

## **ATTACHMENT A**

Construction Agreement

**CONSTRUCTION AGREEMENT  
BY AND BETWEEN  
THE CITY OF VICTORVILLE  
AND  
WEST COAST ARBORISTS, INC.  
FOR  
TREE TRIMMING AND MAINTENANCE SERVICES,  
PROJECT CC24-091**

THIS CONSTRUCTION AGREEMENT (the "Agreement") dated this \_\_\_\_\_ day of \_\_\_\_\_, 2024, for reference purpose only, is made and entered into by and between the City of Victorville, a municipal corporation located in the County of San Bernardino, State of California, hereinafter referred to as the "City", and **West Coast Arborists, Inc., a California corporation**, hereinafter referred to as the "Contractor". The City and the Contractor are sometimes hereinafter referred to as a "Party" and collectively referred to as the "Parties."

**RECITALS:**

**WHEREAS**, the City requires **Tree Trimming and Maintenance Services** (the Project); and

**WHEREAS**, in light of the facts set forth above, the City desires to retain Contractor in connection with **Tree Trimming and Maintenance Services**; and

**NOW, THEREFORE, IN CONSIDERATION OF THE COVENANTS, CONDITIONS, AND PROMISES CONTAINED HEREIN AND FOR SUCH OTHER GOOD AND VALUABLE CONSIDERATION, THE PARTIES HERETO AGREE AS FOLLOWS:**

**Section 1. RECITALS**

The Recitals set forth above are true and correct and are hereby incorporated into this Agreement by this reference, as though set forth herein.

**Section 2. TERM OF AGREEMENT**

This Agreement shall commence on the date of full execution of the Agreement (the "Commencement Date") and shall expire June 30, 2025 (the "Termination Date"), unless sooner terminated in accordance with the provisions of this Agreement (the "Term"). From and after the Termination Date, and upon subsequent agreement by the Parties, this Agreement may continue on a month-to-month basis until terminated pursuant to Section 3 below.

This Agreement may be extended for **Four (4)** additional one-year periods (hereinafter "Option Periods"), at the option of City, subject to satisfactory performance as determined by the City. City shall give Contractor sixty (60) days advance written notice prior to the expiration the initial Term and sixty (60) days advance written notice prior to the expiration date of each subsequently exercised Option Period, if any, should the City decide to exercise its option(s) to extend. In the event City does not give Contractor such written notice of its option to extend, this Agreement shall terminate at the end of the then-current Term or Option Period without

further notice from either Party, unless terminated earlier pursuant to the provisions of Section 21 below. Should the City fail to give Contractor the sixty (60) days written notice of its intention to exercise any Option Period, the City may, in its sole discretion, elect to exercise any Option Period at a later date, following written inquiry from Contractor.

### **Section 3.                    TERMINATION OR SUSPENSION**

a.        This Agreement may be terminated or suspended without cause by either Party at any time, provided that the Party initiating the termination provides the other Party at least thirty (30) days advance written notice of such termination or suspension. In the event of such termination, the City shall only be liable for payment under the payment provisions of this Agreement for satisfactory work rendered or supplies actually furnished prior to the effective date of termination.

b.        This Agreement may be terminated or suspended with cause by either Party at any time, provided that the Party initiating termination provides the other Party at least ten (10) days advance written notice of such termination or suspension. In the event of such termination, the City shall only be liable for payment under the payment provisions of this Agreement for satisfactory work rendered or supplies actually furnished prior to the effective date of termination.

### **Section 4.                    CONTRACT DOCUMENTS; PRIORITY**

a.        Contract Documents. The Contract Documents consist of the following documents, all of which are either attached hereto as exhibits or are incorporated herein by this reference. Said Contract Documents are intended to be correlative and constitute Contractor's performance obligations:

1. This Agreement.
2. Exhibits A & B.
3. Special Provisions.

b.        Interpretation. In the event of any conflict between any of the Contract Documents, the document highest in the order of precedence (from highest to lowest), as set forth in Subsection 4.a above shall control.

### **Section 5.                    CONTRACTOR'S OBLIGATIONS**

Contractor shall complete the Project as specifically set forth in the Contract Documents. Contractor shall furnish, at its own cost and expense, all labor, services, material, tools, equipment, supplies, transportation, and any other items and facilities necessary therefore, as provided in the Contract Documents.

