

CONTRACT FOR TREE PRUNING & STUMP REMOVAL

This Contract for Tree Pruning and Stump Removal (the "Contract") is made this 6th day of July, 2021 by and between the City of Burlingame (the "City" or "City") and, West Coast Arborists, Inc. (the "Contractor") (Each a "Party" and collectively, "Parties").

RECITALS

- A. The City solicited a Request for Proposals (RFP) for Tree Pruning & Stump Removal in the manner prescribed by law; and
- B. Contractor responded to the RFP and represents that it is qualified and willing to provide such Tree Pruning & Stump Removal; and
- C. After review of all proposals submitted, City determined that Contractor best met the selection criteria for the Work; and

AGREEMENT

FOR VALUABLE CONSIDERATION, THE RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Contract Documents. The following documents are incorporated into and made part of this Contract by this reference:

- (a) Request for Proposals
- (b) General Conditions
- (c) Exhibit "A" – Power of Attorney
- (d) Exhibit "B" – Certificate Concerning Control of Employee
- (e) Exhibit "C" – Certificate Regarding Worker's Compensation
- (f) Exhibit "D" – Non-Collusion Declaration
- (g) Exhibit "E" – City of Burlingame Tree Maintenance Specifications
- (h) Exhibit "F" – Scope of Services / Proposal Form

The documents shall be referred to collectively as the "Contract Documents".

2. Scope.

2.1. Contractor shall furnish all necessary management, supervision, labor, materials, tools, supplies, equipment, plant, services, testing and/or any other act or thing required to diligently and fully perform and complete the work generally described as follows: Tree Pruning & Stump Removal (the "Work") as described in this Contract and in Exhibit "F" Scope of Services / Proposal Form.

2.2. The Work shall be performed in accordance, and Contractor shall comply, with, all requirements of the Contract Documents. Where there is a conflict between the requirements of the various Contract Documents, the more stringent requirement shall govern.

2.3. Without limiting the foregoing description, Contractor's scope of work includes, but is not limited to, the following:

- (a) Provide labor, material and equipment required for the Work.
- (b) Submit all required samples, product data, certificates, operations and maintenance instructions, guarantees, and other submittals as requested by City.
- (c) Obtain all necessary permits and approvals for the Work.
- (d) Protect all materials to be used in the Work in accordance with the specifications and local, state and federal law.
- (e) Protect existing facilities and personal property.
- (f) Prepare and submit a written monthly activity report to City for each day on which work is performed, including weekends and holidays when worked, and submit the reports to the City no later than the 10th day of the following month.
- (g) Unload, hoist and otherwise handle Contractor's own materials, supplies and equipment.
- (h) Coordinate with City-scheduled events.
- (i) Comply with all local codes and regulations that regulate and govern the Work.
- (j) Provide suitable and adequate sanitary conveniences that conform with local regulations at suitable locations for the use of Contractor's employees and its Sub-Contractors.

2.4. Contractor shall perform the Work with due care, in accordance with generally accepted practices for landscape maintenance services and the scope of Contractor's obligations under this Contract.

3. Price.

3.1. City agrees to pay, and Contractor agrees to accept, for full performance of the Work, the prices for the Work and any City-approved Changed Work, defined in Section 7 below, set forth in this Contract. The total amount paid to Contractor for the term of the Contract shall not exceed
See Below (\$ 1,276,335.00) (the "Contract Price")

subject to adjustments for changes in the Work as may be directed in writing by City.

One Million Two Hundred Seventy Six Thousand Three Hundred Thirty Five Dollars

3.2. Contractor shall submit written applications for progress payments in a form satisfactory to City on or before the first day of each month on account of Work and any City-approved Changed Work provided during the preceding month. For routine landscape maintenance services, the payment applications shall be based on the tasks satisfactorily completed. For properly authorized Changed Work, the payment applications shall identify each person performing Work, the time each person spends on each task (in units not to exceed one quarter hour) and shall be based on the rates in the Current Contract Rate Sheet.

3.3. Within thirty (30) days after receipt of each application for progress payment, City shall verify the accuracy of the progress payment application, correct the charges where appropriate, and make payment to Contractor in an amount equal to the amount of such application, as verified or corrected by City. No payment made hereunder shall be construed as evidence of acceptance of any part of the Work. City reserves the right to withhold payment from Contractor on account of Work not performed satisfactorily, delays in Contractor's performance of Work, or other defaults hereunder. City shall promptly notify Contractor of any invoiced amounts that City disputes, and City and Contractor shall work to promptly resolve any such disputes. Contractor shall not stop or delay performance of Work under this Agreement on account of payment disputes with City.

