



CITY OF RANCHO CUCAMONGA
PUBLIC WORKS SERVICES DEPARTMENT

City of Rancho Cucamonga
CONTRACT NUMBER
19-187

CONTRACT

CITYWIDE TREE MAINTENANCE

AWARD DATE:

Wednesday, December 4, 2019

**AGREEMENT FOR
PROFESSIONAL SERVICES**

THIS AGREEMENT is made and entered into this 4th day of December 2019, by and between the City of Rancho Cucamonga, a municipal corporation (“City”) and West Coast Arborists, Inc., a Tree Service Contractor (“Contractor”).

RECITALS

- A. City has heretofore issued its request for proposals to perform the following services: Citywide Tree Maintenance Services (RFP 19/20-007) (“the Project”).
- B. Contractor has submitted a proposal to perform the services described in Recital “A”, above, necessary to complete the Project.
- C. City desires to engage Contractor to complete the Project in the manner set forth and more fully described herein.
- D. Contractor represents that it is fully qualified and licensed under the laws of the State of California to perform the services contemplated by this Agreement in a good and professional manner.

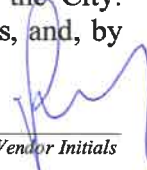
AGREEMENT

NOW, THEREFORE, in consideration of performance by the parties of the mutual promises, covenants, and conditions herein contained, the parties hereto agree as follows:

1. Contractor’s Services.

1.1 Scope and Level of Services. Subject to the terms and conditions set forth in this Agreement, City hereby engages Contractor to perform all services described in Recitals “A” and “B” above, including, but not limited to pruning, removals, stump grinding, planting, staking, pest control, fertilizing, watering, emergency response, arborist services, inventory and banner hanging work; all as more fully set forth in RFP 19/20-007, attached hereto as Exhibit A Contractor’s proposal, dated July 23, 2019, attached hereto as Exhibit B, and Unit Costs attached hereto as Exhibit C, hereinafter entitled “Scope of Work”, and incorporated by reference herein. The nature, scope, and level of the services required to be performed by Contractor are set forth in the Scope of Work and are referred to herein as “the Services.” In the event of any inconsistencies between the Scope of Work and this Agreement, the terms and provisions of this Agreement shall control.

1.2 Revisions to Scope of Work. Upon request of the City the Contractor will promptly meet with City staff to discuss any revisions to the Project desired by the City. Contractor agrees that the Scope of Work may be amended based upon said meetings, and, by


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amendment to this Agreement, the parties may agree on a revision or revisions to Contractor's compensation based thereon. A revision pursuant to this Section that does not increase the total cost payable to Contractor by more than ten percent (10%) of the total compensation specified in Section 3, may be approved in writing by City's Manager without amendment.

1.3 Time for Performance. Contractor shall perform all services under this Agreement in a timely, regular basis consistent with industry standards for professional skill and care, and in accordance with any schedule of performance set forth in the Scope of Work, or as set forth in a "Schedule of Performance", if such Schedule is attached hereto as Exhibit "N/A".

1.4 Standard of Care. As a material inducement to City to enter into this Agreement, Contractor hereby represents that it has the experience necessary to undertake the services to be provided. In light of such status and experience, Contractor hereby covenants that it shall follow the customary professional standards in performing the Services.

1.5 Familiarity with Services. By executing this Agreement, Contractor represents that, to the extent required by the standard of practice, Contractor (a) has investigated and considered the scope of services to be performed, (b) has carefully considered how the services should be performed, and (c) understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. Contractor represents that Contractor, to the extent required by the standard of practice, has investigated any areas of work, as applicable, and is reasonably acquainted with the conditions therein. Should Contractor discover any latent or unknown conditions, which will materially affect the performance of services, Contractor shall immediately inform City of such fact and shall not proceed except at Contractor's risk until written instructions are received from the City Representative.

2. Term of Agreement. The term of this Agreement shall become effective as of the date of the mutual execution by way of both party's signature (the "Effective Date") through June 30, 2021. No work shall be conducted; service or goods will not be provided until this Agreement has been executed and requirements have been fulfilled.

