

AGREEMENT FOR TREE MAINTENANCE SERVICES

THIS AGREEMENT is made and entered into the 6th day of October, 2015, by and between the City of Laguna Niguel, a municipal corporation, hereinafter the "City", and West Coast Arborists Inc. hereinafter the "Contractor."

RECITALS:

1. City requires professionals to provide tree maintenance services at municipal facilities throughout the City. The services will be for trimming, pruning, care, removals, and planting of trees throughout the City and will include inspecting, assessing, and providing reports to provide proper care and maintenance to trees under the jurisdiction of the City of Laguna Niguel.
2. City prepared and distributed the "City of Laguna Niguel Tree Maintenance Services" Request for Proposals, which is Exhibit "A" to the Agreement.
3. Contractor has submitted to the City a Proposal to provide general tree maintenance services, which is Exhibit "B" to this Agreement
4. Contractor has many years of experience and other qualifications to render the required services.
5. City desires to enter into an agreement with Contractor for general maintenance services.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and covenants herein contained, the parties hereto agree as follows:

1. Scope of Work. Contractor shall provide manpower, tools, equipment, and expertise to care for trees throughout the City of Laguna Niguel as described in the Scope of Work in a manner satisfactory to City. The Scope of Work consists of the City's Request for Proposal issued in July 2015, the Technical Specifications as contained in the Request for Proposal for said Services, and the Contractor's Proposal dated August 17, 2015, which are attached hereto respectively as Exhibits "A" and "B." It is understood that the services required to be provided pursuant to this Agreement will be provided on an as needed, when needed basis with the City Public Works Department determining and advising the Contractor what services are required by Contractor and when they are required to be provided using the procedure set forth in the Request for Proposal (Exhibit "A").

In the event of any conflict or inconsistency between Exhibits "A" and "B" and this Agreement, this Agreement shall take precedent over Exhibits "A" and "B."

2. Additional or Different Services. Any proposed changes in the Scope of Work shall be made only by written amendment to this Agreement.

3. Term. The Contractor shall commence providing the required services on October 7, 2015, and this Agreement shall continue in full force and effect until September 30, 2018, subject to termination as provided in paragraph 18. This contract can be renewed for two (2) additional years in one-year increments by mutual agreement, based upon an evaluation of performance of the Contractor with a determination of satisfactory performance by the City.

4. Payment for Services and Compensation. City agrees to pay Contractor for providing the services which are described in Exhibits A and B, not to exceed \$140,000 in each contract year per term of the contract as defined above and to pay for those services in the amount and in the manner and at the times set forth in the Exhibits.

5. Contractor to Supply Instrumentalities. Contractor shall supply all necessary labor, tools, materials, appliances, and equipment to provide the required services.

6. Licenses; Standard of Care.

(a) Contractor represents and agrees that all personnel engaged by Contractor in performing services are and shall be fully qualified and are authorized or permitted under state and local law to perform such services. Contractor represents and warrants to City that it has all licenses, permits, qualifications, and approvals to provide the services and work required to be performed by this Agreement. Contractor further represents and warrants that it shall keep in effect all such licenses, permits, and other approvals during the term of this Agreement.

(b) Contractor shall perform the services under this Agreement in a skillful and competent manner. The Contractor shall be responsible to City for any errors or omissions in the performance of work pursuant to this Agreement. Should any errors caused by Contractor be found in such services, Contractor shall correct the errors at no additional charge to City by redoing the work.

7. Legal Responsibilities.

(a) Contractor shall keep itself informed of all State and Federal laws and regulations which may in any manner affect those employed by it or in any way affect the performance of its services pursuant to this Agreement. Contractor shall, at all times, observe and comply with all such laws and regulations. City, and its officers and employees, shall not be liable at law or in equity by reason of the failure of the Contractor to comply with this paragraph:

(b) The City and its Council members, officers, employees, agents, representatives and consultants are not responsible or liable for any claims, losses or damages that may arise from injury to any person, including employees of Contractor or any subcontractor, or from damage to adjoining or other property from any cause whatsoever arising out of or in connection with the performance of the required services.

8. Non-Assignability. Neither this Agreement nor any rights, title, interest, duties or obligations under this Agreement may be assigned, transferred, conveyed or otherwise disposed of by Contractor without the prior written consent of City.

9. Subcontracting Subject to Approval. Contractor may not subcontract any portion of the work required by this Agreement to other persons or firms unless Contractor first obtains the written consent of City to engage in such subcontracting.

