

CONTRACT TREE MAINTENANCE SERVICES AGREEMENT

By and Between

CITY OF CARSON

and

WEST COAST ARBORISTS, INC.

**CONTRACT TREE MAINTENANCE SERVICES AGREEMENT
BETWEEN THE CITY OF CARSON AND
WEST COAST ARBORISTS, INC.**

THIS AGREEMENT FOR CONTRACT SERVICES (herein “Agreement”) is made and entered into this 1st day of October, 2018 by and between the City of Carson, a California municipal corporation (“City”) and West Coast Arborists, Inc., a California Corporation (“Contractor” and/or “WCA”). City and Contractor are sometimes hereinafter individually referred to as “Party” and hereinafter collectively referred to as the “Parties”.

RECITALS

A. City has sought, by issuance of a Request for Proposals or Invitation for Bids, the performance of contract tree maintenance services in the City of Carson for public parks, various civic facilities, streets and medians, as defined and described particularly in Article 1 of this Agreement.

B. Contractor, following submission of a proposal or bid for the performance of the services defined and described particularly in Article 1 of this Agreement, was selected by the City to perform those services.

C. Pursuant to the City of Carson Municipal Code, City has authority to enter into and execute this Agreement.

D. The Parties desire to formalize the selection of Contractor for performance of contract tree maintenance services in the City of Carson for public parks, various civic facilities, streets and medians, as defined and described particularly in Article 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1. WORK OF CONTRACTOR

1.1 Scope of Work.

In compliance with all terms and conditions of this Agreement, the Contractor shall provide those services specified in the “Scope of Work” attached hereto as Exhibit “A” and incorporated herein by this reference, which may be referred to herein as the “services” or “work” hereunder. As a material inducement to the City entering into this Agreement, Contractor represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the work required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the work and services contemplated herein. Contractor shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Contractor covenants that it shall

follow the highest professional standards in performing the work and services required hereunder and that all materials will be both of good quality as well as fit for the purpose intended. For purposes of this Agreement, the phrase “highest professional standards” shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

1.2 Contractor’s Proposal.

The Scope of Service shall include the Contractor’s scope of work in Contractor’s bid proposal. The Contractor’s bid proposal shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern. The Contractor’s bid proposal shall be escrowed with a neutral third party mutually agreed upon by the parties.

1.3 Compliance with Law.

Contractor shall keep itself informed concerning, and shall render all services hereunder in accordance with, all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

1.4 Licenses, Permits, Fees and Assessments.

Contractor shall obtain at its sole cost and expense such licenses, permits, registrations, and approvals as may be required by law for the performance of the services required by this Agreement. Contractor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor’s performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

1.5 Familiarity with Work.

(a) By executing this Agreement, Contractor warrants that Contractor (i) has thoroughly investigated and considered the scope of work to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder.

(b) Contractor shall promptly, and before the following conditions are disturbed, notify the City, in writing, of any: (i) material Contractor believes may be hazardous waste as defined in Section 25117 of the Health & Safety Code required to be removed to a Class I, II, or III disposal site in accordance with existing law; (ii) subsurface, unknown or latent conditions, materially different from those indicated; or (iii) unknown physical conditions at the site of any unusual nature, different from those ordinarily encountered and generally recognized

as inherent in work of the character provided for in this Agreement, and will materially affect the performance of the services hereunder.

(c) City shall promptly investigate the conditions, and if it finds that the conditions do materially differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the work, shall issue a change order per Section 1.10 of this Agreement.

(d) In the event that a dispute arises between City and Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date set, but shall proceed with all work to be performed under the Agreement. Contractor shall retain any and all rights provided either by contract or by law, which pertain to the resolution of disputes and protests between the contracting parties.

1.6 Protection and Care of Work and Materials.

The Contractor shall adopt reasonable methods, including providing and maintaining storage facilities, during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as caused by City's own negligence. Stored materials shall be reasonably accessible for inspection. Contractor shall not, without City's consent, assign, sell, mortgage, hypothecate, or remove equipment or materials which have been installed or delivered and which may be necessary for the completion of the work.

1.7 Warranty.

Contractor warrants all Work under the Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the City of any defect in the Work or non-conformance of the Work to the Agreement, commence and prosecute with due diligence all Work necessary to fulfill the terms of the warranty at its sole cost and expense. Contractor shall act soon as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair, remove and replace any portions of the Work (or work of other contractors) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected Work. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply

with the requirements of the Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstatement of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand.

1.8 Prevailing Wages.

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 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates, that Contractor and all subcontractors be registered with and pay the registration fee to the Department of Industrial Relations ("DIR"), Contractor be subject to the monitoring and enforcement by the DIR, and the performance of 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. City shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. 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.

1.9 Further Responsibilities of Parties.

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

1.10 Additional Work and Change Orders.

(a) City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Work or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written change order is first given by the Contract Officer

to the Contractor, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Contractor (“Change Order”). All Change Orders must be signed by the Contractor and Contract Officer prior to commencing the extra work thereunder.

(b) Any increase in compensation of up to ten percent (10%) of the Contract Sum or \$25,000, whichever is less; or any increase in the time to perform of up to one hundred eighty (180) days; and does not materially affect the Work and which are not detrimental to the Work or to the interest of the City, may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively, must be approved by the City Council.

(c) Any adjustment in the Contract Sum for a Change Order must be in accordance with the rates set forth in the Schedule of Compensation in Exhibit “C”. If the rates in the Schedule of Compensation do not cover the type of work in the Change Order, the cost of such work shall not exceed an amount agreed upon in writing and signed by Contractor and Contract Officer. If the cost of the Change Order cannot be agreed upon, the City will pay for actual work of the Change Order completed, to the satisfaction of the City, as follows:

(i) Labor: the cost of labor shall be the actual cost for wages of workers and subcontractors performing the work for the Change Order at the time such work is done. The use of labor classifications that would increase the cost of such work shall not be permitted.

(ii) Materials and Equipment: the cost of materials and equipment shall be at cost to Contractor or lowest current price which such materials and equipment are reasonably available at the time the work is done, whichever is lower.

(iii) If the cost of the extra work cannot be agreed upon, the Contractor must provide a daily report that includes invoices for labor, materials and equipment costs for the work under the Change Order. The daily report must include: list of names of workers, classifications, and hours worked; description and list of quantities of materials used; type of equipment, size, identification number, and hours of operation, including loading and transportation, if applicable; description of other City authorized services and expenditures in such detail as the City may require. Failure to submit a daily report by the close of the next working day may, at the City’s sole and absolute discretion, waive the Contractor’s rights for that day.

(d) It is expressly understood by Contractor that the provisions of this Section 1.10 shall not apply to services specifically set forth in the Scope of Work. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Work may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other contractors.

(e) No claim for an increase in the Contract Sum or time for performance shall be valid unless the procedures established in this Section are followed.

1.11 Complaints.

A written log of all complaints shall be maintained to include the date, time of occurrence, location, problem, and action to be taken pursuant thereto or reason for non-action. The log is to be reviewed with Contract Officer or authorized designee at the end of each day. Pictures are to be taken at the time of the incident which is the subject of the complaint. Any activities determined by City to be unacceptable and to require immediate abatement shall be corrected immediately by Contractor. All other complaints shall be abated by Contractor within 24 hours of notification of the complaint.

