

**FIRST AMENDMENT TO AGREEMENT
ANNUAL TREE MAINTENANCE
WEST COAST ARBORIST, INC.**

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on _____ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, WEST COAST ARBORIST, INC., a California Corporation ("SERVICE PROVIDER").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This First Amendment to Agreement is entered into pursuant to action of the Morgan Hill City Council taken on March 1, 2017.
2. The CITY and SERVICE PROVIDER entered into that "Maintenance Service Agreement" made as of July 16, 2015, for services for a maximum compensation of \$600,000.00 ("MAINTENANCE SERVICE AGREEMENT"). The MAINTENANCE SERVICE AGREEMENT is attached as Exhibit "A" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Amendments:** All terms and conditions of the MAINTENANCE SERVICE AGREEMENT, as amended, as attached as Exhibit "A," shall remain in full force and effect; except that the following amendments shall be made as set forth below:
 - A. Paragraph 4.1 shall be amended and replaced in its entirety by the following:
 - 4.1. **Amount.** Compensation under this Agreement shall not exceed six hundred twenty-five thousand, eight hundred twenty-seven dollars (\$625,827).
2. **Conflicts.** In the event of a conflict between the terms and provisions of this First Amendment to Agreement and the terms and provisions of the MAINTENANCE SERVICE AGREEMENT, the terms of this First Amendment to Agreement shall govern and control.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; **AND**
- (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

ATTEST:

CITY OF MORGAN HILL


City Clerk
Date: _____

City Manager
Date: _____


APPROVED AS TO FORM:

WEST COAST ARBORIST, INC.

City Attorney
Date: _____

By: 
Title: Patrick Mahoney, President
Print Name and Title of Signer.
If Corporate: Chairman, President or
Vice President

Date: 2/16/17

By: 
Title: Richard Mahoney, Assistant
Print Name and Title of Signer.
If Corporate: Secretary, Assistant
Secretary, Chief Financial Officer or
Assistant Treasurer

Date: 2/16/17

128-04-15-015

**MAINTENANCE SERVICE AGREEMENT
ANNUAL TREE MAINTENANCE
WEST COAST ARBORIST, INC.**

THIS AGREEMENT is entered into and becomes effective on 7/16/15 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and WEST COAST ARBORIST, INC., a California corporation ("SERVICE PROVIDER") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to action of the Morgan Hill City Council taken on July 15, 2015
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until June 30, 2019 at which time SERVICE PROVIDER'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by SERVICE PROVIDER shall be all supervision, labor, vehicles, materials, tools, equipment, barricades, traffic and warning devices and all other items necessary to provide tree pruning and other designated work as further described in **Exhibit A**.
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$600,000.00. Total compensation under this Agreement shall not exceed \$600,000.00 dollars and shall be billed based on the rate and basis set forth in **Exhibit B**.
 - 4.2. **Billing.** SERVICE PROVIDER shall provide CITY with a monthly invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by SERVICE PROVIDER. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or SERVICE PROVIDER shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, SERVICE PROVIDER shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require SERVICE PROVIDER to complete certain work product or documents and SERVICE PROVIDER shall deliver to CITY all documents in its possession without additional compensation to SERVICE PROVIDER. The CITY Manager of CITY is authorized to terminate this AGREEMENT on behalf of CITY.
6. **Performance of Work.** SERVICE PROVIDER represents that it is qualified by virtue of experience, training, education, and expertise to accomplish these services. Services shall be performed by SERVICE PROVIDER in accordance with professional practices in a manner consistent with a level of care, competence and skill exercised by qualified members of the SERVICE PROVIDER'S profession. By

delivery of completed work, SERVICE PROVIDER certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws. SERVICE PROVIDER shall perform all work and services under this Agreement in conformance with the time schedule set forth on Exhibit C, "Schedule of Performance," attached hereto and incorporated herein by this reference. CITY's City Manager is authorized on behalf of CITY to modify the timeframes set forth on the Schedule of Performance within the term of this Agreement. If SERVICE PROVIDER desires to leave or store any of SERVICE PROVIDER's equipment at a CITY site while SERVICE PROVIDER is performing work or service pursuant to this Agreement, SERVICE PROVIDER will first obtain the consent of CITY's City Manager, or his delegate, to do so, and any such storage shall occur only in the manner and location allowed by such CITY official and entirely at SERVICE PROVIDER's sole risk.

