

CONTRACT NO. MA-012-16010217
BETWEEN
COUNTY OF ORANGE
AND
WEST COAST ARBORIST, INC.

This Contract No. MA-012-16010217 for Tree Maintenance Services, hereinafter referred to as ("Contract") is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California on behalf of OC Community Resources, hereinafter referred to as ("County") and West Coast Arborist, Inc., with a place of business at 2200 E. Via Burton, Anaheim, CA 92806, hereinafter referred to as ("Contractor"), with County and Contractor sometimes individually referred to as ("Party"), or collectively referred to as ("Parties").

RECITALS

WHEREAS, Contractor responded to an Invitation for Bids (IFB) for Tree Maintenance Services for the County of Orange; and

WHEREAS, the Contractor responded and represented that its proposed products shall meet or exceed the requirements and specifications of the Scope of Work, attached hereto as Attachment A and incorporated herein; and

WHEREAS, County agrees to pay Contractor the fees as further set forth in Compensation and Payment, attached hereto as Attachment B and incorporated herein; and

NOW, THEREFORE, the parties mutually agree as follows:

ARTICLES

I. **Contract Specific Terms and Conditions:** To the extent these terms and conditions are inconsistent with the General Terms and Conditions contained below paragraph A – II, these Terms and Conditions shall govern.

1. **Scope of Contract:** This Contract specifies the Contractual terms and conditions by which County will procure and receive goods or services from Contractor, including but not limited to, as detailed in the Scope of Work, incorporated herein as Attachment A.
2. **Term of Contract:** This is a one (1) year Contract commencing on September 1, 2015, or upon execution of all necessary signature or approval by the Orange County Board of Supervisors, whichever occurs later, and shall be renewable for four (4) additional, one (1) year term, unless otherwise terminated by either Party according to terms and conditions herein. Contract renewals require approval by the County Board of Supervisors.
3. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may also be contingent upon the receipt of funds from, and/or appropriation of funds by, the State of California to County. If such funding and/or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
4. **Responsible Entities:**
 - a. **County's Agents.** County hereby designates its Deputy Purchasing Agent or approved designee, to represent County under this Contract. All written communications given to or by Deputy Purchasing Agent to Contractor under this Contract shall be deemed given to or by County. County may change this designation at any time and from time to time by delivery of written notice to Contractor. The Systems & Resources Division Manager, hereinafter referred to as ("***Division Manager***") or his/her designee, is

hereby designated for the day to day oversight of the Scope of Services, attached as Attachment A and incorporated by reference.

b. Contractor's Agents:

- i. Contractor shall appoint a project manager (the "Project Manager") to direct the Contractor's efforts in fulfilling Contractor's obligations under this Contract. This Project Manager shall be subject to approval by the County and shall not be changed without the written consent of County, which consent shall not be unreasonably withheld.
- ii. Contractor shall be solely responsible for hiring, supervising and training all of Contractor's officers, directors, employees, staff members, consultants, volunteers, agents, suppliers, contractors, representatives, and all other persons acting by or through any of the foregoing (collectively, "**Contractor's Agents**") in performing the said Services. Contractor shall at all times exercise reasonable care and diligence to ensure that Contractor's Agents perform their respective obligations hereunder or under their respective contracts in a competent and professional manner. Contractor shall be responsible to County and third Parties for the acts and omissions of Contractor's Agents.

5. **Sub-Contracting:** County will not accept any subcontractor(s).
6. **Usage:** No guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximate, based upon the last usage. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at prices listed in the Contract, regardless of quantity requested.
7. **Usage Reports:** Upon County request, Contractor shall submit usage reports to County which shall include, at minimum, summarized quantities used during the Contract period by line item description as specified in the Contract. The usage report shall be in a format specified by County.
8. **Contractor's Records:** The Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the Contractor in accordance with generally accepted accounting principles. These records shall be stored in the County of Orange for a period of three (3) years. Storage of records in another County will require written approval from the County's Deputy Purchasing Agent or his designee.
9. **Child Support Enforcement Requirements:** Contractors are required to comply with the child support enforcement requirements of the County of Orange. Failure of Contractor to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. Failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.
10. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of County's Program Manager and Contractor routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

Contractor: West Coast Arborists, Inc.
2200 E. Via Burton

Anaheim, CA 92806

Victor Gonzalez, Vice President, Marketing
Phone: 714.991.1900 | Email: vgonzalez@wcainc.com

***Kris Burbidge, Area Manager**
Phone: 714.920.0567 | Email: kburbidge@wcainc.com

Natalia Melendez, Customer Service Representative
Phone: 714.991.1900 x. 121 | Email: amelendez@wcainc.com

Emergency Response (24 Hours/7 days)
Phone: 866.546.2369 [866.LIMB-DOWN]

1. Chuck Working, OC Supervisor
Phone: 714.920.0413 | Email: cworking@wcainc.com
2. Daniel Rivas, OC Supervisor
Phone: 714.715.0089 | Email: drivas@wcainc.com
3. Juan Marquez, OC Supervisor
Phone: 714.620.4489 | Email: jmarquez@wcainc.com

County: County of Orange
OC Community Resources | OC Parks
Purchasing & Contract Services
Attn: Diana Lin, Deputy Purchasing Agent
13042 Old Myford Road
Irvine, CA 92602
Phone: 949.585.6464 | Fax: 714.667.6522
E-mail: Diana.Lin@occr.ocgov.com

County: County of Orange
OC Community Resources | OC Parks
System & Resources Management Division
13042 Old Myford Road
Irvine, CA 92602

Contract Administrators
Attn: Bill Kirk, Division Manager
Phone: 949.923.3736 | Email: Bill.Kirk@ocparks.com

Attn: Jeremy Hampton, Manager
Phone: 949.585.6466 | Email: Jeremy.Hampton@ocparks.com

Attn: Steve Stewart
Phone: 949.923.3774 | Email: Stephen.Stewart@ocparks.com

Cc: County of Orange
OC Community Resources | OC Parks
National Pollutant Discharge Elimination System (NPDES)
13042 Old Myford Road
Irvine, CA 92602

Attn: Robin Lamont, NPDES Coordinator

Phone: 949.585.6441 | Email: Robin.Lamont@ocparks.com

11. **Payment (Electronic Funds Transfer (EFT)):** The County of Orange offers Contractors the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive an Electronic Remittance Advice with the payment details via e-mail. An e-mail address will need to be provided to the County of Orange via an EFT Authorization Form. *To request a form, please contact the Agency/Department representative listed in the Contract. Upon completion of the form, please mail, fax or email to the address or phone listed on the form.*

12. **Conflict of Interest:**

- a. **Contractor's Personnel:** Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor's employees, agents, and relatives; sub-tier Contractors; and third parties associated with accomplishing work and services hereunder. The Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County.
- b. **County Personnel:** County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Contractor shall not, during the period of this Contract, employ any County employee for any purpose.

13. **Equal Employment Opportunity:** The Contractor shall comply with U.S. Executive Order 11426 entitled, "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable state of California regulations as may now exist or be amended in the future. The Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, religion, sex, marital status, political affiliation or physical or mental condition.

Regarding handicapped persons, the Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to provide equal opportunity to handicapped persons in employment or in advancement in employment or otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicaps in all employment practices such as the following: employment, upgrading, promotions, transfers, recruitments, advertising, layoffs, terminations, rate of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to comply with the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to prohibition of discrimination against qualified handicapped persons in all programs and/or activities as detailed in regulations signed by the Secretary of the Department of Health and Human Services effective June 3, 1977, and found in the Federal Register, Volume 42, No. 68 dated May 4, 1977, as may now exist or be amended in the future.

Regarding Americans with disabilities, Contractor agrees to comply with applicable provisions of Title 1 of the Americans with Disabilities Act enacted in 1990 as may now exist or be amended in the future.

14. **Nondiscrimination – Statement of Compliance:** The Contractor's signature affixed hereon and dated shall constitute a certification under penalty of perjury under the laws of the state of California that the Contractor has, unless exempted, complied with the nondiscrimination program requirements of Government Code Section 12900 (a-f) and Title 2, California Code of Regulations, Section 8103.

15. **Publication:** No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any

person, partnership, company, corporation, or agency, without prior written approval by County, except as necessary for the performance of the services of this Contract. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after County approval.

