



Item No. 10 Town of Atherton

CITY COUNCIL STAFF REPORT – CONSENT AGENDA

TO: HONORABLE MAYOR AND CITY COUNCIL
GEORGE RODERICKS, CITY MANAGER

THROUGH: ROBERT OVADIA, PUBLIC WORKS DIRECTOR

FROM: SALLY BENTZ-DALTON, PARK MANAGER/TOWN ARBORIST

DATE: DECEMBER 15, 2021

SUBJECT: APPROVAL OF AN AGREEMENT TO AMENDMENT WITH
WEST COAST ARBORISTS, INC. FOR PUBLIC TREE
MAINTENANCE FOR FISCAL YEAR 2021-22

RECOMMENDATION

Approve a contract amendment in an amount not to exceed \$100,000 for annual maintenance for public trees in FY 2021-2022; direct the City Attorney to prepare the amendment; and authorize the City Manager to execute the amendment on behalf of the Town.

BACKGROUND

The Town entered into an agreement with West Coast Arborists, Inc. (WCA) for Tree Maintenance Services in June 2018. The original contract was for a single year with two, single year extensions expiring in June 2021. Staff failed to timely act on the return of the agreement for an amendment to extend services and the second amendment expired. West Coast Arborists has been providing on-call, as needed services, per the rates and terms in the original contract since that time; but the contract needs to be extended.

ANALYSIS

West Coast Arborist, Inc. would like to continue providing public tree maintenance services for the remainder of the current fiscal year at the 2018-2019 rates. Staff supports this and doing so will allow services to continue, under formal contract through the current fiscal year and allow staff the opportunity to negotiate a formal contract extension beyond June 2022. WCA has advised that a cost adjustment based on the Consumer Price Index (CPI) for the previous 12-month period beginning next fiscal year (July 2022) would be required past June 2022.

The quality of service has been good and West Coast Arborists, Inc. has been very cooperative and accommodating in continuing to perform work as needed including emergency tree pruning and removals since the contract expired.

POLICY FOCUS

The Town has historically contracted for tree maintenance services. City Council discussion should focus on the cost effectiveness of maintaining the existing contract arrangement.

FISCAL IMPACT

Funds for the maintenance of public trees, including required pruning and removal of dead trees, are located within the Public Works Budget. Funds are used on an “as needed” basis and the FY 2021-22 Budget includes \$70,000 for public street trees and \$30,000 for public park trees. WCA service prices are attached and are consistent with current operations and expectations for work.

GOAL ALIGNMENT

This Report and its contents are in alignment with the following Council Policy Goals:

- Goal A – Maintain Fiscal Responsibility
- Goal F – Be Forward-Thinking, Well-Managed, and Well-Planned

PUBLIC NOTICE

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting in print and electronically. Information about the project is also disseminated via the Town’s electronic News Flash and Atherton Online. There are approximately 1,200 subscribers to the Town’s electronic News Flash publications. Subscribers include residents as well as stakeholders – to include, but be not limited to, media outlets, school districts, Menlo Park Fire District, service providers (water, power, and sewer), and regional elected officials.

COMMISSION/COMMITTEE FEEDBACK/REFERRAL

This item ___ has or X has not been before a Town Committee or Commission.

- ___ Audit/Finance Committee (meets every other month)
- ___ Bicycle/Pedestrian Committee (meets as needed)
- ___ Civic Center Advisory Committee (meets as needed)
- ___ Environmental Programs Committee (meets every other month)
- ___ Park and Recreation Committee (meets each month)
- ___ Planning Commission (meets each month)
- ___ Rail Committee (meets every other month)
- ___ Transportation Committee (meets every other month)

ATTACHMENT

1. WCA Proposal Letter and Confirmation of Rates
2. 2018-2019 WCA Maintenance Contract



November 15, 2021

TOWN OF ATHERTON

ATTN: SALLY BENTZ DALTON

91 ASHFIELD ROAD

ATHERTON, CA 94027

RE: Tree Maintenance Services performed by WCA, Inc.

Dear Ms. Bentz-Dalton,

With this fiscal year quickly ending, West Coast Arborists, Inc. would like to take this opportunity to express our gratitude to you and your staff for another successful year. Together we have worked diligently to ensure that the City's urban forest continues to thrive.

Due to the negative fiscal impact created by the COVID-19 pandemic, public agencies are facing reduced revenue streams that will affect services, particularly in Contract Year 2021-22. **The purpose of this letter is to express our interest and willingness to continue our current Tree Maintenance Agreement for one (1) additional year at the same terms, conditions and unit pricing.**

By maintaining these rates, we can help to ease the current financial strain, promote contractor stability and guarantee the City with quality tree care & customer service.