1.12 Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.

2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Contractor the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed **One Million Nine Hundred Sixty Nine Thousand Seven Hundred Sixty Four and 09/100 Dollars (\$1,969,764.09)** (the "Contract Sum"), unless additional compensation is approved pursuant to Section 1.10.

2.2 Method of Compensation.

The method of compensation may include: (i) a lump sum payment upon completion, (ii) payment in accordance with specified tasks or the percentage of completion of the services less the contract retention;, (iii) payment for time and materials based upon the Contractor's rates as specified in the Schedule of Compensation, provided that (a) time estimates are provided for the performance of sub tasks, (b) contract retention is maintained and (c) the Contract Sum is not exceeded; or (iv) such other methods as may be specified in the Schedule of Compensation.

2.3 Reimbursable Expenses.

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual subcontractor expenses of an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Contractor at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Contractor is required to attend additional meetings to facilitate such coordination, Contractor shall not be entitled to any additional compensation for attending said meetings.

2.4 Invoices.

Each month Contractor shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. By submitting an invoice for payment under this Agreement, Contractor is certifying compliance with all provisions of the Agreement. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. Sub-contractor charges shall also be detailed by such categories. Contractor shall not invoice City for any duplicate services performed by more than one person.

City shall independently review each invoice submitted by the Contractor to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Contractor which are disputed by City, or as provided in Section 7.3, City will cause Contractor to be paid within forty-five (45) days of receipt of Contractor's correct and undisputed invoice; however, Contractor acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Contractor for correction and resubmission. Review and payment by the City of any invoice provided by the Contractor shall not constitute a waiver of any rights or remedies provided herein or any applicable law.

2.5 Waiver.

Payment to Contractor for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Contractor.

ARTICLE 3. PERFORMANCE SCHEDULE

3.1 Time of Essence.

Time is of the essence in the performance of this Agreement.

3.2 Schedule of Performance.

Contractor shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Contractor, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

3.3 Force Majeure.

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather,

fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Contractor shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Contractor be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Contractor's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Inspection and Final Acceptance.

City may inspect and accept or reject any of Contractor's work under this Agreement, either during performance or when completed. City shall reject or finally accept Contractor's work within forty-five (45) days after submitted to City. City shall accept work by a timely written acceptance, otherwise work shall be deemed to have been rejected. City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as to amount to fraud. Acceptance of any work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Articles 1 and 5, pertaining to warranty and indemnification and insurance, respectively.

3.5 Term.

Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding one (1) years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D").

ARTICLE 4. COORDINATION OF WORK

4.1 Representatives and Personnel of Contractor.

The following principals of Contractor ("Principals") are hereby designated as being the principals and representatives of Contractor authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

Robert Thompson
(Name)

Manager, West Coast Arborists, Inc.
(Title)

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing Principals were a substantial inducement for City to enter into this Agreement. Therefore, the Principals 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. All personnel of Contractor, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the Principals may not be replaced nor may their responsibilities be substantially reduced by Contractor without the express written approval of City. Additionally, Contractor shall make every

reasonable effort to maintain the stability and continuity of Contractor's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Contractor shall notify City of any changes in Contractor's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

4.2 Status of Contractor.

Contractor shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Contractor shall not at any time or in any manner represent that Contractor or any of Contractor's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Contractor, nor any of Contractor's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Contractor expressly waives any claim Contractor may have to any such rights.

4.3 Contract Officer.

The Contract Officer shall be **Gregory MacDonald, City of Carson Tree and Concrete Maintenance Supervisor**, or such person as may be designated by the City Manager. It shall be the Contractor's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Contractor shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

4.4 Independent Contractor.

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Contractor, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Contractor's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Contractor shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venturer or a member of any joint enterprise with Contractor.

4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Contractor shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. All subcontractors shall

obtain, at its or Contractor's expense, such licenses, permits, registrations and approvals (including from the City) as may be required by law for the performance of any services or work under this Agreement. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Contractor or any surety of Contractor of any liability hereunder without the express consent of City.

ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS

5.1 Insurance Coverages.

The Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of City:

(a) Commercial General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than \$1,000,000.00 per occurrence or if a general aggregate limit is used, then the general aggregate limit shall be twice the occurrence limit.

(b) Workers Compensation Insurance. A policy of workers compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for the Contractor against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Contractor in the course of carrying out the work or services contemplated in this Agreement.

(c) Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than \$1,000,000. Said policy shall include coverage for owned, non-owned, leased, hired cars and any automobile.

(d) Professional Liability. Professional liability insurance appropriate to the Contractor's profession. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. The insurance must be maintained for at least 5 consecutive years following the completion of Contractor's services or the termination of this

Agreement. During this additional 5-year period, Contractor shall annually and upon request of the City submit written evidence of this continuous coverage.

(e) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements in Exhibit "B".

(f) Subcontractors. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

5.2 General Insurance Requirements.

All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents may apply in excess of, and not contribute with Contractor's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. Moreover, the insurance policy must specify that where the primary insured does not satisfy the self-insured retention, any additional insured may satisfy the self-insured retention. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Contractor has provided the City with Certificates of Insurance, additional insured endorsement forms or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of and endorsements to all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

All certificates shall name the City as additional insured (providing the appropriate endorsement) and shall conform to the following "cancellation" notice:

CANCELLATION:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATED THEREOF, THE ISSUING COMPANY SHALL MAIL THIRTY (30)-DAY ADVANCE WRITTEN NOTICE TO CERTIFICATE HOLDER NAMED HEREIN.

[to be initialed]

Agent's Initials

City, its respective elected and appointed officers, directors, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of

activities Contractor performs; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or any automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, employees or volunteers. 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.

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. The Contractor agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which the Contractor may be held responsible for the payment of damages to any persons or property resulting from the Contractor's activities or the activities of any person or persons for which the Contractor is otherwise responsible nor shall it limit the Contractor's indemnification liabilities as provided in Section 5.3.

In the event the Contractor subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, the contract between the Contractor and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Contractor is required to maintain pursuant to Section 5.1, and such certificates and endorsements shall be provided to City.

5.3 Indemnification.

To the full extent permitted by law, Contractor agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Contractor, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Contractor is legally liable ("indemnitors"), or arising from Contractor's or indemnitors' reckless or willful misconduct, or arising from Contractor's or indemnitors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Contractor will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Contractor will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of

Contractor hereunder; and Contractor agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Contractor hereunder, Contractor agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

In addition, Contractor agrees to indemnify, defend and hold harmless the Indemnified Parties from, any and all claims and liabilities for any infringement of patent rights, copyrights or trademark on any person or persons in consequence of the use by the Indemnified Parties of articles to be supplied by Contractor under this Agreement, and of which the Contractor is not the patentee or assignee or has not the lawful right to sell the same.

Contractor shall incorporate similar indemnity agreements with its subcontractors and if it fails to do so Contractor shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Contractor in the performance of professional services and work hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Contractor and shall survive termination of this Agreement.

5.4 Performance and Labor Bonds.

Concurrently with execution of this Agreement Contractor shall deliver to the City, the following:

(a) A performance bond in the amount of the Contract Sum of this Agreement, in the form provided by the City Clerk, which secures the faithful performance of this Agreement.