### **Section 6.                    COMPENSATION**

The Contractor agrees to receive and accept the following amount, not to exceed **One Hundred Thirty-four Thousand Four Hundred Seventy-five and 00/100 Dollars (\$134,475.00 = \$84,475.00 in support of the Public Works Department and \$50,000 in support of Parks)**, as full compensation for furnishing; all materials, doing all the work contemplated and embraced in this contract, all loss or damage arising out of the nature of the work aforesaid, the action of the elements, any unforeseen difficulties or obstructions which may arise or be encountered in the execution of the work until its acceptance by the City, and for all

risks of every description connected with the work, all expenses incurred by or in consequence of the suspension or discontinuance of work well and faithfully completing the whole work, thereof, according to the requirements of the agreement documents and to the satisfaction of **Doug Mathews, Director of Public Works and Water**, or his designee, to wit: See **Exhibit "A", Scope of Work**.

## **Section 7.      BID PROPOSAL FORMS**

The City shall pay Contractor as provided in the Bid Proposal Forms, attached hereto as **Exhibit "B"**, and incorporated herein by this reference as though set forth in full, subject to approval of the City, when applicable.

## **Section 8.              PREVAILING WAGES**

a. Compliance with State Prevailing Wage Law. Pursuant to California Labor Code Section 1773, the **City** has obtained from the Director of the Department of Industrial Relations ("**DIR**") the general prevailing rate of per diem wages and the general prevailing wage rate for holiday and overtime work applicable for each craft, classification, or type of worker in San Bernardino County, California, where the Project is to be performed. Copies of these prevailing rate of per diem wages are on file at the City of Victorville Finance Department/Purchasing Division and shall be made available for review to any interested party on request. Copies of these prevailing rate of per diem wages are also available from the State of California via the internet at <http://www.dir.ca.gov/DLSR/PWD>. **Contractor** and its subcontractors shall pay not less than said specified prevailing rate of per diem wages to all workers employed by them in the performance of any work under this Agreement which constitutes "public works" or "public work", including without limitation, **Tree Trimming and Maintenance Services**, and any other work or services described in or encompassed by California Labor Code ("**Labor Code**") Sections 1720 through 1720.9, 1771, and 1772. **Contractor** shall be solely responsible for using the correct and current prevailing wage rates and performing accordingly. An error on the part of any awarding body does not relieve the **Contractor** from the responsibility for payment of the correct prevailing wage, or compliance with the maintenance and inspection of payroll records, posting of prevailing wage rates at the work/job site, employment of apprentices, and other requirements of Labor Code Section 1720 *et seq.*; Labor Code Section 1810 *et seq.*; California Code of Regulations, Title 8, Section 16000 *et seq.*; and all other applicable State labor laws.

b. Designation as Contractor Not Determinative. For purposes of this Agreement, **Contractor** and its subcontractors shall be subject to and shall comply with all provisions of the Labor Code applicable to contractors and subcontractors when they are engaged in the performance of any work under this Agreement which constitutes "public works" or "public work" as defined in subsection a above, despite being designated as a **Contractor**.

c. Conflict. It is further expressly agreed by and between the Parties hereto that should there be any conflict between the provisions of this **Section** and the terms of **Exhibit "A"** or **Exhibit "B"** of this Agreement, the provisions of this **Section** shall control and nothing herein shall be considered as an acceptance of the terms of **Contractor's** Scope of Services, scope of work, bid proposal, cost proposal, and/or fee schedule which conflict with the provisions of this **Section**.

d. Payroll Records. **Contractor** and its subcontractors must comply with the provisions of Labor Code sections 1776 and 1812 and all implementing regulations, including without limitation, those set forth in Title 8 of the California Code of Regulations, Section 16000 *et seq.*

(hereinafter the “**Regulations**”), which are fully incorporated by this reference, including requirements for electronic submission of payroll records to the DIR.

(1) **Contractor and Subcontractor Obligations.** **Contractor** and each subcontractor must keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in connection with the Work. Each payroll record must contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(a) The information contained in the payroll record is true and correct; and

(b) **Contractor** or subcontractor has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any covered work performed by its employees on the Project.

(2) **Certified Record.** A certified copy of an employee’s payroll record must be made available for inspection or furnished to the employee or his or her authorized representative on request, to the **City**, to the Division of Labor Standards Enforcement, to the Division of Apprenticeship Standards of the DIR, and as further required by the Labor Code.

(3) **Enforcement.** Upon notice of noncompliance with Labor Code Section 1776, **Contractor** or subcontractor has ten days in which to comply with the requirements of this section. If **Contractor** or subcontractor fails to do so within the ten-day period, **Contractor** or subcontractor will forfeit a penalty of \$100.00 per day, or portion a day, for each worker for whom compliance is required, until strict compliance is achieved. Upon request by the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, these penalties will be withheld from payments then due to **Contractor**.

