

**FIRST AMENDMENT
TO
TREE MAINTENANCE SERVICES AGREEMENT
[Maintenance Services for Tree Maintenance Services (RFP No. 22-23.38)]**

THIS FIRST AMENDMENT TO TREE MAINTENANCE SERVICES AGREEMENT (the “First Amendment”) is made and entered into as of _____, 2024 (“Effective Date”) by and between the CITY OF ORANGE, a municipal corporation (“City”), and WEST COAST ARBORISTS, INC., a California corporation (“Contractor”), with reference to the following.

A. City and Contractor entered into a Tree Maintenance Services Agreement (Agreement No 7521) dated as of June 7, 2023, which is incorporated herein by this reference (the “Original Agreement”); and

B. City and Contractor desire to amend the Original Agreement to modify, amend and supplement certain portions of the Original Agreement by revising the Scope of Services and increasing the compensation.

NOW, THEREFORE, the parties hereby agree as follows:

Section 1. Defined Terms. Except as otherwise defined herein, all capitalized terms used herein shall have the meanings set forth for such terms in the Original Contract.

Section 2. Cross-References. City and Contractor agree that all references in this First Amendment are deemed and construed to refer to the Original Contract, as implemented by this First Amendment.

Section 3. Revised Scope of Services. The Scope of Services, Section 1, Exhibit A of the Original Agreement, is hereby amended, modified and supplemented to include the services described on Exhibit A attached hereto and incorporated herein by this reference.

Section 4. Compensation. Section 2 of the Original Agreement is hereby amended to increase an annual total not-to-exceed compensation for the services to be rendered by the following:

Year	Amendment	Total not to exceed
Year 2: 7/2024 through 6/2025	\$82,500	\$8,763,200
Year 3: 7/2025 through 6/2026	\$82,500	\$8,845,700
Year 4: 7/2026 through 6/2027	\$82,500	\$8,928,200
Year 5: 7/2027 through 6/2028	\$82,500	\$9,010,700

and Section 2 are hereby amended in their entirety to read as follows:

“c. The total amount of compensation under this Contract, including contingencies, shall not exceed NINE MILLION TEN THOUSAND SEVEN

HUNDRED DOLLARS (\$9,010,700.00). The compensation for services performed under this First Amendment shall be paid as specified in Exhibit B”

Section 5. **Indemnity.** Section 17 of the Original Agreement is hereby amended in its entirety to read as follows:

“**a.** To the fullest extent permitted by law, Contractor agrees to indemnify, defend and hold City, its City Council and each member thereof, and the officers, officials, agents and employees of City (collectively the “Indemnitees”) entirely harmless from all liability arising out of:

(1) Any and all claims under workers’ compensation acts and other employee benefit acts with respect to Contractor’s employees or subcontractor’s employees arising out of Contractor’s work under this Agreement, including any and all claims under any law pertaining to Contractor or its employees’ status as an independent contractor and any and all claims under Labor Code section 1720 related to the payment of prevailing wages for public works projects; and

(2) Any claim, loss, injury to or death of persons or damage to property caused by any act, neglect, default, or omission of Contractor, or person, firm or corporation employed by Contractor, either directly or by independent contract, including all damages due to loss or theft sustained by any person, firm or corporation including the Indemnitees, or any of them, arising out of, or in any way connected with the work or services which are the subject of this Agreement, including injury or damage either on or off City’s property; but not for any loss, injury, death or damage caused by the active negligence or willful misconduct of City. Contractor, at its own expense, cost and risk, shall indemnify any and all claims, actions, suits or other proceedings that may be brought or instituted against the Indemnitees on any such claim or liability covered by this subparagraph, and shall pay or satisfy any judgment that may be rendered against the Indemnitees, or any of them, in any action, suit or other proceedings as a result of coverage under this subparagraph.

b. Reserved.

c. Except for the Indemnitees, the indemnifications provided in this Agreement shall not be construed to extend any third party indemnification rights of any kind to any person or entity which is not a signatory to this Agreement.

d. The indemnities set forth in this section shall survive any closing, rescission, or termination of this Agreement, shall prevail over any inconsistent terms or provisions, and shall continue to be binding and in full force and effect in perpetuity with respect to Contractor and its successors.

e. Contractor’s obligation to defend the Indemnitees is not contingent upon an acknowledgment of or determination of the merit of any claim, liability, demands, causes of action, suits, losses, expenses, errors, omissions and/or costs.