16. **News/Information Release:** The Contractor agrees that it will not issue any news releases in connection with either the award of this Contract or any subsequent amendment of, or effort under this Contract. Contractors must first obtain review and approval of said news/media contact from County through County's Division. Any requests for interviews or information received by the media should be referred directly to County. Contractors are not authorized to serve as media spokespersons for County projects without first obtaining authorization from County's Division Manager.
17. **Ownership of Documents:** County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remain the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the Contractor without the express written consent of the County.
18. **Title to Data:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.
19. **Copyright Access:** Notwithstanding anything to the contrary, the County shall have a royalty-free nonexclusive and irrevocable license to publish, translate, or use, now and hereafter, all material developed specifically for, or by, the County under this Contract.
20. **Contractor Work Hours and Safety Standards:** The Contractor shall ensure compliance with all safety and hourly requirements for employees in accordance with federal, state and County safety regulations and laws.
21. **Provision of Labor and Material:** The Contractor shall provide labor, material, special equipment, and permits (when applicable) to perform services specified in the attached proposal that was submitted by the Contractor to the requesting agency/department.
22. **Prevailing Wage (Labor Code §1773):** Pursuant to the provisions of Section 1773 of the Labor Code of the state of California, the Contractor shall comply with the general prevailing rates of per diem wages and the general prevailing rates for holiday and overtime wages in this locality for each craft, classification, or type of worker needed to execute this Contract. The rates are available from the Director of the Department of Industrial Relations at the following website: <http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm>. The Contractor shall post a copy of such wage rates at the job site and shall pay the adopted prevailing wage rates. The Contractor shall comply with the provisions of Sections 1775 and 1813 of the Labor Code.
23. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
 - a. Afford the Contractor written notice of the breach and ten calendar days or such shorter time that may be specified in this Contract within which to cure the breach;

- b. Discontinue payment to the Contactor for and during the period in which the Contractor is in breach; and
- c. Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.

24. **Liquidated Damages:** It is agreed by and between the Contractor and the County that if this Contract is not fully and completely performed within the terms of the Contract, damage will be sustained by the County. Said damage includes any additional costs resulting from a delay in scheduled time frames by the Contractor. Since it is and will be impractical and extremely difficult to determine the actual damage which the County will sustain by reason of such delay, it is therefore agreed that Contractor will pay to the County liquidated damages in a set amount for each and every day of delay as set forth in this document. In the event the liquidated damages as set forth herein are not paid by the Contractor, the County will deduct the amount of liquidated damages from any monies due Contractor under this Contract.

This provision may be invoked at the sole option of the County by notification to the Contractor by certified return receipt mail.

If Contract is delayed by reason of changes or extra services ordered by the County or as a result of the County's failure to perform or delays cause by the County, the time of performance of this Contract will be extended commensurate with the time required for the extra services, and no liquidated damages will accrue during the period of such extension.

If this Contract is not fully and completely performed within the time set forth herein, the County shall have the right to increase the time for such performance and to waive the liquidated damages. Nothing herein shall be construed as giving the Contractor a right to extra time for performance.

25. **Licenses:** Contractor, if any, shall, at all time during the term of this Contract, maintain in full force and effect such licenses or permits as may be required by the State of California or any other government entity. Contractor, if any, shall strictly adhere to, and obey, all governmental rules and regulations now in effect or as subsequently enacted or modified, as promulgated by any local, state, or federal governmental entity.

26. **Termination:**

- a. **Default – Contractor:** If Contractor is in default of any of its obligations under this Contract and has not commenced cure within ten days after receipt of a written notice of default from County and cured such default within the time specified in the notice, the County shall immediately be entitled to either commence resolution in accordance with this paragraph or to terminate this Contract by giving written notice to take effect immediately. Default shall include failure to carry out any of the requirements of this Contract, including, but not limited to not providing enough properly skilled workers or proper materials, persistently disregarding laws and or ordinances, not proceeding with the work as agreed to herein, or otherwise substantially violating any provision of this Contract. Upon termination of the Contract with Contractor, the County may begin negotiations with a third-party Contractor to provide goods and/or services as specified in this Contract.

The right of either party to terminate this Contract hereunder shall not be affected in any way by its waiver of or failure to take action with respect to any previous default.

- b. **Convenience of the County:** The County may terminate performance of work under this Contract for its convenience in whole, or, from time to time, in part if the user Agency/Department determines that a termination is in the County's interest. The Agency/Department assigned buyer shall terminate the Contract by delivering to the Contractor a written notice of termination specifying the extent of the termination and the effective date thereof. The parties agree that, as to the terminated portion of the Contract, the Contract shall be deemed to remain in effect until such time as the termination settlement, if any, is concluded and the Contract shall not be void.

After receipt of a notice of termination and, except as directed by the assigned buyer, the Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Contractor shall:

- i. Stop work as specified in the notice of termination;
- ii. Place no further orders for materials, services, or facilities, except as necessary to complete the continued portion of the Contract;
- iii. Terminate all orders to the extent they relate to the work terminated;
- iv. As directed by the assigned buyer transfer title and deliver to the County (a) fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (b) completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to the County;
- v. Complete performance of the work not terminated; and
- vi. Take any action that may be necessary or as the County may direct for the protection and preservation of the property related to this Contract that is in the possession of the Contractor and in which the County has or may acquire an interest and to mitigate any potential damages or requests for Contract adjustment or termination settlement to the maximum practical extent.

At the completion of the Contractor's termination efforts, the Contractor may submit to the assigned buyer a list indicating quantity and quality of termination inventory not previously disposed of and request instructions for disposition of the residual termination inventory.

After termination the Contractor shall submit a final termination settlement proposal to the user Agency/Department in a format acceptable to the County. The Contractor shall submit the proposal promptly, but no later than 60 days from the effective date of the termination, unless extended in writing by the County upon written request of the Contractor within the 90-day period. However, if the Agency/Department determines that the facts justify it, a termination settlement proposal may be received and acted on after the expiration of the filing period or any extension.

The Contractor and the County may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done, including a reasonable amount for accounting, legal, clerical and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data, and storage, transportation and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. However, the agreed amount may not exceed the total Contract price as reduced by (a) the amount of payment previously made and (b) the Contract price of work not terminated. The Contract shall be amended and the Contractor paid the agreed amount.

- i. The Contract price for completed supplies or services accepted by the County (or sold or acquired) not previously paid for, adjusted for any savings of freight and other charges; and
- ii. Except for normal spoiling and except to the extent that the County expressly assumes the risk of loss, the County shall exclude from the amounts payable to the Contractor the fair value, as determined by the Agency/Department, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the County.

The Contractor shall use generally accepted accounting principles and sound business practices in determining all costs claimed, agreed to, or determined under this clause. Such costs shall be allocable

to the terminated Contract or portion thereof, allowable under applicable laws, regulations, generally accepted accounting principles and good business judgment and objectively reasonable.

The Contractor shall have the right to appeal, under the County's protest procedure, any determination made by the County, except that if the Contractor failed to submit the termination settlement proposal within the time provided and failed to request a time extension, there is no right of appeal.

In arriving at the amount due the Contractor under this clause, there shall be deducted:

- i. All payment to the Contractor under the terminated portion of this Contract;
- ii. Any claim which the County has against the Contractor under this or any other Contract; and
- iii. The agreed price for or proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the County.

If the termination is partial, the Contractor may file a proposal with the Agency/Department for an equitable adjustment of the price(s) of the continued portion of the Contract. The Agency/Department shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 30 days from the effective date of termination unless extended in writing by the Agency/Department.

The County may:

- i. Under the terms and conditions it prescribes, make partial payment and payments against costs incurred by the Contractor for their terminated portion of the Contract, if the County believes that the total of these payments will not exceed the amount to which the contractor will be entitled; and
- ii. If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the County upon demand.

In determining the amount payable to the Contractor and notwithstanding any other provision, if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, the County shall allow no profit and shall reduce the settlement to reflect the indicated rate of loss.

Unless otherwise provided in this Contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this Contract for three years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this Contract. The Contractor shall make these records and documents available to the County, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the County, photographs, microphotographs, electronic storage, or other authentic reproductions may be maintained instead of original records and documents.

27. Contract Disputes:

The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor and County, such matter shall be brought to the attention of the County Purchasing Agent by way of the following process:

- a. The Contractor shall submit to the Agency/Department assigned Buyer a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.

- b. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.

Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County Deputy Purchasing Agent or his designee. If the County fails to render a decision within 90 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions. The County's final decision shall be conclusive and binding regarding the dispute unless the Contractor commences action in a court of competent jurisdiction to contest such decision within 90 days following the date of the County's final decision or one year following the accrual of the cause of action, whichever is later.

28. **Conditions Affecting Work:** The Contractor shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract and to know the general conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to the County. The County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.
29. **Hazardous Conditions:** Whenever the Contractor's operations create a condition hazardous to traffic or to the public, the Contractor shall provide flagmen and furnish, erect and maintain control devices as are necessary to prevent accidents or damage or injury to the public at Contractor's expense and without cost to the County. The Contractor shall comply with County directives regarding potential hazards.

