

FIRST AMENDMENT TO TREE MAINTENANCE SERVICES AGREEMENT

This First Amendment to the Tree Maintenance Services Agreement (“Amendment”), between the City of La Habra (“City”) and West Coast Arborists, (“Contractor”) takes effect on July 1, 2020.

BACKGROUND

On September 15, 2014, the City entered into an agreement (“Agreement”) with Contractor for tree maintenance services. The parties wish to modify insurance terms, termination and hold harmless terms, and modify the rate schedule attachment to reflect increased insurance costs that are part of the Agreement. The parties, therefore, agree as follows:

AGREEMENT

SECTION 1. Article IV of the Agreement is deleted in its entirety and replaced with the following:

ARTICLE IV INSURANCE

4.1 Insurance Requirements.

The CITY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. If the existing policies do not meet the Insurance Requirements set forth herein, CONTRACTOR agrees to amend, supplement or endorse the policies to do so.

Without limiting the indemnity provisions of the Contract, the CONTRACTOR shall procure and maintain in full force and effect during the term of the Contract, the following policies of insurance.

4.2 Minimum Scope of Insurance.

- (a) **Commercial General Liability (CGL)** which affords coverage at least as broad as Insurance Services Office “occurrence” form CG 00 01, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than \$20,000,000 per occurrence and \$25,000,000 in aggregate.
- (b) **Automobile Liability Insurance** with coverage at least as broad as Insurance Services Office Form CA 0001 covering “Any Auto”

(Symbol 1) with limit no less than \$5,000,000 each accident for bodily injury and property damage.

- (c) **Workers' Compensation** as required by the State of California with statutory limits, and **Employer's Liability Insurance** with a limit of not less than \$1,000,000 per accident for bodily injury or disease.
- (d) **Professional Liability** with limit of not less than \$5,000,000 per occurrence. Covered Professional Services shall specifically include all work to be performed under the contract and delete any exclusion that may potentially affect the work to be performed.

If the **CONTRACTOR** maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by the **CONTRACTOR**.

4.3 Endorsements.

The insurance policies shall contain or be endorsed to contain, the following provisions:

- (a) **Commercial General Liability**

- (1) **Additional Insured:** The City, its elected officials, officers, employees, volunteers, boards, agents and representatives shall be additional insureds with regard to liability and defense of suits or claims arising out of the work or operations performed by or on behalf of the **CONTRACTOR** including materials, parts or equipment furnished in connection with such work or operations.

Additional Insured Endorsements shall not:

1. Be limited to "Ongoing Operations"
2. Exclude "Contractual Liability"
3. Restrict coverage to the "Sole" liability of contractor
4. Exclude "Third-Party-Over Actions"
5. Contain any other exclusion contrary to the Contract

Additional Insured Endorsements shall be at least as broad as ISO Form(s) CG 20 10 11 85; or CG 2010 and CG 20 37.

- (2) **Primary Insurance:** This insurance shall be primary and any other insurance whether primary, excess, umbrella or contingent insurance, including deductible, or self-insurance available to the insureds added by endorsement shall be in excess of and shall not contribute with this

insurance. Coverage shall be at least as broad as ISO CG 20 01 04 13.

(b) Auto Liability

- (1) **Additional Insured:** The City, its elected officials, officers, employees, volunteers, boards, agents and representatives shall be additional insureds with regard to liability and defense of suits or claims arising out of the work or operations performed by or on behalf of the **CONTRACTOR**
- (2) **Primary Insurance:** This insurance shall be primary and any other insurance whether primary, excess, umbrella or contingent insurance, including deductible, or self-insurance available to the insureds added by endorsement shall be in excess of and shall not contribute with this insurance.

(c) Workers' Compensation

- (1) **Waiver of Subrogation:** A waiver of subrogation stating that the insurer waives all rights of subrogation against the indemnified parties.

4.4 Insurance Obligations of CONTRACTOR.

The insurance obligations under this contract shall be: (1) all the insurance coverage and/or limits carried by or available to the Contractor; or (2) the minimum insurance coverage requirements and/or limits shown in this contract; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to the City. No representation is made that the minimum insurance requirements of this contract are sufficient to cover the obligations of the Contractor under this contract.