(b) A labor and materials bond in the amount of the Contract Sum of this Agreement, in the form provided by the City Clerk, which secures the payment of all persons furnishing labor and/or materials in connection with the work under this Agreement.

Both the performance and labors bonds required under this Section 5.4 shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional and remain in force during the entire term of the Agreement and shall be null and void only if the Contractor

promptly and faithfully performs all terms and conditions of this Agreement and pays all labor and materials for work and services under this Agreement.

5.5 Sufficiency of Insurer or Surety.

Insurance and bonds required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City ("Risk Manager") due to unique circumstances. If this Agreement continues for more than 3 years duration, or in the event the Risk Manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Contractor agrees that the minimum limits of the insurance policies and the performance bond required by Section 5.4 may be changed accordingly upon receipt of written notice from the Risk Manager.

5.6 Substitution of Securities.

Pursuant to Public Contract Code Section 22300, substitution of eligible equivalent securities for any funds withheld to ensure performance under this Agreement may be permitted at the request and sole expense of the Contractor. Alternatively, the Contractor may, pursuant to an escrow agreement in a form prescribed by Public Contract Code Section 22300, request payment of retentions funds earned directly to the escrow agent at the sole expense of the Contractor. 5.7

5.7 Release of Securities.

City shall release the Performance and Labor Bonds when the following have occurred:

- (a) Contractor has made a written request for release and provided evidence of satisfaction of all other requirements under Article 5 of this Agreement;
- (b) the Work has been accepted; and
- (c) after passage of the time within which lien claims are required to be made pursuant to applicable laws; if lien claims have been timely filed, City shall hold the Labor Bond until such claims have been resolved, Contractor has provided statutory bond, or otherwise as required by applicable law.

ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1 Records.

Contractor shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies, certified and accurate copies of payroll records in compliance with all applicable laws, or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract

Officer to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of 3 years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Contractor's business, custody of the books and records may be given to City, and access shall be provided by Contractor's successor in interest. Notwithstanding the above, the Contractor shall fully cooperate with the City in providing access to the books and records if a public records request is made and disclosure is required by law including but not limited to the California Public Records Act.

6.2 Reports.

Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Contractor hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Contractor agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Contractor is providing design services, the cost of the project being designed, Contractor shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Contractor is providing design services, the estimated increased or decreased cost estimate for the project being designed.

6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Contractor, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Contractor will be at the City's sole risk and without liability to Contractor, and Contractor's guarantee and warranties shall not extend to such use, reuse or assignment. Contractor may retain copies of such documents for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City for all damages resulting therefrom. Moreover, Contractor with respect to any documents and materials that may qualify as "works made for hire" as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed "works made for hire" for the City.

6.4 Confidentiality and Release of Information.

(a) All information gained or work product produced by Contractor in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Contractor. Contractor shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Contractor, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered “voluntary” provided Contractor gives City notice of such court order or subpoena.

(c) If Contractor, or any officer, employee, agent or subcontractor of Contractor, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Contractor for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Contractor’s conduct.

(d) Contractor shall promptly notify City should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION

7.1 California Law.

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Los Angeles, State of California, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in the County of Los Angeles, State of California.

7.2 Disputes; Default.

In the event that Contractor is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Contractor for any work performed after the date of default. Instead, the City may give notice to Contractor of the default and the

reasons for the default. The notice shall include the timeframe in which Contractor may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Contractor is in default, the City shall hold all invoices and shall proceed with payment on the invoices only when the default is cured. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Contractor does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Contractor's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

7.3 Retention of Funds.

Contractor hereby authorizes City to deduct from any amount payable to Contractor (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Contractor's acts or omissions in performing or failing to perform Contractor's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Contractor, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Contractor to insure, indemnify, and protect City as elsewhere provided herein.

7.4 Waiver.

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Contractor shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

7.5 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

7.6 Legal Action.

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel

specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Contractor shall file a claim pursuant to Government Code Sections 905 et seq. and 910 et. seq., in order to pursue a legal action under this Agreement.

7.7 Liquidated Damages.

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Contractor and its sureties shall be liable for and shall pay to the City the sum of _____ (\$_____) as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit "D"). The City may withhold from any monies payable on account of services performed by the Contractor any accrued liquidated damages.

7.8 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Contractor, except that where termination is due to the fault of the Contractor, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Contractor reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Contractor may determine. Upon receipt of any notice of termination, Contractor shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Contractor has initiated termination, the Contractor shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Contractor has initiated termination, the Contractor shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

7.9 Termination for Default of Contractor.

If termination is due to the failure of the Contractor to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Contractor for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

7.10 Attorneys' Fees.

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

7.11 Unfair Business Practices Claims.

In entering into this Agreement, Contractor offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2, (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials related to this Agreement. This assignment shall be made and become effective at the time the City renders final payment to the Contractor without further acknowledgment of the Parties.

ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

8.1 Non-liability of City Officers and Employees.

No officer or employee of the City shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict 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 hinder Contractor's performance of services under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Contract Officer. Contractor agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

8.3 Covenant Against Discrimination.

Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry, or other protected class in the performance of this Agreement. Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry, or other protected class.

8.4 Unauthorized Aliens.

Contractor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, *et seq.*, as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Contractor so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Contractor hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 Notices.

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer (with her/his name and City title), City of Carson, 701 East Carson, Carson, California 93203 and in the case of the Contractor, to the person at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section. All correspondence relating to this Agreement shall be serialized consecutively.

9.2 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

9.3 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

9.4 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Contractor and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

9.5 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

9.6 Warranty & Representation of Non-Collusion.

No official, officer, or employee of City has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of City participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interests found to be "remote" or "noninterests" pursuant to Government Code Sections 1091 or 1091.5. Contractor warrants and represents that it has not paid or given, and will not pay or give, to any third party including, but not limited to, any City official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded any agreement. Contractor further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any City official, officer, or employee, as a result of consequence of obtaining or being awarded any agreement. Contractor is aware of and understands that any such act(s), omission(s) or other conduct resulting in such payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

Contractor's Authorized Initials _____

9.7 Corporate Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this

Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

CITY:

CITY OF CARSON, a municipal corporation

Albert Robles, Mayor

ATTEST:

Donesia Gause-Aldana, City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Sunny K. Soltani, City Attorney
[lf/cfn]

CONSULTANT:

WEST COAST ARBORISTS, INC., a California Corporation

By: _____
Name: Patrick Mahoney
Title: President

By: _____
Name: Richard Mahoney
Title: Assistant Secretary
Address: West Coast Arborists, Inc.
2200 E. Via Burton Street
Anaheim, CA 92806

Two corporate officer signatures required when Contractor is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. CONTRACTOR'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONTRACTOR'S BUSINESS ENTITY.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____, 2018 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

CAPACITY CLAIMED BY SIGNER		DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/>	INDIVIDUAL	_____
<input type="checkbox"/>	CORPORATE OFFICER	TITLE OR TYPE OF DOCUMENT