3.4. Payment to Contractor shall be considered as full compensation of all labor, supervision, materials, supplies, and equipment used in carrying out the Work. Contractor shall pay all taxes, including sales, use and income taxes, incurred in connection with performance of the Work.

3.5. City's failure to discover or object to any unsatisfactory work or billing prior to payment will not constitute a waiver of City's right to:

- (a) Require Contractor to correct such work or billings; or
- (b) Seek any other legal remedy.

3.6. As further described in Section 7 below, should work be requested by City or proposed by Contractor that is beyond the Work described in the Contract Documents, the Contractor shall provide a written request for consideration of Changed Work to the City. Contractor shall not provide Changed Work until Contractor has received written approval from the City to perform same. Should the Contractor elect to proceed prior to receiving written approval by the City for Changed Work, the Contractor does so at Contractor's own risk. In no event shall City pay for Changed Work made necessary by Contractor's errors or oversights. The City will pay for approved Changed Work at the rates set forth in this Contract.

3.7. Contractor agrees to furnish, as a condition of payment, payroll affidavits, receipts, vouchers, and other documents, in form satisfactory to City, prior to receipt of any payment.

4. Entire Agreement. This Contract and the documents incorporated herein by reference constitute the entire agreement between City and Contractor with regard to the subject matter of this agreement and supersede any prior written or oral representations.

5. Time.

5.1. Contractor shall continue performance of the Work without interruption.

5.2. Time is of the essence in the performance of this Contract.

5.3. Contractor shall provide City with scheduling information in a form acceptable to City, including any changes made by City in the scheduling of work. Contractor shall coordinate the Work with that of all other Contractors, Sub-Contractors and suppliers so as not to delay or damage their performance.

5.4. This Agreement shall commence upon full execution hereof and shall continue for a term of two (2) years, with an option authorizing the City Manager or his/her representative to renew the Agreement for four (4) additional years in two-year increments. The option to renew the Agreement is at the City's sole discretion, and shall be done through modification of this Agreement.

6. Labor Provisions

6.1 Discrimination Prohibited. Discrimination against any prospective or present employee engaged in the Work on grounds of race, color, ancestry, national origin, ethnicity, religion, sex, sexual orientation, age, disability, or marital status is strictly prohibited. Contractor and its Subcontractors are required to comply with all applicable Laws prohibiting discrimination, including the California Fair Employment and Housing Act (Govt. Code § 12900 et seq.), Government Code § 11135, and Labor Code §§ 1735, 1777.5, 1777.6, and 3077.5.

6.2 Labor Code Requirements.

- (a) *Eight Hour Day.* Pursuant to Labor Code § 1810, eight hours of labor constitute a legal day's work under this Contract.
- (b) *Penalty.* Pursuant to Labor Code § 1813, Contractor will forfeit to City as a penalty, the sum of \$25.00 for each day during which a worker employed by Contractor or any Subcontractor is required or permitted to work more than eight hours in any one calendar day or more than 40 hours per calendar week, except if such workers are paid overtime under Labor Code § 1815.

- (c) *Apprentices.* Contractor is responsible for compliance with the requirements governing employment and payment of apprentices, as set forth in Labor Code § 1777.5, which is fully incorporated by reference.
- (d) *Notices.* Pursuant to Labor Code § 1771.4, Contractor is required to post all job site notices prescribed by Laws.

6.3 **Prevailing Wages.** Each worker performing Work under this Contract that is covered under Labor Code §§ 1720 or 1720.9, including cleanup at the Project site, must be paid at a rate not less than the prevailing wage as defined in §§ 1771 and 1774 of the Labor Code. The prevailing wage rates are on file with the City and available online at <http://www.dir.ca.gov/dlsr>.

- (a) *Penalties.* Pursuant to Labor Code § 1775, Contractor and any Subcontractor will forfeit to City as a penalty up to \$200.00 for each calendar day, or portion a day, for each worker paid less than the applicable prevailing wage rate. Contractor must also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.
- (b) *Federal Requirements.* If this Project is subject to federal prevailing wage requirements in addition to California prevailing wage requirements, Contractor and its Subcontractors are required to pay the higher of the currently applicable state or federal prevailing wage rates.