(4) **Payment of Invoices.** Copies of the certified payrolls, proof of payroll submissions, and appropriate lien releases are required with each invoice to the **City**. Payment of the invoice may be delayed when payroll-related documents and/or lien releases are not included with the invoice.

e. **Apprentices.** **Contractor** is responsible for compliance with the requirements governing employment and payment of apprentices, as set forth in Labor Code section 1777.5, which is fully incorporated by reference.

f. **Notices.** Pursuant to Labor Code section 1771.4, **Contractor** is required to post all Job Site notices, including prevailing wage rates and other notices, as required by regulation.

g. **Other Labor Requirements.** **Contractor** has the responsibility for and shall comply with all other applicable requirements of Labor Code Section 1720 *et seq.*, Labor Code Section 1810 *et seq.*, the Regulations, and all other applicable State labor laws. **Contractor** further acknowledges and agrees that it will be independently responsible for reviewing the applicable laws and regulations and effectuating compliance with those laws. **Contractor** shall require the same of all its subcontractors.

h. Statutory Penalties. The statutory penalties for failure to pay prevailing wage or to comply with State wage and hours laws will be enforced as follows:

(1) Pursuant to Labor Code section 1775, the **Contractor** and any subcontractor under it shall forfeit as a penalty to the **City** not more than Two Hundred Dollars (\$200.00), for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate as determined by the Director of the DIR for such work or craft in which such worker is employed for any public work done under this Agreement by it or by any subcontractor under it. The difference between such prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the **Contractor**.

(2) Pursuant to Labor Code Section 1813, **Contractor** or subcontractor shall, as a penalty to the **City**, forfeit twenty-five dollars (\$25) for each worker employed in the execution of this Agreement by the respective **Contractor** or subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week, except as specified in Labor Code Section 1815. In accordance with the provisions of Labor Code Section 1810 *et seq.*, eight (8) hours is the legal working day.

i. DIR Monitoring. Pursuant to Labor Code Section 1771.4, the Agreement for this Project is subject to compliance monitoring and enforcement by the DIR.

j. DIR Registration. Pursuant to Labor Code Sections 1725.5 and 1771.1, the **Contractor** and its subcontractors must be registered with the DIR prior to the execution of a contract to perform public works. By entering into this Agreement, **Contractor** represents that it is aware of the registration requirement and is currently registered with the DIR. **Contractor** shall maintain a current registration for the duration of the Project. **Contractor** shall further include the requirements of Labor Code Sections 1725.5 and 1771.1 in any subcontract and ensure that all subcontractors are registered at the time this Agreement is entered into and maintain registration for the duration of the Project.

## **Section 9. WORKERS' COMPENSATION INSURANCE**

Contractor shall procure and maintain, at its own expense, during the Term of this Agreement, workers' compensation insurance, providing coverage as required by the California State Workers' Compensation Law. If any class of employees employed by Contractor is not protected by the California State Workers' Compensation Law, Contractor shall provide adequate insurance for the protection of such employees to the satisfaction of the City.

In conformance with current statutory requirements of Section 1860 *et seq.*, of the Labor Code of the State of California, the undersigned confirms the following as their certification:

I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions before commencing the performance of the work of this contract.

## **Section 10. NOTICE TO PROCEED**

No work, service, material, or equipment shall be performed or furnished under this

Contract unless and until a Notice to Proceed has been given to the Contractor by the City. Contractor shall commence work pursuant to the Contract Documents as directed by the City in the Notice to Proceed, and to diligently execute the same to completion within the time limits set forth in the Contract Documents.

**Section 11.**                    **COMPLIANCE WITH LAWS**

Contractor shall comply with all local, state, and federal laws and regulations applicable to the performance of the work required by the Contract Documents, including any rule, regulation, or bylaw governing the conduct or performance of Contractor, its employees, officers, board members, agents, independent contractors, and subcontractors. Unless otherwise specified in the Contract Documents, all required permits and licenses shall be held or obtained by the Contractor at its sole expense.

**Section 12.**                    **COMMERCIAL GENERAL AND AUTOMOBILE LIABILITY INSURANCE**

Contractor shall procure and maintain at its own expense, during the term of this Agreement, commercial general liability insurance, of not less than One Million Dollars (\$1,000,000) per occurrence, and Two Million Dollars (\$2,000,000) in the aggregate, for bodily injury, personal injury, death, loss, or damage resulting from the wrongful or negligent acts by the Contractor or its officers, employees, servants, volunteers, and agents and independent contractors.