7. **Insurance Requirements.** CONSULTANT shall procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of CONSULTANT, including its subcontractors, relating to or arising from the performance of any work or service under this Agreement, and must remain in full force and effect at all times during the period covered by this Agreement. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. CONSULTANT further understands that the CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to CONSULTANT, at any time as deemed necessary to protect the interests of the CITY.

7.1. **Insurance Types and Amounts.**

7.1.1. **Commercial General Liability (CGL).** CONSULTANT shall maintain CGL against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

7.1.2. **Automobile Liability.** CONSULTANT shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if CONSULTANT does not own automobiles, then CONSULTANT shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

7.1.3. **Workers' Compensation Insurance and Employer's Liability.** CONSULTANT shall maintain Workers Compensation coverage, as required by law, in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If CONSULTANT is self-insured, CONSULTANT shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

7.1.4. Pollution (Environmental) Liability. If the performance of CONSULTANT'S work or service under this Agreement involves hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials, CONSULTANT shall procure and maintain Pollution Liability covering the contractor's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Such coverage shall be in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

7.1.5. Professional Liability.

7.1.5.1. If the performance of CONSULTANT's work or service under this Agreement involves professional and/or technical services (examples include, but are not limited to, architects, engineers, land surveyors, and appraisers), CONSULTANT shall procure and maintain either a claims made or occurrence Errors and Omission liability insurance in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Further, if CONSULTANT maintains a claims-made policy, CONSULTANT shall provide written evidence of such insurance to the CITY for at least five (5) years after the completion of work performed under this Agreement.

7.1.5.2. If the performance of CONSULTANT's work or service under this Agreement relates to Information Technology or related services (examples include, but are not limited to computer programmers, hardware engineers, or other systems consultants), CONSULTANT shall procure and maintain a claims made Errors and Omission liability insurance, including Cyber Liability and Data Breach, in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

7.1.5.3. If the performance of CONSULTANT's work or service under this Agreement involves contact with minors, CONSULTANT shall procure and maintain Sexual Abuse and Molestation insurance in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

7.2. Endorsements. CONSULTANT shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

7.2.1. General Liability.

7.2.1.1. The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds;

7.2.1.2. the insurer waives the right of subrogation against the City of Morgan Hill and the CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers; and,

7.2.1.3. insurance shall be primary non-contributing.

7.2.2. Workers Compensation.

The insurer waives the right of subrogation against the City of Morgan Hill and the CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

7.3. Qualification of Insurers. All insurance required pursuant to this Agreement must be issued by a company licensed and admitted, or otherwise legally authorized to carry out insurance business in the State of California, and each insurer must have a current A.M. Best's financial strength rating of "A" or better and an financial size rating of "VII" or better.

7.4. Certificates. CONSULTANT shall furnish CITY of Morgan Hill with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to the CONSULTANT's agreement with the CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein

Certificate Holder address:

City of Morgan Hill
Attn: Risk Management
17575 Peak Avenue
Morgan Hill, CA 95037

8. Non-Liability of Officials and Employees of the CITY. No official or employee of CITY shall be personally liable for any default or liability under this Agreement.

9. Compliance with Law.

9.1. SERVICE PROVIDER and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. SERVICE PROVIDER and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.

9.2. Without limiting the provisions of Section 9.1 above, each worker performing work under this Agreement shall be paid at a rate not less than the prevailing wage as defined in Sections

1771 and 1774 of the Labor Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>. SERVICE PROVIDER shall post a copy of the applicable prevailing rates at the Worksite. Pursuant to Labor Code Section 1775, SERVICE PROVIDER and any Subcontractor shall forfeit to CITY as a penalty up to two hundred dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wage rate. SERVICE PROVIDER shall also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.

10. **Independent Contractor.** SERVICE PROVIDER is an independent contractor and not an agent or employee of CITY.