	TITLE(S)	
<input type="checkbox"/>	PARTNER(S)	_____
	<input type="checkbox"/> LIMITED	NUMBER OF PAGES
	<input type="checkbox"/> GENERAL	
<input type="checkbox"/>	ATTORNEY-IN-FACT	_____
<input type="checkbox"/>	TRUSTEE(S)	DATE OF DOCUMENT
<input type="checkbox"/>	GUARDIAN/CONSERVATOR	
<input type="checkbox"/>	OTHER _____	

SIGNER IS REPRESENTING:
 (NAME OF PERSON(S) OR ENTITY(IES))

 SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____, 2018 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

CAPACITY CLAIMED BY SIGNER		DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/>	INDIVIDUAL	_____
<input type="checkbox"/>	CORPORATE OFFICER	TITLE OR TYPE OF DOCUMENT

	TITLE(S)	
<input type="checkbox"/>	PARTNER(S)	_____
	<input type="checkbox"/> LIMITED	NUMBER OF PAGES
	<input type="checkbox"/> GENERAL	
<input type="checkbox"/>	ATTORNEY-IN-FACT	_____
<input type="checkbox"/>	TRUSTEE(S)	DATE OF DOCUMENT
<input type="checkbox"/>	GUARDIAN/CONSERVATOR	
<input type="checkbox"/>	OTHER _____	

SIGNER IS REPRESENTING:
 (NAME OF PERSON(S) OR ENTITY(IES))

 SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT "A"

SCOPE OF SERVICES

I. West Coast Arborist, Inc. (“WCA”) will perform the following tree maintenance Services in various public parkways, medians, parks, and civic facilities in the City of Carson. The following Specifications and this Agreement do not guarantee any specific amount of work; as the scope, inventory and trimming frequency of trees may increase or decrease annually depending upon public policy or available funding resources.

A. Standards. In all cases, the City’s representative shall have the sole discretion in determining conformance and acceptability of trees trimmed by WCA. Trimmed trees rejected by the City’s representative shall be excluded from payment, or redone at no cost, to the reasonable satisfaction of the City’s representative.

B. Schedule. WCA shall perform tree pruning and maintenance duties in accordance with the grid schedule approved by the Contract Officer.

i. The City of Carson is divided into a grid of twenty-one (21) Tree Maintenance Zones, as referenced in Section 3914 (Pruning Cycles) in the Carson Municipal Code and provided in Section VI herein, which shall be used to schedule routine tree maintenance in the City. WCA shall perform tree maintenance services for seven (7) zones annually within a three (3) year trim cycle.

ii. WCA shall perform, as needed, additional tree maintenance on the Queen Palms (dead fronds and fruit stalks only), Ficus benjamina (raise for street clearance), and Coral trees (crown reduction to reduce limb loss) every year, including zone and non-zone years.

C. Tree Hazards.

i. In the event that WCA determines, or is made aware, that a tree is a risk to public safety (meaning the tree is in poor condition; or, the tree is poorly structured, or diseased, or declining, or dead) and the tree is creating a foreseeable risk of personal injury or property damage, reasonable measures shall be taken to limit risk and protect against liability.

a. A tree that is in poor condition has one or more conditions that include but are not limited to: large decay pockets, severe insect or disease problems, twig and branch problems, poor vigor, serious structural defects and/or similar conditions.

b. Poorly structured trees have hazardous cracks or structural problems that present above normal safety concerns, and the potential for tree failure cannot be mitigated through pruning.

- c. Diseased or declining trees are beyond any management strategy available to recover them.
- d. Dead trees should be removed as soon as possible.
- ii. If in the performance of its duties, WCA determines, or is made aware, that a tree is in poor condition and posing an immediate or potential risk to public safety, WCA shall promptly address the risk through structural pruning, the prescription and application of authorized treatment procedures, and/or removal.
- iii. In the event removal is the recommended response, WCA shall immediately notify the City's Contract Officer of the recommendation and simultaneously secure the tree and the (potential) hazard so as to prevent any immediate threat to public safety. Any removal must be authorized in writing by the Contract Officer.

D. Emergency / On-Call Work.

- i. The Contractor shall be required to provide emergency / "on-call" response to tree-related hazards such as hanging limbs, wind damaged, or down trees. This may be at night or during storm conditions. The Contractor shall be given specific locations and the work to be done at each location via telephone call from the Contract Officer. The Contractor shall be required to start the work indicated within ninety (90) minutes of the initial telephone call and report back to the Contract Officer upon completion of the work specified.
- ii. **The Contractor is required to provide 24 hour emergency phone numbers and names of a minimum of two (2) contact individuals within one week of start of contract term. Should the phone number or contact person change during the course of the contract those changes must be provided to the City.**
- iii. The Contractor shall be required to provide all traffic control required during his emergency operations. Should the work involve any high voltage lines, the contractor shall be required to notify the responsible utility company.
- iv. Work performed under the emergency provision of this contract shall be paid on a per "crew hour" basis in accordance with Item P in Section I of Exhibit C (Schedule of Compensation). This shall include all labor, tools, equipment, disposal fees, and materials necessary for completing the emergency work.

E. Specifications. Services shall be performed in accordance with the following Pruning Standards and Specifications ("Specifications"):

- i. All work shall conform to: the Pruning Standards of the Western Chapter International Society of Arboriculture (ISA) in ANSI A300 (2017 Pruning); specifications set forth in Article III (Public Safety), Chapter 9 (City Tree Preservation and Protection) of the Carson Municipal Code; the WCA Contract Tree Trimming Services Proposal (No. P17-25) to City of Carson dated January 3, 2018, which is incorporated herein by reference and made a part of this Agreement thereby, and which shall be superseded by this Agreement in the event of conflict; and, the Specifications contained herein.
- ii. WCA shall comply with Standards of CAL OSHA and the American National Standard Institute (ANSI), Z 133.1-1988 (or most recent) Safety requirements including any City special conditions.
- iii. WCA shall provide and post “No Parking” signs 48 hours in advance of the work on streets which have trees which are to be trimmed, while considering and coordinating with the street sweeping predetermined schedules. Nails, staples, screws, or tacks shall not be used to post signs. It is acceptable to use string, wire, or tape.
- iv. WCA shall maintain good public relations at all times. Work shall be conducted in a manner which will cause the least possible interference and annoyance to the public. Work shall be performed by competent employees and supervised by an experienced supervisor in tree trimming operations. WCA shall maintain at least one (1) bilingual (English and Spanish) speaking foreman, on site, at all times. WCA shall be responsible for notifying residents at each location of the intended tree operations in the form of posting at WCA’s expense at least two (2) days prior to beginning work at such location.
- v. WCA shall exercise precautions as necessary when working adjacent to aerial or underground utilities. In the event that aerial utility wires present a hazard to WCA’s personnel or others near the work site, work is to immediately cease and WCA shall immediately notify the appropriate utility company and the City. Work shall then commence in accordance with instruction from the utility company, and WCA shall notify City of such instructions. WCA is responsible to notify Underground Services Alert (USA) at 1-800-422-4133.
- vi. No hooks, gaffs, spurs or climbers shall be used by anyone employed for trimming. Plants or other material growing on or attached to the trees shall be removed to ground level at time of tree trimming. All visible nails, screws, staples, wire, or tacks shall be removed if possible without further damaging the tree.
- vii. Final pruning cuts shall be made without leaving stubs. Cuts shall be made in a manner to promote fast callous growth, but not flush cut.