Contractor shall further procure and maintain, at its own expense, during the Term of this Agreement, commercial vehicle liability insurance covering personal injury and property damage, of not less than One Million Dollars (\$1,000,000) Combined Single Limit, covering any vehicle(s) utilized by Contractor or its officers, employees, servants, volunteers, or agents and independent contractors in performing the services required by this Agreement.

**Section 13.**                    **POLLUTION LIABILITY**

Contractors Pollution Liability and/or Asbestos Pollution Liability and/or Errors & Omissions applicable to the work being performed, with a limit no less than \$1,000,000 per claim or occurrence and \$1,000,000 aggregate per policy period of one year.

**Section 14.**                    **INSTALLATION FLOATER**

Contractor, and or any of its subcontractors, suppliers, vendors, employees, or person whom it performing any work under this agreement shall purchase, and maintain insurance to the full contract and insurable value thereof commonly referred to as an Installation Floater policy that offers "Installation" coverage for all materials, supplies, equipment, and property obtained by, or for Contractor, which is to become part of the work while such equipment and property is stored at the jobsite, at temporary locations, or while in transit to the project from such temporary locations. **Contractor, and or any of its subcontractors, suppliers, vendors, employees, or person whom is performing any work under this agreement shall** also be responsible for insuring their owned, leased/rented or borrowed equipment. Insurance shall name the City as a Loss Payee as their interest may appear, and include a Waiver of Subrogation Endorsement(s) in favor of the City of Victorville.

**Section 15.**                    **ADDITIONAL INSURED**

Notwithstanding any inconsistent statement in any required insurance policies or any subsequent endorsements attached thereto, the protection offered by all policies, except for Workers' Compensation coverage, shall bear an endorsement whereby it is provided that, the City and its officers, employees, servants, volunteers, and agents and independent contractors, including, without limitation, the City Attorney, are named as Additional Insureds.

**Section 16.**                    **WAIVER OF SUBROGATION RIGHTS**

Contractor shall require the carriers of all required insurance policies to waive all rights of subrogation against the City and its officers, volunteers, employees, contractors, and subcontractors. Each policy of insurance shall be endorsed to reflect such waiver.

**Section 17.**                    **PROOF OF INSURANCE COVERAGE; REQUIRED PRIOR TO COMMENCEMENT OF SERVICES**

a. Contractor shall secure from a good and responsible company or companies authorized to do insurance business in the State of California the policies of insurance required by this Agreement and furnish to the City Clerk certificates of said insurance at least one (1) day prior to the commencement of any services to be performed under this Agreement.

b. The certificates of insurance shall bear an endorsement whereby it is provided that, in the event of cancellation or amendment of any required insurance policy for any reason whatsoever, the City shall be notified by mail, postage prepaid, not less than thirty (30) days before the cancellation or amendment is effective. In the case of non-payment, ten (10) days' advance written notice shall be given.

c. The certificates of insurance shall bear an endorsement whereby it is provided that the respective insurance policy shall not be terminated or expire without first providing thirty (30) days written notice to the City of such termination or expiration.

d. The certificates of insurance shall indicate that the respective insurance policy will be maintained throughout the Term of this Agreement.

e. The commercial general liability and vehicle liability policies shall be endorsed to contain the following provision: "For any claims related to this contract, the **Contractor's insurance coverage shall be primary and non-contributory** and at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies."

**Section 18.**                    **TIME OF THE ESSENCE**

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

**Section 19.**                    **INDEMNIFICATION**

Notwithstanding the limits of any insurance, Contractor shall indemnify the City, its officials, officers, agents, volunteers and employees against, and will hold and save them and



each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising or alleged to arise out of or in connection with the negligent performance of the work, operations or activities of Contractor, its agents, employees, subcontractors, or invitees, provided for herein, or arising or alleged to arise from the negligent acts or omissions of Contractor hereunder, or arising or alleged to arise from Contractor's negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, but excluding such claims or liabilities or portion of such claims or liabilities arising or alleged to arise from the negligence or willful misconduct of the City its officials, officers, agents, volunteers or employees, 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 officials, officers, agents or employees for any such claims or liabilities arising or alleged to arise out of or in connection with Contractor's (or its agents', employees', subcontractors' or invitees') negligent performance of or failure to perform such work, operations or activities hereunder; and Contractor agrees to save and hold the City, its officials, volunteers, officers, agents, and employees harmless there from;