Parties to this Agreement shall have the option to renew in one (1) year increments to a total of six (6) additional years, unless sooner terminated as provided in Section 14 herein. Prior to entering into an agreement for an annual extension the Contractor may request a Cost of living Increase in an amount not to exceed the increase in the December index of the Consumer Price Index All Urban Consumers for the Riverside-San Bernardino-Ontario, California area published by the U.S. Department of Labor, Bureau of Labor Statistics. Options to renew are contingent upon the City Manager's approval, subject to pricing review, and in accordance to all Terms and Conditions stated herein unless otherwise provided in writing by the City.

3. Compensation.

3.1 Compensation. City shall compensate Contractor as set forth in Exhibit C, provided, however, that full, total and complete amount payable to Contractor shall not


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exceed \$600,000 (Six Hundred Thousand Dollars) for services January 1, 2020 through June 30, 2020 and \$1,200,000 (One Million, Two Hundred Thousand Dollars) for services July 1, 2020 through June 30, 2021, including all out of pocket expenses, unless additional compensation is approved by the City Manager or City Council. City shall not withhold any federal, state or other taxes, or other deductions. However, City shall withhold not more than ten percent (10%) of any invoice amount pending receipt of any deliverables reflected in such invoice. Under no circumstance shall Contractor be entitled to compensation for services not yet satisfactorily performed.

The parties further agree that compensation may be adjusted in accordance with Section 1.2 to reflect subsequent changes to the Scope of Services. City shall compensate Contractor for any authorized extra services as set forth in Exhibit C.

4. Method of Payment.

4.1 Invoices. Contractor shall submit to City monthly invoices for the Services performed pursuant to this Agreement. The invoices shall describe in detail the Services rendered during the period and shall separately describe any authorized extra services. Any invoice claiming compensation for extra services shall include appropriate documentation of prior authorization of such services. All invoices shall be remitted to the City of Rancho Cucamonga, California.

4.2 City shall review such invoices and notify Contractor in writing within ten (10) business days of any disputed amounts.

4.3 City shall pay all undisputed portions of the invoice within thirty (30) calendar days after receipt of the invoice up to the not-to-exceed amounts set forth in Section 3.

4.4 All records, invoices, time cards, cost control sheets and other records maintained by Contractor relating to services hereunder shall be available for review and audit by the City.

5. Representatives.

5.1 City Representative. For the purposes of this Agreement, the contract administrator and City representative shall be Lucas Mitchell, Maintenance Supervisor, or such other person as designated in writing by the City ("City Representative"). It shall be Contractor's responsibility to assure that the City Representative is kept informed of the progress of the performance of the services, and Contractor shall refer any decisions that must be made by City to the City Representative. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the City Representative.

5.2 Contractor Representative. For the purposes of this Agreement, Patrick Mahoney, President, is hereby designated as the principal and representative of Contractor


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authorized to act in its behalf with respect to the services specified herein and make all decisions in connection therewith ("Contractor's Representative"). It is expressly understood that the experience, knowledge, capability and reputation of the Contractor's Representative were a substantial inducement for City to enter into this Agreement. Therefore, the Contractor's Representative shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. Contractor may not change the Responsible Principal without the prior written approval of City.

6. Contractor's Personnel.

6.1 All Services shall be performed by Contractor or under Contractor's direct supervision, and all personnel shall possess the qualifications, permits, and licenses required by State and local law to perform such Services, including, without limitation, a City business license as required by the City's Municipal Code.

6.2 Contractor shall be solely responsible for the satisfactory work performance of all personnel engaged in performing the Services and compliance with the standard of care set forth in Section 1.4.

6.3 Contractor shall be responsible for payment of all employees' and subcontractors' wages and benefits, and shall comply with all requirements pertaining to employer's liability, workers' compensation, unemployment insurance, and Social Security. By its execution of this Agreement, Contractor certifies that it is aware of the provisions of Section 3700 of the California Labor Code that require every employer to be insured against liability for Worker's 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.