- viii. When trimming fungus, disease or fire blight-infested limbs or fronds, all pruning tools shall be cleaned after each cut with approved disinfectant.
- ix. Unless otherwise approved in writing by City, trees are to be trimmed block by block, subject to the instructions of the Contract Officer or his or her authorized representative.
- x. Topping is not permitted on any tree, except by specific direction from the Contract Officer. "Rounding off" shall be considered topping. Restoration pruning shall be done on formerly topped trees as a regular part of work.

F. Additional Requirements.

- i. The specific techniques employed shall be consistent with industry practice as previously stated, for the size and species of the tree being trimmed.
- ii. Contractor shall raise lower limbs on the street side and to the sidewalk side, where practical, to a minimum height of 13'6" from the top of the curb, and 9' from the sidewalk, without detracting from the natural shape of the tree. Contractor shall trim to clear streets lights within 10 feet. Care must be used to avoid stripping branches of all foliage at the interior of the tree crown. Crown reduction cuts shall be done to minimize branch end weight load. Trees must be trimmed to clear all structures by at least 5'.
- iii. Palm Trim shall consist of: removing all dead or drooping fronds and fruiting structures as close to the trunk as possible without cutting into outer trunk line, leaving, at least, all healthy fronds above a horizontal plane at the head of the palm tree. All dead frond sheaths shall be removed along the entire length of the tree. On all Date Palms, pruning tools and live cut surfaces shall be disinfected with a ten (10) percent chlorine bleach solution after each cut and between trees where there is danger of transmitting disease on tools. Fresh solution shall be mixed daily. Old solutions shall be disposed of through proper disposal methods.
- iv. Contractor shall ensure that private property and vehicles at work locations are not endangered or damaged during the course of work. City will serve as mediator between Contractor and the owner of damaged property in the event damage occurs during the course of work pursuant to this Agreement.
- v. Contractor shall be responsible for the protection of all improvements adjacent to work areas, including, but not limited to, sprinkler systems, drain pipes, lawns, plantings, brick or masonry work, mailboxes, lights, fences, walls, sidewalks, lawns, and paving located on public or private property. If any improvements are removed or damaged by Contractor, other than those scheduled for removal, such improvements shall be replaced in kind at no cost to City, and to the satisfaction of City and the

affected property owner no later than five (5) working days after the date of damage or removal. Plywood or better is to be provided by Contractor and used to protect any lawns from damage.

- vi. Brush and debris shall be removed, sidewalks swept, parkways raked out and gutters cleaned daily. Cut branches (“hangers”) shall not be left in the trees. No brush, leaves, debris, trucks, or equipment shall remain on the street overnight without the written authorization of City’s representative. City’s representative shall be the sold judge as to the adequacy of clean up and shall have the authority to direct further clean up with results the same day. This may include use of City staff on overtime, which will result in costs deducted from Contractor’s billing.
- vii. In cases where it is determined that the trees scheduled for removal have died due to Eucalyptus Longhorn Borer, Turpentine Beatle, Polyphagus Shot Hole Borer, or other pests or diseases, the wood shall be disposed of by hauling to an appropriate disposal station. At no time shall any wood from trees having died from the above be hauled anywhere other than the appropriate disposal station. The City Representative must approve the disposal station or method prior to any disposal taking place. While in transport, the Contractor shall make sure that no debris spills out of any truck, and if so, take appropriate steps to clean them up. Cost of transportation and dumping fees will be the responsibility of the Contractor.
- viii. Trees with known pathogens that can be spread with pruning tools shall be pruned using additional caution. All significant pest, disease or structural weaknesses or defects observed by the Contractor while performing this work shall be promptly reported to the City. Avoid pruning on windy days, as determined by the Contract Officer, to reduce the transmission of spores. All tools used on a tree known to contain an infectious tree disease shall be properly disinfected immediately before and after completing work on such tree. Acceptable sterilization methods include a ten percent (10%) bleach solution for ten (10) minutes or handheld butane/propane torch heating for 15 seconds per side. All major diseases and/or pest problems shall be promptly reported to the Contract Officer.
- ix. Wood with known wood-boring insect infestations shall be chipped into pieces smaller than four (4) inches. Wood that is infected with disease shall be handled and disposed of in a manner that minimizes the possibility of transmission of the disease. This might entail not working on windy days, as determined by the Contract Officer, to reduce transmission of spores and transporting green waste in covered containers.

G. Specifications for Tree Removal.

- i. Tree removal is an integral part in the maintenance of the community forest.
- ii. Tree stumps to be removed shall be completely ground a minimum of eighteen inches (18”) below soil surface unless utilities prevent an eighteen inch (18”) depth. Grinding of stump shall be completed within twenty-one (21) days of tree removal, and the parkway area within twelve feet (12’) in either direction of the removed tree shall be consistently level to plus or minus one inch from adjacent curb top and sidewalk.
- iii. Contractor must comply with all underground service alert requirements and reporting.
- iv. All excavation as a result of this process shall be back filled and/or consistently level with surrounding soil and hardscape, compacted and fine graded, but allowing for some settling.
- v. The trees to be removed shall be marked by the Contract Officer with an orange band of paint around the tree trunk. Only those trees so marked shall be removed by the Contractor.
- vi. Trees shall be felled in a manner consistent with industry practice with the primary emphasis on the safety of the public and the protection of adjacent property.
- vii. The Contractor shall be responsible for contacting Underground Service Alert (USA) at 1-800-422-4133 for the locating of underground utilities prior to stumping operations.

H. Disposal of Materials / Recycling.

- i. All green waste produced as a result of the Contractor’s operations under this contract will be reduced, reused, recycled, and/or transformed. Weight slips will be required as proof of final disposal and must be submitted with each demand for payment.
- ii. Reducing shall include but not be limited to chipping, grinding, and/or shredding operations. Disposal is to be at a recycling yard for use in a tub grinding and mulching, or composting program and proof of such will be provided with each demand for payment.
- iii. Reusing will include, but not limited to using chipped, ground or shredded tree materials as mulch. If the Contractor has a location outside the City of Carson where such mulch may be applied, Contractor is to provide to the City documentation (with each demand for payment) from the property owner indicating location and amount of material that will be used at that location. Tree chips diverted for mulch within the City shall be reported by approximate tonnage.

- iv. Recycling will include, but not be limited to, firewood that is too large to be chipped, ground or shredded for use as mulch. Transformation will include, but not be limited to, firewood that is too large to be chipped, ground or shredded for use as mulch. If wood is to be kept for firewood by Contractor, the Contractor must provide to the City proof of such an operation with each demand for payment.