6.4 **Payroll Records.** Contractor must comply with the provisions of Labor Code §§ 1776 and 1812 and all implementing regulations, including requirements for electronic submission of payroll records to the DIR.

- (a) *Contractor and Subcontractor Obligations.* Contractor and each Subcontractor must keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in connection with the Work. Each payroll record must contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - (1) The information contained in the payroll record is true and correct; and
 - (2) Contractor or the Subcontractor has complied with the requirements of Labor Code §§ 1771, 1811, and 1815 for any Work performed by its employees on the Project.
- (b) *Certified Record.* A certified copy of an employee's payroll record must be made available for inspection or furnished to the employee or his or her authorized representative on request, to City, to the Division of Labor Standards Enforcement, to the Division of Apprenticeship Standards of the DIR, and as further required by the Labor Code.
- (c) *Enforcement.* Upon notice of noncompliance with Labor Code § 1776, Contractor or Subcontractor has ten days in which to comply with the requirements of this section. If Contractor or Subcontractor fails to do so within the ten-day period, Contractor or Subcontractor will forfeit a penalty of \$100.00 per day, or portion a day, for each worker for whom compliance is required, until strict compliance is achieved. Upon request by the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, these penalties will be withheld from payments then due to Contractor.

6.5 **Labor Compliance.** Pursuant to Labor Code § 1771.4, the Contract for this Project is subject to compliance monitoring and enforcement by the DIR. Contractor and its subcontractors must be currently registered with California Department of Industrial Relations ("DIR") pursuant to Labor Code section

1725.5 to perform any Work for this Contract. Pursuant to Labor Code section 1771.4, this Contract is subject to compliance monitoring and enforcement by DIR. Pursuant to Labor Code Section 1771.4, Contractor is required to post all job site notices required by law or regulations.

7. Changes in Work.

7.1. City may, from time to time, request changes to this Contract or the Work ("Changed Work"). Such requests shall be made in writing by the City, and shall describe in detail the proposed additions, deletions, or modifications to the Work. Contractor shall respond to such request in writing, with a statement of the impacts to costs, expenses and time associated with the Changed Work. Neither the City's request nor the Contractor's response shall constitute a modification of this Contract. Any modification shall be contained in a written amendment to this Contract signed by an authorized representative on behalf of City. City's execution of the amendment shall constitute authorization to proceed with the Changed Work.

7.2. Contractor shall make no changes in the Work without written direction from the City. Contractor shall not be compensated for any change made without any such written direction.

7.3. If the City directs the Contractor in writing to make changes in the Work that materially affect the cost of performing the Work, the Contract Price will be adjusted based on one of the following:

- (a) Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices in Contractor's Proposal or this Contract to the quantities involved in the changed work;
- (b) By establishment of new unit prices and related quantities for the changed work;
- (c) By a combination of existing and new unit prices and related quantities for the changed work; or
- (d) By mutual acceptance of a lump sum.

8. Claims. If any dispute shall arise between City and Contractor regarding performance of the Work, or any alleged change in the Work, Contractor shall timely perform the disputed work and shall give written notice of a claim for additional compensation to City within ten (10) days after commencement of the disputed work. Contractor's failure to give written notice within the ten (10) day period constitutes an agreement by Contractor that it will receive no extra compensation for the disputed work. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, Changed Work, claims and/or changed conditions, Contractor must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, Changed Work, claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against the City.

9. Inspection of Work. Contractor shall make the Work accessible at all reasonable times for inspection by the City.

10. Assignment and Subcontracting.

10.1. Contractor shall give personal attention to the performance of the Contract and shall keep the Work under its control.

10.2. No Sub-Contractors will be recognized as such, and all persons engaged in the work of construction will be considered as employees of the Contractor, who will be held responsible for their work pursuant to the provisions of the Contract Documents.

10.3. No Sub-Contractor who is ineligible to bid on, be awarded or perform work on a public works project under Labor Code Sections 1777.1 or 1777.7 can bid, submit a proposal, be awarded or perform work as a Sub-Contractor on the Project. The Contractor is prohibited from performing work on the Project with a Sub-Contractor who is ineligible to perform work on a public works project under these sections of the Labor Code.