4.5 Notice of Cancellation.

Required insurance policies shall not be cancelled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the CITY except ten (10) days shall be allowed for non-payment of premium.

4.6 Waiver of Subrogation.

Required insurance coverages shall not prohibit **CONTRACTOR** from waiving the right of subrogation prior to a loss. **CONTRACTOR** shall waive all rights of subrogation against the indemnified parties and Policies shall contain or be endorsed to

contain such a provision. This provision applies regardless of whether the CITY has received a waiver of subrogation endorsement from the insurer.

4.7 Evidence of Insurance.

All policies, endorsements, certificates, and/or binders shall be subject to approval by the CITY as to form and content. These requirements are subject to amendment or waiver only if so approved in writing by the CITY. The CITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15 days) prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the CITY. If such coverage is cancelled or reduced, CONTRACTOR shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the CITY evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

4.8 Deductible or Self-Insured Retention.

Any deductible or self-insured retention must be approved in writing by the CITY and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention. The CITY may require the CONTRACTOR to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration and defense expenses within the retention.

4.9 Contractual Liability.

The coverage provided shall apply to the obligations assumed by the CONTRACTOR under the indemnity provisions of this contract.

4.10 Failure to Maintain Coverage.

CONTRACTOR agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to the CITY. The CITY shall have the right to withhold any payment due until CONTRACTOR has fully complied with the insurance provisions of this Contract.

In the event that the CONTRACTOR'S operations are suspended for failure to maintain required insurance coverage, the CONTRACTOR shall not be entitled to an extension of time for completion of the Work because of production lost during suspension.

4.11 Acceptability of Insurers.

Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law. Any other rating must be approved in writing by the CITY.

4.12 Claims Made Policies.

If coverage is written on a claims-made basis, the retroactive date on such insurance and all subsequent insurance shall coincide or precede the effective date of the initial CONTRACTOR'S Contract with the CITY and continuous coverage shall be maintained or an extended reporting period shall be exercised for a period of at least two (2) years from termination or expiration of this Contract.

4.13 Insurance for Subcontractors.

CONTRACTOR shall be responsible for causing Subcontractors to purchase the same types and limits of insurance in compliance with the terms of this Contract/Agreement, including adding the CITY as an Additional Insured, providing Primary and Non-Contributory coverage and Waiver of Subrogation to the Subcontractor's policies. The Commercial General Liability Additional Insured Endorsement shall be on a form at least as broad as CG 20 38 04 13.

4.14 Additional Insurance.

Further, CONTRACTOR shall obtain any additional kinds and amounts of insurance which, in its own judgment, may be necessary for the proper protection of any of its officers', employees', or authorized sub-CONTRACTORS' own actions during the performance of this Agreement.

SECTION 2. Article V of the Agreement is deleted in its entirety and replaced with the following:

ARTICLE V TERMINATION and HOLD HARMLESS

5.1 Notice of Termination.

CITY may terminate the whole or any part of this Agreement at any time and without cause by giving thirty (30) days written notice to CONTRACTOR of such termination, and specifying the effective date thereof. CONTRACTOR shall discontinue all services affected by such termination within thirty (30) days of receipt of such notice, unless otherwise instructed by CITY in writing. CONTRACTOR shall not terminate this Agreement except for cause.

5.2 Termination Without Cause.

If CITY terminates this Agreement without cause, CONTRACTOR shall be paid for services performed through the date of termination, upon receipt of written documentation of said services by CITY. Such payment shall include a pro-rated amount of profit, if applicable, but no amount shall be paid for anticipated profit on unperformed services.

5.2 Termination for Cause.

Should CONTRACTOR default in the performance of any covenant, condition, or agreement contained in this Agreement and the default is not cured within thirty (30) days after written notice of the default is served on CONTRACTOR by CITY then CITY, in addition to any other remedies at law or equity, may terminate this Agreement. CONTRACTOR shall be compensated for services which have been completed and accepted by CITY. CONTRACTOR shall be liable to CITY for any reasonable additional costs incurred to correct or cure unsatisfactory work performed by CONTRACTOR which, at CITY'S discretion, must be revised, in part or in whole, to complete the Project.