I. Clean Up

- i. Each day's scheduled work shall be completed and all debris, cuttings, trimmings removed from the site. **UNDER NO CIRCUMSTANCES SHALL ANY BRUSH, LEAVES, DEBRIS, TRUCKS, OR EQUIPMENT REMAIN ON THE STREET OVERNIGHT WITHOUT AUTHORIZATION FROM THE CONTRACT OFFICER.**
- ii. The Contract Officer shall be the sole judge as to the adequacy of the clean-up and will have the authority to direct further clean up with results expected that same day. This may include use of City personnel on an overtime basis, which will result in costs deducted from contractor's billing.
- iii. Contractor shall be responsible for the protection of all improvements adjacent to the work areas, including but not limited to, sprinkler systems, drain pipes, lawns, plantings, brick or masonry work, mailboxes, lights, fences, walls, sidewalks, street paving, etc. located on either public or private property. Any improvements removed or damaged, other than those scheduled for removal, shall be replaced in kind at contractor's expense without cost to the City, and to the entire satisfaction of City staff and/or property owner. Replacement shall be no later than five (5) working days from date of damage, unless extended by the Contract Officer.

II. As part of the Services, Contractor will prepare and deliver the following tangible work products to the City Contract Officer and Risk Manager:

- A. Urban Forest Inventory.** WCA shall provide an ongoing tree site inventory, which shall serve as a database of the City's Urban Forest, as referenced in the Technical Approach section of the WCA Contract Tree Trimming Services Proposal (No. P17-25) to City of Carson dated January 3, 2018, which is incorporated herein by reference and made a part of this Agreement thereby. WCA shall continue to maintain and update the inventory throughout the term of this Agreement, by area as it is billed. The data will be collected in fields that represent each individual tree. The records include Tree Species, Condition, Diameter (DBH/DSH), GPS Location, Date of last maintenance, and inspection Comments. City may modify the foregoing fields to accommodate City's needs.

B. Tree Hazards. A detailed summary of any and all actions taken by WCA pursuant to Sections I(C) and (D) concerning trees posing an immediate or potential risk to public safety, as well as a detailed summary of the risk, within three (3) working days of the action taken. This summary shall be provided to both the City's Contract Officer as well as the City's Director of Risk Management.

C. Photographs. When requested, Contractor shall supply the Contract Officer and the Risk Manager with photographs of "Before and After" trimming that are suitable for reproduction. Contractor shall supply the Contract Officer with photos of sites where damage has occurred to public and/or private property or person(s).

III. In addition to the requirements of Section 6.2, during performance of the Services, Contractor will keep the City apprised of the status of performance by delivering status reports to the Contract Officer upon request.

IV. All work product is subject to review and acceptance by the City, and must be revised by the Contractor without additional charge to the City until found satisfactory and accepted by City.

V. Contractor will utilize the following personnel to accomplish the Services:

A. Robert Thompson, Project Manager

B. WCA Project Team

C. WCA ISA Certified Arborists and Tree Workers

VI. Map of Tree Maintenance Zones

(see next page)

City of Carson *Tree Maintenance Zones*

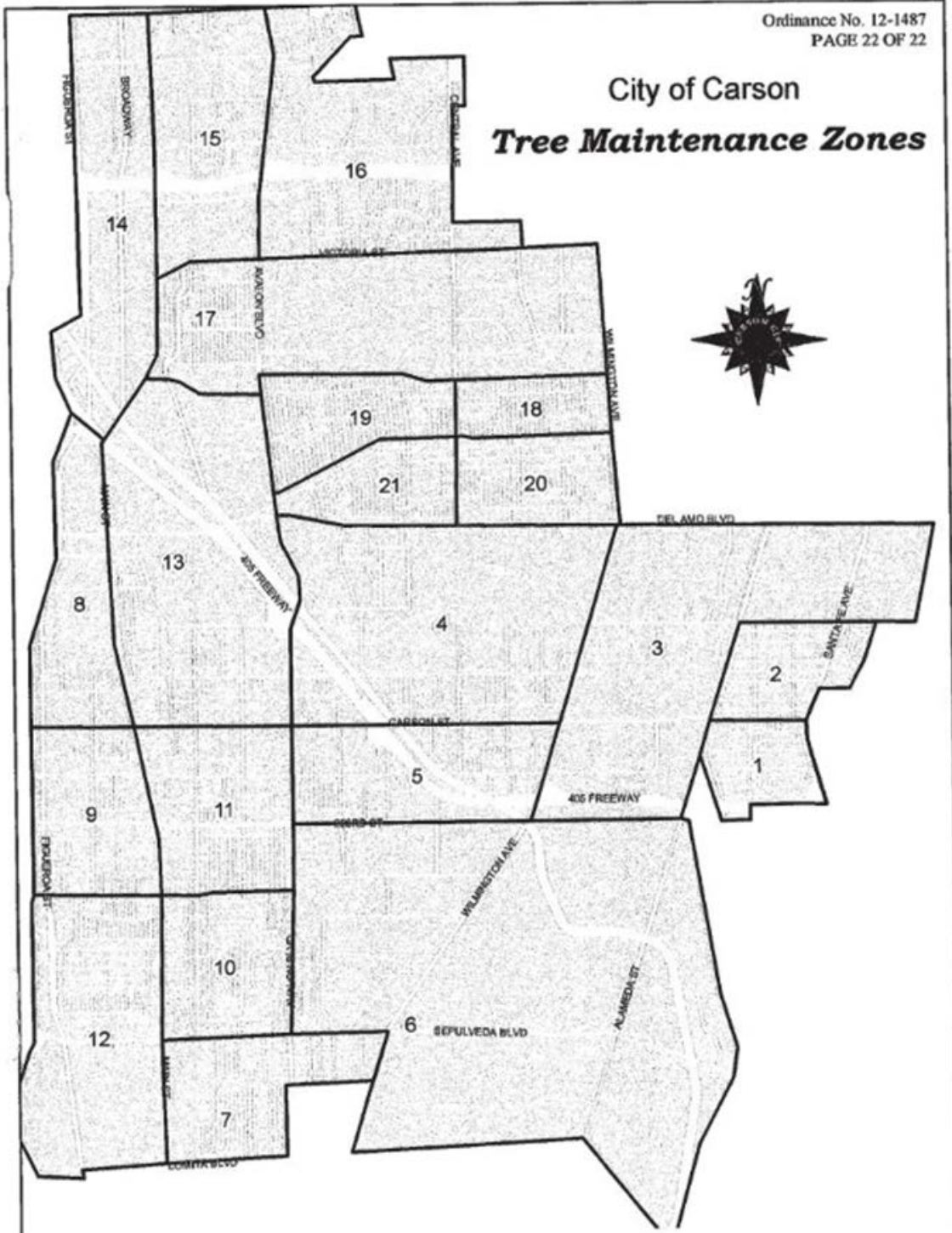


EXHIBIT "B"

SPECIAL REQUIREMENTS (Superseding Contract Boilerplate)

- I. Section 2.4, Invoices, shall be amended in its first paragraph as follows (added text is identified in ***bold italics***):

“Each month Contractor shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City’s Director of Finance. By submitting an invoice for payment under this Agreement, Contractor is certifying compliance with all provisions of the Agreement. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. ***The invoice shall include all of the requirements detailed in Section IV of Exhibit C.*** Sub-contractor charges shall also be detailed by such categories. Contractor shall not invoice City for any duplicate services performed by more than one person.”

- II. Section 3.4, Inspection and Final Acceptance, shall be amended as follows (deleted text is identified in ~~strike through~~):

“City may inspect and accept or reject any of Contractor’s work under this Agreement, either during performance or when completed. City shall reject or finally accept Contractor’s work within forty-five (45) days after submitted to City. ~~City shall accept work by a timely written acceptance, otherwise work shall be deemed to have been rejected.~~ City’s acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as to amount to fraud. Acceptance of any work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Articles 1 and 5, pertaining to warranty and indemnification and insurance, respectively.”