Emergency lights and traffic cones must also be readily available at all times and must be used in any hazardous condition. Emergency traffic cones must be placed in front of and behind vehicles to warn oncoming traffic.

Signs, lights, flags, and other warning and safety devices shall conform to the requirements set forth in Chapter 5 of the current traffic manual, Traffic Control for Construction and Maintenance Work Zones, published by the state of California Department of Transportation.

30. **Pollution Controls:** The County of Orange is subject to two Municipal National Pollutant Discharge Elimination System (NPDES) Permits which authorize the discharge of stormwater from its municipal separate storm sewer system (MS4). The requirements differ depending on the geographic location of the project. The two governing permits are the Santa Ana Regional Water Quality Control Board Order number R8-2009-0030 NPDES No. CAS618030 and the San Diego Regional Water Quality Control Board Order number 2009-0002, NPDES No. CAS0108740. Copies of the RWQCB Permits are available for review.

The County implements procedures to assess potential water quality impacts to receiving water bodies and ensure that flood management processes and projects do not contribute pollutants to receiving waters to the maximum extent practicable.

Per the subject permits the County is required to prepare and update a Stormwater Program Local Implementation Plan (LIP) which details how compliance with requirements of the MS4 Permits will be maintained. Model maintenance procedures relevant to the County's municipal facilities and field programs

were prepared and are included in the County of Orange LIP Exhibit A-5.III. The Model Maintenance Procedures apply to any party conducting municipal activities and must contain pollution prevention and source control techniques to minimize the impact of those activities upon dry-weather urban runoff, stormwater runoff, and receiving water quality.

Work performed under this Contract shall conform to the Permit requirements, the LIP and the Model Maintenance Procedures. The Contractor shall fully understand the Model Maintenance Procedures applicable to activities that are being conducted under this Contract prior to conducting them and maintain copies of the Model Maintenance Procedures throughout the Contract duration.

The applicable Model Maintenance Procedures are available at:

<https://media.ocgov.com/gov/pw/watersheds/documents/damp/lip.asp>

Contractor must comply with the California Department of Pesticide Regulation New Restrictions to Protect Water Quality in Urban Areas posted at: <http://www.cdpr.ca.gov/docs/pressrls/2012/120718.htm>

31. **Expenditure Limit:** The Contractor shall notify the County's Division Manager or his/her designee in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. The County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless a change order to cover those costs has been issued.
32. **Cooperative Agreement:** The provisions and pricing of this Contract will be extended to other County of Orange Agencies/Departments ("Cooperative Entities"). Cooperative entities wishing to use this Contract will be responsible for issuing their own purchase documents/agreements, providing for their own acceptance, and making any subsequent payments. The cooperative entities are responsible for obtaining all certificates of insurance and bonds required. The Contractor is responsible for providing each cooperative entity a copy of the Contract upon request by the cooperative entity. County of Orange makes no guarantee of usage by other users of this Contract. County of Orange may authorize the loading of this agreement into an electronic commerce system.
33. **Material Safety Data Sheets (MSDS):** The Contractor is required to provide a completed Material Safety Data Sheet (MSDS) for each hazardous substance provided to the County under the Contractor's Contract with the County. This includes hazardous substances that are not directly included in the Contract, but are included in the goods or services provided by the Contractor to the County. The provision of the MSDSs must be in accordance with the requirements of California Labor Code Sections 6380 through 6399, General Industry Safety Order Section 5194, and Title 8, California Code of Regulations. The MSDSs for each substance must be sent to the place of shipment or provision of goods/services and must also be sent to:

County of Orange
CEO/Risk Management
Attn: Safety and Loss Prevention Program
PO Box 327
Santa Ana, CA 92702

II. General Terms and Conditions

- A. **Governing Law and Venue:** This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for trial to another County.

- B. **Entire Contract:** This Contract, when accepted by the Contractor either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire Contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County's Deputy Purchasing Agent or his designee, hereinafter "Purchasing Agent."
- C. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
- D. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
- E. **Delivery:** Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed statement of work. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor's expense. Overshipments and undershipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by County.
- F. **Acceptance/Payment:** Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.
- G. **Warranty:** Contractor expressly warrants that the goods/services covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnities as identified in paragraph "HH", and as more fully described in paragraph "HH", harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
- H. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, property right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph "HH", it shall indemnify, defend and hold County and County Indemnities harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorneys fees, costs and expenses.
- I. **Assignment:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express written consent of County. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.

- J. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to all the penalties imposed for a violation of Section 1720 et seq. of the California Labor Code.
- K. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to terminate this Contract without penalty immediately with cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of Contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation.
- L. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- M. **Remedies Not Exclusive:** The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either party to any other remedies provided by law.
- N. **Independent Contractor:** Contractor shall be considered an independent Contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.
- O. **Performance:** Contractor shall perform all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work.
- P. **Insurance Provisions:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract.

All self-insured retentions (SIRs) and deductibles shall be clearly stated on the Certificate of Insurance. If no SIRs or deductibles apply, indicate this on the Certificate of Insurance with a zero (0) by the appropriate line of coverage. Any self-insured retention (SIR) or deductible in an amount in excess of \$25,000 (\$5,000 for automobile liability), which shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management upon review of Contractor's current audited financial report.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:

- 1) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds.
- 2) A primary non-contributing endorsement evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees.

All insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

All insurance policies required by this Contract shall give the County of Orange 30 days notice in the event of cancellation and 10 days for non-payment of premium. This shall be evidenced by policy provisions or an endorsement separate from the Certificate of Insurance.

The Commercial General Liability policy shall contain a severability of interests clause, also known as a “separation of insureds” clause (standard in the ISO CG 001 policy).

Insurance certificates should be forwarded to the Agency/Department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified Contractor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

- Q. Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. Contractor shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements of paragraph “HH”, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
- R. Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.
- S. Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.
- T. Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
- U. Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.
- V. Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances,

requirements, and regulations (collectively “laws”), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph “P”, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.

- W. **Freight (F.O.B. Destination):** Contractor assumes full responsibility for all transportation scheduling, packaging, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.
- X. **Pricing:** The Contract price shall include full compensation for providing all required goods, in accordance with required specifications, or services, as specified herein or when applicable, in the scope of services attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.
- Y. *Intentionally left blank.*
- Z. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.
- AA. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
- BB. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- CC. **Calendar Days:** Any reference to the word “day” or “days” herein mean calendar day or calendar days, respectively, unless otherwise expressly provided.
- DD. **Attorney Fees:** In any action or proceeding to enforce or interpret any provisions of this Contract, or where any provisions hereof is validly asserted as a defense, each party shall bear its own attorney’s fees, costs and expenses.
- EE. **Interpretation:** This Contract has been negotiated at arm’s length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party has been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the parties and this Contract.
- FF. **Authority:** The parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
- GG. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification

and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

HH. Indemnification Provisions: Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

II. Audit/Inspections: Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. County will provide reasonable notice of such an audit or inspection.

County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this agreement shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County's Division Manager and/or his/her designee.

County of Orange
West Coast Arborist, Inc.

Contract Number: MA-012-16010217

CONTRACT SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the date preceding the signature.

WEST COAST ARBORISTS, INC.*:

Signature

Patrick Mahoney

Print Name

President

Title

8/3/15

Date

Signature

Richard Mahoney

Print Name

Assistant Secretary

Title

8/3/15

Date

*Pursuant to California Corporations Code Section 313, the signatures of two corporate officials are required to bind the corporation, one from each of the following two groups: If the Contracting party is a corporation, (2) two signatures are required: one (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer. The signature of one person alone is sufficient to bind a corporation, as long as he or she holds corporate offices in each of the two categories described above. For County purposes, proof of such dual office holding will be satisfied by having the individual sign the instrument twice, each time indicating his or her office that qualifies under the above described provision.

In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signator to bind the corporation.