6.4 Contractor shall indemnify, defend and hold harmless City and its elected officials, officers and employees, servants, designated volunteers, and agents serving as independent contractors in the role of City officials, from any and all liability, damages, claims, costs and expenses of any nature to the extent arising from Contractor's violations of personnel practices and/or any violation of the California Labor Code. City shall have the right to offset against the amount of any fees due to Contractor under this Agreement any amount due to City from Contractor as a result of Contractor's failure to promptly pay to City any reimbursement or indemnification arising under this Section 6.

7. Ownership of Work Product.

7.1 Ownership. All documents, ideas, concepts, electronic files, drawings, photographs and any and all other writings, including drafts thereof, prepared, created or provided by Contractor in the course of performing the Services, including any and all intellectual and proprietary rights arising from the creation of the same (collectively, "Work Product"), are considered to be "works made for hire" for the benefit of the City. Upon payment being made, and provided Contractor is not in breach of this Agreement, all Work Product shall


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be and remain the property of City without restriction or limitation upon its use or dissemination by City. Basic survey notes, sketches, charts, computations and similar data prepared or obtained by Contractor under this Agreement shall, upon request, be made available to City. None of the Work Product shall be the subject of any common law or statutory copyright or copyright application by Contractor. In the event of the return of any of the Work Product to Contractor or its representative, Contractor shall be responsible for its safe return to City. Under no circumstances shall Contractor fail to deliver any draft or final designs, plans, drawings, reports or specifications to City upon written demand by City for their delivery, notwithstanding any disputes between Contractor and City concerning payment, performance of the contract, or otherwise. This covenant shall survive the termination of this Agreement. City's reuse of the Work Product for any purpose other than the Project, shall be at City's sole risk.

7.2. Assignment of Intellectual Property Interests: Upon execution of this Agreement and to the extent not otherwise conveyed to City by Section 7.1, above, the Contractor shall be deemed to grant and assign to City, and shall require all of its subcontractors to assign to City, all ownership rights, and all common law and statutory copyrights, trademarks, and other intellectual and proprietary property rights relating to the Work Product and the Project itself, and Contractor shall disclaim and retain no rights whatsoever as to any of the Work Product, to the maximum extent permitted by law. City shall be entitled to utilize the Work Product for any and all purposes, including but not limited to constructing, using, maintaining, altering, adding to, restoring, rebuilding and publicizing the Project or any aspect of the Project.

7.3 Title to Intellectual Property. Contractor warrants and represents that it has secured all necessary licenses, consents or approvals to use any instrumentality, thing or component as to which any intellectual property right exists, including computer software, used in the rendering of the Services and the production of the Work Product and/or materials produced under this Agreement, and that City has full legal title to and the right to reproduce any of the Work Product. Contractor shall defend, indemnify and hold City, and its elected officials, officers, employees, servants, attorneys, designated volunteers, and agents serving as independent contractors in the role of City officials, harmless from any loss, claim or liability in any way related to a claim that City's use is violating federal, state or local laws, or any contractual provisions, relating to trade names, licenses, franchises, patents or other means of protecting intellectual property rights and/or interests in products or inventions. Contractor shall bear all costs arising from the use of patented, copyrighted, trade secret or trademarked documents, materials, software, equipment, devices or processes used or incorporated in the Services and materials produced under this Agreement. In the event City's use of any of the Work Product is held to constitute an infringement and any use thereof is enjoined, Contractor, at its expense, shall: (a) secure for City the right to continue using the Work Product by suspension of any injunction or by procuring a license or licenses for City; or (b) modify the Work Product so that it becomes non-infringing. This covenant shall survive the termination of this Agreement.