- III. Section 3.5, Term, shall be amended as follows (deleted text is identified in ~~strike through~~, added text is identified in ***bold italics***):

“Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding ~~one (1)~~ ***three (3)*** years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit “D”). ***City may exercise in its sole discretion an option to extend this Agreement for an additional term of one (1) to (3) three years, either all at once or incrementally at discretion of City, providing Contractor thirty (30) days written notice prior to the end of the current agreement term of its desire to extend the agreement. Contractor agrees to provide the services specified in the Scope of Services, adjusted to the rates that are based upon changes in the Consumer Price Index (CPI), All Urban Consumers, for Los Angeles-Anaheim Riverside Area, as published by the United States Department of Labor, Bureau of Labor Statistics, for said additional periods, should the City give the required notice.***”

IV. Section 5.1, Insurance Coverage, subsection (a), shall be amended as follows (deleted text is identified in ~~strike through~~, added text is identified in **bold italics**):

“(a) Commercial General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than ***\$2,000,000.00*** ~~\$1,000,000.00~~ per occurrence or if a general aggregate limit is used, then the general aggregate limit shall be twice the occurrence limit.”

V. Section 5.1, Insurance Coverage, subsection (c), shall be amended as follows (deleted text is identified in ~~strike through~~, added text is identified in **bold italics**):

“(c) Automotive Insurance (Form CA 0001 (Ed 1/87) including “any auto” and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than ***\$2,000,000.00*** ~~\$1,000,000.00~~. Said policy shall include coverage for owned, non-owned, leased, hired cars and any automobile.”

VI. Section 5.7, Release of Securities, shall be amended as follows (deleted text is identified in ~~strike through~~, added text is identified in **bold italics**):

“City shall release the Performance and Labor Bonds when the following have occurred:

(a) Contractor has made a written request for release and provided evidence of satisfaction of all other requirements under Article 5 of this Agreement;

(b) the ***Agreement term has concluded*** ~~Work has been accepted~~; and

(c) after passage of the time within which lien claims are required to be made pursuant to applicable laws; if lien claims have been timely filed, City shall hold the Labor Bond until such claims have been resolved, Contractor has provided statutory bond, or otherwise as required by applicable law.”

VII. Section 6.2, Reports, shall be amended as follows (added text is identified in **bold italics**):

“Contractor shall periodically prepare and submit to the Contract Officer ***and Risk Manager*** such reports concerning the performance of the services required by this Agreement as the Contract Officer ***and Risk Manager*** shall require. Contractor hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Contractor agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Contractor is providing design services, the cost of the project being designed, Contractor shall promptly notify the Contract Officer ***and Risk Manager*** of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Contractor is providing design services, the estimated increased or decreased cost estimate for the project being designed.”

VIII. Section 7.7, Liquidated Damages, shall be amended as follows (added text is identified in *bold italics*):

“Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Contractor and its sureties shall be liable for and shall pay to the City the sum of **Two Hundred Fifty and 00/100 Dollars (\$250.00)** as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit “D”). ***The City will provide the Contractor with written notification of deficient performance.*** The City may withhold from any monies payable on account of services performed by the Contractor any accrued liquidated damages.”

IX. Section 9.8, Wildlife Avoidance/Migratory Bird Treaty Compliance, shall be added to Article 9 as follows:

“The Contractor must at all times provide each crew with a full time on site Certified Tree Worker who is also a Certified Wildlife Protector. To minimize conflicts with nests, trees should be inspected carefully for nests and cavities using binoculars prior to pruning. All federal laws, such as the Migratory Bird Treaty Act, Endangered Species Act, and state and local laws that protect birds and wildlife located in trees should be followed. When feasible, trees should be scheduled for removal during non-breeding/non-nesting season. Trees scheduled for pruning or removal during the breeding/nesting season shall be visually inspected at ground level with binoculars to verify that there is no wildlife present. If wildlife is located in the tree, the tree shall not be pruned and the Contract Officer shall be notified.”

X. Section 9.9, Safety, shall be added to Article 9 as follows:

“(a) Contractor shall conform to all Caltrans Department of Transportation Traffic Safety requirements and operating rules at all times while performing services pursuant to this Agreement (WATCH, 2012 or most current).

(b) Contractor shall comply with Standards of CAL OSHA and the American National Standard Institute (ANSI), Z 133.1 (most current version) Safety requirements including any City special conditions.

(c) Contractor shall provide and post “No Parking” signs at least 48 hours in advance of the work on streets intended to be trimmed, while considering and coordinating with the street sweeping predetermined schedules.

(d) Contractor shall supply and use all safety equipment necessary to close or delineate traffic lanes to through traffic, including high visibility Arrow Board(s) where appropriate. Sign stands, delineators and/or cones shall be used to identify the work site for pedestrian and vehicular safety.

(e) Where work is in progress, no street may be closed. Work may be performed on only one side of the street at a time.

(f) Contractor shall exercise precautions as necessary when working adjacent to aerial or underground utilities. In the event that aerial utility wires present a hazard to Contractor's personnel or others near the work site, work is to immediately cease and Contractor shall immediately notify the appropriate utility company and the City. Work shall then commence in accordance with instruction from the utility company, and Contractor shall notify City of such instructions. Contractor is responsible to notify Underground Services Alert (USA) at 1-800-422-4133."

XI. Section 9.10, Inspection, shall be added to Article 9 as follows:

(a) The Contract Officer shall, at all times, have access to the work performed, and shall be furnished by Contractor with every reasonable accommodation and assistance for ascertaining full knowledge with respect to the process, workmanship and character of materials and equipment used and employed in the work.

(b) Inspection of the work shall not relieve the Contractor of any obligation to fulfill the contract and/or complete the project as prescribed. Defective work shall be made good notwithstanding the fact that such defective work may have been previously overlooked by the Contract Officer and accepted for payment.

(c) Any work found to be unacceptable will be noted in writing. Upon receipt of said letter noting these deficiencies, the Contractor shall make a reasonable good faith effort to correct the deficiencies as determined by the Contract Officer within a reasonable period not to exceed five (5) working days from notification. After this time period, if unacceptable conditions still exist, the City has the right to deduct payment or terminate the contract immediately without penalty or prejudice. This section shall supersede any conflicting section within this Agreement to the benefit of the City.

