITY OF POMONA

WEST COAST ARBORISTS, INC.

By: 

Anita D. Gutierrez
City Manager

By: 

Patrick Mahoney
President

Date: 6/26/24

Patrick Mahoney
PRINT:

06/12/24

DATE:

ATTEST:

By: 

Rosalia Butler, City Clerk

By: 

Richard Mahoney
Secretary

Richard Mahoney
PRINT

06/12/24

DATE

366764 C27, C31, C61/D49

CONTRACTOR'S LICENSE NUMBER &
CLASSIFICATION

1000000956

DIR REGISTRATION NUMBER

APPROVED AS TO FORM:

By: 

Best Best & Krieger LLP
City Attorney