5.4 Procurement of Similar Services.

In the event this Agreement is terminated as provided by this Article, with or without cause, in whole or in part, CITY may procure any and all services as may be necessary to complete the Project.

5.5 Work Product.

In the event of termination of this Agreement, all finished or unfinished design, development and construction documents, data studies, drawings, maps and reports prepared by CONTRACTOR shall be delivered to the CITY within seven (7) days of CONTRACTOR's receipt of termination notice, and at no additional cost to CITY. Any use of uncompleted documents without specific written authorization from CONTRACTOR shall be at CITY's sole risk and without liability or legal expense to CONTRACTOR.

5.6 Indemnification and Hold Harmless.

These Indemnification provisions are independent of and shall not in any way be limited by the Insurance Requirements of this Agreement. CITY approval of the insurance required by this contract does not in any way relieve the CONTRACTOR from liability under this section.

a) Defense, Indemnity and Hold Harmless. Contractor shall defend, indemnify and hold harmless the City, its present and former officers, directors, employees, agents, volunteers, mayor, staff, boards, committee and representatives, as broadly interpreted (collectively, the "Indemnified Parties"), of and from all claims, suits, demands, obligations, losses damages, sums or any other matters, threatened or presently asserted, including but not limited to all legal fees, costs of defense and litigation expenses (including legal fees, expert fees and any other costs or fees, including those of adverse parties imposed on or sought against the Indemnified Parties), arising directly or indirectly out of any liability or claim of loss or liability for personal injury, bodily injury to persons, contractual liability, errors or omissions, breach, failure to perform, damage to or loss of property, or any other loss, damage, injury or other claim of any kind or nature arising out of the work to be performed by Contractor herein, caused by or arising out of the negligent acts or omissions, or intentional misconduct of Contractor, including its subcontractors, employees, agents and other persons or entities performing work for Contractor.

(b) Contractual Indemnity. To the fullest extent permitted under California law, Contractor shall contractually indemnify, defend and hold harmless the Indemnified Parties from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses, amounts for good faith settlement, or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees and costs), arising out of or related to, in whole or in part, the performance of this Agreement by Contractor or by any individual or entity for which Contractor is legally liable, including but not limited to Contractor's officers, agents, representatives, employees, independent contractors, subcontractors or affiliated or related entities and/or its or their employees, agents and representatives, caused by or arising out of all negligent acts or omissions, or intentional misconduct of Contractor, including its subcontractors, employees, agents and other persons or entities performing work for Contractor. Indemnification shall include any claim that Contractor or Contractor's employees or agents, are or may be considered and treated as employees of the City or are entitled to any employee benefits from City, including but not limited to those available under Public Employees Retirement Law. The obligation to indemnify, defend and hold harmless the Indemnified Parties shall apply to all liability as defined above regardless of whether the Indemnified Parties were or are alleged to have been negligent, except that it shall not apply to claims arising from the sole negligence or willful intentional misconduct of the Indemnified Parties. Contractor's obligation to defend the Indemnified Parties is not contingent upon there being an acknowledgement of or determination of the merit of any claims, liability, demands, causes of action, suits, losses, expenses, errors, omissions and/or costs.

(c) Subcontractors and Indemnification. Contractor agrees to and shall obtain executed indemnity agreements in favor of the Indemnified Parties with provisions identical to those set forth from each and every Subcontractor, Sub consultant or other person or entity involved by, for, with, or on behalf of Contractor in the performance of any aspect of this Agreement. In the event Contractor fails to obtain such indemnity

obligations. Contractor shall be fully responsible for each and every Subcontractor, Subconsultant or other person or entity in terms of defense, indemnity and hold harmless obligations in favor of the Indemnified Parties as set out above. This obligation to indemnify and defend the Indemnified Parties is binding on the successors, assigns or heirs of Contractor and shall survive the full performance or termination of this Agreement. These indemnification provisions are independent of and shall not in any way be limited or superseded by the insurance requirements and insurance-related provisions of this Agreement.