c. In the event the City, its officials, officers, agents, volunteers or employees is made a Party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising or alleged to arise out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Contractor hereunder, Contractor shall pay to the City, its officials, volunteers 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 for counsel acceptable to City;

d. Contractor's duty to defend and indemnify as set out in this Section shall include any claims, liabilities, obligations, losses, demands, actions, penalties, suits, costs, expenses or damages or injury to persons or property arising or alleged to arise from, in connection with, as a consequence of or pursuant to any state or federal law or regulation regarding hazardous substances, including but not limited to the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), Resource Conservation and Recovery Act of 1976 ("RCRA"), the Hazardous and Solid Waste Amendments of 1984, the Hazardous Material Transportation Act, the Toxic Substances control Act, the Clean Air Act, the Clean Water Act, the California Hazardous Substance Account Act, the California Hazardous Waste Control Law or the Porter-Cologne Water Quality Control Act, as any of those statutes may be amended from time to time;

The Contractor's indemnification obligations pursuant to this Section shall survive the termination of this Agreement. Contractor shall require the same indemnification from all subcontractors.

## **Section 20.**                      **REPORTS**

Upon request by **Doug Mathews, Director of Public Works and Water**, or his designee, Contractor shall prepare and submit reports concerning Contractor's performance of the work required by this Agreement.

## **Section 21.**                    **RECORDS**

a. Contractor shall keep such books and records as shall be necessary to perform the services required by this Agreement and enable **Doug Mathews, Director of Public Works and Water**, or his designee, to evaluate the cost and the performance of such services.

b. Books and records pertaining to costs shall be kept and prepared in accordance with generally accepted accounting principles. **Doug Mathews, Director of Public Works and Water**, or his designee, shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.

c. **Doug Mathews, Director of Public Works and Water**, or his designee, shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.

d. Records and supporting documents pertaining to the use of funds paid to Contractor hereunder shall be retained by Contractor and made available to **Doug Mathews, Director of Public Works and Water**, or his designee, for purposes of performing an audit for a period of five (5) years from the date of termination of this Agreement.

## **Section 22.**                    **MODIFICATIONS AND AMENDMENTS**

This Agreement may be modified or amended only by a written instrument signed by both Parties.

## **Section 23.**                    **ENTIRE AGREEMENT**

a. This Agreement supersedes any and all prior or contemporaneous agreements, either oral or written, between the City and Contractor with respect to the subject matter of this Agreement.

b. The Contract Documents contain all of the covenants and agreements between the Parties with respect to the subject matter herein, and each Party acknowledges that no representations, inducements, promises, or agreements have been made by or on behalf of any Party, except those covenants and agreements in this Agreement and the Contract Documents.

c. No agreement, statement, or promise with respect to the subject matter of the Contract Documents, which is not contained in the Contract Documents, or in a valid modification or amendment to the Contract Documents, shall be valid or binding on either Party.

## **Section 24.**                    **AMBIGUITIES**

This Agreement is in all respects intended by each Party hereto to be deemed and construed to have been jointly prepared by the Parties and the Parties hereby expressly agree that any uncertainty or ambiguity existing herein shall not be interpreted against either of them. Except as expressly limited by this paragraph, all of the applicable rules of interpretation of contract shall govern the interpretation of any uncertainty or ambiguity of this Agreement.

Notwithstanding the foregoing, the Parties agree that **Exhibit "B"** is attached hereto for reference purposes and to the extent there are any ambiguities, inconsistencies or conflicts between the terms of this Construction Agreement and **Exhibit "B"** the terms of this Construction Agreement shall control and nothing set forth in **Exhibit "B"** shall be deemed to supersede any of the provisions of this Construction Agreement.

## **Section 25.**                    **NOTICES**

a.        Any notice to be provided pursuant to this Agreement shall be in writing, and all such notices shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the Parties as follows:

To the City:	Doug Mathews, Director of Public Works and Water, Public Works Department City of Victorville 14343 Civic Drive Victorville, CA 92392
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To Contractor:	Patrick Mahoney, President West Coast Arborists, Inc. 2200 E. Van Burton Anaheim, CA 92806
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b.        Notices, payments, and other documents shall be deemed delivered upon receipt by personal service or as of the second (2nd) day after deposit in the United States mail.

## **Section 26.**                    **NON-LIABILITY OF CITY OFFICERS AND EMPLOYEES**

No officer or employee of the City shall be personally liable to 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 Contractor or to its successor(s), or for any breach of any obligation of the terms of this Agreement.

## **Section 27.**                    **REVIEW BY ATTORNEYS**

Each Party hereto has had its attorneys review this Agreement and all related documents. Each Party hereto has consulted with its attorneys and has negotiated the terms of this Agreement based on such consultation.