11. **Confidentiality.** All data, documents, or other information received by SERVICE PROVIDER from CITY or prepared in connection with SERVICE PROVIDER'S services under this Agreement are deemed confidential and shall not be disclosed to any third party by SERVICE PROVIDER without prior written consent by CITY.

12. **Conflict of Interest and Reporting.** SERVICE PROVIDER shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

13. **Notices.** All notices shall be personally delivered or mailed, via first class mail to the below listed address. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.

Address of SERVICE PROVIDER is as follows:

West Coast Arborists, Inc.
2220 E. Via Burton Street
Anaheim, CA 92806

Address of CITY is as follows:

Community Services Director	with a copy to:
City of Morgan Hill	City Clerk
17575 Peak Avenue	City of Morgan Hill
Morgan Hill, CA 95037	17575 Peak Avenue
	Morgan Hill, CA 95037

14. **Licenses, Permits and Fees.** SERVICE PROVIDER shall obtain a City of Morgan Hill Business License, all permits and licenses to the extent required by ordinances, codes and regulations of the federal, state and local government.

15. **Maintenance of Records.**

15.1. **Maintenance.** SERVICE PROVIDER shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to services provided under this Agreement. SERVICE PROVIDER shall maintain records for a period of at least 3 years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at

the end of the 3 year period, then SERVICE PROVIDER shall retain said records until such action is resolved.

15.2. Access to and Audit of Records. The CITY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the SERVICE PROVIDER and its subcontractors related to services under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the Parties to this Agreement may be subject, at the request of the CITY or as part of any audit of the CITY, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

15.3. Ownership of Work Product. All documents or other information developed or received by SERVICE PROVIDER for work performed under this Agreement shall be the property of CITY. SERVICE PROVIDER shall provide CITY with copies of these items upon demand or upon termination of this Agreement.

16. Familiarity with Work. By executing this Agreement, SERVICE PROVIDER represents that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should SERVICE PROVIDER discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at SERVICE PROVIDER'S risk, until written instructions are received from CITY.

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

18. No Assignment. Neither this Agreement nor any portion shall be assigned by SERVICE PROVIDER, without prior written consent of CITY.

19. Attorney Fees. In any legal action, dispute or arbitration arising out of or relating to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs and expenses incurred.

20. Defense and Indemnification.

20.1. Defense and Indemnification. SERVICE PROVIDER shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by SERVICE PROVIDER, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").

20.2. Exceptions. SERVICE PROVIDER is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence or willful misconduct of the CITY.

20.3. Not limited by insurance. The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMS alleged against an INDEMNITEE, regardless of whether any

insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by SERVICE PROVIDER.

20.4. Right to Offset. CITY shall have the right to offset against any compensation due SERVICE PROVIDER under this Agreement any amount due CITY from SERVICE PROVIDER as a result of SERVICE PROVIDER's failure to pay CITY promptly any indemnification arising under this Section (20) and any amount due CITY from SERVICE PROVIDER arising from SERVICE PROVIDER's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

20.5. Interpretation. This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of the SERVICE PROVIDER to indemnify the INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.

21. Entire Agreement; Modification; Conflicting Provisions. This Agreement constitutes the entire Agreement between the Parties and supersedes any previous agreements, oral or written. This Agreement may be modified or provisions waived only by a subsequent mutual written agreement executed by CITY and SERVICE PROVIDER. If the provisions contained in the main body of this Agreement conflict with any provision contained in an exhibit to this Agreement, the provisions of the main body of this Agreement shall govern and control over any provision contained in an exhibit to this Agreement.

22. Governing Law and Venue. This Agreement shall be construed in accordance with the laws of the State of California. This Agreement was entered into and is to be performed in the County of Santa Clara. Any action or dispute arising out of this Agreement shall only be brought in Santa Clara County.

23. Interpretation. This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties including, but not limited to, California Civil Code § 1654, the provisions of which are hereby waived. This Agreement shall be construed and interpreted in a neutral manner.

24. Preservation of Agreement. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected or invalidated.


25. **Authority to Execute.** Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

IN WITNESS THEREOF, these Parties have executed this Agreement on the day and year shown below.