COUNTY OF ORANGE

a political subdivision of the State of California

Signature

Print Name

Deputy Purchasing Agent

Title

Date

Signature

Print Name

Procurement Manager

Title

Date

APPROVED AS TO FORM

Office of the County Counsel
County of Orange, California

Deputy County Counsel

Date

ATTACHMENT A
SCOPE OF WORK

- I. Scope of Work:** Contractor shall furnish all staffing, labor, equipment, materials and incidentals required for Tree Maintenance Services as described in the Scope of Work (SOW).
- II. Description of Work:** This Contract is for comprehensive tree maintenance services, inventory and work record management at various Orange County Park (OC Parks) facilities.
- A. Work consists of clearance tree trimming, trimming of large trees, palm tree trimming, tree removal, stump removal, GIS/GPS tree inventory, pesticide recommendation, pesticide application/injection, arborist services, reports, and other tree maintenance.
 - B. In general the County attempts to avoid tree maintenance during nesting season. If tree maintenance is necessary during nesting season, Contractor is required to monitor for nesting activity prior to any work, per all applicable laws and regulations. No additional compensation is allowed.
 - C. High volume work may consist of planned annual tree maintenance based on OC Parks tree inventory and desired maintenance cycle. Contractor shall work with the County to prepare and submit proposed schedule, overall department budget and individual facility budgets for annual maintenance cycle, three (3) months prior to anticipated start date. The County shall approve the plan or submit changes. Contractor will meet and coordinate with supervisory staff at each park no fewer than three (3) weeks prior to beginning of work.
 - i. The plan and budget are set up to trim most trees no less frequently than every four years. Slow growth and trees in areas that are not typically maintained are planned on an 8 year cycle.
 - ii. All Oak species shall be planned for an 8 year cycle.
 - D. Low volume work (Non-Routine) may be assigned on an as-needed basis and may include tree trimming or removal, stump and limb removal, pesticide recommendation and treatment, arborist services, inventory, and other as needed. Non-routine work may be assigned based on the County's needs, and shall be completed by Contractor within two (2) weeks of notice to proceed. If applicable, one (1) low volume mobilization fee shall be permitted for a work order or group of work orders.
 - E. Emergency work may be assigned as-needed based on County needs. Emergency work will be performed and billed by line item price with addition of the Emergency Mobilization fee. Only one mobilization fee will be allowed per emergency incident. One emergency incident and applicable mobilization fee may span more than one tree, work order or day. Contractor must be at the park facility within 2 hours of initial call from County.
 - F. It is the express intent of the Scope of Work; the Contractor shall limit use of the Hourly Work, or Crew Rental, to tasks that are not identified as separate line items, or tasks that cannot reasonably be included in a line item. For example, but not limited to, Hourly Work will not be allowed for large, poorly structured or unusual trees, challenging conditions, inclement weather, heavy canopy, most down or leaning trees, down limbs, hanging limbs. County shall determine if Hourly Work charges are justified. If, Hourly Work is not approved, Contractor shall accept payment at contract line item price as approved by the County.
 - G. The majority of all tree pruning performed falls under the Full Prune category as described in this SOW.
 - H. Contractor shall be responsible for repairs to all turf (including rutting), landscape, trail, irrigation, natural areas, concrete, hardscape, and damage by their vehicles, equipment or employees. The County uses a systematic inspection process (scheduled inspections, performed and documented in OC Parks' maintenance management system) to identify and document maintenance deficiencies. Any damage identified after Contractor work, that has not been documented on a previous inspection or backlogged work order shall be assumed to have been caused by Contractor and will be Contractor's repair responsibility.

- I. Contractor shall be penalized the full value of any tree damaged by Contractors' operation or removed in error.
- J. The County reserves the right to increase or decrease the quantity of any item(s) or portion(s) of the work described in the specifications or to omit portions of the work so described as may be deemed necessary or expedient by the County. Contractor shall agree not to claim or bring suit for damages, whether for loss of profits or otherwise, on account of any decrease or omission of any kind of work to be done. Alterations, modifications or deviations from the work described in the scope of services by Contractor shall be subject to the prior written approval of the County.
- K. Contractor will not receive compensation for work performed that was not assigned by County Division Manager and/or his/her designee; invoice that exceeds Contractors written quote, work that exceeds pre-established facility annual maintenance cycle budget, or for work that is outside the intended scope of this Contract.

III. Contractor Requirements:

- A. Must demonstrate a minimum of 5 years' experience building and maintaining client GIS tree inventories in geodatabase format. Inventories must include recommended maintenance cycles, work history, tree health/condition, height, and diameter.
- B. Must demonstrate a minimum of 5 years' experience contracting with entities similar in size and scope to OC Parks.
- C. Licensing and/or certifications shall be current at all times during the term of the Contract. Contractor shall have in full force and effect, all licenses and/or certifications required by law to perform of the said services described in the SOW. Copies of the licensing and certification information shall be made available to the County upon request.
 - * California State Contractors License Board (CSLB)
 - License C27: Landscaping Contractor
 - License C61: Limited Specialty
 - License D49: Tree Service Contractor
 - * International Society of Arboriculture (ISA) Certification or equivalent
 - ISA Certified Arborist®
 - ISA Certified Tree Worker/Climber Specialist®
 - * Agricultural Pest Control Adviser (PCA)
 - * Qualified Applicator Certificate

IV. Contractor Performance Requirements:

- A. Supervision: Contractor shall provide a supervisor or foreman who shall be present at all times during Contract operations, and who shall be responsible for both conduct and workmanship. Said supervisor or foreman shall communicate effectively in both written and oral English.
- B. All work shall comply with good arboreal practice for the particular species of trees being trimmed, shall be consistent with the Pruning Standards as adopted by the International Society of Arboriculture and the most current American National Standards, Z133-1-1972, entitled "Safety Requirements for Tree Pruning, Trimming, Repair or Removal".
- C. Trees shall not be visibly marked at any time, for any reason, e.g. for work identification.

-
- D. The County shall determine if the Contractor has met all trimming requirements, payment shall not be made for trimming that is not in accordance with standards and specifications as detailed in this SOW. The Contractor shall be deemed in default if they consistently fail to comply with the Contract standards.
- E. Any structural weakness, decayed trunk or branches, split crotches or limbs discovered by the Contractor during the course of trimming shall be reported to County for determination of action as soon as it is discovered.
- F. Contractor shall be responsible for the removal of all vines entwined in the tree or around its trunk, and the removal of sucker growth from tree trunks.
- G. Pesticide Usage and Reporting:
1. Contractor shall submit Pesticide Usage Report(s) to OC Parks National Pollutant Discharge Elimination System (NPDES) Coordinator at the end of each month summarizing the facilities treated, pests treated, pesticides used, pesticide application rates, man hours and equipment.
 - a) Report(s) will provide all information needed, and in a format sufficient for all annual reporting, including IPM and NPDES.
 2. OC Parks IPM Policy encourages use of the least toxic pesticide required for effective control of a given pest.
- H. Disposal of Materials:
1. The County shall receive AB 939 recycling credit.
 2. All green waste produced as a result of the Contractor's operations shall be reduced, reused, recycled, and/or transformed by Contractor.
 3. Reduction, reuse, recycling and transformation shall include but is not limited to, production of lumber, and daily cover.
 4. Weight slips, or other approved documentation, shall be required as proof of final disposal and shall be submitted by Contractor at the end of each month to OC Parks NPDES Coordinator.
- I. Pests and Diseases:
1. All trees known or suspected to be diseased/infested, Contractor shall disinfect all tools and cut surfaces after each cut and between trees.
 2. All trees with known or suspected PHSB, Fusarium, Gold Spotted Oak Borer or other high priority pests/pathogens as determined by the County. Contractor shall handle all debris in a manner consistent with newest version of all appropriate Best Management Practices (BMP), which minimizes the chance of spreading infection or infestation.
 3. Material and debris from trees with known or suspected disease/infestation shall be chipped to 1" or smaller and shall not be left on site or used as mulch off site.
 4. No additional charges for disinfection or special handling shall be allowed.
- J. Pre-inspection:

1. Prior to the commencement of any work in the vicinity of any tree, the Contractor shall identify presence of nesting birds, the location of utilities, irrigation components and/or any private property element(s) that could be compromised by any work activity.
2. If, during the course of pre-inspection, the Contractor identifies damage that exists before the onset of work, the Contractor shall document the damages with photos and report such damage to County Division Manager and/or his/her designee prior to commencing work in that area. All photo documentation shall have the time and date embedded.
3. Any claim of damage that cannot be refuted by photo-documentation and/or a written report to the County shall be considered the responsibility of the Contractor.

K. Protection and Restoration of Existing Areas:

1. Contractor shall protect all turf, landscape, trail, irrigation, natural areas, concrete, and hardscape from damages by its operations.
2. Contractor shall use reinforcing under equipment (e.g. tires, outriggers, jack) sufficient to prevent rutting and marking or other damage to all landscape, turf, and hardscape.
3. All damages shall be repaired and/or replaced at Contractor's expense within three (3) days after notification of such damage by County. Repairs and/or replacements shall be equal to original in all aspects.