## **Section 28.**                    **CARE OF WORK**

Contractor must adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and other components to prevent losses or damages, and will be responsible for all damages, to persons or property, until acceptance of the work by the City, except those losses or damages as may be caused by the City's own negligence. The performance of the work by Contractor or the payment of money by the City shall not relieve Contractor from any obligation

to correct any incomplete, inaccurate, or defective work at no further cost to the City, when such inaccuracies are due to the negligence of Contractor.

**Section 29.**                    **CAPTIONS AND HEADINGS**

The captions and headings contained in this Agreement are provided for identification purposes only and shall not be interpreted to limit or define the content of the provisions described under the respective caption or heading.

**Section 30.**                    **SUCCESSORS, HEIRS, AND ASSIGNS**

Except as otherwise expressly provided herein, this Agreement shall be binding upon the successors, endorsees, assigns, heirs, and personal representatives of each of the Parties to this Agreement and, likewise, shall inure to the benefit of the successors, endorsees, assigns, heirs, and personal representatives of each of the Parties.

**Section 31.**                    **GENDER; PLURAL**

In this Agreement, unless the context clearly requires otherwise, the masculine, feminine and neuter genders and the singular and the plural shall include one another.

**Section 32.**                    **SEVERABILITY**

If any one or more of the sentences, clauses, paragraphs, or sections contained herein is declared invalid, void, or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall not affect, impair, or invalidate any of the remaining sentences, clauses, paragraphs, or sections contained herein.

**Section 33.**                    **GOVERNING LAW**

The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the Parties under this Agreement, shall be construed pursuant to and in accordance with California law.

**Section 34.**                    **CUMULATIVE REMEDIES**

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 of any other default by the other Party.

**Section 35.**                    **VENUE**

All proceedings involving disputes over the terms, provisions, covenants, or conditions contained in this Agreement and all proceedings involving any enforcement action related to this Agreement shall be initiated and conducted in the applicable court or forum in San Bernardino County, California.

**Section 36.**

**ATTORNEY'S FEES**

Should any litigation, specifically including but not limited to, arbitration and other non-judicial resolution of disputes be commenced between the Parties to this agreement concerning this agreement or the rights and duties of either in relation thereto, the Parties prevailing in such litigation or other proceeding shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for attorney fees in such litigation where the proceeding which, if not agreed upon by the Parties, shall be determined by the court or other entity in which such litigation or other proceeding is brought.

**Section 37.**

**EFFECTIVENESS OF AGREEMENT**

This Agreement shall not be binding upon the City, until signed by the authorized representative(s) of Contractor, approved by the City's Risk Manager, and executed by the authorized City personnel or Mayor.

**Section 38.**

**REPRESENTATIONS OF PARTIES AND PERSONS  
EXECUTING AGREEMENT**

a. Each of the Parties to this Agreement hereby represents that all necessary and appropriate actions of their governing bodies have been taken to make this Agreement a binding obligation of each of the Parties hereto.

b. The persons executing this Agreement warrant that they are duly authorized to execute this Agreement on behalf of and bind the Parties each purports to represent.

**Section 39.**

**COUNTERPARTS**

This Agreement may be executed by the Parties in counterparts, and when executed by each of the Parties, each counterpart shall be deemed to be a part of this Agreement.

(END OF THIS PAGE)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the dates written below.

**THE CITY OF VICTORVILLE**

**WEST COAST ARBORISTS**

By: \_\_\_\_\_  
**Elizabeth Becerra,**  
**Mayor**

By: \_\_\_\_\_  
**Patrick Mahoney,**  
**President**

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

**ATTEST;**

By: \_\_\_\_\_  
**Jennifer Thompson,**  
**City Clerk**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
**Sandra Bostick,**  
**Risk Manager**

Dated: \_\_\_\_\_

**APPROVED AS TO STANDARD FORM:**

By: \_\_\_\_\_  
**Andre de Bortnowsky,**  
**City Attorney**

Dated: \_\_\_\_\_

## **EXHIBIT A**

### **SCOPE OF WORK**

City agrees to engage Contractor and Contractor agrees to furnish all necessary labor, tools, materials, and equipment for and to do the Work for the Project. The Work shall be performed, as generally described in the Request for Proposal, Project Number CC24-091 and applicable Addenda for the Project, portions of which are attached hereto for ease of reference as **Exhibit "A"**, and the entirety of which is currently on file in office of the City Clerk), and the prices set forth in Contractor's Bid Proposal (attached as **Exhibit "B"**).