AS SET FORTH IN CA. CORP. CODE § 313, TWO SIGNATURES ARE REQUIRED FOR CALIFORNIA CORPORATIONS:

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND
- (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

ATTEST:



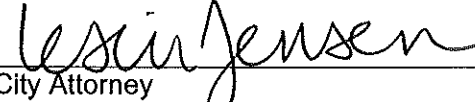
 City Clerk/Deputy City Clerk

for Michelle Wilson

 Print Name

Date: 7/16/15

APPROVED AS TO FORM:

for 


 City Attorney

Renee Gurza

 Print Name

Date: 07/16/15

CITY OF MORGAN HILL



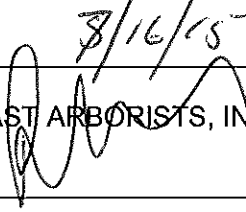
 City Manager

Steve Rymer

 Print Name

Date: 8/16/15

WEST COAST ARBORISTS, INC.




 By:

Title: Patrick Mahoney, President
 Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: 6/30/15



 By:

Title: Richard Mahoney, Assistant Secretary
 Print Name and Title of Signer.

If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer

Date: 6/30/15

**EXHIBIT A
SCOPE OF SERVICES**

RFP DOCUMENTS-SPECIAL PROVISIONS

**SECTION 2
SCOPE OF WORK**

2-1 Scope of Work. This work shall consist of pruning street trees and park trees for traffic and pedestrian clearance, tree health, removing trees as designated, stump removal, tree planting, staking and inventory of trees as well as leaving the work site in a neat, clean, and orderly condition upon completion of the work or at the end of the day, in the area as specified in these specifications and the special provisions. The Contractor will cease all pruning activities when the designated number of trees has been pruned. Regardless of size of the tree the price to prune will be the same for all grid and park trees. This work also includes scheduled crew pruning on a daily basis as well as emergency call outs, over and above the grid pruning. All green waste to be disposed of by the contractor and the cost to be included within the various bid items.

2-2 General Conditions. These general conditions which shall apply to this contract and shall be attached to the executed Maintenance Services Agreement. Contractor shall also comply with the International Society of Arboriculture Pruning Standards, latest revised edition of the Western Chapter, Standards for Nursery Stock by the American Association of Nurserymen and the American National Standards for tree care operations.

2-3 Estimated Annual Volume of Work. The estimated annual volume of work is \$150,000.

**SECTION 3
PRUNING SERVICES**

3-1 Types of Pruning Services.

3-1.1 Scheduled Service. The Contractor will furnish scheduled tree pruning service (complete trim) for trees designated by the City at the execution of the agreement. After executing of the agreement, City may add or delete other trees within the specified grids or within designated parks, at the same bid price.

3-1.2 Unscheduled Service. The Contractor will also provide, if required by the City, unscheduled tree pruning. The City will provide at least 24 hour notice for unscheduled pruning. Crew and equipment shall consist of 2 workers, 1 of which is an arborist, truck, and chipper plus all necessary pruning tools. The City may increase or decrease the quantity of these services at the same bid price.

3-1.3 Emergency Service. The Contractor will also respond to emergency calls for service at any and all times day or night during the term of this agreement within (3) hours of being notified. Crew and equipment shall consist of 2 workers, 1 of which is an arborist, truck, and chipper, plus all necessary pruning tools.

3-2 Work Schedule. As soon as notified of the award of the contract, the Contractor shall perform the activities as outlined by the Director of Community Services Tree Trimming/Maintenance Contract work schedule. Said schedule must show the dates of the expected start and completion of

the various items of the contract work. During a scheduling conference between the Contractor and the Director of Community Services, the work schedule will be discussed and modified, if necessary, by mutual agreement. The Contractor will cease all grid and park tree pruning once the designated number of trees has been pruned. 13

3-3 Temporary Stoppage of Tree Trimming/Maintenance Activities. The Director of Community Services shall have the authority to suspend the contract work, wholly or in part, for such a period of time as the Director may deem necessary, due to unsuitable weather, or to such other conditions as the Director considers unfavorable for the proper prosecution of the work, or for such time as the Director may deem necessary due to failure on the part of the Contractor or contractor's workers to carry out orders or to perform any of the requirements of the contract. The Contractor shall immediately comply with such an order from the Director of Community Services and shall not resume operations until so ordered in writing.

