

## **PROFESSIONAL SERVICES AGREEMENT**

**THIS AGREEMENT** is made this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by the **CITY OF GARDEN GROVE**, a municipal corporation, ("CITY") and **West Coast Arborists, Inc.**, here in after referred to as "CONTRACTOR".

### **RECITALS**

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Garden Grove City Council authorization, dated \_\_\_\_\_.
2. The services and prices provided by Contractor to City are in accordance with the services, equipment and the prices provided by Contractor in its successful public bid to the City of Rancho Cucamonga. Contractor agrees to honor the same pricing schedule that was originally submitted to the City of Rancho Cucamonga for the services outlined in this Agreement, which was adopted by the Rancho Cucamonga City Council, subject to the proposal to City for City-specific products and services. A copy of the City of Rancho Cucamonga's Agreement, Contract Number 19-187 is attached as Attachment "A" and is incorporated herein by reference.
3. CONTRACTOR is qualified by virtue of experience, training, education and expertise to accomplish services.

### **AGREEMENT**

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term and Termination.** The term of this agreement shall be in effect from July 1, 2021 through June 30, 2022 with an option to extend the agreement on a year-to-year basis to a maximum of four (4) additional years per the agreement with the City of Rancho Cucamonga. This agreement may be terminated by the CITY without cause. In such event, the CITY will compensate CONTRACTOR for work performed to date in accordance with Cost Proposal included in Attachment "A". Contractor is required to present evidence to support performed work completion.
2. **Services to be Provided.** The services to be performed and provided by Contractor consist of City wide Tree Maintenance in accordance with the services set forth in City of Rancho Cucamonga's Agreement, Contract Number 19-187, which is attached hereto as Attachment "A" and is incorporated herein by reference.

3. **Compensation.** CONTRACTOR shall be compensated as follows:

- 3.1 **AMOUNT.** Compensation under this agreement shall be the Not to Exceed (NTE) amount of Four Hundred Forty Thousand Dollars (\$440,000.00), per year, in arrears and in accordance with City of Rancho Cucamonga's Agreement, Contract Number 19-187, which is attached hereto as Attachment "A" and is incorporated herein by reference.
- 3.2 **Payment.** For work under this Agreement, payment shall be made per invoice for work completed. Within 45 day of delivery of goods or completion of performance of services, CONTRACTOR must promptly render an invoice to CITY or payment may be significantly delayed. For work under this Agreement, payment shall be made per invoice for work completed. For extra work not a part of this Agreement, a written authorization by CITY will be required, and payment shall be based on City of Rancho Cucamonga's Agreement, Contract Number 19-187, which is attached hereto as Attachment "A" and is incorporated herein by reference.
- 3.3 **Records of Expenses.** CONTRACTOR shall keep complete and accurate records of all costs and expenses incidental to services covered by this Agreement. These records will be made available at reasonable times to CITY.
- 3.4 **Termination.** CITY and CONTRACTOR shall have the right to terminate this agreement, without cause, by giving thirty (30) days written notice of termination. If the Agreement is terminated by CITY, then the provisions of paragraph 3 would apply to that portion of the work completed.

4. **Insurance requirements.**

- 4.1 **COMMENCEMENT OF WORK.** CONTRACTOR shall not commence work under this Agreement until all certificates and endorsements have been received and approved by the CITY. All insurance required by this Agreement shall contain a Statement of Obligation on the part of the carrier to notify the CITY of any material change, cancellation, or termination at least thirty (30) days in advance and provide a Waiver of Subrogation in favor of the City.
- 4.2 **WORKERS COMPENSATION INSURANCE.** During the duration of this Agreement, CONTRACTOR and all subcontractors shall maintain Workers Compensation Insurance in the amount and type required by law, if applicable

4.3 INSURANCE AMOUNTS. CONTRACTOR shall maintain the following insurance for the duration of this Agreement:

- (a) Commercial general liability in an amount of \$2,000,000.00 per occurrence: **claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to CITY/AGENCY and have a Best's Guide Rating of A- Class VII or better, as approved by the CITY.
- (b) Automobile liability in an amount of \$2,000,000.00 per occurrence. Insurance companies must be acceptable to CITY/AGENCY and have a Best's Guide Rating of A- Class VII or better, as approved by the CITY.

An **On-Going and Completed Operations Additional Insured Endorsement** for the policy under section 4.3 (a) shall designate CITY, it's officers, officials, employees, agents, and volunteers as additional insureds for liability arising out of work or operations performed by or on behalf of the CONTRACTOR. CONTRACTOR shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements, as approved by the CITY.

An Additional Insured Endorsement for the policy under section 4.3 (b) shall designate CITY, it's officers, officials, employees, agents, and volunteers as additional insureds for automobiles, owned, leased, hired, or borrowed by the CONTRACTOR. CONTRACTOR shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements, as approved by the CITY.

For any claims related to this Agreement, CONTRACTOR's insurance coverage shall be primary insurance as respects CITY, it's officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the CITY, it's officers, officials, employees, agents, and volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.

- 5. **Non-Liability of Officials and Employees of the City.** No official or employee of CITY shall be personally liable to CONTRACTOR in the event of any default or breach by CITY, or for any amount which may become due to CONTRACTOR.
- 6. **Non-Discrimination.** CONTRACTOR covenants there shall be no discrimination against any person or group due to race, color, creed, religion, sex, marital

status, age, handicap, national origin, or ancestry, in any activity pursuant to this Agreement.