10.4. When a portion of the Work which has been subcontracted by the Contractor is not being prosecuted in a manner satisfactory to the City, the Sub-Contractor shall be removed immediately at the request of the City and shall not again be employed on the Work.

10.5. Contractor may not assign performance of the Contract except upon written consent of the City.

11. Termination and Suspension.

11.1. Should Contractor fail within five (5) working days from receipt of City's written notice to correct any contractual deficiencies, including but not limited to failure to perform the Work in accordance with the Contract Documents, failure to comply with the directions of City or failure pay its creditors, City may terminate this Contract for default. Following a termination for default, City shall have the right to take whatever steps it deems necessary to correct any deficient element of the Work and charge the cost thereof to Contractor, who shall be liable for the full cost of City's corrective action, including reasonable overhead, profit and attorneys' fees.

11.2. City may at any time terminate the Contract at City's convenience upon thirty (30) days written notice to Contractor. In the event of termination for convenience, Contractor shall recover only the actual cost of work completed to the date of termination, which cost shall be documented to City's satisfaction, plus a reasonable amount not to exceed fifteen percent (15%) of the actual cost of the unpaid Work performed for overhead and profit. Contractor shall not be entitled to any claim or lien against City for any additional compensation or damages in the event of such termination including, without limitation, any claim for lost profits, termination costs or unperformed or terminated Work.

11.3. If City terminates Contractor for default, and if it is later determined that the termination was wrongful, such default termination shall automatically be converted to and treated as a termination for convenience. In such event, Contractor shall be entitled to receive only the amounts payable under Section 11.2, and Contractor specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits.

11.4. City may, in writing, order Contractor to suspend all or any part of the Contractor's Work for the City's convenience or an account of events beyond City's control. If City suspends Contractor's performance for more than one hundred twenty (120) consecutive days, an adjustment to the Contractor's compensation may be made for increased costs, if any.

11.5. The performance of work under the Contract may be terminated by City, in its discretion, upon application therefore by the Contractor for unforeseen causes beyond the control and without the fault or negligence of the Contractor, including acts of God, acts of the public enemy, governmental acts, fires and epidemics, if such, causes irrecoverably disrupt or render impossible the Contractors performance hereunder. An "act of God" shall mean an earthquake, flood, cyclone, or other cataclysmic phenomenon of nature beyond the power of the Contractor to foresee or make preparation in defense against.

12. Hold Harmless And Indemnification.

12.1. The City and its officers, agents, and employees thereof connected with the Work, shall not be answerable or accountable in any manner for any loss or damage that may happen to the Work or any part thereof; for any loss or damage to any of the materials or other things used or employed in performing the Work; for injury to or death of any person; or for damage to property from any cause except losses due to sole negligence or willful misconduct of the City's officers, agents, or employees.

12.2. To the fullest extent allowed by law, Contractor and Contractor's subcontractors shall defend, indemnify and hold harmless the City, its elected and appointed officers, contractors, volunteers, employees and agents (the "City Parties"), from all liability, penalties, costs, losses, damages, expenses, causes of action, claims or judgments, including attorney's fees and other defense costs, resulting from injury to or death sustained by any person (including Contractor's employees), or damage to property of any kind, or any other injury or damage whatsoever, which injury, death or damage arises out of or is in any way connected with the performance of the Work or this Contract, regardless of the Contractor's fault or negligence, including any of the same resulting from City Parties' alleged or actual negligent act or omission; except that said indemnity shall not be applicable to injury, death or damage to property arising from the sole negligence or willful misconduct of the City Parties. Contractor shall also reimburse City for the cost of any settlement paid by City or any City Parties as part of any claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorneys' fees and costs, including expert witness fees. Contractor shall reimburse City Parties for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. This indemnification shall survive termination and expiration of this Contract and shall extend to claims asserted after termination of this Contract for whatever reason. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City Parties.

12.3. In addition to any remedy authorized by law, any money due the Contractor under and by virtue of the Contract, may be retained by the City until disposition has been made of any aforesaid suits or claims.

13. Insurance.

13.1. Contractor shall obtain, at its sole cost and expense, all insurance required by this Section 13. Certificates of such insurance and copies of the insurance policies and endorsements shall be delivered to City within ten (10) days after being notified of the award of the Contract, and before execution of the Contract by the City.