L. Loss of Control:

1. Tree work is a controlled task. At no time should work be performed so as to result in a loss of control incident (e.g. free-falling large limbs or trunk sections, hinge cutting, lack of safety apparatus/equipment guards, improper use/loading of equipment).
2. Contractor shall be responsible to meet equipment inventory requirements sufficient to perform all work described herein.
3. Failure to maintain control at all times will be penalized. See Attachment B, Compensation & Payment.
4. In addition to penalties and/or the withholding of Contract payments, the Contractor shall be responsible for the mitigation of any damage related to a loss of control incident.

M. GIS/GPS and Tree Inventory:

1. All GIS/GPS and Tree Inventory work shall be performed by "in-house" Contractor. All GIS and inventory records created by the Contractor are property of the County of Orange.
2. Contractor shall create and maintain County tree inventory in geodatabase format and shall be fully compatible with ESRI ArcGIS newest version.
3. GPS work shall be performed using Trimble GeoXH 6000 or better.
4. Contractor shall follow County workflow and schedule for import and export of tree inventory updates to/from Contractor's inventory system and County GIS. Contractor shall update and modify geodatabase themes as required by the County.
5. Failure to meet and maintain the requirements for the GIS tree inventory shall be grounds for termination

of the Contract.

N. Tree Inventory Updates and additions:

1. Contractor shall provide a complete update of the County GIS tree inventory at no additional cost to the County within three (3) months of the Contract award.
2. When assigned and approved by County, Contractor may be allowed to charge fees for new inventory entries on trees that are not the subject of any other action.
3. Contractor shall update inventory, including metadata, and add new entries at no additional charge to the County for any tree that is the subject of any maintenance, inspection, or evaluation action.

O. Sound Control: Contractor shall comply with all County and local sound control and noise level rules, regulations, and ordinance, which apply to any work performed pursuant to the Contract.

P. Dust Control: Contractor shall not create dust in such a quantity as to violate the South Coast Air Quality Management District (AQMD) regulations.

Q. Debris Removal: Contractor shall remove all trash and debris from work area by the end of each day and as required during the course of work. Contractor shall dispose of materials at a site outside of the County right-of-way approved for disposal of such materials.

R. Water: Contractor shall furnish all water required for performance of work; shall make arrangements for obtaining water with the governing water district, and shall comply with all requirements set forth by the governing water district.

S. Utilities: Underground main distribution conduits such as water, gas, sewer, electrical power, telephone, or cable television may not be affected by the work indicated in the work packages Contractor shall assume that every property parcel shall be served by a service connection for each type of utility and shall protect all such service connections. Contractor shall contact UNDERGROUND SERVICE ALERT (USA) for all subsurface excavation and will Contract utility companies to mark locations if necessary.

T. Parking Control: Parked cars may interfere with the work to be performed. Therefore, Contractor shall post, maintain, and subsequently remove, temporary "No Parking" signs along the streets, parking lots, and other as needed areas, upon completion of work. Work is performed no less than 24 hours prior to the start of said work. Contractor shall be responsible for replacing signs which are damaged or removed in order to maintain notice to the public.

U. Traffic Control:

1. Contractor shall provide traffic control and equipment at no additional cost to the County.
2. Contractor shall post proper signage and traffic control to notify public regarding condition of work area in accordance with provisions of the Manual on Uniform Traffic Control Devices (MUTCD), as published by the State of California, Department of Transportation.
3. Park access shall be accessible at all times during all services.

V. Safety: Contractor agrees to perform all work outlined in this Contract in such a manner as to meet all accepted standards for safe practices during operations and to maintain safe conditions on premises and ways at all times, including safely stored equipment, machines and materials. This includes compliance with local, County, State or other legal intents and terms of the applicable Occupational Safety and Health Administration (OSHA) and CAL/OSHA Safety orders at all times so as to protect all persons, including Contractor's

employees and agents, against injury or damage to property.

W. High Voltage Lines: Should work involve any high voltage lines, Contractor shall be required to notify responsible utility company.

V. Identification and Scheduling of Work:

A. Low Volume Work (Non-Routine):

1. Contractor shall provide County a written quote for work that is within the parameters of the Contract.
2. Quote shall contain all required line items, line item price, and number of work units, line item total and job total.
3. If the work is not listed as a line item in this SOW, the quote will include the number of hours required to complete the job, and a statement indicating why the request does not fall within a Contract line item.
4. County shall provide Contractor a work order with authorization to proceed.
5. The work order shall include a detailed explanation of work requested, location, County Contact information, and any special instructions or alerts.
6. Upon receipt of authorization to proceed and work order, Contractor shall coordinate with County on anticipated start date.
7. Additional or add on work shall not be performed without new and/or an updated quote and approval in writing by County.

B. Emergency:

1. Contractor must report to the park facility within two (2) hours of initial notification from County.
2. Contractor must be readily available 24 hours a day, 7 days a week, 365 days a year.
3. Contractor shall provide County a written quote/confirmation the following business day.

C. High Volume Work (Routine Annual Tree Maintenance):

1. Within one (1) week of award of Contract, Contractor shall schedule initial meeting with County to develop multi-year plan for tree maintenance cycles and budget based on tree inventory and desired level of service.
 - a) In general the annual maintenance cycle shall consist of tree pruning and tree removal.
 - b) Annual maintenance shall generally be completed outside of nesting season.
2. County may make adjustments to the multi-year plan and level of service.
3. Multi-year annual maintenance cycles and budget shall be finalized and submitted to County no later than two (2) months after Contract award.
4. Contractor shall submit each year's annual maintenance plan, overall budget and individual facility budgets no less than three (3) months prior to the start of work.
5. The County shall approve annual plan and provide Contractor with work order and authorization to

proceed.

6. With authorization to proceed, Contractor shall coordinate with facility supervisors no less than three (3) weeks prior to start of work.
 7. Contractor shall not exceed the planned annual budget at any OC Park facility without written authorization from the County.
- D. Delays: Contractor is responsible for notifying County if weather or other conditions exist that preclude starting or continuing with any work.
- E. Access Gates: Contractor shall be provided with keys to the access gates upon request. Contractor shall return all keys upon completion of work and prior to request for payment. For each key not returned, the sum of One Hundred dollars (\$100.00) will be deducted and forfeited from any payment due to Contractor.
- F. Contractor shall keep all access gates closed except when entering and leaving the worksite. Contractor shall close and lock all access gates at the end of each working day. In the event that County is called out to a gate left open by Contractor, the sum of Two Hundred and Fifty dollars (\$250.00) based on minimum call back payments, will be deducted and forfeited from any payment due to Contractor.

VI. Specifications:

- A. Emergency: Contractor is required to provide 24-hour emergency phone numbers and names of a minimum of four (4) contact individuals within one (1) week of Contract award. Should phone number or contact person change during the course of the Contract those changes must be provided to County.
1. Contractor may be required to provide emergency/on-call response for services in this SOW. This may be at night, weekends, and holidays or during storm conditions.
 2. Contractor is required to start work indicated within two (2) hours of initial telephone call and report to County authorized representative upon completion of work specified.
 3. Three Hundred dollars (\$300.00) per hour shall be deducted and forfeited from payment to Contractor for each and every hour over the two (2) hours specified with each emergency requested.
 4. Contractor shall be allowed to stockpile debris from emergency work and in a manner that does not cause a hazard and shall mark debris with lighted barricades sufficient for visibility from all angles. Stockpile must be removed by end of the next calendar day. Stockpile shall not interfere with access to roadways, driveways, trails or sidewalks.
- B. General Pruning Specifications:
1. Trees shall be pruned to prevent branch and foliage interference with safe public passage. Street clearance shall be kept to a minimum of fourteen (14) feet, six (6) inches above the paved surface of the street and fourteen (14) feet above the curb and surface of a public sidewalk or pedestrian way. Exceptions are allowed for young trees, which would be irreparable damaged by such pruning action. If pruning to these standards would result in permanent disfiguration of a tree, the Contractor shall not prune the tree until direction is obtained from the County.
 2. Selectively prune branches that create sight line conflicts with traffic control signs and/or devices.
 3. Selectively prune branches that are within five (5) feet of a structure.
 4. Clear trees of sprout or sucker growth to a minimum height of ten (10) feet above ground level.

Exceptions are allowed for young trees, which would be irreparable damage by such pruning action.

5. Prune to maintain a balanced appearance unless authorized by the County to do otherwise.
6. Remove all vines entwined in trees and on tree trunks. Vine tendrils shall be removed without injury to trees.
7. Tree limbs shall be removed and controlled in such a manner as to cause no damage to other parts of the tree, or to other plants or property.
8. All tools used on a tree known or suspected to contain an infectious tree disease shall be properly disinfected immediately before and after completing work on such tree.
9. All major pest problems shall be promptly reported to the County.
10. All cutting tools and saws used in tree pruning shall be kept sharpened to result in final cuts with an un-abrasive wood surface and secure bark remaining intact.
11. All trees six (6) inches in diameter or less shall be pruned with hand tools only.
12. Chain saws shall not be permitted to remove any branches two (2) inches or less in diameter.
13. Any extraneous metal, wire, rubber or other material interfering with tree growth shall be removed when possible.
14. The use of climbing spurs or spike shoes in the act of pruning trees is prohibited, unless specifically directed by County to aid in the safety of climbers performing the removal of a tree.