Thank you in advance for your consideration. We look forward to continuing the strong relationship built between us, and to maintaining quality urban tree care service. Should you have any questions or require additional information, please contact me at (800) 521-3714.

Sincerely,

Victor M. Gonzalez

Vice President, Business Development

West Coast Arborists, Inc.

2200 E. Via Burton · Anaheim, California 92806 · 714.991.1900 · 800.521.3714 · Fax 714.956.3745



Schedule of Compensation for Year 2021 - 2022

Tree Maintenance Services performed by WCA, Inc.

Item	Description	Unit	Proposed Prices
1	Svc Rqst Pruning 0-6 DSH	Each	\$49.00
2	Svc Rqst Pruning 7-18 DSH	Each	\$99.00
3	Svc Rqst Pruning 19-24 DSH	Each	\$189.00
4	Svc Rqst Pruning 25-36 DSH	Each	\$369.00
5	Svc Rqst Pruning >36 DSH	Each	\$499.00
6	Tree & Stump Removal 0-24 DSH	Inch	\$39.00
7	Tree & Stump Removal >24 DSH	Inch	\$49.00
8	Tree Only Removal 0-24 DSH	Inch	\$24.00
9	Tree Only Removal >24 DSH	Inch	\$34.00
10	Stump Only Removal	Inch	\$15.00
11	Plant 24" Box Tree	Each	\$350.00
12	Plant 36" Box Tree	Each	\$1,200.00
13	Plant 48" Box Tree	Each	\$2,200.00
14	Plant 60" Box Tree	Each	\$5,900.00
15	Root Pruning - 24" depth	Linear Foot	\$24.00
16	Root Pruning - 36" depth	Linear Foot	\$36.00
17	Pesticide Treatment 0-12 DSH	Each	\$24.00
18	Pesticide Treatment >12 DSH	Each	\$50.00
19	Watering	Each	\$9.00
20	GPS Inventory	Each	\$5.00
21	Arborist Report	Each	\$500.00
22	Certified Arborist - 2 hour min	Man Hour	\$125.00
23	Crew Rental - per man	Man Hour	\$90.00
24	Emergency Call Out - 3 hour min	Man Hour	\$125.00
25	Specialty Equipment Rental	Hour	\$90.00

**AGREEMENT FOR TREE MAINTENANCE SERVICES
BETWEEN
TOWN OF ATHERTON
AND
WEST COAST ARBORISTS, INC.**

This AGREEMENT FOR TREE MAINTENANCE SERVICES BETWEEN THE TOWN OF ATHERTON AND WEST COAST ARBORISTS, INC. ("AGREEMENT"), is made and entered into this 17th day of June, by and among the TOWN OF ATHERTON, a municipal corporation ("TOWN"), and WEST COAST ARBORISTS, INC. ("CONTRACTOR").

In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

SECTION 1. TERM OF AGREEMENT.

Subject to the provisions of SECTION 18, "TERMINATION OF AGREEMENT" of this AGREEMENT, the term of this AGREEMENT shall be for a period of one year beginning July 1, 2018 and ending June 30, 2019. Such term may be extended twice of up to an additional one year period upon written agreement of both parties.

SECTION 2. SCOPE OF SERVICES.

CONTRACTOR agrees to perform the tree maintenance services and 24-hour emergency tree response as requested from time to time by Town as set forth in EXHIBIT "A," "SCOPE OF SERVICES," and made a part of this AGREEMENT by reference. The work of this Contract includes, but is not limited to, routine pruning, hazardous tree removal, and storm damage cleanup of City trees within the City limits of Atherton.

SECTION 3. ADDITIONAL SERVICES.

CONTRACTOR shall not be compensated for any services rendered in connection with its performance of this AGREEMENT that are in addition to or outside of those set forth in this AGREEMENT or listed in EXHIBIT "A" unless such additional services are authorized in advance and in writing by TOWN. CONTRACTOR shall be compensated for any such additional services in the amounts and in the manner agreed to between CONTRACTOR and TOWN.

SECTION 4. COMPENSATION AND METHOD OF PAYMENT.

(a) Subject to any limitations set forth in this AGREEMENT, TOWN agrees to pay CONTRACTOR the amounts specified in EXHIBIT "B" and made a part of this AGREEMENT by reference. The total compensation, including reimbursement for actual expenses, shall not exceed EIGHTY-FIVE THOUSAND DOLLARS (\$85,000.00) per year, unless additional compensation is approved in advance in writing by TOWN.