7. **Independent Contractor.** It is agreed to that CONTRACTOR shall act and be an independent contractor and not an agent or employee of the CITY, and shall obtain no rights to any benefits which accrue to CITY'S employees.
8. **Compliance with Law.** CONTRACTOR shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government. CONTRACTOR shall comply with, and shall be responsible for causing all contractors and subcontractors performing any of the work pursuant to this Agreement to comply with, all applicable federal and state labor standards, including, to the extent applicable, the prevailing wage requirements promulgated by the Director of Industrial Relations of the State of California Department of Labor. The City makes no warranty or representation concerning whether any of the work performed pursuant to this Agreement constitutes public works subject to the prevailing wage requirements.
9. **Notices.** All notices shall be personally delivered or mailed to the below listed address, or to such other addresses as may be designated by written notice. These addresses shall be used for delivery of service of process.
  - a. (Contractor)  
West Coast Arborists, Inc.  
Attention: Patrick Mahoney (President)  
2200 East Via Burton Street  
Anaheim, CA 92806
  - b. (Address of City) (with a copy to):  
City of Garden Grove Garden Grove City Attorney  
11222 Acacia Parkway 11222 Acacia Parkway  
Garden Grove, CA 92840 Garden Grove, CA 92840
10. **CONTRACTOR'S PROPOSAL.** This Agreement shall include CONTRACTOR's proposal or bid which is incorporated herein as part of CONTRACTOR's proposal to, and contract with, the City of Rancho Cucamonga. In the event of any inconsistency between the terms of the proposal, the contract with the City of Rancho Cucamonga, and this Agreement, this Agreement shall govern.
11. **Licenses, Permits, and Fees.** At its sole expense, CONTRACTOR shall obtain a Garden Grove Business License, all permits, and licenses as may be required by this Agreement.
12. **Familiarity with Work.** By executing this Agreement, CONTRACTOR warrants 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 facilities, difficulties, and restrictions of the work under this Agreement.

Should Contractor discover any latent or unknown conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY of this and shall not proceed, except at CONTRACTOR'S risk, until written instructions are received from CITY.

13. **Time of Essence.** Time is of the essence in the performance of this Agreement.
14. **Limitations Upon Subcontracting and Assignment.** The experience, knowledge, capability, and reputation of CONTRACTOR, its principals and employees were a substantial inducement for CITY to enter into this Agreement. CONTRACTOR shall not contract with any other entity to perform the services required without written approval of the CITY. This Agreement may not be assigned voluntarily or by operation of law, without the prior written approval of CITY. If CONTRACTOR is permitted to subcontract any part of this Agreement, CONTRACTOR shall be responsible to CITY for the acts and omissions of its subcontractor as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and CITY. All persons engaged in the work will be considered employees of CONTRACTOR. CITY will deal directly with and will make all payments to CONTRACTOR.
15. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement and that by executing this Agreement, the parties are formally bound.
16. **Indemnification.** To the fullest extent permitted by law, CONTRACTOR shall defend, and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damages of any nature, including interference with use of property, arising out of, or in any way connected with the negligence, recklessness and/or intentional wrongful conduct of CONTRACTOR, CONTRACTOR'S agents, officers, employees, subcontractors, or independent contractors hired by CONTRACTOR in the performance of the Agreement. The only exception to CONTRACTOR'S responsibility to protect, defend, and hold harmless CITY, is due to the sole negligence, recklessness and/or wrongful conduct of CITY, or any of its elective or appointive boards, officers, agents, or employees.

This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONTRACTOR.

17. **Prevailing Wages.** The CITY has been advised that the Prevailing Wages Law applies to the work. CONTRACTOR and its subcontractors must be registered with the California Department of Industrial Relations pursuant to Labor Code Section 1725.5. This Agreement shall not be effective until CONTRACTOR provides proof of registration to the CITY. CONTRACTOR shall

be responsible for CONTRACTOR's compliance in all respects with the Prevailing Wage Law, including the payment of the prevailing wage rates to all the laborers involved, and with California Labor Code Section 1770 et seq., including the keeping of all records required by the provisions of Labor Code Section 1776 and the implementing administrative regulations. CONTRACTOR shall submit payroll records to the Labor Commissioner pursuant to Labor Code section 1771.4(a)(3) and shall comply with the job site notices posting requirements established by the Labor Commissioner pursuant to Title 8, California Code of Regulations Section 16461(e) or other regulation promulgated pursuant to Labor Code Section 1771.4(a)(2). Pursuant to Labor Code Section 1771.4, this Project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations. The CITY shall be a third party beneficiary of the forgoing covenant with rights to enforce the same as against the CONTRACTOR.

18. **Appropriations.** This Agreement is subject to and contingent upon funds being appropriated therefor by the Garden Grove City Council for each fiscal year covered by the term of this Agreement. If such appropriations are not made, this Agreement shall automatically terminate without penalty to the CITY

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(Agreement Signature Block on Next Page)

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

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

**"CITY"  
CITY OF GARDEN GROVE**

**By:** \_\_\_\_\_  
**City Manager**

**ATTESTED:**

\_\_\_\_\_  
**City Clerk**

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

**"CONTRACTOR"  
West Coast Arborists, Inc.**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

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

**Tax ID No.** \_\_\_\_\_

**Contractor's License:** \_\_\_\_\_

**Expiration Date:** \_\_\_\_\_

If CONTRACTOR is a corporation, a Corporate Resolution and/or Corporate Seal is required. If a partnership, Statement of Partnership must be submitted to CITY.

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Garden Grove City Attorney

\_\_\_\_\_  
Date