C. Prune Classifications:

1. Full Prune: A Full Prune is performed when conditions within the crown of a hardwood tree are such that the entire tree needs to be fully pruned. Complete pruning is recommended when the primary objective is to maintain or improve tree health and structure, and includes pruning to reduce overall canopy mass and excessive wood weight. Trees that are identified for a Full Prune shall generally have no more than thirty (30) percent of the live foliage removed.
2. A Full Prune typically consists of one or more of the following pruning treatments:
 - a) Crown Cleaning: Crown Cleaning or cleaning out is the removal of dead, diseased, crowded, weakly attached and low-vigor branches and water sprouts from the entirety of the tree crown. Care must be used to avoid stripping branches of all foliage at the interior of the tree crown.
 - b) Crown Thinning: Crown Thinning includes crown cleaning and the selective removal of branches to increase light penetration and air movement into and through the crown. Care must be used to avoid stripping branches of all foliage at the interior of the tree crown. When thinning the crown of mature trees, up to thirty (30) percent of the live foliage may be removed unless directed otherwise by the County.
 - c) Crown Reduction: Crown Reduction is used to reduce the height and/or spread of a tree. Crown reduction varies from topping, a destructive practice, in that cuts are not made indiscriminately, resulting in large stubbed off limbs that are subject to decay. While reducing a crown, tree workers must adhere to basic tree trimming practices involving limb/branch size relationships and use of the branch bark collar in avoiding the onset of decay at cut sites.

- d) Crown Restoration: Crown Restoration is corrective pruning used as a means to restore the form of crowns that have been previously damaged by topping or other extenuating circumstances.
- 3. Crown Raising/Clearance Prune: A crown raising or clearance prune does not involve the detail of work found in a full prune. Crown raising or clearance pruning may consist of one or more of the following pruning types:
 - a) Crown Raising: Crown Raising consists of removing the lower branches of a tree in order to provide clearance for buildings, vehicles and pedestrians. It is important that a tree have at least one-half ($\frac{1}{2}$) of its foliage on branches that originate in the lower two-thirds ($\frac{2}{3}$) of its crown to ensure a well-formed, tapered structure and to uniformly distribute stress within the tree.
 - b) Clearance Prune: Clearance prune is employed as a means of eliminating limbs from the crown of a hardwood tree when an entire pruning of the tree is not warranted. Clearance pruning does not involve the fine detail work described herein as "full prune".
 - c) Removals of hanging and down limbs are included in this line item.

D. Pruning Specifications for individual Hardwood Species:

1. General Trimming and Shaping of Conifers

- a) Two (2) basic classes of conifers can be found in County facilities, those with branches radiating out from the trunk in whorls such as Pine trees or Cedar trees and those that sprout branches in a random manner such as Juniper or Taxus. Typically up to thirty (30) percent of the live foliage may be removed unless directed otherwise by the County.
- b) Contractor shall avoid damaging the central leader on all conifers. In specific cases the County may direct the Contractor to remove the central leader in an effort to limit the height of specific trees.
- c) At the time of pruning, the County shall determine which trees shall have the new growth pinched back in an effort to control canopy size.
- d) To control the growth of large, mature conifers Contractor shall be required to prune the new growth of lateral limbs.
- e) Typical pruning of conifers shall generally consist of removing crossed limbs, deadwood or unwanted branches from the interior of the canopy.

2. General Trimming and Shaping of Broadleaf Trees:

- a) Follow the shape indicated by the natural growth habits of each tree species.
- b) Cut to laterals to preserve the natural form of the tree, leaving the head open enough for the branching system to show and permitting the dead material to be easily cleaned out and light to show through the head. Tree foliage shall be reduced by at least twenty-five (25) percent and up to thirty (30) percent.
- c) In specific cases the County may direct the Contractor to reduce the size of the tree crown in an effort to limit the height of specific trees.
- d) Trim to remove dead wood or weak, diseased, insect-infested, broken, low, or crossing limbs. Branches with an extremely narrow angle of attachment should normally be removed.

- e) Small limbs, including suckers and waterspouts, shall be cut close to the trunk or branch from which they arise.
- f) Heading cuts and/or topping will not be allowed under any circumstances.
- g) Heading, rounding over, or stubbing shall not be an accepted practice for reducing the size or the framework of any tree.

E. Palm Tree Pruning: Palm Pruning consists of maintaining the crowns and trunks of palm trees including the pruning of spent or declining fronds, seed pods and the skinning or shaping of spent petiole bases into a ball or nut as applicable by palm type.

1. Palm trees shall be trimmed using a handsaw or pole saw that has been sanitized before and after the handsaw is used to cut the fronds of any other palm tree.
2. Live, healthy fronds, initiating at an angle of 90 degrees or greater from the horizontal plane, shall not be removed. Fronds removed should be cut close to the petiole base, taking into consideration the role of petiole bases in the formation and maintenance of the ornamental ball at the base of the canopy, as applicable by species.
3. Live trunk tissue should never be cut while pruning palm trees.
4. The use of chainsaws to prune any frond, fruit or flower structures from any Canary Island Date Palm will result in severe Contract penalties.
5. Using properly sterilized equipment as described herein, any fruit or flower structures in the crown of the palm shall be removed concurrently with frond pruning.
6. Care shall be taken in the handling of fruit and flowers as they are likely to release clear liquids that react with and can cause staining to hardscape elements. The Contractor shall be responsible for removing palm fruit related stains from private property hardscape elements.
7. Maintenance of the ornamental ball located at the base of the palm canopy, directly below the live fronds, shall be as described by species as follows:
 - a) Canary Island Date Palm (Phoenix canariensis): dead petiole bases shall be formed into an ornamental ball which begins directly below the lowest green fronds and acts to provide a base of support to the palm crown. This ornamental ball shall be uniform and smooth in appearance and shall extend no less than four (4) and no more than eight (8) feet below the lowest live frond in the crown.
 - i. Ornamental balls with flattened or “stop sign” sides will not be accepted. The upper portion of the ornamental ball shall not taper in, resulting in a “pineapple” appearance.
 - ii. The Contractor may use a sanitized chainsaw in forming and/or shaping the ornamental ball of a Canary Island Date Palm.
 - b) Date Palm (Phoenix dactylifera): spent petiole bases are left to form a supportive “base” below the lowest green fronds of the crown. Unlike the ornamental ball of a Canary Island Date Palm the base does not require ornate shaping. Spent petiole bases are left uniformly long to form the base of the canopy, which shall extend no less than four (4) and no more than six (6) feet below the lowest live frond in the crown.
 - i. The Contractor may use a sanitized chainsaw in forming and/or shaping the base of a Date Palm.

- c) Queen Palm (*Syagrus romanzoffiana*) and King Palm (*Archontophoenix cunninghamiana*): loose petiole bases are to be removed each time the crown is serviced. Petiole bases that are attached to live trunk tissue shall be left undamaged.
- d) Mexican Fan Palm (*Washingtonia robusta*): spent petiole bases are left uniformly long to form a base which shall extend no more than four (4) feet below the lowest live frond in the crown. Using hand tools, the Contractor shall skin the trunk area below the base clean without causing damage to live trunk tissue.
- e) California Fan Palm (*Washingtonia filifera*): spent petiole bases are left uniformly long to form a nut which shall extend no more than eight (8) feet below the lowest live frond in the crown. Using hand tools, the Contractor shall skin the trunk area below the base clean without causing damage to live trunk tissue.

F. Tree and Stump Removal:

1. Removal of down or leaning trees and their root systems are included in this line item.
2. Contractor shall be responsible for contacting Underground Service Alert (USA) for location of underground utilities prior to stumping operations.
3. While loading and handling debris, the Contractor shall maintain control at all times so as not to result in damage to the public rights of way or private property. In addition, the Contractor shall not drop logs or trunks so as to create undue noise or impact shock related damages to public and/or private property.
4. Trees shall be felled in a manner consistent with industry practice with primary emphasis on safety of public and protection of adjacent property.
5. Contractor shall not remove any tree without first confirming that the tree being considered is indeed the tree to be removed. Any confusion should be resolved by contacting the County for assistance. The errant removal of trees shall be penalized.
6. During a tree removal, the Contractor shall maintain control of the tree and its parts at all times, which shall include the selection and use of proper techniques and equipment. At no time shall branches, limbs or tree trunks be allowed to freefall and create damage of any type. Loss of control incidents shall be penalized.
7. Stumps including root flare shall be ground to a depth of no less than eighteen (18) inches. Surface roots shall be traced and ground to a depth of no less than eight inches. Debris generated by stump grinding and root removal shall be removed from the site and replaced with a topsoil mix. Chips and stump grinding shall not be used as a backfill material.
8. If stump grinding does not follow within same work day as removal, tree trunk shall be left five (5) feet above grade or a safety barricade shall be placed and maintained over stump until stump grinding is complete.
9. Stumps to be left in place shall be cut at three (3) feet above grade.

