

**CITY OF COSTA MESA  
MAINTENANCE SERVICES AGREEMENT  
WITH  
WEST COAST ARBORISTS, INC.**

THIS MAINTENANCE SERVICES AGREEMENT ("Agreement") is made and entered into this 1st day of December, 2024 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and West Coast Arborists, Inc., a California corporation, ("Contractor").

**WITNESSETH:**

- A. City proposes to utilize the services of Contractor as an independent contractor to provide tree maintenance services, as more fully described herein; and
- B. Section 2-165 of the Costa Mesa Municipal Code permits the City to purchase services through competitively awarded agreements of other local, state, or federal government agencies, a process known as "piggybacking"; and
- C. The City of Rialto competitively awarded Contractor a contract effective July 1, 2024 for tree maintenance services, attached hereto as Exhibit "A" and incorporated herein by reference ("Rialto Contract"); and
- D. The City desires to "piggyback" onto the Rialto Contract, and Contractor consents to the "piggybacking"; and
- E. City and Contractor desire to contract for the tree maintenance services in accordance with the Rialto Contract, subject to the modifications set forth herein; and
- F. Contractor represents that it has the experience and expertise to properly perform such services and holds all necessary licenses to practice and perform the services; and
- G. City and Contractor desire to contract for the services and desire to set forth their rights, duties and liabilities in connection with the performance of such services; and
- H. No official or employee of City has a financial interest, within the provisions of Sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

1. Contractor agrees to perform the services set forth in the Rialto Contract for the City in accordance with the terms of the Rialto Contract, except as otherwise stated herein.
2. Except as otherwise stated herein, the terms and conditions of the Rialto Contract shall

form the basis of this Agreement, with the City having the rights, duties, and obligations of the City of Rialto set forth in the Rialto Contract.

3. If any provision of this Agreement conflicts with any provision of the Rialto Contract, then the terms, conditions and provisions of this Agreement shall control.
4. The terms and conditions of the Rialto Contract are modified, amended, or supplemented as follows:
  - a) All references in the Rialto Contract shall be considered references to the City of Costa Mesa.
  - b) Section 1.7 shall be amended to read as follows:
    1. Consultant is aware of the requirements of California Labor Code Section 1720, *et seq.* and 1770, *et seq.*, as well as California Code of Regulations, Title 8, Section 1600, *et seq.*, ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "Public Works" and "Maintenance" project. Consultant shall defend, indemnify, and hold City, its elected officials, officers, employees, and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Law.
    2. Payment of Prevailing Wages. Contractor shall pay the prevailing wage rates for all work performed under this Agreement. When any craft or classification is omitted from the general prevailing wage determinations, Contractor shall pay the wage rate of the craft or classification most closely related to the omitted classification. A copy of the general prevailing wage rate determination is on file in the Office of the City Clerk and is incorporated into this Agreement as if fully set forth herein. Contractor shall post a copy of such wage rates at all times at the project site(s).
    3. Legal Working Day. In accordance with the provisions of Labor Code Section 1810, *et seq.*, eight (8) hours is the legal working day. Contractor and any subcontractor(s) of Contractor shall comply with the provisions of the Labor Code regarding eight (8)-hour work day and 40-hour work week requirements, and overtime, Saturday, Sunday, and holiday work. Work performed by Contractor's or any subcontractor's employees in excess of eight (8) hours per day, and 40 hours during any one week, must include compensation for all hours worked in excess of eight (8) hours per day, or 40 hours during any one week, at not less than one and one-half times the basic rate of pay. Contractor shall forfeit as a penalty to City Twenty-Five Dollars (\$25.00), or any greater penalty set forth in the Labor Code, for each worker employed in the execution of the work by Contractor or by any subcontractor(s) of Contractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in one calendar day or more than 40 hours in any calendar week in violation of the Labor Code.
    4. Apprentices. Contractor shall comply with the provisions of Labor Code Section 1777.5 concerning the employment of apprentices on public works project. Contractor shall be responsible for ensuring compliance by its subcontractors with Labor Code Section 1777.5.
    5. Payroll Records. Pursuant to Labor Code Section 1776, Contractor and any subcontractor(s) shall keep accurate payroll records, showing the name,

address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor or any subcontractor in connection with this Agreement. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following: (1) The information contained in the payroll record is true and correct; and (2) The employer has complied with the requirements of Sections 1771, 1881, and 1815 of the Labor Code for any work performed by his or her employees on this project. The payroll records shall be certified and shall be available for inspection at all reasonable hours in accordance with the requirements of Labor Code Section 1776.

6. Registration with DIR. Contractor and any subcontractor(s) of Contractor shall comply with the provisions of Labor Code Section 1771 and Labor Code 1725.5 requiring registration with the DIR.

c) Section 2.1 shall be amended to read as follows:

Subject to any limitations set forth in this Agreement, City agrees to pay Contractor an annual not to exceed amount of One Million One Hundred Thousand Dollars (\$1,100,000.00) (the "Contract Sum"). The Contract Sum may also be increased for additional services pursuant to Section 1.9.

d) Section 3.4 shall be deleted in its entirety and replaced as follows:

Term. Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect through completion of the services related to Request for Proposals No. 24-025, (the "Project"), and as identified in the Schedule of Performance, Exhibit "C". The initial contract will be for Four (4) years Seven (7) months, from December 1, 2024, through June 30, 2029.