13.2. The insurance requirements specified herein shall apply to all subcontractors, although the limits of insurance may be reduced with the City's written consent. The Contractor shall designate appropriate insurance limits for Sub-Contractors which shall be subject to the approval of the City. It shall be the responsibility of the Contractor to ensure that all subcontractors comply with this provision, and to verify their compliance when requested by the City. The Contractor shall not allow any subcontractor to commence work until all insurance required of the subcontractor has been obtained and verified by the Contractor. Subcontractors shall furnish original certificates and endorsements as verification of insurance coverage. Upon request, Contractor shall deliver certificates of insurance or copies of the insurance policies and endorsements of all subcontractors to City; provided, however, that this shall not relieve Contractor of its obligation to ascertain the existence of such insurance.

13.3. The insurance required by this Section 13 shall be maintained by Contractor in full force and effect at all times during prosecution of the Work and until the expiration of the warranty period following the final completion and acceptance thereof by City, and no policy may be assigned, cancelled, or reduced in coverage without thirty (30) days' prior written notice to City, which shall be provided by Contractor.

13.4. The following are the minimum insurance requirements of this Contract:

- (a) Contractor shall maintain a Commercial General Liability insurance policy (on Insurance Services Office form number CG 0001 – “occurrence” form) insuring Contractor for an amount not less than Four Million Dollars (\$4,000,000.00) per occurrence with an annual aggregate limit of not less than Four Million Dollars (\$4,000,000.00) for bodily injury, personal injury and property damage.
- (b) Contractor shall maintain an Automobile Liability insurance policy (on Insurance Services Office form number CA 0001 covering Automobile Liability, code 1 "any auto," and endorsement CA 0025) insuring Contractor for an amount not less than One Million Dollars (\$2,000,000.00) combined single limit per accident for bodily injury and property damage.
- (c) Contractor shall maintain a Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Contractor as follows:
 - (1) This policy shall provide coverage for Workers' Compensation (Coverage A) in accordance with California law.
 - (2) This policy shall also provide coverage for One Million Dollars (\$1,000,000.00) Employers' Liability (Coverage B).
- (d) All of the following endorsements are required to be made a part of each of the required policies:
 - (1) Commercial General Liability. The general liability policy shall include or be endorsed (amended) to state that: (1) using ISO CG forms 20 10 and 20 37, or endorsements providing the exact same coverage, the City, its officials, officers, employees, agents, and volunteers shall be covered as additional insured with respect to the Work or ongoing and completed operations performed by or on behalf of the Contractor, including materials, parts or equipment furnished in connection with such work; (2) using ISO CG form 24 04, or endorsements providing the exact same coverage, the insurance shall waive any right of subrogation of the insurer against the City, its officials, officers, employees, agents, and volunteers, or any other additional insureds, or shall specifically allow Contractor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss; and (3) using ISO CG form 20 01, or endorsements providing the exact same coverage, the insurance coverage shall be primary insurance as respects the City, its officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor's scheduled underlying coverage. Any excess insurance shall contain a provision that such coverage shall also apply on a primary and noncontributory basis for the benefit of the City, before the City's own primary insurance or self-insurance shall be called upon to protect it as a named insured. Any insurance or self-insurance maintained by the City, its officials, officers, employees, agents, and volunteers shall be excess of the Contractor's insurance and shall not be called upon to contribute with it in any way.
 - (2) Automobile Liability. The automobile liability policy shall include or be endorsed (amended) to state that: (1) the City, its officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Contractor or for which the Contractor is responsible; (2) the insurance shall waive any right of subrogation of the insurer against the City, its officials, officers, employees, agents, and volunteers, or any other additional insureds, or shall specifically allow Contractor or others providing insurance evidence in compliance with these specifications to waive their right of recovery

- prior to a loss; and (3) the insurance coverage shall be primary insurance as respects the City, its officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, officers, employees, agents, and volunteers shall be excess of the Contractor's insurance and shall not be called upon to contribute with it in any way.
- (3) **Workers' Compensation and Employer's Liability Coverage.** The insurer shall agree to waive all rights of subrogation against the City, its officials, officers, employees, agents, and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Contractor.
 - (e) The City reserves the right to require complete, certified copies of all required insurance policies at any time.
 - (f) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the additional insured parties.
 - (g) Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - (h) Insurance is to be placed with insurers with a Best's rating of no less than A:VII.
 - (i) Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Contractor shall demonstrate financial capability for payment of such deductibles or self-insured retentions.
 - (j) Notwithstanding the minimum limits set forth in this Contract, any available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as additional insureds as specified herein.