(b) Each month CONTRACTOR shall furnish to TOWN an original invoice for all work performed and expenses incurred during the preceding month. The invoice shall detail charges by the following categories: labor (by sub-category), travel, materials, equipment, supplies, subcontractor contracts and miscellaneous expenses. TOWN shall independently

review each invoice submitted by the CONTRACTOR to determine whether the work performed and expenses incurred are in compliance with the provisions of this AGREEMENT. In the event no charges or expenses are disputed, the invoice shall be approved and paid according to the terms set forth in subsection (c). In the event TOWN disputes any charges or expenses, the original invoice shall be returned by TOWN to CONTRACTOR for correction and resubmission.

(c) Except as to any charges for work performed or expenses incurred by CONTRACTOR that are disputed by TOWN, TOWN will use its best efforts to cause CONTRACTOR to be paid within thirty (30) days from receipt of CONTRACTOR invoice.

(d) Payment to CONTRACTOR for work performed pursuant to this AGREEMENT shall not be deemed to waive any defects in work performed by CONTRACTOR.

SECTION 5. INSPECTION AND FINAL ACCEPTANCE.

TOWN may inspect and accept or reject any of CONTRACTOR's work under this AGREEMENT, either during performance or when completed. TOWN shall reject work by a timely written explanation. TOWN's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any of CONTRACTOR's work by TOWN shall not constitute a waiver of any of the provisions of this AGREEMENT including, but not limited to, Sections 15 and 16, pertaining to indemnification and insurance, respectively.

SECTION 6. OWNERSHIP OF DOCUMENTS.

All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed or discovered by CONTRACTOR in the course of providing any services pursuant to this AGREEMENT, if any, shall become the sole property of TOWN and may be used, reused or otherwise disposed of by TOWN without the permission of the CONTRACTOR. Upon completion, expiration or termination of this AGREEMENT, CONTRACTOR shall turn over to TOWN all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents.

SECTION 7. CONTRACTOR'S BOOKS AND RECORDS.

(a) CONTRACTOR shall maintain any and all documents and records demonstrating or relating to CONTRACTOR's performance of services pursuant to this AGREEMENT. CONTRACTOR shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to work, services, expenditures and disbursements charged to TOWN pursuant to this AGREEMENT. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by CONTRACTOR pursuant to this AGREEMENT. Any and all such documents or records shall be maintained for a minimum of three (3) years from the date of execution of this AGREEMENT or longer to the extent required by laws relating to audits of public agencies and their expenditures.

(b) Any and all records or documents required to be maintained pursuant to this section shall be made available for inspection, audit and copying, at any time during regular business hours, upon written request by TOWN or its designated representative. Copies of

such documents or records shall be provided directly to TOWN for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records shall be made available at CONTRACTOR's address indicated for receipt of notices in this AGREEMENT.

(c) Where TOWN has reason to believe that any of the documents or records required to be maintained pursuant to this section may be lost or discarded due to dissolution or termination of CONTRACTOR's business, TOWN may, by written request, require that custody of such documents or records be given to TOWN.

SECTION 8. STATUS OF CONTRACTOR.

(a) CONTRACTOR is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of TOWN. CONTRACTOR shall have no authority to bind TOWN in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against TOWN, whether by contract or otherwise, unless such authority is expressly conferred under this AGREEMENT or is otherwise expressly conferred in writing by TOWN.

(b) The personnel performing the services under this AGREEMENT on behalf of CONTRACTOR shall at all times be under CONTRACTOR's exclusive direction and control. Neither TOWN, nor any elected or appointed boards, officers, officials, employees or agents of TOWN, shall have control over the conduct of CONTRACTOR or any of CONTRACTOR's officers, employees or agents, except as set forth in this AGREEMENT. CONTRACTOR shall not at any time or in any manner represent that CONTRACTOR or any of CONTRACTOR's officers, employees or agents are in any manner officials, officers, employees or agents of TOWN.

(c) Neither CONTRACTOR, nor any of CONTRACTOR's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits that may otherwise accrue to TOWN employees. CONTRACTOR expressly waives any claim CONTRACTOR may have to any such rights.

SECTION 9. STANDARD OF PERFORMANCE.

CONTRACTOR represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the services required under this AGREEMENT in a thorough, competent and professional manner. CONTRACTOR shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. In meeting its obligations under this AGREEMENT, CONTRACTOR shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of CONTRACTOR under this AGREEMENT.

SECTION 10. COMPLIANCE WITH APPLICABLE LAWS, PERMITS AND LICENSES.