**CITY OF VICTORVILLE  
TREE TRIMMING & MAINTENANCE SERVICES  
SCOPE OF SERVICES**

**A. GENERAL INFORMATION**

**Project Description**

The City of Victorville (the "City") is soliciting Requests for Proposals from qualified firms to perform annual tree trimming and maintenance services, GPS inventory asset management and general arborist inspection and reporting services. The City has approximately 8,407 trees within LMAD/DFAD/MAD areas, Open Spaces, public right-of way, Parks and other City facilities (see Project Data and Charts on page 31). The estimated annual budget for contractual tree maintenance services is \$134,308.

**Location and Climate**

Located in Southern California at the high-point between Los Angeles and Las Vegas, Victorville is the leading city for both industry and retail in the High Desert region. Victorville is a growing, vibrant community that is home to approximately 125,000 residents and some of the area's largest employers.

At 2,875 feet above sea level, Victorville's dry, high-desert climate offers a taste of all seasons. We enjoy cool springs and falls, hot and sunny summers and generally milder winters that can sometimes bring light snow. Average rainfall is approximately 3.9 inches per year, which means low humidity throughout the year. Temperatures can range from below freezing in winter to 110 in the summer.

**Project Purpose**

The purpose of this maintenance contract is to provide the City of Victorville with the best possible tree care to maintain the City's trees at a level expected by the City's residents, City Council, City staff, and visitors of the community. The selected firm will work closely with City staff to ensure the most appropriate care and maintenance of the City's tree inventory.

It is the intent of the City to award a contract, in a form approved by the City Attorney, to the selected firm. The City reserves the right to further negotiate the terms and conditions of the contract. The City shall reserve the right to reject any proposal for noncompliance with contract requirements and provisions, or to not award a contract because of unforeseen circumstances or if it is determined to be in the best interest of the City. This project will be awarded based on demonstrated ability and performance providing similar services at a fair and reasonable cost. This contract may not be awarded to the lowest bidder. The City Council will approve as part of the annual budget an annual contract amount. The City does not guarantee a specific amount of work and the quantity of work may increase or decrease depending on the annual needs of the tree conditions.

**Project Scope of Work**

The Contractor shall perform tree trimming and maintenance, general arborist services and GPS inventory management in accordance with the statement of work described herein and all applicable governing standards (see Project Specifications on page 12). The work performed to service tree maintenance pertaining to this contract is routine, perpetual and typical.



EXHIBIT A

It shall be understood that the Contractor will be required to perform and complete the proposed tree trimming and maintenance, general arborist services and GPS inventory management work in a thorough and professional manner, and to provide all labor, tools, equipment, traffic control, materials and supplies necessary to complete all work in a timely manner that will meet the City's requirements.

## **EXHIBIT B**

### **BID PROPOSAL FORMS**

**See Attachment**

**CITY OF VICTORVILLE  
CC24-091 TREE TRIMMING AND MAINTENANCE SERVICES**

The undersigned declares he has carefully examined the locations of the proposed work, the Scope of Services, and Contract Documents; and being familiar with all of the conditions surrounding the work. All of the aforementioned shall be done in accordance with said Scope of Services and all applicable addenda.

HEREBY PROPOSE to furnish all labor, materials, equipment and transportation, and to do all work required to complete the said work in accordance with the said Specifications for the monthly unit prices as named in the following schedule:

DESCRIPTION	BID ITEM PRICE (UNIT PRICE IN FIGURES)
<b>1. ROUTINE ANNUAL TREE TRIMMING SERVICES</b>	
a. <b>Routine Annual Tree Trimming</b>	
Prune by Grid	\$ <u>94.00</u> (per tree)
<b>2. SERVICE REQUEST SERVICES</b>	
a. <b>Tree Pruning</b>	
0" to 6"	\$ <u>80.00</u> (per tree)
7" to 12"	\$ <u>160.00</u> (per tree)
13" to 18"	\$ <u>240.00</u> (per tree)
19" to 24"	\$ <u>325.00</u> (per tree)
25" to 30"	\$ <u>325.00</u> (per tree)
31" and Over	\$ <u>325.00</u> (per tree)
b. <b>Crown Raising/Clearance Pruning</b>	
0" to 6"	\$ <u>64.00</u> (per tree)
7" to 12"	\$ <u>64.00</u> (per tree)
13" to 18"	\$ <u>64.00</u> (per tree)
19" to 24"	\$ <u>64.00</u> (per tree)
25" to 30"	\$ <u>64.00</u> (per tree)
31" and Over	\$ <u>64.00</u> (per tree)
c. <b>Palm Tree Trimming</b>	
Palm Tree Trimming – any size	\$ <u>94.00</u> (per tree)
d. <b>Tree Removal and Stump Grinding</b>	
Tree Removal	
0" to 6"	\$ <u>48.00</u> (per inch DBH)
7" to 12"	\$ <u>48.00</u> (per inch DBH)
13" to 18"	\$ <u>48.00</u> (per inch DBH)
19" to 24"	\$ <u>48.00</u> (per inch DBH)
25" to 30"	\$ <u>48.00</u> (per inch DBH)
31" and Over	\$ <u>48.00</u> (per inch DBH)
Stump Grinding	\$ <u>20.00</u> (per inch DBH at grade)