3-4 Extra Work . Extra work, when ordered in writing by the Director of Community Services and accepted by the Contractor, shall be paid for under written work order in accordance with the terms therein provided. Payment for extra work will be made at the unit price or lump sum previously agreed upon between the Contractor and the Director of Community Services. All extra work shall be adjusted daily upon report sheets prepared for the Director of Community Services, furnished by the Contractor and signed by both parties, and said daily report shall be considered thereafter the true records of extra work done.

3-5 Authority of the Director of Community Services. The Director of Community Services shall decide any and all questions that may arise as to the quality and acceptability of materials furnished and work performed as to the manner of performance and rate of progress of the work, and any and all questions which may arise as to the interpretation of the plans and specifications. The Director of Community Services shall likewise decide any and all questions as to the acceptable fulfillment of the contract on the part of the Contractor, and all questions as to claims and compensations. The decision of the Director of Community Services shall be final, and he shall have relative authority to enforce and make effective such decisions and actions as the Contractor fails to carry out promptly. For the purposes of routine and normal supervision and coordination of work the Director of Public Work is the City's authorized representative for all work within the scope of this agreement.

3-6 Interpretation of Specifications. Should it appear that the work to be done or any matter relative thereto, is not sufficiently detailed or explained in the specifications, the Contractor shall request the Director of Community Services for such further explanation as may be necessary, and shall conform to such explanation or interpretation as part of the contract, so far as may be consistent with the intent of the original specifications. In the event or doubt of questions relative to the true meaning of the specifications, reference shall be made to the Board of Directors, whose decision thereon shall be final.

3-7 Removal of Defective or Unauthorized Work . It is the intent of the specifications that only first-class work, materials and workmanship will be acceptable. All work which is defective in its construction or deficient in any of the requirements of the specifications shall be remedied, or removed and replaced by the Contractor in an acceptable manner, and no compensation will be allowed for such correction. Any work done beyond the lines shown on the plans or established by the Director of Community Services, or any extra work done without written authority will be considered as unauthorized and will not be paid for. Upon failure on the part of the Contractor to comply forthwith with any order of the Director of Community Services made under the provisions of this paragraph, the Director of Community Services shall have authority to cause defective work to be remedied or removed and replaced and unauthorized work to be removed and to deduct the

costs thereof from any moneys due or to become due the Contractor. Damage done to trees as a result of pruning practices not in compliance with the specifications shall result in replacement of the tree by the contractor with no additional compensation. Similar size tree will be provided and planted (up to 48" box).

3-8 Sound and Vibration Control Requirements. The contractor shall comply with all local sound control and noise level rules, regulations and ordinances. No internal combustion engine shall operate on the project without a muffler of the type recommended by the manufacturer. Should any muffler or other control device sustain damage, the Contractor shall promptly remove the equipment and shall not return said equipment to the job until the device is repaired or replaced. Said noise and vibration level requirements shall apply to all equipment on the job or related to the job, including, but not limited to truck, transit mixers or transit equipment that may or may not be owned by the Contractor.

3-9 Air Pollution Control. Contractor shall comply with all air pollution control rules, regulations, ordinances and statues. All containers of paint, thinner, during compound, solvent or liquid asphalt shall be labeled to indicate the contents, fully complying with the applicable material requirements.

3-10 Cleaning up. Upon completion of the scheduled work or at the end of the day, whatever occurs first, the Contractor shall clean all the streets and grounds occupied by contractor in connection with the project, of all rubbish, debris, excess material, temporary structures and equipment, leaving the entire site of the work in a neat and presentable condition.

3-11 Public Convenience and Safety.

A. Attention is directed to Section 7-10 of the Standard Specifications and the Manual of Warning Signs, Lights and Devices for Use in Performing Work upon Highways, published by the California Department of Transportation.

Full compensation for conforming to the requirements of Section 7-10 of the Standard Specifications, the above referenced Caltrans Manual and these Special Provisions not otherwise provided for, shall be considered as included in the prices paid for the various contract items of work and not additional compensation will be allowed thereof.