8. Status as Independent Contractor. Contractor is, and shall at all times remain as to City, a wholly independent contractor. Contractor shall have no power to incur any debt,


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obligation, or liability on behalf of City or otherwise act as an agent of City. Neither City nor any of its agents shall have control over the conduct of Contractor or any of Contractor's employees, except as set forth in this Agreement. Contractor shall not, at any time, or in any manner, represent that it or any of its officers, agents or employees are in any manner employees of City. Contractor shall pay all required taxes on amounts paid to Contractor under this Agreement, and to defend, indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Contractor shall fully comply with the workers' compensation law regarding Contractor and Contractor's employees

9. Confidentiality. Contractor may have access to financial, accounting, statistical, and personnel data of individuals and City employees. Contractor covenants that all data, documents, discussion, or other information developed or received by Contractor or provided for performance of this Agreement are confidential and shall not be disclosed by Contractor without prior written authorization by City. City shall grant such authorization if applicable law requires disclosure. All City data shall be returned to City upon the termination of this Agreement. Contractor's covenant under this Section shall survive the termination of this Agreement. This provision shall not apply to information in whatever form that is in the public domain, nor shall it restrict the Contractor from giving notices required by law or complying with an order to provide information or data when such an order is issued by a court, administrative agency or other legitimate authority, or if disclosure is otherwise permitted by law and reasonably necessary for the Contractor to defend itself from any legal action or claim.

10. Conflict of Interest.

10.1 Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the Services, or which would conflict in any manner with the performance of the Services. Contractor further covenants that, in performance of this Agreement, no person having any such interest shall be employed by it. Furthermore, Contractor shall avoid the appearance of having any interest, which would conflict in any manner with the performance of the Services. Contractor shall not accept any employment or representation during the term of this Agreement which is or may likely make Contractor "financially interested" (as provided in California Government Code §§1090 and 87100) in any decision made by City on any matter in connection with which Contractor has been retained.

10.2 Contractor further represents that it has not employed or retained any person or entity, other than a *bona fide* employee working exclusively for Contractor, to solicit or obtain this Agreement. Contractor has not paid or agreed to pay any person or entity, other than a *bona fide* employee working exclusively for Contractor, any fee, commission, gift, percentage, or any other consideration contingent upon the execution of this Agreement. Upon any breach or violation of this warranty, City shall have the right, at its sole and absolute discretion, to terminate this Agreement without further liability, or to deduct from any sums payable to Contractor hereunder the full amount or value of any such fee, commission, percentage or gift.


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10.3 Contractor has no knowledge that any officer or employee of City has any interest, whether contractual, noncontractual, financial, proprietary, or otherwise, in this transaction or in the business of Contractor, and that if any such interest comes to the knowledge of Contractor at any time during the term of this Agreement, Contractor shall immediately make a complete, written disclosure of such interest to City, even if such interest would not be deemed a prohibited “conflict of interest” under applicable laws as described in subsection 10.1.

11. Indemnification.

11.1 To the maximum extent permitted by law, the Contractor shall defend, indemnify and hold the City, and its elected officials, officers, employees, servants, volunteers, and agents serving as independent contractors in the role of City officials, (collectively, “Indemnitees”), free and harmless with respect to any and all damages, liabilities, losses, reasonable defense costs or expenses (collectively, “Claims”), including but not limited to Claims relating to death or injury to any person and injury to any property, which arise out of, pertain to, or relate to the acts, omissions, activities or operations of Contractor or any of its officers, employees, subcontractors, Contractors, or agents in the performance of this Agreement. Contractor shall defend Indemnitees in any action or actions filed in connection with any such Claims with counsel of City’s choice, and shall pay all costs and expenses, including actual attorney’s fees and experts’ costs incurred in connection with such defense. The indemnification obligation herein shall not in any way be limited by the insurance obligations contained in this Agreement provided, however, that the Contractor shall have no obligation to indemnify for Claims arising out of the sole negligence or willful misconduct of any of the Indemnitees.

11.2 Nonwaiver of Rights. Indemnitees do not, and shall not, waive any rights that they may possess against Contractor because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement.

11.3 Waiver of Right of Subrogation. Except as otherwise expressly provided in this Agreement, Contractor, on behalf of itself and all parties claiming under or through it, hereby waives all rights of subrogation against the Indemnitees, while acting within the scope of their duties, from all claims, losses and liabilities arising out of or incident to activities or operations performed by or on behalf of the Contractor.