G. Root Pruning:

1. Contractor shall be responsible for contacting Underground Service Alert (USA) for location of underground utilities prior to root pruning operations.

2. Roots shall be pruned immediately adjacent to the edge of sidewalk or curb or other improvement. Root pruning cuts shall be four (4) inches wide, sixteen (16) deep as measured from top of sidewalk, curb or adjacent improvement and extend eight (8) feet in each direction from centerline of tree (sixteen (16) feet total length).
3. Root pruning equipment shall be specifically designed for this purpose with cutting teeth sharpened adequately to sever roots in a clean manner and equipped with padded tracks or rubber tires to prevent scraping or marking of sidewalks.
4. All cuts shall be backfilled immediately upon completion of root pruning at each location. Backfill material shall consist of dirt and/or mulch from root pruning and shall be free from rocks. All debris generated by these operations will be immediately removed from site and properly disposed of outside right-of-way.
5. Contractor shall repair or replace all utility service connections, sprinkler systems and any other assets which are damaged or removed as a result of root pruning operations. Repairs shall be implemented immediately and completed by end of next working day. Repairs and replacements will be equal to existing improvement and shall match them in finish, dimensions and manufacturer.

H. Hourly Work/Crew Rental:

1. County may request Contractor to perform tree and/or vegetation operations outside of scope of previously listed work items. Contractor shall furnish a crew with equipment necessary to perform the requested work.
2. County shall determine if crew rental charges are justified and will provide Contractor with written approval.

I. Pesticide Treatment of Trees:

1. Contractor shall have an "in-house" Qualified Applicator apply chemicals in accordance with the recommendations from the "in-house" Agricultural Pest Control Adviser (PCA) and all applicable product labels and regulations.
2. Applications will be made by drench, spray or injection as conditions warrant. The primary method of application shall be trunk or soil injection.
3. The following are pesticides that may be used on this Contract for treatment of Polyphagous Shot Hole Borer (PSHB), Golden Spotted Oak Borer (GSOB), Fusarium dieback and other pests. This list is not all inclusive or exhaustive.
 - a) Propiconazole
 - b) Tebuconazole
 - c) Thiabendazole
 - d) Emamectin benzoate
 - e) Imidacloprid
 - f) Dinotefuran
 - g) Bifenthrin
 - h) Carbaryl

J. Certified Arborist

1. Contractor will provide a Certified Arborist to evaluate a tree or trees for removal, trimming, disease, pests, overall condition, and other as needed areas.

2. Contractor will provide a written report with recommended action within seven days of request.

K. Tree Planting

1. Tree planting consists of the installation of nursery stock container or palm trees supplied by the Contractor.
2. As stated previously herein, the Contractor shall identify the location of all utilities and private property landscape irrigation components prior to the planting of any tree. The Contractor shall assume full responsibility for any damage that occurs during the planting of any tree.
3. Contractor shall supply quality nursery stock which is fully rooted and representative of recognized standards for size and quality of the material being planted.
4. Brown trunk height (BTH) for palm trees shall be measured from the top of root ball to the lowest green frond attached to the trunk at an angle of ninety (90) degrees.
5. Planting stock shall be well watered prior to shipping and covered for the duration of transport. Trees that are delivered uncovered, with a dry or fractured root ball or with broken scaffold limbs will be rejected. Root bound material will be rejected. Palms that are delivered uncovered, with a dry root ball or with a soilless root ball will be rejected.
6. Contractor shall not begin excavation for the planting of a tree without first confirming that the planting site being considered is indeed the site intended for the planting of a tree.
7. In excavating planting pits, the Contractor shall not excavate deeper than the depth of the root ball of the tree being installed. The bottom of the planting pit shall be undisturbed so that the planted tree will not settle below top of root ball grade standards defined herein.
8. All nursery containers and box sides shall be removed from tree root balls prior to planting. The Contractor shall not install trees with box bottoms left on. All container debris (e.g. strapping, box fragments, nails) shall be removed from the planting pit prior to backfilling.
9. Contractor shall install the tree or palm so that the top of root ball is two (2) inches above surrounding finish grade. The Contractor shall not cut or trim the root ball as a means of meeting grade standards.
10. Contractor shall backfill hardwood tree plantings with an equal mix of excavated soil and topsoil. The topsoil portion of the backfill mix shall contain no more than ten (10) percent well decomposed organic fines.
11. Contractor shall backfill palm plantings with one hundred (100) percent washed mortar (plaster) sand.
12. Contractor shall cease backfilling when the planting pit is one-half ($\frac{1}{2}$) full and apply water to remove air pockets from the backfill. Once the water has drained, Contractor shall resume backfilling the planting pit. A watering basin shall be constructed in a uniform circle and shall extend from the center of the tree trunk to six (6) inches beyond the edge of the root ball. The top of the watering basin shall be graded and maintained uniformly with the upper edge of the basin maintained at a grade of four (4) inches above the root flare of the tree.
13. Contractor shall be responsible for the stability of planted trees. The nursery stake shall be removed from the trunk of the tree (as applicable) and the tree shall be double staked using two (2), two (2) inch lodge pole stakes of a length sufficient to be installed beyond the depth of the planting stock root ball and to extend to the lowest branches of the installed tree's crown. The stakes shall be installed an equal distance from the trunk of the tree and shall be installed perpendicular to the street or sidewalk and shall be

installed so that one stake is orientated to be one hundred eighty (180) degrees opposite the other. The root ball shall not be damaged by the installation of stakes. The stake shall not be in contact with any aerial part of the tree.

14. Upon completion of the planting of a tree, Contractor shall seed and top- dress any barren areas within ten (10) feet of the center of the trunk of the tree if there was established turf in that location. The seed shall be of the same turf grass type existing on site or annual ryegrass if the turf is a non-seedable variety; to be applied at a rate appropriate for the type of turf seed applied. The seed shall be top dressed with well-decomposed organic fines, spread evenly with a topdressing roller, at a depth of one eighth (.125) inch. Use of manure, native soil or chip topdressings will not be allowed.

ATTACHMENT B
COMPENSATION & PAYMENT

1. **Compensation:** This is an all-inclusive, firm fixed price Contract not to exceed Seven-Hundred and Fifty-Thousand (\$750,000) between County and Contractor for the provided in Attachment “A”, Scope of Work.

Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor, tax, shipping, freight, insurance requirements, and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services and for performance by Contractor of all its duties and obligations hereunder. Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. County shall have no obligation to pay any sum in excess of total Contract amount specified herein unless authorized by amendment in accordance with Paragraphs “C” and “R” of Contract Terms and Conditions.

2. **Payment Terms:** Invoices are to be submitted in arrears to the user Agency/Department to the ship-to address, unless otherwise directed in this Contract. Contractor must reference Contract number on all invoices. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the Agency/Department and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the Contractor.

Billing shall cover services and/or goods not previously invoiced. The Contractor shall reimburse the County of Orange for any monies paid to the Contractor for goods or services not provided or when goods or services do not meet the Contract requirements.

Payments made by the County shall not preclude the right of the County from thereafter disputing any items or services involved or billed under this Contract and shall not be construed as acceptance of any part of the goods or services.

3. **Penalties:**

- i. County will provide the Contractor with written notification of deficient performance. County reserves the right to deduct from the payments due or to become due to the Contractor for deficient performance. The following Liquidated Damages shall be applied to deficient performance and/or late completion. The parties hereto agree that it is impracticable or extremely difficult to determine the actual damages to the purchaser from failure to maintain the building according to the established schedule.

❖ Two Hundred and Fifty dollars (\$250.00) each calendar day

- ii. **Access Gates:** Contractor shall be provided with keys to the access gates upon request and return all keys upon completion of work. Contractor shall keep all access gates closed except when entering and leaving the worksite. The gate shall close and lock at the end of each work day. In the event that County is called out to a gate left open by Contractor, the sum of Two Hundred and Fifty dollars (\$250.00) based on minimum call back payments, will be deducted and forfeited from any payment due to Contractor.