CONTRACTOR shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this AGREEMENT. CONTRACTOR shall obtain any and all licenses, permits and authorizations necessary to perform the services set forth in this AGREEMENT. Neither TOWN, nor any elected or appointed boards, officers, officials, employees or agents of TOWN,

shall be liable, at law or in equity, as a result of any failure of CONTRACTOR to comply with this section.

SECTION 11. NONDISCRIMINATION.

In performing the services under this Agreement, CONTRACTOR agrees as follows:

(a) CONTRACTOR will not discriminate against any employee or applicant from employment because of race, creed, color, national origin, ancestry, sexual orientation, political affiliation or beliefs, sex, age, physical handicap, medical condition, marital status or pregnancy (as those terms are defined by the California Fair Employment and Housing Act—Government Code Section 12900-12996). CONTRACTOR will take positive action or ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, national origin, ancestry, sexual orientation, political affiliation or beliefs, sex, age, physical handicap, medical condition, marital status or pregnancy. Such action shall include but not be limited to the following: Employment upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by TOWN setting forth the provisions of this nondiscrimination clause.

(b) CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, ancestry, sexual orientation, political affiliation or beliefs, sex, age, physical handicap, medical condition, marital status or pregnancy.

SECTION 12. UNAUTHORIZED ALIENS.

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

SECTION 13. PREVAILING WAGES

CONTRACTOR and CONTRACTOR's subcontractors, if any) shall, to the extent provided by the California Labor Code, pay not less than the latest prevailing wage rates to workers and professionals as determined by the Director of Industrial Relations of the State of California pursuant to California Labor Code, Part 7, Chapter 1, Article 2.

SECTION 14. CONFLICTS OF INTEREST.

(a) CONTRACTOR covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner

with the interests of TOWN or which would in any way hinder CONTRACTOR's performance of services under this AGREEMENT. CONTRACTOR further covenants that in the performance of this AGREEMENT, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of TOWN Manager. CONTRACTOR agrees at all times to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of TOWN in the performance of this AGREEMENT.

(b) TOWN understands and acknowledges that CONTRACTOR is, as of the date of execution of this AGREEMENT, independently involved in the performance of non-related services for other governmental agencies and private parties. CONTRACTOR is unaware of any stated position of TOWN relative to such projects. Any future position of TOWN on such projects shall not be considered a conflict of interest for purposes of this section.

SECTION 15. INDEMNIFICATION.

INDEMNITY FOR PROFESSIONAL LIABILITY: To the fullest extent permitted by law, CONTRACTOR shall indemnify, defend and hold harmless TOWN and any and all of its , officials, employees, and agents ("Indemnified Parties") from and against all losses, liabilities, damages, costs and expenses, including attorney's fees and costs to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of CONTRACTOR, its officers, agents, employees or subconsultants (or any entity or individual for which CONTRACTOR shall bear legal liability) in the performance of professional services under this agreement.

INDEMNITY FOR LIABILITY: To the full extent permitted by law, CONTRACTOR shall indemnify, defend with counsel suitable to TOWN and hold harmless TOWN, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorneys fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this AGREEMENT by CONTRACTOR or by any individual or entity for which CONTRACTOR is legally liable, including but not limited to officers, agents, employees or subcontractors of CONTRACTOR.

SECTION 16. INSURANCE.

CONTRACTOR agrees to obtain and maintain in full force and effect during the term of this AGREEMENT the insurance policies set forth in EXHIBIT "C," "INSURANCE," and made a part of this AGREEMENT. All insurance policies shall be subject to approval by TOWN as to form and content. These requirements are subject to amendment or waiver if so approved in writing by TOWN Manager. CONTRACTOR agrees to provide TOWN with copies of required policies upon request.

SECTION 17. ASSIGNMENT.

The expertise and experience of CONTRACTOR are material considerations for this AGREEMENT. TOWN has an interest in the qualifications of and capability of the persons and entities who will fulfill the duties and obligations imposed upon CONTRACTOR under this AGREEMENT. In recognition of that interest, CONTRACTOR shall not assign or transfer this Agreement or any portion of this AGREEMENT or the performance of any of CONTRACTOR's

duties or obligations under this AGREEMENT without the prior written consent of TOWN Council. Any attempted assignment without TOWN's consent shall be ineffective, null and void, and shall constitute a material breach of this AGREEMENT entitling TOWN to any and all remedies at law or in equity, including summary termination of this AGREEMENT. TOWN acknowledges, however, that CONTRACTOR, in the performance of its duties pursuant to this AGREEMENT, may utilize subcontractors.

SECTION 18. TERMINATION OF AGREEMENT.

(a) TOWN may terminate this AGREEMENT, with or without cause, at any time by written notice of termination to CONTRACTOR. In the event such notice is given, CONTRACTOR shall cease immediately all work in progress.