11.4 Survival. The provisions of this Section 11 shall survive the termination of the Agreement and are in addition to any other rights or remedies which Indemnitees may have under the law. Payment is not required as a condition precedent to an Indemnitee’s right to recover under this indemnity provision, and an entry of judgment against Contractor shall be conclusive in favor of the Indemnitee’s right to recover under this indemnity provision.

12. Insurance.


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12.1 Liability Insurance. Contractor shall procure and maintain in full force and effect for the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the services hereunder by Contractor, and/or its agents, representatives, employees or subcontractors.

12.2 Minimum Scope of Insurance. Unless otherwise approved by City, coverage shall be at least as broad as:

- (1) Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
- (2) Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
- (3) Worker's Compensation insurance as required by the State of California, and Employer's Liability Insurance.

12.3 Minimum Limits of Insurance. Contractor shall maintain limits no less than:

- (1) Commercial General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. Commercial General Liability Insurance or other form with a general aggregate limit shall apply separately to this Agreement or the general limit shall be twice the required occurrence limit.
- (2) Automobile Liability: \$2,000,000 per accident for bodily injury and property damage.
- (3) Employer's Liability: \$1,000,000 per accident and in the aggregate for bodily injury or disease and Workers' Compensation Insurance in the amount required by law.
- (4) The Insurance obligations under this Agreement shall be the greater of (i) the Insurance coverages and limits carried by the Contractor; or (ii) the minimum Insurance coverages and limits shown in this Agreement. Any insurance proceeds in excess of the specified limits and coverage required which are applicable to a given loss, shall be available to the City. No representation is made that the minimum Insurance requirements of this Agreement are sufficient to cover the obligations of the Contractor under this agreement.


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12.4 Deductibles and Self-Insured Retentions. Any deductibles or self- insured retentions must be declared to and approved by the City and shall not reduce the limits of coverage. City reserves the right to obtain a full certified copy of any required insurance policy and endorsements.

12.5 Other Insurance Provisions.

- (1) The commercial general liability and automobile liability policies are to contain the following provisions on a separate additionally insured endorsement naming the City, its officers, officials, employees, designated volunteers and agents serving as independent contractors in the role of City officials, as additional insureds as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, occupied or used by Contractor; and/or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no limitations on the scope of protection afforded to City, its officers, officials, employees, designated volunteers or agents serving as independent contractors in the role of City officials which are not also limitations applicable to the named insured.
- (2) For any claims related to this Agreement, Contractor's insurance coverage shall be primary insurance as respects City, its officers, officials, employees, designated volunteers and agents serving as independent contractors in the role of City officials. Any insurance or self-insurance maintained by City, its officers, officials, employees, designated volunteers or agents serving as independent contractors in the role of City officials shall be in excess of Contractor's insurance and shall not contribute with it.
- (3) Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (4) Contractor shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required polices are reduced; (3) or the deductible or self-insured retention is increased. In the event of any cancellation or reduction in coverage or limits of any insurance, Contractor shall forthwith obtain and submit proof of substitute insurance. Should Contractor fail to immediately procure other insurance, as specified, to substitute for any canceled policy, the City may procure such insurance at Contractor's sole cost and expense.


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- (5) Each insurance policy required by this clause shall expressly waive the insurer's right of subrogation against City, its elected officials, officers, employees, servants, attorneys, designated volunteers, and agents serving as independent contractors in the role of City officials.
- (6) Each policy shall be issued by an insurance company approved in writing by City, which is admitted and licensed to do business in the State of California and which is rated A:VII or better according to the most recent A.M. Best Co. Rating Guide.
- (7) Each policy shall specify that any failure to comply with reporting or other provisions of the required policy, including breaches of warranty, shall not affect the coverage required to be provided.
- (8) Each policy shall specify that any and all costs of adjusting and/or defending any claim against any insured, including court costs and attorneys' fees, shall be paid in addition to and shall not deplete any policy limits.
- (9) Contractor shall provide any and all other insurance, endorsements, or exclusions as required by the City in any request for proposals applicable to this Agreement.