B. Warning and Protection Devices: The Contractor will be responsible for providing placing and maintaining approved signs, barricades, pedestals, flashers, delineators, fences, barriers and flagmen where needed, and other necessary facilities in the vicinity of the maintenance area and where any dangerous conditions may be encountered as a result thereof, for the protection of the motoring public. The Contractor will not be allowed to proceed with the work until such time that a sufficient number of these protection devices have been delivered to the project site. Where parked vehicles are likely to interfere with the proposed work, the Contractor will supply and post at no less than 200' intervals on each side of the street "Temporary No Parking" signs 48 hours before the start of construction and to report the time of posting to the City's Police Department for the purpose of establishing "Tow Away" provisions. The Contractor shall be responsible for the removal of the temporary signs upon the completion of the Work. All signs shall be kept graffiti free at all times. Should the Contractor appear neglectful in furnishing warning and protection devices as outlines above, the Traffic Director of Community Services may direct attention to the existence of a hazard and the necessity of additional or different measures which shall be furnished and installed by the Contractor at Contractor's own expense, free of any cost to the City. Should the Contractor refuse or fail to act in a timely manner to correct a hazardous condition, the Traffic Director of Community Services may direct City forces to provide the necessary protective and warning devices as deemed appropriate by the Director of Community Services.

The cost accrued by the City in connection therewith will be deducted from the Contractor's contract payment. Any action or inaction on the part of the City in directing attention to the inadequacy of warning and protective measures or in providing additional protective warning devices shall not relieve the Contractor from responsibility for public safety or abrogate Contractor's obligation to furnish and pay for these devices.

The Contractor shall submit any and all work schedules and/or traffic control plans to the Director of Community Services for approval as needed.

3-12 Construction Yard. It shall be the Contractor's responsibility to locate any storage sites for materials and equipment needed and such sites either located on public or private property must be approved in advance by the Director of Community Services.

When storage sites are to be located upon private property, the Contractor shall be required to submit to the Director of Community Services, written approval from the record owner authorizing the used of the property by the Contractor.

3-13 Equipment Requirements. Prior to beginning of contractor operations, the Contractor shall furnish a current list indicating the equipment to be used for the project. All equipment shall be in safe and working condition. Prior to the beginning of aerial operations, the Contractor shall furnish, at no cost to the City, current certification for all aerial devices to be used in the completion of contract operations.

3-14 Preservation of Property. Existing improvements in areas adjoining the property whereon tree pruning work is being performed shall be protected from injury or damage resulting from operations of the Contractor.

3-15 Emergency Work

A. Emergency response - The contractor shall have the capability to receive and to respond immediately to calls of an emergency nature during normal working hours and during hours outside of normal working hours. Calls of an emergency nature received by the City shall be referred to the contractor for immediate disposition.

B. Emergency Work - In the event that emergency work is required, the Contractor shall notify the Director of Community Services or representative by telephone in advance before any emergency work is commenced. Non-emergency maintenance work requires written approval before the work is performed.

C. Emergency Personnel - In situations involving an emergency after normal work hours, the Contractor shall dispatch qualified personnel and equipment to reach the site within three (3) hours. Contractor's vehicle shall carry sufficient equipment to effect safe control of traffic. When the Contractor arrives at the site, the Contractor shall set up traffic warning and control devices, if deemed necessary, and proceed to accomplish the necessary work. The Contractor shall supply the City with name(s) and telephone number(s) of responsible person(s) representing the Contractor for twenty-four (24) hour emergency response. The above mentioned information shall remain current at all times. Any changes shall be forwarded to the City in writing within twelve (12) hours of any such change. Failure to maintain emergency information current shall result in a \$200.00 penalty for each occurrence.

D. Contractor's Response - The Contractor must maintain telephone service so that all calls from the City to the Contractor have no toll charge. Failure to respond by telephone or in person within one (1) hour of the City's attempt to contact the Contractor's representative may result in a \$200.00

penalty per incident. Failure to respond at any level will subject the Contractor to any primary or secondary costs arising from said emergencies.

E. Complaint Requests - The contractor must correct all complaint requests within twenty-four (24) hours. Failure to respond/correct as requested may result in termination of the contract.