❖ One Hundred dollars (\$100.00)/per key

❖ Two Hundred and Fifty dollars (\$250.00)/per call, if gate left open

4. **Invoicing Instructions:** The Contractor shall provide an invoice on the Contractor’s letterhead. Each invoice shall have a unique number and shall include the following information:

1. Contractor’s name and address
2. Contractor’s remittance address, if different from (1), above
3. Contractor’s Tax Identification Number (TIN) or Employer’s Identification Number (EIN)

4. Name of County Agency/Department
5. Delivery/service address
6. Master Agreement (MA) number
7. Service Date(s)
8. Product/service description, quantity, and prices
9. Sales tax, if applicable
10. Freight/delivery charges, if applicable
11. Total

Invoices and supporting documentation are to be forwarded to:

OC Community Resources
Attn: Accounts Payable
1770 N. Broadway, 4th floor
Santa Ana, CA 92706

The responsibility for providing an acceptable invoice to the County of payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction.

5. **Payment (Electronic Funds Transfer (EFT)):** The County of Orange offers Contractors the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive an Electronic Remittance Advice with the payment details via e-mail. An e-mail address will need to be provided to the County of Orange via an EFT Authorization Form. *To request a form, please contact the Agency/Department representative listed in the Contract. Upon completion of the form, please mail, fax or email to the address or phone listed on the form.*
6. **Invoicing Instructions:** The Contractor will provide a two-part invoice on the Contractor's letterhead for goods delivered and/or services rendered. In the case of goods, the Contractor will leave an invoice with each delivery. Each invoice will have a number and will include the following information:
 1. Contractor's name and address
 2. Contractor's remittance address, if different from (1), above
 3. Contractor's Tax Identification Number (TIN) or Employer's Identification Number (EIN)
 4. Name of County Agency/Department
 5. Delivery/service address
 6. Master Agreement (MA) number
 7. Service Date(s)
 8. Product/service description, quantity, and prices
 9. Sales tax, if applicable
 10. Freight/delivery charges, if applicable
 11. Total

ATTACHMENT C
CONTRACTOR'S PRICING

High Volume Work (Routine Annual Tree Maintenance)			
<u>Work Description</u>	<u>Tree DBH</u>	<u>Unit</u>	<u>Unit Cost</u>
Full Prune	0" - 6"	EA	\$ 25.00
Full Prune	7" - 12"	EA	\$ 55.00
Full Prune	13" - 18"	EA	\$ 85.00
Full Prune	19" - 24"	EA	\$ 125.00
Full Prune	25" - 30"	EA	\$ 175.00
Full Prune	31" - 36"	EA	\$ 225.00
Full Prune	36"+	EA	\$ 325.00
Crown Raise/Clearance Prune	0" - 6"	EA	\$ 20.00
Crown Raise/Clearance Prune	7" - 12"	EA	\$ 30.00
Crown Raise/Clearance Prune	13" - 18"	EA	\$ 40.00
Crown Raise/Clearance Prune	19" - 24"	EA	\$ 40.00
Crown Raise/Clearance Prune	25" - 30"	EA	\$ 40.00
Crown Raise/Clearance Prune	31" - 36"	EA	\$ 40.00
Crown Raise/Clearance Prune	36"+	EA	\$ 40.00
Prune Date Palm	N/A	EA	\$ 80.00
Prune Fan Palm	N/A	EA	\$ 50.00
Prune all other Palm Species	N/A	EA	\$ 35.00
Palm Trunk Skinning in Excess of 10 feet	N/A	LF	\$ 10.00
Tree Removal with Stumping	0" - 6"	EA	\$ 100.00
Tree Removal with Stumping	7" - 12"	EA	\$ 175.00
Tree Removal with Stumping	13" - 18"	EA	\$ 350.00
Tree Removal with Stumping	19" - 24"	EA	\$ 400.00
Tree Removal with Stumping	25" - 30"	EA	\$ 500.00
Tree Removal with Stumping	31" - 36"	EA	\$ 600.00
Tree Removal with Stumping	36"+	EA	\$ 800.00
Tree Removal w/o Stumping	0" - 6"	EA	\$ 70.00
Tree Removal w/o Stumping	7" - 12"	EA	\$ 125.00
Tree Removal w/o Stumping	13" - 18"	EA	\$ 195.00
Tree Removal w/o Stumping	19" - 24"	EA	\$ 275.00
Tree Removal w/o Stumping	25" - 30"	EA	\$ 350.00
Tree Removal w/o Stumping	31" - 36"	EA	\$ 425.00
Tree Removal w/o Stumping	36"+	EA	\$ 550.00
Insecticide Treatment	N/A	Dia/Inch	\$ 8.00
Fungicide Treatment	N/A	Dia/Inch	\$ 8.00
Root Pruning	N/A	LF	\$ 100.00

ATTACHMENT C
CONTRACTOR'S PRICING (cont.)

Low Volume Work (Non Routine)			
<u>Work Description</u>	<u>Tree Height</u>	<u>Unit</u>	<u>Unit Cost</u>
Full Prune	0" - 6"	EA	\$ 25.00
Full Prune	7" - 12"	EA	\$ 55.00
Full Prune	13" - 18"	EA	\$ 85.00
Full Prune	19" - 24"	EA	\$ 125.00
Full Prune	25" - 30"	EA	\$ 175.00
Full Prune	31" - 36"	EA	\$ 225.00
Full Prune	36"+	EA	\$ 325.00
Crown Raise/Clearance Prune	0" - 6"	EA	\$ 20.00
Crown Raise/Clearance Prune	7" - 12"	EA	\$ 30.00
Crown Raise/Clearance Prune	13" - 18"	EA	\$ 40.00
Crown Raise/Clearance Prune	19" - 24"	EA	\$ 40.00
Crown Raise/Clearance Prune	25" - 30"	EA	\$ 40.00
Crown Raise/Clearance Prune	31" - 36"	EA	\$ 40.00
Crown Raise/Clearance Prune	36"+	EA	\$ 40.00
Prune Date Palm	N/A	EA	\$ 80.00
Prune Fan Palm	N/A	EA	\$ 50.00
Prune all other Palm Species	N/A	EA	\$ 35.00
Palm Trunk Skinning in Excess of 10 feet	N/A	LF	\$ 10.00
Tree Removal with Stumping	0" - 6"	EA	\$ 100.00
Tree Removal with Stumping	7" - 12"	EA	\$ 175.00
Tree Removal with Stumping	13" - 18"	EA	\$ 350.00
Tree Removal with Stumping	19" - 24"	EA	\$ 400.00
Tree Removal with Stumping	25" - 30"	EA	\$ 500.00
Tree Removal with Stumping	31" - 36"	EA	\$ 600.00
Tree Removal with Stumping	36"+	EA	\$ 800.00
Tree Removal w/o Stumping	0" - 6"	EA	\$ 70.00
Tree Removal w/o Stumping	7" - 12"	EA	\$ 125.00
Tree Removal w/o Stumping	13" - 18"	EA	\$ 195.00
Tree Removal w/o Stumping	19" - 24"	EA	\$ 275.00
Tree Removal w/o Stumping	25" - 30"	EA	\$ 350.00
Tree Removal w/o Stumping	31" - 36"	EA	\$ 425.00
Tree Removal w/o Stumping	36"+	EA	\$ 550.00
Root Pruning	N/A	EA	\$ 100.00
Inventory Entry	N/A	EA	\$ 4.00

ATTACHMENT C
CONTRACTOR'S PRICING (cont.)

Low Volume Work (Non Routine)			
<u>Work Description</u>	<u>Tree Height</u>	<u>Unit</u>	<u>Unit Cost</u>
Certified Arborist	N/A	HR	\$ 120.00
Insecticide Treatment	N/A	Dia/Inch	\$ 8.00
Fungicide Treatment	N/A	Dia/Inch	\$ 8.00
Hourly Work / Crew Rental (per man/per hour)	N/A	HR	\$ 65.00
Tub Grinding	N/A	Ton	\$ 40.00
Emergency / Priority Mobilization Fees			
<u>Work Description</u>		<u>Unit</u>	<u>Unit Cost</u>
Emergency (2 Hour Response)		EA	\$ 195.00
Priority (< 7 Day Response)		EA	\$ 195.00
Tree Planting (Unit Cost shall include tree + planting + double staked with 2" lodge poles)			
<u>Work Description</u>		<u>Unit</u>	<u>Unit Cost</u>
15 Gallon		EA	\$ 110.00
24 Inch Box		EA	\$ 225.00
48 Inch Box		EA	\$1,100.00
36 Inch Box		EA	\$ 625.00
Fan Palm per Ft. Brown Trunk Height		FT	\$ 75.00