(b) CONTRACTOR may terminate this AGREEMENT at any time upon thirty (30) days written notice of termination to TOWN.

(c) Upon termination of this AGREEMENT by either CONTRACTOR or TOWN, all property belonging exclusively to TOWN, which is in CONTRACTOR's possession, shall be returned to TOWN. CONTRACTOR shall furnish to TOWN a final invoice for work performed and expenses incurred by CONTRACTOR, prepared as set forth in SECTION 4 of this AGREEMENT. This final invoice shall be reviewed and paid in the same manner as set forth in SECTION 4 of this AGREEMENT.

SECTION 19. DEFAULT.

In the event that CONTRACTOR is in default under the terms of this AGREEMENT, TOWN shall not have any obligation or duty to continue compensating CONTRACTOR for any work performed after the date of default and may terminate this AGREEMENT immediately by written notice to the CONTRACTOR.

SECTION 20. EXCUSABLE DELAYS.

CONTRACTOR shall not be liable for damages, including liquidated damages, if any, caused by delay in performance or failure to perform due to causes beyond the control of CONTRACTOR. Such causes include, but are not limited to, acts of God, acts of the public enemy, and acts of federal, state or local governments, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather. The term and price of this AGREEMENT shall be equitably adjusted for any delays due to such causes.

SECTION 21. COOPERATION BY TOWN.

All public information, data, reports, records, and maps as are existing and available to TOWN as public records, and which are necessary for carrying out the work as outlined in EXHIBIT "A," "SCOPE OF SERVICES," shall be furnished to CONTRACTOR in every reasonable way to facilitate, without undue delay, the work to be performed under this AGREEMENT.

SECTION 22. NOTICES.

All notices required or permitted to be given under this AGREEMENT shall be in writing and shall be personally delivered, or sent by fax or certified mail, postage prepaid and return receipt requested, addressed as follows:

To TOWN: City Manager
91 Ashfield Road
Atherton, CA 94027
grodericks@ci.atherton.ca.us

To CONTRACTOR: Victor Gonzales, Vice President
West Coast Arborists, Inc
2200 E. Via Burton
Anaheim, CA 92806

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile or, if mailed, three (3) days after deposit of the same in the custody of the United States Postal Service.

SECTION 23. AUTHORITY TO EXECUTE.

The person or persons executing this AGREEMENT on behalf of CONTRACTOR represents and warrants that he/she/they has/have the authority to so execute this AGREEMENT and to bind CONTRACTOR to the performance of its obligations hereunder.

SECTION 24. BINDING EFFECT.

This AGREEMENT shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

SECTION 25. MODIFICATION OF AGREEMENT.

No amendment to or modification of this AGREEMENT shall be valid unless made in writing and approved by the CONTRACTOR and by TOWN. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void. In the event of any conflict between the terms and conditions of this AGREEMENT and any attached exhibits, the terms and conditions of this AGREEMENT will control.

SECTION 26. WAIVER.

Waiver by any party to this AGREEMENT of any term, condition, or covenant of this AGREEMENT shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this AGREEMENT shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this AGREEMENT. Acceptance by TOWN of any work or services by CONTRACTOR shall not constitute a waiver of any of the provisions of this AGREEMENT.

SECTION 27. LAW TO GOVERN; VENUE.

This AGREEMENT shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue shall lie exclusively in the County of San Mateo.

SECTION 28. ATTORNEYS FEES, COSTS AND EXPENSES.

In the event litigation or other proceeding is required to enforce or interpret any provision of this AGREEMENT, the prevailing party in such litigation shall be entitled to an award of reasonable attorneys' fees, costs and expenses, in addition to any other relief to which it may be entitled. The parties agree that this Agreement has been drafted cooperatively by both parties.

SECTION 29. ENTIRE AGREEMENT.

This AGREEMENT, including the attached EXHIBITS "A" and "B," is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between CONTRACTOR and TOWN prior to the execution of this AGREEMENT. No statements, representations or other agreements, whether oral or written, made by any party which are not embodied herein shall be valid and binding.

SECTION 30. SEVERABILITY.

If a term, condition or covenant of this AGREEMENT is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this AGREEMENT shall not be affected thereby and the AGREEMENT shall be read and construed without the invalid, void or unenforceable provision(s). IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed the day and year first above written.