13.5. Insurance Requirements are Material Element of Performance. In the event of the breach of any provision of this section, or in the event of any notices received which indicate any required insurance coverage will be diminished or canceled, City, at its option, may, notwithstanding any other provisions of this Contract to the contrary, immediately declare a material breach of this Contract and suspend all further work pursuant to this Contract.

14. Laws To Be Observed.

14.1. Contractor shall keep itself fully informed of all existing and future state and federal laws and county and municipal ordinances and regulations which in any manner affect those engaged or employed in the Work, or the materials used in the Work, or which in any way affect the conduct of Work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same.

14.2. Contractor shall at all times observe and comply with, and shall cause all of its agents and employees to observe and comply with all such existing and future laws, ordinances, regulations, orders, and decrees of bodies or tribunals having any jurisdiction or authority over the Work and shall protect and indemnify the City, and all officers and employees thereof against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree by Contractor, its agents or employees. If any discrepancy or inconsistency is discovered in the plans, drawings, specifications, or Contract for the Work in relation to any such law, ordinance, regulation, order or decree, Contractor shall forthwith report the same to the City in writing.

14.3. Contractor must insure that employees and applicants for employment are not discriminated against on the basis of age, color, race, national origin, ancestry, religion, sex, sexual preference or marital status, and shall comply with the Americans with Disabilities Act.

15. Notices. All notices required under this Contract shall be given in writing, sent via facsimile or US Mail, addressed to the recipient at the address set forth below the signatures at the end of this Agreement.

For City:
City of Burlingame
Bob Disco, Park Superintendent
1010 Burlingame Ave.
Burlingame, CA 94010
Phone No.: (650) 558-7333
bdisco@burlingame.org

Contractor:
Contractor Name: Attn: West Coast Arborists, Inc.
Attn: Patrick Mahoney
Address: 2200 E. Via Burton
Anaheim, CA 92806
Phone No.: 714-991-1900
Email: pmahoney@wcainc.com

16. Differing Site Conditions.

16.1. The Contractor shall promptly, and before the following conditions are disturbed, notify the City in writing of any:

- (a) Material that the Contractor believes may be hazardous waste, as defined in Section 25117 of the Health and Safety Code, which is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
- (b) Subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents, or
- (c) Unknown physical conditions at the site of any unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.

16.2. The City shall promptly investigate the conditions, and if it finds that such conditions do materially so differ, or do involve hazardous waste, and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the Work, it shall issue a change order under the provisions described in the Contract Documents.

16.3. No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice required in the Contract Documents.

16.4. In the event a dispute arises between the City and the Contractor as to whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, Contractor shall not be excused from completing the Work as provided in the Contract Documents. The Contractor shall proceed with the Work. The Contractor shall retain any and all rights provided either by this Contract or by law which pertain to the resolution of disputes and protests.

17. Records and Audits.

17.1. Contractor and its Sub-Contractors shall establish and maintain records pertaining to this Contract. Contractor's and Sub-Contractors' accounting systems shall conform to generally accepted accounting principles and all records shall provide a breakdown of total costs charged under this Contract, including properly executed payrolls, time records, invoices and vouchers.

17.2. During the term of this Contract, Contractor shall permit City and its authorized representatives to inspect and examine Contractor's books, records, accounts, and any and all data relevant to this

Contract at any reasonable time for the purpose of auditing and verifying statements, invoices, or bills submitted by Contractor pursuant to this Contract and shall provide such assistance as may be reasonably required in the course of such inspection. City further reserves the right to examine and re-examine said books, records, accounts, and data during the three (3) year period following the termination of this Contract. Contractor shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatever for this three-year period.

18. Independent Contractor.

18.1. In performing the Work, Contractor shall be, and is, an independent Contractor and not an employee of City. Contractor shall have and exercise full control and supervision of the Work, and full control over the employment, direction, compensation and discharge of all persons assisting Contractor in the performance of the Work. Contractor shall be solely responsible for all matters relating to the payment of its employees, including compliance with social security, withholding and other all other regulations governing such matters

18.2. The relationship between City and Contractor is not exclusive. Contractor may perform services for and contract with as many additional clients, persons or companies as Contractor sees fit. City may contract with others for performance of the same or services similar to those covered by this Contract at its discretion.