3-16 Pruning Standards. All trimming/maintenance work shall be accordance with pruning standards as established by the latest edition of the International Society of Arboriculture Western Chapter. In all cases, the Director of Community Services shall have complete and sole discretion in determining conformance and acceptability of trees trimmed by the contractor. Trimmed trees rejected by the Director of Community Services shall be excluded from payment, and may need to be replaced per Section 3-7.

A. All trees, large and small, shall be given a complete trim by grid and park area (see specifications for "Complete Trim").

B. Contractor shall comply with Standards of CAL OSHA and the American National Standard Institute Safety Requirements. 17

C. The Contractor shall exercise precautions as necessary when working adjacent to aerial and subterranean utilities. In the event that aerial utility wires present a hazard to the Contractor's personnel or others near the work site, work is to immediately cease and the appropriate utility company notified. Work shall then commence in accordance with instructions from the utility company. In the event that work causes excavation, contractor is responsible for appropriate notification of Underground Service Alert (USA).

D. No hooks, gaffs, spurs or climbers will be used by anyone employed for such trimming. Any vine plant growing on trees shall be removed at ground level.

E. Final pruning cuts shall be made without leaving stubs. Cuts shall be made in a manner to promote fast callous growth.

F. Unless otherwise approved, trees are to be trimmed block by block, subject to the instructions of the Director of Community Services or authorized representative.

G. Contractor shall maintain at least one (1) English speaking arborist, on-site, at all times.

H. When trimming fungus, disease or fire blight infected limbs or fronds, all pruning tools shall be cleaned after each cut with alcohol or bleach.

I. Topping shall not be done without prior approval of the City.

3-17 Specifications for Complete Trim

A. Low branches overhanging streets shall be removed, where practical, to a minimum height above the street grade to fifteen feet (15'). Low branches overhanging sidewalks and parkway shall be removed to a minimum height of seven feet (7') and without detracting from the natural shape of the tree.

B. Shorten the length of limbs which extend beyond the natural perimeter of an otherwise symmetrical form.

C. Prune end branches to lighten end weight where such overburden appears likely to cause breakage of limbs. Remove cross limbs, water sprouts and suckers. Perform crown reduction to ISA Specifications to approximately a 25 percent reduction in total crown size.

D. All trees on which vines are growing shall have said vines removed. Vine tendrils shall be removed in a manner which will not injure trees or cause scaring of low branches and tree trunks.

3-18 Specifications for Removals

3-18.1 Specifications for Complete Tree Removal 18

A. Removal of entire tree, stump remaining shall be no higher than four (4) inches above soil grade and shall be removed within 24 hours after tree removal per the unit bid price contained within "Complete Tree Removal."

B. Work shall begin within 10 days after each request and be diligently pursued until completion.

C. Contractor shall make all arrangements necessary to have power or utility lines temporarily disconnected if necessary for the safe removal of the tree.

D. When the removal requires special or additional means, there shall be no additional units or overall cost to the City without the authorization of the Director of Community Services.

3-18.2 Tree Stump Removal

A. Type of Work: Provide complete tree stump and surface root removal.

B. Specifications for stump and surface root removal:

1. Removal of entire stump or grinding to a depth of 12 inches below average soil grade or deeper if specified by the Director of Community Services.

2. Removal of all lateral surface roots to a depth of 8 inches (8") below grade.

a) When sidewalk is present, remove all surface roots between the curb and sidewalk.

b) When no sidewalk is present, remove surface roots.

c) Backfill material shall be compacted to provide for minimal settling. It shall consist of an equal mixture of soil and stumped material which shall be three (3) inches above grade to provide for any soil settlement.

3-19 Climbing Techniques. Climbing and pruning practices should not injure the tree except for the pruning cuts. Climbing spurs shall not be used when pruning a tree, unless the branches are more than the throw-line distance apart. In such cases, the spurs should be removed once the climber is tied in. Spurs may be used to reach an injured climber and when removing tree.

Rope injury to thin barked trees from loading out heavy limbs should be avoided by installing a block in the tree to carry the load.

3-20 Competing Plant Materials. Competing plant material or plant material clinging to trunk, such as ivy, volunteer trees, or woody shrubs shall be removed to provide a clear 19 area of at least 18", but not more than 24" around the trunk of the tree, and the root crown.