Signatures on next page

TOWN

By: _____
George Rodericks, City Manager

Date: June 17, 2019

CONTRACTOR

By: _____
Patrick Mahoney
Title: President

Date: 6/7/19

APPROVED AS TO FORM:

By: _____
William B. Connors, City Attorney

ATTEST:

By: _____
Anthony Suber, City Clerk

EXHIBIT "A"

SCOPE OF SERVICES

GENERAL DESCRIPTION OF WORK

Work in this Contract includes, but is not limited to, routine pruning, hazardous tree removal and storm damage cleanup of City trees within the City limits of Atherton.

The unit pricing for each item shall be considered full compensation for furnishing all labor, materials tools, equipment and incidentals for doing all the work in the bid item.

PUBLIC SAFETY AND CONVENIENCE

1. Contractor will be responsible for traffic diversion, safety, and traffic control, including flagman when necessary for public safety. The Contractor shall maintain control of traffic on the roadways at all times. Contractor shall furnish, erect, maintain and remove all signs, cones, barricades, bridges, lights, flashers and other items as directed by the Project Manager, or as are necessary for the safety of the general public.
2. The Contractor will not be permitted to have equipment or materials in the lanes open to traffic at any time unless permitted by the Superintendent.
3. The Contractor is cautioned that all personal vehicles and service equipment parking will be prohibited where it conflicts with safety, access, or flow of traffic. Personal vehicles and service equipment parking will be prohibited on all private lots without the owner's permission. During non-service periods (evenings, holidays, etc.), all work equipment, materials, and traffic control devices will be removed from the right-of-way and all traveled lanes shall be free of hazards and open to traffic unless a specific traffic control plan has been approved by the Project Manager for use during these time periods.
4. Contractor shall conduct all operations so as to cause the least possible obstruction and inconvenience to traffic and the general public.
5. The work area shall be kept sufficiently cleaned of all loose material produced by the operation so as not to raise an objectionable amount of dirt or dust. All dust and debris resulting from the operation shall be promptly removed from the work site and disposed of properly.
6. Upon completion of all operations, the area shall be cleaned and returned to the condition which existed before the work was started.
7. The Contractor will be held responsible for all damage to surrounding vegetation, landscape and fixtures. The Contractor is responsible for promptly restoring any existing landscaping, repairing damaged sprinkler systems or replacing any existing improvements that were damaged or displaced as a result of his work.
8. Damage to any property shall be reported immediately to the Public Works Superintendent and to the property owner involved if applicable.

9. Damage to any private property, utility lines, or Town owned property during the performance of the work shall be repaired or replaced to the satisfaction of the Public Works Superintendent.

WORK CONDITIONS

1. The citizens of Atherton are used to high-quality service performed with respect to their needs, wishes and concerns. All employees working on this project shall behave in a professional manner at all times. Discourtesy to or abusive treatment of residents or motorists will not be tolerated.
2. The Contractor shall prohibit the use of drugs or alcoholic beverages by all of his employees on the job. All employees shall be neatly and properly clothed.
3. No solicitation of private landscape or tree work by the Contractor or his employees while they are performing work under this contract will be allowed.
4. If any employee violates any of these provisions or appears to be incompetent, that person shall be discharged from working on the project.
5. The Town does not assume any liability from fire, theft, accident or any other cause resulting in damage or loss of Contractors supplies, materials or equipment, or of personal property of employees.
6. Equipment shall be suitable to produce the quality of work required and be maintained at all times in a satisfactory condition.
 - a. All tools shall be clean, sharp, in perfect working order, and checked by the contractor for safety before each working day.
 - b. All trucks shall be in satisfactory operating condition, shall be professional in appearance, and in compliance with all applicable laws and regulations.

PERFORMANCE TIME AND NOISE CONTROL

All work must be performed between 8:00 AM - 5:00 PM specifically Monday through Friday; no weekends or holidays, unless authorized by the Public Works Superintendent. All operations shall be conducted and all equipment constructed, maintained and operated in a manner that will not unduly disturb the public or violate Ordinance # 464 of the Atherton Municipal Code, relating to noise and hours of operation.

The contractor shall assume and plan for delays, such as inclement weather, and be prepared to complete work the next working day if feasible.

PRUNING STANDARDS

1. Pruning shall conform to the techniques and standards specified in the current edition of ANSI A300 (Tree, Shrub and Other Woody Plant Maintenance -Standard Practices).
2. Climbing spurs shall not be used on any tree to be pruned except in an emergency situation (such as aerial rescue) or upon written authorization of the Project Manager.

3. Pruning tools shall be sterilized with Lysol or equivalent approved by the Project Manager before and after pruning any elm tree.