18.3. Contractor shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, income and personal property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the Work to be performed by Contractor, and reimburse the City in full for any of the expenses listed in the first sentence of this Section 18.3 that City may be ordered to pay for Contractors employees, subcontractors, or subcontractors' employees.

18.4. Additional Charges. Charges from Contractor to City will not be honored or paid by City unless the charges are authorized and approved by City at the time the Work for which a charge is submitted is being performed.

18.5. Clean-up. Contractor will remove all debris, unused materials or equipment resulting from performance of the Work, no less often than daily. If Contractor fails to do so, City may, after twenty-four (24) hours' notice to Contractor, clean up the site and deduct the cost from monies due or to become due to the Contractor.

19. Safety. Contractor shall execute and maintain its Work so as to avoid injury or damage to any person or property. In carrying out its Work, the Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the Work and the conditions under which the Work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life-saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

20. Severability/Partial Invalidity. If any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions, and such invalidity, illegality or unenforceability shall not

affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained in this Contract.

21. Governing Law/Venue. This Contract shall be governed by the laws of the State of California. Any litigation regarding this Contract or its contents shall be filed in the County of Contra Costa, if in state court, or in the federal court assigned to Contra Costa County, if in federal court. Contractor waives the right to move any litigation out of Contra Costa County.

22. Counterparts. This Contract may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

23. Authorized Signatories. All parties to this Contract warrant and represent that they have the power and authority to enter into this Contract in the names, titles, and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s).

24. Conflicts of Interest. Contractor covenants that neither it, nor any officer or principal of its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City, or which would in any way affect Contractor's performance of Work under this Contract. Contractor further covenants that in the performance of the Contract, no person having any such interest shall be employed by it as an officer, employee, agent or Sub- Contractor without the express written consent of City. Contractor agrees to at all times avoid conflicts of interest, or the appearance of any conflicts of interest, with the interests of the City in the performance of this Contract.

25. Remedies Not Exclusive. Except as provided in Sections 12.2 and 12.3, no remedy herein conferred upon or reserved to City is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

26. Successors and Assigns. All representations, covenants and warranties set forth in this Contract, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns. Other than City, Contractor and their successors and assigns, there are no other beneficiaries of this Contract.

27. Headings. The headings of the several sections, and any table of contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

28. No Waiver of Default. No delay or omission of City to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default of an acquiescence therein; and every power and remedy given by this Agreement to City shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of City.

29. Business License Requirement. Contractor shall at all times it is performing the Work have and maintain a City of Burlingame Business License.

30. Contractor License Notice. CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN FOUR YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN 10 YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS' STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO,

CALIFORNIA 95826.

31. Attorneys' Fees and Costs. If action in law or equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Contract, the prevailing party shall be entitled to recover from the losing party attorney's fees and costs in an amount determined to be reasonable by a court of competent jurisdiction.

IN WITNESS WHEREOF, the City and Contractor have executed this Contract as of the date first above written.

CONTRACTOR:

West Coast Arborists, Inc.

DocuSigned by:
* By: [Signature]
Printed Name: Patrick Mahoney
Title: President

CITY:

DocuSigned by:
By: [Signature]
Lisa K. Goldman, City Manager

** By: _____
Printed Name: _____
Title: _____

ATTEST:

DocuSigned by:
By: [Signature]
Meaghan Hassel-Shearer, City Clerk

APPROVED AS TO FORM:

DocuSigned by:
By: [Signature]
Michael Guina, City Attorney

If required by City, proper notarial acknowledgment of execution by Consultant must be attached. If a Corporation, Agreement must be signed by one corporate officer from each of the following two groups.

- *Group A.
- Chairman,
- President, or
- Vice-President

- **Group B.
- Secretary,
- Assistant Secretary,
- CFO or Assistant Treasurer

Otherwise, the corporation must attach a resolution certified by the secretary or assistant secretary under corporate seal empowering the officer(s) signing to bind the corporation.

If an LLC:

The Agreement must be signed by a Managing Member or the LLC must attach a resolution empowering the signatory to bind the LLC. If a partnership:

The Agreement must be signed by the Managing Partner or the Partner authorized to execute agreements of this type. Additional documentation, such as the partnership agreement, confirming this signature authority may be required.

If a sole proprietorship:

The Agreement must be signed by the owner.