EXHIBIT "C"

SCHEDULE OF COMPENSATION

I. Contractor shall perform the following tasks at the following rates provided herein (Contractor to provide all materials, supplies, personnel, etc., inclusive with the rates provided below unless otherwise expressly specified):

	ROUTINE TREE TRIMMING BY ZONE	RATE	QTY	ITEM COST
A.	<u>Per tree, small 0-6" DSH</u>	<u>\$49.00</u>	<u>1,311</u>	<u>\$64,239.00</u>
B.	<u>Per tree, medium 7-18" DSH</u>	<u>\$98.00</u>	<u>2,109</u>	<u>\$206,682.00</u>
C.	<u>Per tree, large, over 18" DSH</u>	<u>\$169.00</u>	<u>1,617</u>	<u>\$273,273.00</u>
D.	<u>Date palms</u>	<u>\$93.00</u>	<u>32</u>	<u>\$2,976.00</u>
E.	<u>Mexican fan palms</u>	<u>\$75.00</u>	<u>215</u>	<u>\$16,125.00</u>
F.	<u>Queen, Majesty, Kentia, other (King palms are excluded from trimming as they are self-cleaning)</u>	<u>\$49.00</u>	<u>33</u>	<u>\$1,617.00</u>

REMOVALS

G.	<u>Per inch DSH, complete tree and stump</u>	<u>\$39.00</u>	<u>per City Request</u>	<u>PER UNIT</u>
H.	<u>Per inch DSH, tree removal only</u>	<u>\$29.00</u>	<u>per City Request</u>	<u>PER UNIT</u>
I.	<u>Per inch Dia., stump removal only</u>	<u>\$10.00</u>	<u>per City Request</u>	<u>PER UNIT</u>

TREE PLANTING LABOR ONLY

J.	<u>Per tree, 15 gallon</u>	<u>\$49.00</u>	<u>per City Request</u>	<u>PER UNIT</u>
K.	<u>Per tree, 24 inch box</u>	<u>\$99.00</u>	<u>per City Request</u>	<u>PER UNIT</u>
L.	<u>Per tree, 36 inch box</u>	<u>\$249.00</u>	<u>per City Request</u>	<u>PER UNIT</u>
M.	<u>Per tree, 48 inch</u>	<u>\$349.00</u>	<u>per City Request</u>	<u>PER UNIT</u>

TREE WATERING

N.	<u>Per day, watering of planted trees</u>	<u>\$360.00</u>	<u>per City Request</u>	<u>PER DAY</u>
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CREW RENTAL

O.	<u>Per hour, 3 people, aerial unit, dump truck & chipper (day call out)</u>	<u>\$90.00¹</u>	<u>per City Request</u>	<u>PER MAN HOUR</u>
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P.	<u>Per hour, emergency work, pursuant to Section I(D) of Exhibit A.</u>	<u>\$120.00¹</u>	<u>per City Request</u>	<u>PER CREW HOUR</u>
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NON-ZONE YEAR TRIMMING

Q.	<u>Per tree, Queen Palms (dead fronds and fruit stalks only)</u>	<u>\$49.00</u>	<u>457</u>	<u>\$22,393.00</u>
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R.	<u>Per tree, Ficus benjamina</u>	<u>\$49.00</u>	<u>379</u>	<u>\$18,571.00</u>
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S.	<u>Per tree, Coral trees (crown reduction to reduce limb loss)</u>	<u>\$289.00</u>	<u>73</u>	<u>\$21,097.00</u>
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TOTALS

All trees @ 7 zones per year, plus 5% removals	<u>\$594,479.70</u>	<u>PER YEAR</u>
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All trees @ 7 zones per year, plus 5% removals, plus non-zone year trimming for Queen Palms, Ficus benjamina, and Coral Trees.	<u>\$656,588.03</u>	<u>PER YEAR</u>
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Total Contract Amount	<u>1,969,764.09</u>	<u>CONTRACT TERM</u>
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II. A retention of ten percent (10%) shall be held from each payment as contract retention to be paid as part of the final payment upon satisfactory completion of services.

III. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task sub-budget to another so long as the

¹ Inclusive of all labor, tools, equipment, disposal fees and materials necessary for completing the emergency work.

Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 1.8.

- IV. The City will compensate Contractor for the Services performed upon submission of a valid invoice. Each invoice is to include:**
- A.** Line items describing the work performed (including a listing of completed work by street address, tree species, work performed, and date the work was performed), the number of hours worked, the hourly rate, and other data as requested by the City.
 - B.** Line items for all materials and equipment properly charged to the Services.
 - C.** Line items for all other approved reimbursable expenses claimed, with supporting documentation.
 - D.** Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.
 - E.** Each invoice shall include all recycling receipts or proof of reusing and reducing operations.
- V. The total compensation for the Services shall not exceed \$1,969,764.09 as provided in Section 2.1 of this Agreement.**

EXHIBIT "D"

SCHEDULE OF PERFORMANCE

I. Weekly Work Schedule.

- a. Contractor shall, prior to commencing performance of the Services, obtain an approved weekly work schedule indicating the order, location and completion of work from the Contract Officer. The approved weekly work schedule is subject to change by the Contract Officer upon reasonable notice to Contractor.
- b. Contractor shall perform all Services timely in accordance with the weekly work schedule.

II. Weekly Meetings

- a. Contractor, field leadperson or foreperson shall meet with the Contract Officer, at place of Contract Officer's designation, each Monday between 7:00 and 7:30 a.m. for the purpose of reviewing the week's work, receiving special instructions, and to discuss any problems encountered on the job during the previous week.
- b. At sole discretion of Contract Officer the time and place of the weekly meetings are subject to change upon written notice to Contractor

III. Changes to Schedule of Performance.

- a. Contractor shall notify the City in writing of any changes in start date of each tree maintenance operation at least 24 hours in advance or either the scheduled start date, or the new start date, whichever is earlier in time.
- b. Should the Contractor discontinue work for any reason, the City must be notified immediately as to the rationale behind the shut-down and the restarting date of operations.

IV. Hours of Performance

- a. The general hours of operation shall be 7:00 a.m. to 4:30 p.m. with respect to any chipping, cutting or other operations generating harsh or unusual noise.
- b. The days of operations shall be Monday through Thursday. However, at the sole discretion of the City, some areas within the City may require that work be completed at night and on Fridays or weekends.
- c. The Contractor shall schedule operations with the Contract Officer to accommodate the City's 4/10 work plan.

- d. **NO WORK SHALL BE PERFORMED WITHOUT THE WRITTEN APPROVAL OF OR A WRITTEN REQUEST FROM THE CONTRACT OFFICER.**

- V. **Contractor shall deliver the following tangible work products to the City Contract Officer and Risk Manager within the following timelines:**
 - A. **Urban Forest Inventory.** WCA shall provide an *ongoing* tree site inventory, which shall serve as a database of the City’s Urban Forest, as referenced in the Technical Approach section of the WCA Contract Tree Trimming Services Proposal (No. P17-25) to City of Carson dated January 3, 2018, which is incorporated herein by reference and made a part of this Agreement thereby. WCA shall continue to maintain and update the inventory throughout the term of this Agreement, by area as it is billed. The data will be collected in fields that represent each individual tree. The records include Tree Species, Condition, Diameter (DBH/DSH), GPS Location, Date of last maintenance, and inspection Comments. City may modify the foregoing fields to accommodate City’s needs.

 - B. **Tree Hazards.** A detailed summary of any and all actions taken by WCA pursuant to Sections I(C) and (D) concerning trees posing an immediate or potential risk to public safety, as well as a detailed summary of the risk, *within three (3) working days of the action taken*. This summary shall be provided to both the City’s Contract Officer as well as the City’s Director of Risk Management.

 - C. **Photographs.** *When requested*, Contractor shall supply the Contract Officer with photographs of “Before and After” trimming that are suitable for reproduction. Contractor shall supply the Contract Officer with photos of sites where damage has occurred to public and/or private property or person (s).

- VI. **The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.**