GENERAL PRUNING SPECIFICATIONS

- A. General pruning specifications shall apply to all pruning work.
- B. Limbs that are too heavy to safely support their own weight, whether due to their length, diameter, a weak crotch or structural defect, shall be lightened by thinning the end weight or heading back the ends. Where possible, thinning is preferred over heading back. Conserve inner foliage as much as possible by thinning and shortening.
- C. Crossing or crowded limbs or branches shall be thinned to improve the structure and symmetry of the canopy.
- D. Deadwood over 3/4 inch in diameter shall be removed.
- E. Final cuts six (6) inches or greater in diameter must be approved by the Project Manager.
- F. Structural defects, including weak crotches, splits, cracks, broken cables and decayed cavities, observed in a tree shall be reported to the Project Manager.
- G. Clearance of foliage shall be as follows:
 1. Clearance over traffic lanes and bike lanes shall be a minimum of fourteen (14) feet above pavement level unless otherwise specified.
 2. Clearance over private property shall be a minimum of ten (10) feet above ground level unless otherwise specified. Clearance from structures shall be a minimum of ten (10) feet, vertical and horizontal unless otherwise specified.
 3. Clearance from street lights shall conform to the Project Manager's request. Clearance from traffic signals, traffic signs and stop signs shall provide adequate sight line distances to the signals or signs.
 4. Clearance from electric service drops is necessary only when vegetation is placing a noticeable strain or abrasion on the line, or as required by the Project Manager.

EXHIBIT "B"
COMPENSATION AND SCHEDULE OF PAYMENTS

1. **TOTAL COMPENSATION**

Town shall compensate Contractor for the satisfactory performance of the work described in this Agreement to not exceed the amount of **Eighty-Five Thousand Dollars (\$ 85,000.00) per Fiscal Year.** Services are on-call, as-needed, compensation for services shall be per the attached Bid Schedule set forth below as submitted by Contractor.

2. Contractor shall submit an itemized statement to Town on a Town approved form for its services performed, which shall include documentation setting forth in detail a description of the services rendered, and the hours of service, if appropriate. Town shall compensate Contractor the amount of such billing within thirty (30) days receipt of same.
3. There shall be no right to reimbursement of expenses incurred by Contractor except as specified in Exhibit A to this Agreement.

SERVICES

TREE PLANTING

24" Box Trees	\$ 350.00	/ tree
36" Box Trees	\$ 1,200.00	/ tree
48" Box Trees	\$ 2,200.00	/ tree
60" Box Trees	\$ 5,900.00	/ tree

PESTICIDE TREATMENT

0 - 12" dbh	\$ 24.00	/ tree
Over 12" dbh	\$ 50.00	/ tree

EMERGENCY CALL-OUTS

After hours, weekends, holidays	\$ 125.00	/ man hours
	# 3.0	minimum man hours per call

Inventory/Reports

Adding New Trees to Existing Software Program \$ 5.00 / tree
(GPS and Arborist assessment/description)

Arborist Report on existing trees \$ 500.00 / tree

Or

\$ 125.00 / hour

2.0 hours minimum per tree

Submitted

SERVICES

REQUESTED PRUNING SERVICE

dbh = diameter breast height

0 – 6" dbh	\$ 49.00	/ tree
7" – 18" dbh	\$ 99.00	/ tree
19" – 24" dbh	\$ 189.00	/ tree
25" – 36" dbh	\$ 369.00	/ tree
Over 36" dbh	\$ 499.00	/ tree

REQUESTED TREE AND STUMP REMOVAL SERVICE

dbh = diameter breast height

Tree and Stump Removal 0-24" dbh	\$ 39.00	/ diameter inch
Tree and Stump Removal Over 24" dbh	\$ 49.00	/ diameter inch
Tree Removal Only 0-24" dbh	\$ 24.00	/ diameter inch
Tree Removal Only Over 24" dbh	\$ 34.00	/ diameter inch
Stump Removal Only	\$ 15.00	/ inch

SERVICES

MANUAL WATERING

Watering \$ 9.00 / tree per day

CERTIFIED ARBORIST RATES

Rate for Arborist per hour for projects or task not covered by contract or other special services
(e.g., City Council Meeting, Residential Public Meeting, etc.)

\$ 125.00 / hour

CREW RENTAL RATE FOR SPECIAL PROJECTS / SPECIAL EQUIPMENT RATES

3 man crew with equipment \$ 270.00 / hour

1 man crew with equipment \$ 90.00 / hour

28 ton crane \$ 90.00 / hour

40-yard roll-off truck \$ 90.00 / hour

95' boom truck \$ 90.00 / hour

Caterpillar loader \$ 90.00 / hour

\$ / hour

MISC ROOT SERVICES

Root Pruning - 24" depth \$ 24.00 / per linear foot

Root Barrier Installation - 36" depth \$ 36.00 / per linear foot

EXHIBIT "C"

INSURANCE

A. Insurance Requirements. CONTRACTOR shall provide and maintain insurance, acceptable to TOWN, in full force and effect throughout the term of this AGREEMENT, against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by CONTRACTOR, its agents, representatives or employees. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII. CONTRACTOR shall provide the following scope and limits of insurance:

1. Minimum Scope of Insurance. Coverage shall be at least as broad as:

(1) Insurance Services Office form Commercial General Liability coverage (Occurrence Form CG 0001).