10. Independent Contractor. Contractor is and shall at all times remain as to City a wholly independent contractor. Neither the City nor any of its officers, employees, or agents, shall have control over the conduct of the Contractor or any of the Contractor's officers, employees, or agents. Contractor shall not at any time or in any manner represent that it or any of its officers, employees, or agents, are officers, employees, or agents, of the City. Except as specified in writing by City, Contractor shall have no authority, expressed or implied, to act on behalf of City, and Contractor shall have no authority, expressed or implied, to incur any obligation or liability against the City. Contractor shall be responsible for and pay all taxes and other payments for Contractor and its employees for Federal and State income taxes, including withholding of taxes, Social Security, worker's compensation insurance, State disability insurance, unemployment insurance, and all other similar items.

11. Administration. This Agreement will be administered by the Public Works Department. The Director of Public Works or his designee shall be considered the Project Administrator and shall have the authority to act for the City under this Agreement. The Director of Public Works or his designee shall represent the City in all matters pertaining to the services to be rendered pursuant to this Agreement.

12. Indemnification. Contractor shall indemnify, protect, defend and hold harmless, City and its Council members, officers, employees, agents, and representatives from any suits, claims, actions, liability or damages of whatsoever kind and nature that may arise from or are in any way related to Contractor's performance of work pursuant to this Agreement. This provision shall survive the term of this Agreement.

13. Liability Insurance.

(a) Without limiting Contractor's indemnification of City, as described in paragraph 12, Contractor shall obtain, provide and maintain, at its own expense, during the term of this Contract, a policy or policies of insurance, satisfactory to the City, from insurance carriers admitted to do business in the State of California, which contain the coverage described below. The policy or policies shall be provided to City prior to the Contractor providing services pursuant to this Agreement.

- (1) Comprehensive Liability Insurance, vehicular and non-vehicular, for claims for bodily injury, death, or property damage which may arise from the performance of the Contract. Such insurance shall be in an amount of at least \$2 million per occurrence and \$4 million in the aggregate.
- (2) Certificates of Insurance shall be provided by Contractor as evidence of the above-indicated policies.
- (3) The City of Laguna Niguel, the City Council, and the City's officers, employees, agents and representatives shall be named as additional insureds under these policies.
- (4) Certificates of Insurance shall provide that 30 days written notice of cancellation shall be given to the City in the event of cancellation and/or reduction in coverage of any nature.

(b) Contractor shall include subcontractors, if any, as insureds under its policies or shall furnish separate certificates of insurance for each subcontractor. All coverage for each subcontractor shall comply with the requirements of this paragraph.

(c) Rating of Insurer.

Insurance is to be placed with insurers with a Best's rating of no less than A:VIII, unless otherwise agreed to in writing by the City

14. State Labor Code.

(a) Contractor and all subcontractors shall adhere to the general prevailing rate of per diem wages as determined and as published by the State Director of the Department of Industrial Relations pursuant to Sections 1770, 1773, and 1773.2 of the California Labor Code. Copies of these rates and the latest revisions thereto are on file in the office of the City Clerk of the City of Laguna Niguel and are available for review upon request.

(b) Contractor's attention is directed to the provisions of Sections 1774, 1775, 1776, 1777.5 and 1777.6 of the State Labor Code. Contractor shall comply with the provisions of these Sections. The statutory provisions for penalties for failure to comply with the State's wage and hour laws will be enforced.

(c) Sections 1774 and 1775 require the Contractor and all subcontractors to pay not less than the prevailing wage rates to all workmen employed in the execution of the contract and specify forfeitures and penalties for failure to do so. The minimum wages to be paid are those determined by the State Director of the Department of Industrial Relations. Section 1776 requires the Contractor and all subcontractors to keep accurate payroll records, specifies the contents thereof, their inspection and duplication procedures and certain notices required of the Contractor pertaining to their location.

(d) Section 1777.5 of the Labor Code requires Contractor or subcontractor employing tradesmen in any apprenticeable occupation to apply to the Joint Apprenticeship Committee nearest the site of the public works project, which administers the apprenticeship program in that trade for a certificate of approval. The certificate will also fix the ratio of apprentices to journeymen to be used in the performance of the Contract. The Contractor is required to make contributions to funds established for the administration of apprenticeship programs if he employs registered apprentices or journeymen in any apprenticeable trade and if other contractors on the public works site are making such contributions. Information relative to apprenticeship standards, contributions, wage schedules and other requirements may be obtained from the State Director of Industrial Relations or from the Division of Apprenticeship Standards. Section 1777.6 of the Labor Code provides that it shall be unlawful to refuse to accept otherwise qualified employees as registered apprentices solely on the grounds of race, religious creed, color, national origin, ancestry, sex, or age.