(d) City Lost or Damaged Property – Theft. Contractor further agrees to pay or cause to be paid for the Indemnified Parties' benefit for any and all damage, fines or penalties, or loss or theft to the property of the City arising out of or related in any way to the negligent acts or omissions, or intentional misconduct of Contractor or of Contractor's officers, agents, representatives, employees, independent contractors, subcontractors or affiliated or related entities and/or its or their employees, agents and representatives, whether such actions, omissions to act, negligence or intentional conduct is or was authorized by this Agreement or not. City assumes no responsibility whatsoever for any property placed on the premises of City. Contractor further agrees to waive all rights of subrogation against the Indemnified Parties.

(e) Non-Waiver and Non-Exhaustion of City's Further Rights and Remedies. No aspect of this provision shall in any way limit or effect the rights of the Indemnified Parties against the 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 a dispute as to the termination of Contractor. The indemnity obligations of Contractor shall continue until it is determined by final judgment that the claim against the City and any Indemnified Parties is determined by final judgment and after exhaustion of any rights of appeal. Further, no aspect of this provision shall impact the City's rights to contribution from Contractor, or for the City to dispute Contractor's refusal to defend and indemnify City.

(f) Limitations on Scope of Indemnity. Notwithstanding the foregoing, Contractor shall not be responsible for indemnification for claims or losses caused by the sole negligence or intentional wrongdoing of Indemnified Parties. Further, the indemnity provided shall be interpreted as broadly as permitted under California law and as to agreements between parties and shall if required be reformed to be consistent with those laws to protect and save this provision for the protection of the Indemnified Parties.

SECTION 3. Exhibit "B" SCHEDULE OF COMPENSATION.

The Schedule of Compensation is hereby amended and replaced with the attached document titled: The Schedule of Compensation for Year 2020-2021.

SECTION 4. All other terms, conditions, and provisions of the Agreement, to the extent not modified with this Amendment, shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be duly executed with all the formalities required by law on the respective dates set forth opposite their signatures.


CITY OF LA HABRA

By:  / 11/3/20
Jim Sadro, City Manager Date

APPROVED AS TO FORM:

By:  /
Richard D. Jones, City Attorney

ATTEST:

By:  / 11/3/2020
Laurie Swindell, CMC, City Clerk

WEST COAST ARBORISTS, INC. (WCA)

By:  / 10/5/20
Patrick Mahoney, President Date



Schedule of Compensation for Year 2020 - 2021

Tree Maintenance Services performed by WCA, Inc.

Item	Description	Unit	Proposed Prices
1	Street Tree Prune	Each	\$50.40
2	Park/Facility Tree Prune	Each	\$50.40
3	Palm Tree Prune	Each	\$50.40
4	Svc Rqst Prune 0-6 DBH	Each	\$50.40
5	Svc Rqst Prune 7-18 DBH	Each	\$130.20
6	Svc Rqst Prune 19-24 DBH	Each	\$240.45
7	Svc Rqst Prune > 24 DBH	Each	\$364.35
8	Crown Restoration Prune	Each	\$236.25
9	Palm Tree Skinning	Foot	\$20.45
10	Tree and Stump Removal	Inch	\$26.25
11	Tree Only Removal	Inch	\$13.65
12	Stump Only Removal	Inch	\$12.60
13	Plant 15 Gal w/o RB	Each	\$130.20
14	Plant 24" Box w/o RB	Each	\$275.10
15	Watering	Day	\$546.00
16	Specialty Equipment Rental	Hour	\$163.80
17	Arborist Services	Man Hour	\$163.80
18	Crew Rental - per man	Man Hour	\$81.90
19	Emergency Call Out - per man	Man Hour	\$81.90

The proposed rates reflect a 5% increase to offset the added cost to provide increased insurance coverage as may be required by the City of La Habra.