3-21 Tree Specifications. If applicable, each replacement tree shall be selected in accordance with the standards set forth in the American Standard for Nursery Stock.

3-22 Tree Stakes and Ties. If applicable, tree stakes shall be 3" diameter pressure treated wood poles. Tree ties shall be "VIT" twist brace ties in 18" or 24" lengths.

3-23 Disposal of Material. Excavation material determined as unsuitable fill material by the Director of Community Services shall become the property of the contractor and shall be legally disposed of outside the site of the work by and at the expense of the Contractor. The Contractor is required to recycle all green waste material generated from its operations, unless the Director of Community Services desires the material to be stock piled. Green waste receipts are required and are to be submitted for material.

3-24 Public Convenience. Contractor shall perform all tree trimming/maintenance operations in such a manner as to cause as little inconvenience as possible to abutting property owners. Convenient access to driveways, houses and buildings along the line of the work shall be maintained at least each morning and evening and temporary approaches to crossings or intersecting streets shall be provided and kept in good condition.

3-25 Inventory. The Contractor will collect and maintain an entire tree inventory as part of this Agreement. The data will be collected by address and GPS coordinate and include tree species, land type, diameter at breast height, crown height, work information, botanical and common names, and other relevant information. Areas to be collected will include, but not limited to, Assessment Districts, Parks, Right-of-Ways, and City-owned Facilities. Inventory information shall be available on-line to City staff and must allow for the production of reports on work histories and the printing of reports from the system. Upon request, data files shall be made available to the City in a standard format for integration with the City's GIS system and Microsoft Excel.

3-26 Quality Control Program. Contractor shall provide the City with a copy of their quality control program. This program shall address how the contractor will address citizen concerns; communicate with the City and contractor's employees. This program shall also include the contractor's methods for ensuring that work is completed in a satisfactory manner and that adequate follow-up work is accomplished.

3-27 Pictures. Contractor is to supply representative of "Before and After" trimming pictures that are suitable for reproduction when requested by the City.

3-28 Tree Planting Contractor to follow the guidelines as outlined in the City's Standard Tree Planting and Staking (L-17) standards and Tree Root Barrier (L-18) standards.

Exhibit B

Schedule of Compensation Rates

ITEM	DESCRIPTION	REFERENCE	UNIT	UNIT PRICE
1.	Residential Grid and Park Pruning (small, medium, and large trees)	3-16, 3-17	Per tree	\$64.00
2.	Full Trim Based on Service or Special Requests			
A	0" – 6" dbh	3-17	Per tree	\$45.00
B	7" – 12" dbh	3-17	Per tree	\$79.00
C	13" – 18" dbh	3-17	Per tree	\$119.00
D	19" – 24" dbh	3-17	Per tree	\$229.00
E	25" and over dbh	3-17	Per tree	\$329.00
3 – A	Complete Tree / Removal – Under 36" (including stump/roots)	3-18.1	Per dbh	\$27.00
3 – B	Complete Tree / Removal – Over 36" (including stump/roots)	3-18.1	Per dbh	\$39.00
4	Stump Removal (including roots)	3-18.2	Per diameter inch	\$14.00
5 – A	Tree Planting – 15 gallon tree with linear root barrier	3-28	Per tree	\$189.00
5 – B	Tree Planting – 15 gallon tree without root barrier	3-28	Per tree	\$159.00
5 – C	Tree Planting – 24 inch box tree with linear root barrier	3-28	Per tree	\$309.00
6 - A	Tree Inventory – with GPS	3-25	Per tree	\$3.00
6 – B	Tree Inventory – without GPS	3-25	Per tree	\$2.00
7	Evaluations by certified arborist with verbal recommendations		Hourly	\$119.00
8.	Tree Watering (per half day)			\$337.50
9	Crew Rental			
A	3 crew members with truck & equipment (regular time)	3-13	Hourly	\$207.00
B	3 crew members with truck & equipment (emergency response)	3-13, 3-15	Hourly	\$297.00

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

All work shall be planned in advance on a schedule to be agreed upon by the City and Contractor.