(e) Eight hours labor constitutes a legal day's work, as set forth in Labor Code Section 1810, and Contractor shall comply with the requirements concerning working hours set forth in Labor Code Section 1810 et seq.

15. Workers' Compensation Insurance. Contractor acknowledges the provisions of State Labor Code Section 3700, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and Contractor certifies that it will comply with these provisions before commencing performance of work under this Contract. The Contractor shall sign a Workers' Compensation Insurance Certificate, in a form satisfactory to the City, and submit the signed Certificate to the City prior to commencing work under this Contract.

16. Blank

17. Nondiscrimination by Contractor. Contractor represents and agrees that Contractor, its affiliates, subsidiaries, or holding companies do not and will not

discriminate against any subcontractor, consultant, employee, or applicant for employment because of race, religion, color, sex, handicap, or national origin. Such nondiscrimination shall include, but not be limited to, the following: employment, upgrading, demotion, transfers, recruitment, recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

18. Termination. City may terminate this Agreement, without cause or penalty, by providing written notice to the other party that the Agreement is terminated. Said written notice shall be provided at least ninety (90) days in advance of the termination date. Unless terminated as provided herein, this Agreement shall continue in effect for the period set forth in paragraph 3. If City terminates this Agreement pursuant to this paragraph, Contractor's compensation shall be paid based on the percentage of the required services performed.

19. Notices. Any notices to be given hereunder by either party to the other in writing may be effected either by personal delivery or by mail. Mailed notices shall be addressed to the address of the parties to be notified which appears below, but each party may change its address by written notice given in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt. Mailed notices will be deemed communicated and received as of five (5) calendar days following the date of mailing of the notice.

CITY: City of Laguna Niguel
Attn: Director of Public Works
30111 Crown Valley Parkway
Laguna Niguel, California 92677

CONTRACTOR: West Coast Arborists Inc.
Att: Rose Epperson, Vice President
2200 E. Via Burton
Anaheim, CA 92806

20. Entire Agreement. This Agreement supersedes any and all agreements, either oral or written, between the parties hereto with respect to the rendering of services described in Exhibit "A and B" hereto by Contractor for City and contains all of the covenants and agreements between the parties with respect to the rendering of such services. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made with regard to such services by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise regarding such services not contained in this Agreement shall be valid or binding. Any modification or amendment of this Agreement will be effective only if it is in writing and signed by both parties to this Agreement.

21. Exhibits. The Exhibits referenced in this Agreement are attached hereto and incorporated herein by this reference as though set forth in full in the Agreement.

22. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of California. Any legal action in which enforcement of the terms and conditions of this Agreement is requested, or in which it is alleged that a breach of this Agreement has taken place, shall be filed and prosecuted in the County of Orange, California.

23. Breach of Agreement. If Contractor defaults in the performance of any of the terms or conditions of this Agreement, it shall have ten (10) days [or some other appropriate time] after service upon it of written notice of such default in which to cure the default by rendering a satisfactory performance. In the event that Contractor fails to cure its default within such period of time, City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity, or under this Agreement. The failure of City to object to any default in the performance of the terms and conditions of this Agreement shall not constitute a waiver of either that term or condition or any other term or condition of this Agreement.

24. Attorney Fees. If any legal proceeding, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party will be entitled to reasonable attorney's fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that party may be entitled.

25. Severability. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

26. Successors and Assigns. The terms and conditions of this Agreement shall be binding on the successors and assigns of the parties to this Agreement.

27. Authority to Sign. The persons executing this Agreement on behalf of the Contractor warrants and represents that they have the authority to execute this Agreement on behalf of the Contractor and have the authority to bind the Contractor to the performance of the obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

"CITY"

CITY OF LAGUNA NIGUEL

By: _____
Rod Foster

Title: City Manager

ATTEST:

Eileen Gomez,
City Clerk

APPROVED AS TO FORM BY THE
CITY ATTORNEY FOR THE
CITY OF LAGUNA NIGUEL,
CALIFORNIA

Terry E. Dixon, Esq.
City Attorney

"CONTRACTOR"

West Coast Arborists Inc.

By: _____

Print Name: Patrick Mahoney

Title: President

By: _____

Print Name: Rose Epperson

Title: Vice President

Signatures are to be notarized; attach Acknowledgment. Obtain two signatures if contractor is a corporation.