f. The indemnifications provided in this Agreement are independent of and shall not in any way be limited or superseded by the insurance requirements and insurance-related provisions of this Agreement.

g. No aspect of this provision shall in any way limit or effect the rights of City against Contractor under the terms of this Agreement or otherwise. The indemnification provisions shall apply regardless of whether this Agreement is executed after Contractor begins the work and shall extend to claims arising after this Agreement is performed or terminated, including as dispute as to the termination of Contractor. The indemnity obligations of Contractor shall continue until it is determined by final judgment that a claim against City is determined by final judgment and after exhaustion of any rights of appeal. Further, no aspect of this provision shall impact City's rights to contribution from Contractor or from City to dispute Contractor's refusal to defend and indemnify City."

Section 6. Integration. This First Amendment amends, as set forth herein, the Original Contract and, except as specifically amended hereby, the Original Contract shall remain in full force and effect. To the extent that there is any conflict or inconsistency between the terms and provisions of this First Amendment and the terms and provisions of the Original Contract, the terms and provisions of this First Amendment shall control and govern the rights and obligations of the parties.

[Remainder of page intentionally left blank; signatures on next page]

IN WITNESS of this Contract, the parties enter into this Contract on the year and day first above written.

“CONTRACTOR”

“CITY”

WEST COAST ARBORISTS, INC.,
a California corporation

CITY OF ORANGE, a municipal corporation

*By: _____
Printed Name: _____
Title: _____

By: _____
Daniel R. Slater, Mayor

By: _____
Printed Name: _____
Title: _____

ATTEST:

Pamela Coleman, City Clerk

APPROVED AS TO FORM:

Mike Vigliotta, City Attorney

***NOTE:** *If CONTRACTOR is a corporation, the City requires the following signature(s):*
-- *(1) the Chairman of the Board, the President or a Vice-President, AND (2) the Secretary, the Chief Financial Officer, the Treasurer, an Assistant Secretary or an Assistant Treasurer. If only one corporate officer exists or one corporate officer holds more than one corporate office, please so indicate. OR*
-- *The corporate officer named in a corporate resolution as authorized to enter into this Agreement. A copy of the corporate resolution, certified by the Secretary close in time to the execution of the Agreement, must be provided to the City.*

√NA

EXHIBIT "A"

SUPPLEMENTAL SCOPE OF SERVICES

[Behind this page.]



RFB 190-55

Proposal Date: 3/5/2024

Santiago Creek Tree and Brush Maintenance

West Coast Arborists, Inc. will provide tree and brush clearance per Scope of Work and Specifications for the amount listed below.

Term: Commencing March 1, 2023 and terminating on June 30, 2028
One available option: Commencing July 1, 2028 and terminating on June 30, 2031

Lump sum bid amount if proect area is competed in its entirety (Zones 1-6)

Zones 1-6. BID AMOUNT Eighty Two Thousand, Five Hundred \$ 82,500.00
WRITTEN FORM

Bid amounts below should reflect the cost of performing work in any one zone or comination of zones, assuming award is based on City funding and not inclusive of all zones.

Zone 1. BID AMOUNT Twenty Thousand, Six Hundred Twenty Five \$ 20,625.00
WRITTEN FORM

Zone 2. BID AMOUNT Twelve Thousand, Three Hundred Seventy Five \$ 12,375.00
WRITTEN FORM

Zone 3. BID AMOUNT Twelve Thousand, Three Hundred Seventy Five \$ 12,375.00
WRITTEN FORM

Zone 4. BID AMOUNT Sixteen Thousand, Five Hundred \$ 16,500.00
WRITTEN FORM

Zone 5. BID AMOUNT Eight Thousand, Two Hundred Fifty \$ 8,250.00
WRITTEN FORM

Zone 6. BID AMOUNT Twelve Thousand, Three Hundred Seventy Five \$ 12,375.00
WRITTEN FORM

Hourly crew rate (in the event that additional work is needed): \$ 96.00 Per Man Hour

Hourly rate for Biologist or ISA Certified Arborists (if needed): \$ 175.00 Per Man Hour

List crew positions and equipment utilized by crew to complete work: Crew postions (number of each type of position): 1.) Groundperson (x2) 2.) Tree Trimming (x2)

3.) Senior Tree Trimmer (Foreman) (x1) 4. Area Manager (x1) 5. Area Supervisor (x2)
Equipment: Aerial Tower (x2), Dump Truck (x1), Brush Chipper (x1), Pickup Truck (x1), Hand Tools