(2) Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, including code 1 "any auto" and endorsement CA 0025, or equivalent forms subject to the written approval of TOWN.

(3) Workers' Compensation insurance as required by the Labor Code of State of California and Employer's Liability insurance and covering all persons providing services on behalf of CONTRACTOR and all risks to such persons under this AGREEMENT.

(4) Errors and omissions liability insurance appropriate to CONTRACTOR's profession.

2. Minimum Limits of Insurance. CONTRACTOR shall maintain limits of insurance no less than:

(1) General Liability: \$2,000,000 general aggregate for bodily injury, personal injury and property damage.

(2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

(3) Workers' Compensation and Employer's Liability: Workers' Compensation as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.

(4) Errors and omissions Liability: \$1,000,000 per occurrence.

B. Other Provisions. Insurance policies required by this AGREEMENT shall contain the following provisions:

1. All Policies. Each insurance policy required by this section shall be endorsed and state the coverage shall not be suspended, voided, canceled by the insurer or either party to this AGREEMENT, reduced in coverage or in limits except after thirty (30) days' prior written notice by Certified mail, return receipt requested, has been given to TOWN.

2. General Liability Accident -- Mobile Liability Rates.

(1) TOWN and its respective elected and appointed officers, officials, and employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities CONTRACTOR performs; products and completed operations of CONTRACTOR; premises owned, occupied or used by CONTRACTOR; or automobiles owned, leased, hired or borrowed by CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to TOWN, and their respective elected and appointed officers, officials, or employees.

(2) CONTRACTOR's insurance coverage shall be primary insurance with respect to TOWN, and its respective elected and appointed, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by TOWN, and its respective elected and appointed officers, officials, employees or volunteers, shall apply in excess of, and not contribute with, CONTRACTOR 's insurance.

(3) CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(4) Any failure to comply with the reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to TOWN and its respective elected and appointed officers, officials, employees or volunteers.

3. Workers' Compensation and Employer's Liability Coverage. Unless TOWN otherwise agrees in writing, the insurer shall agree to waive all rights of subrogation against TOWN, and its respective elected and appointed officers, officials, employees and agents for losses arising from work performed by CONTRACTOR.

C. Other Requirements. CONTRACTOR agrees to deposit with TOWN, at or before the effective date of this contract, certificates of insurance necessary to satisfy TOWN that the insurance provisions of this contract have been complied with. TOWN Attorney may require that CONTRACTOR furnish TOWN with copies of original endorsements effecting coverage required by this section. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. TOWN reserves the right to inspect complete, certified copies of all required insurance policies, at any time.

1. CONTRACTOR shall furnish certificates and endorsements from each subcontractor identical to those CONTRACTOR provides.

2. Any deductibles or self-insured retentions must be declared to and approved by TOWN. At the option of TOWN, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects TOWN or its respective elected or appointed officers, officials, employees and volunteers or the CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims.

3. 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 AGREEMENT.

EXTENSION OF THE TREE MANAGEMENT SERVICES AGREEMENT BY AND BETWEEN THE TOWN OF ATHERTON AND WEST COAST ARBORISTS, INC.

This extension of the Agreement (herein "Agreement") by and between the Town of Atherton ("Town") and West Coast Arborists, Inc. ("Contractor") for Tree Maintenance Services effective July 1, 2018, is entered into as of the __ day of June, 2019, by and between the Town and Contractor.

Pursuant to Section 1 of the Agreement, both parties hereby agree to a first extension of the term for a period of one (1) year. As a result, the Agreement will now terminate on June 30, 2020, leaving one possible further extension in the future.

All provisions of the Agreement remain in full force and effect.

IN WITNESS THEREOF, the parties have executed this Extension as of the Effective Date July 1, 2019.

TOWN OF ATHERTON:

By: _____ / _____
George Rodericks, City Manager (Date)

CONTRACTOR:

By: _____ / 6/7/19
Name: Patrick Mahoney (Date)
Title: President

ATTEST:

Anthony Suber, City Clerk

APPROVED AS TO FORM:

William B. Conners, City Attorney