e. <b>Root Pruning</b>	\$ <u>20.00</u>	(per LF)
f. <b>Root Barrier Installation</b>	\$ <u>20.00</u>	(per LF)
g. <b>Tree Planting</b> (includes tree, materials, stakes and planting costs)		
15 Gallon	\$ <u>215.00</u>	(per tree)
24 inch Box	\$ <u>395.00</u>	(per tree)
36 inch Box	\$ <u>1,075.00</u>	(per tree)
48 inch Box	\$ <u>1,875.00</u>	(per tree)
60 inch Box	\$ <u>5,000.00</u>	(per tree)
h. <b>Tree Watering</b>		
Tree Watering of young trees, water truck/operator-per hour	\$ <u>99.00</u>	(per hour)
g. <b>General Labor Rates</b>		
1 Ground-person	\$ <u>99.00</u>	(per hour)
1 Equipment Operator	\$ <u>99.00</u>	(per hour)
1 Trimmer	\$ <u>99.00</u>	(per hour)
h. <b>Day Rate Service Crew.</b> Boom truck to include a chip body, low decibel chipper, 1 trimmer, 2 ground persons	\$ <u>2,376.00</u>	(per eight (8) hour day)
i. <b>Specialty Equipment Day Rate</b>	\$ <u>1,200.00</u>	(per eight (8) hour day)
j. <b>Emergency Services.</b> Fully equipped 3 person crew called in for emergency service.		
During Normal business hours	\$ <u>447.00</u>	(per hour)
After hours, weekends, holidays	\$ <u>447.00</u>	(per hour)
k. <b>General Arborist Services</b>		
Arborist Reports	\$ <u>174.00</u>	(per hour)
Resistograph Testing	\$ <u>174.00</u>	(per hour)
Ground Penetrating Radar	\$ <u>700.00</u>	(per hour)
Air Spade Services	\$ <u>174.00</u>	(per hour)
Fumigation	\$ <u>174.00</u>	(per hour)
Fertilization	\$ <u>174.00</u>	(per hour)
Level 1, 2, 3 Risk Assessments	\$ <u>174.00</u>	(per hour)
Soil Testing/Tree Well Enhancements	\$ <u>174.00</u>	(per hour)
l. <b>Plant Health Care Services</b>		
Tree Spraying from Ground Level	\$ <u>3.00</u>	(per diameter inch)
Tree Spraying from Aerial Tower	\$ <u>5.00</u>	(per diameter inch)
Insecticide Trunk Banding	\$ <u>6.00</u>	(per diameter inch)
Plant Growth Regulator Trunk Banding	\$ <u>3.00</u>	(per diameter inch)
Plant Growth Regulator Soil Application	\$ <u>5.00</u>	(per diameter inch)
Fertilizer Drenching	\$ <u>4.00</u>	(per diameter inch)
Trunk Injection – Insecticide/Miticide	\$ <u>6.00</u>	(per diameter inch)
Trunk injection – Fungicide	\$ <u>5.00</u>	(per diameter inch)
Trunk Injection – Insecticide and Fungicide	\$ <u>9.00</u>	(per diameter inch)


m. **GPS Tree Inventory** \$ 4.00 (per tree)

Bidder's Name: West Coast Arborists, Inc.

Company Name: West Coast Arborists, Inc.

Phone: 714-991-1900 Fax: 714-956-3745 Email: vgonzalez@wcainc.com

Name: Patrick Mahoney

	President	05/28/24
Signature	Title	Date

**NOTE: COST PROPOSAL SHEETS (PAGES 50-52) NEEDS TO BE SUBMITTED SEPARATELY IN A SEALED ENVELOPE CLEARLY IDENTIFIED AS "SEALED DOLLAR COST FOR TREE TRIMMING & MAINTENANCE SERVICES"**