12.6 Evidence of coverage. Prior to commencing performance under this Agreement, the Contractor shall furnish the City with certificates and original endorsements, or copies of each required policy, effecting and evidencing the insurance coverage required by this Agreement including (1) Additional Insured Endorsement(s), (2) Worker's Compensation waiver of subrogation endorsement, and (3) General liability declarations or endorsement page listing all policy endorsements. The endorsements shall be signed by a person authorized by the insurer(s) to bind coverage on its behalf. All endorsements or policies shall be received and approved by the City before Contractor commences performance. If performance of this Agreement shall extend beyond one year, Contractor shall provide City with the required policies or endorsements evidencing renewal of the required policies of insurance prior to the expiration of any required policies of insurance.

12.7 Contractor agrees to include in all contracts with all subcontractors performing work pursuant to this Agreement, the same requirements and provisions of this Agreement including the indemnity and insurance requirements to the extent they apply to the scope of any such subcontractor's work. Contractor shall require its subcontractors to be bound to Contractor and City in the same manner and to the same extent as Contractor is bound to City pursuant to this Agreement, and to require each of its subcontractors to include these same provisions in its contract with any sub-subcontractor.

13. Cooperation. In the event any claim or action is brought against City relating to Contractor's performance or services rendered under this Agreement, Contractor shall render


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any reasonable assistance and cooperation that City might require. City shall compensate Contractor for any litigation support services in an amount to be agreed upon by the parties.

14. Termination. City shall have the right to terminate this Agreement at any time for any or no reason on not less than ten (10) days prior written notice to Contractor. In the event City exercises its right to terminate this Agreement, City shall pay Contractor for any services satisfactorily rendered prior to the effective date of the termination, provided Contractor is not then in breach of this Agreement. Contractor shall have no other claim against City by reason of such termination, including any claim for compensation. City may terminate for cause following a default remaining uncured more than five (5) business days after service of a notice to cure on the breaching party.

Contractor may terminate this Agreement for cause upon giving the City D ten (10) business days prior written notice for any of the following: (1) uncured breach by the City of any material term of this Agreement, including but not limited to Payment Terms; (2) material changes in the conditions under which this Agreement was entered into, coupled with the failure of the parties to reach accord on the fees and charges for any Additional Services required because of such changes.

15. Notices. Any notices, bills, invoices, or reports authorized or required by this Agreement shall be in writing and shall be deemed received on (a) the day of delivery if delivered by hand or overnight courier service during Contractor's and City's regular business hours; or (b) on the third business day following deposit in the United States mail, postage prepaid, to the addresses set forth in this Section, or to such other addresses as the parties may, from time to time, designate in writing pursuant to the provisions of this Section.

All notices shall be addressed as follows:

If to City: William Wittkopf
City of Rancho Cucamonga
Public Works Services Department 8794
Lion Street
Rancho Cucamonga, CA 91730

If to Contractor: Patrick Mahoney, President
West Coast Arborists, Inc.
2200 East Via Burton Street
Anaheim, CA 92806

16. Non-Discrimination and Equal Employment Opportunity. In the performance of this Agreement, Contractor shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation. Contractor will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment, without regard to their race,


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color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation.

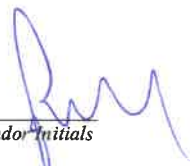
17. Assignment and Subcontracting. Contractor shall not assign or transfer any interest in this Agreement or subcontract the performance of any of Contractor's obligations hereunder without City's prior written consent. Except as provided herein, any attempt by Contractor to so assign, transfer, or subcontract any rights, duties, or obligations arising hereunder shall be null, void and of no effect.

18. Compliance with Laws. Contractor shall comply with all applicable federal, state and local laws, ordinances, codes and regulations in force at the time Contractor performs the Services. 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 compliance with 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. The applicable prevailing wage rate determinations can be found at <http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm> 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 the Contractor's principal place of business and at the Project site. Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

19. Non-Waiver of Terms, Rights and Remedies. Waiver by either party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by City of any payment to Contractor constitute or be construed as a waiver by City of any breach of covenant, or any default which may then exist on the part of Contractor, and the making of any such payment by City shall in no way impair or prejudice any right or remedy available to City with regard to such breach or default.

20. Attorney's Fees. In the event that either party to this Agreement shall commence any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover its costs of suit, including reasonable attorney's fees and costs of experts.

21. Exhibits; Precedence. All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail.


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22. Applicable Law and Venue. The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of California. Venue for any action relating to this Agreement shall be in the San Bernardino County Superior Court.

23. Construction. In the event of any asserted ambiguity in, or dispute regarding the interpretation of any matter herein, the interpretation of this Agreement shall not be resolved by any rules of interpretation providing for interpretation against the party who causes the uncertainty to exist or against the party who drafted the Agreement or who drafted that portion of the Agreement.

24. Entire Agreement. This Agreement consists of this document, and any other documents, attachments and/or exhibits referenced herein and attached hereto, each of which is incorporated herein by such reference, and the same represents the entire and integrated agreement between Contractor and City. This Agreement supersedes all prior oral or written negotiations, representations or agreements. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by the parties which expressly refers to this Agreement.

IN WITNESS WHEREOF, the parties, through their respective authorized representatives, have executed this Agreement as of the date first written above.

Contractor Name:

West Coast Arborists, Inc.

By:  10/22/19
Name Date

Patrick Mahoney, President
Title

City of Rancho Cucamonga

By:  10/4/19
Name Date

Mayor Pro Tem
Title

By:  10-22-19
Name Date

Richard Mahoney, Secretary

Title
(two signatures required if corporation)


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ATTACHMENTS

- **Attachment A – Sample Additional Insured Endorsement, Ongoing Operations**
- **Attachment B – Sample Additional Insured Endorsement, Completed Operations**
- **Attachment C – Sample Waiver of Subrogation**



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Attachment A – Sample Additional Insured Endorsement, Ongoing Operations

POLICY NUMBER: [REDACTED]

**COMMERCIAL GENERAL LIABILITY
CG 20 10 10 01**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – SCHEDULED PERSON OR
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization: The City of Rancho Cucamonga, it's Officers, Officials, Employees, designated Volunteers and agents serving as independent contractors in the role of City Officials.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

A. Section II – Who Is An Insured is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your ongoing operations performed for that insured.

B. With respect to the insurance afforded to these additional insureds, the following exclusion is added:

2. Exclusions

This insurance does not apply to "bodily injury" or "property damage" occurring after:

(1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or

(2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

CG 20 10 10 01

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Attachment B – Sample Additional Insured Endorsement, Completed Operations

POLICY NUMBER [REDACTED]

**COMMERCIAL GENERAL LIABILITY
CG 20 37 10 01**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

<p>Name of Person or Organization: The City of Rancho Cucamonga, it's Officers, Officials, Employees, designated Volunteers and agents serving as independent contractors in the role of City officials. Attn: Public Works 10500 Civic Center Dr. Rancho Cucamonga, CA 91730</p>
<p>Location And Description of Completed Operations: [REDACTED]</p>
<p>Additional Premium: Included</p>

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

Section II – Who Is An Insured is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" at the location designated and described in the schedule of this endorsement performed for that insured and included in the "products-completed operations hazard".


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Attachment C – Sample Waiver of Subrogation

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 24 04 10 93

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

*City of Rancho Cucamonga and its elected officials, officers, employees, servants, attorneys,
designated volunteers, and agents serving as independent contractors in the role of City officials.*

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

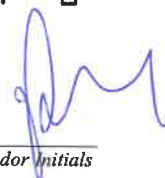
The TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US Condition (Section IV – COMMERCIAL GENERAL LIABILITY CONDITIONS) is amended by the addition of the following:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

CG 24 04 10 93

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SCOPE OF WORK

Scope of Work Contents:

- **Exhibit A – RFP 19/20-007**
- **Exhibit B – Contractor’s proposal, dated July 23, 2019**
- **Exhibit C – Unit Costs**