Agreement Price. Contractor agrees not to raise Contractor's prices during the initial two (2) years of this Agreement. Thereafter, Contractor may request in writing at least sixty (60) days prior to December 1, 2026, a price increase based on an increase Consumer Price Index for All Urban Consumers for the Los Angeles-Long Beach-Anaheim area (CPI). The adjustment will be determined using the June index for the current year and the June index for the preceding year. However, in no event shall any increase in Contractor's prices exceed two percent (2%). Contractor's written request for a price increase shall include reference to the CPI index, the percentage CPI increase, and Contractor's revised prices based on such CPI increase. The price increase shall be effective on the first day after the initial two (2) year period of the Agreement.

e) Section 7.1 shall be amended to read as follows:

California Law. This Agreement shall be interpreted, construed, and governed both as to validity and to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relating to this Agreement shall be instituted in the Superior Court of

the County of Orange, State of California, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, Eastern Division.

- f) Section 9.3 shall be amended to provide the following contact information for City.

If to City:       City of Costa Mesa  
                          Attention: Robert Ryan  
                          77 Fair Drive  
                          Costa Mesa, CA 92626

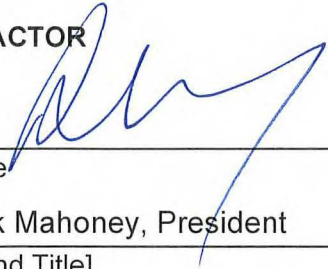
CC:                City of Costa Mesa  
                          Attn: Purchasing  
                          77 Fair Drive  
                          Costa Mesa, CA 92626

- g) The certificates of insurance required by Section 5.2 of the Rialto Contract shall be attached hereto as Exhibit "B."
- h) Contractor shall provide a drug-free workplace by complying with all provisions set forth in City's Council Policy 100-5, attached hereto as Exhibit "D" and incorporated herein by reference. Contractor's failure to conform to the requirements set forth in Council Policy 100-5 shall constitute a material breach of this Agreement and shall be cause for immediate termination of this Agreement by City.
- i) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

**CONTRACTOR**

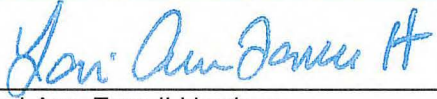
  
Signature  
Patrick Mahoney, President  
[Name and Title]

Date: 11/20/24

  
Signature  
Richard Mahoney, Secretary  
[Name and Title]

Date: 11/20/24

**CITY OF COSTA MESA**

  
Lori Ann Farrell Harrison  
City Manager

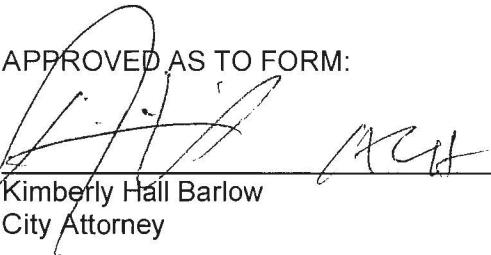
Date: 12/18/2024

ATTEST:

 12/18/2024  
Brenda Green  
City Clerk




APPROVED AS TO FORM:

  
Kimberly Hall Barlow  
City Attorney

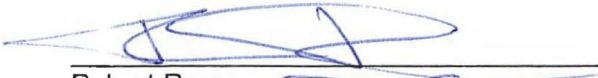
Date: 12/11/24

APPROVED AS TO INSURANCE:

  
Ruth Wang  
Risk Management

Date: 12/10/24

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Robert Ryan  
Project Manager


Date: 12/10/24

DEPARTMENTAL APPROVAL:

  
\_\_\_\_\_  
Raja Sethuraman  
Public Works Director

Date: 12-10-24

APPROVED AS TO PURCHASING:

  
\_\_\_\_\_  
Carol Molina  
Finance Director

Date: December 9, 2024

**EXHIBIT A**

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF RIALTO AND  
WEST COAST ARBORISTS, INC.**



**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF RIALTO AND  
WEST COAST ARBORISTS, INC**

THIS SERVICES AGREEMENT (herein "Agreement") is made and entered into this 1st day of July, 2024, by and between the City of Rialto, a municipal corporation and California general law city ("City"), and West Coast Arborists, Inc. a California C Corporation, ("Consultant"). City and Consultant are sometimes individually referred to as "Party" or collectively as "Parties".

**RECITALS**

A. City has sought, by Request for Proposals No. 24-025, the performance of professional services related to the trimming, complete removal of trees and stumps, watering, disease/pest control, plantings, new tree care watering, staking, root pruning, skinning, and GIS inventory/internet database, as defined and described particularly in Article 1 of this Agreement.

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

C. Pursuant to Chapter 2.48 of the Rialto Municipal Code, City has authority to enter into and execute this Agreement.

D. The Parties desire to formalize the selection of Consultant for the performance of those services defined and described particularly in Article 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

**OPERATIVE PROVISIONS**

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

**ARTICLE 1. SERVICES OF CONSULTANT**

## **1.1 Scope of Services.**

In compliance with all terms and conditions of this Agreement, Consultant shall provide those professional services associated with the trimming, complete removal of trees and stumps, watering, disease/pest control, plantings, new tree care watering, staking, root pruning, skinning, and GIS inventory/internet database, and as specified in the "Scope of Services" attached hereto as **Exhibit "A"** and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder. As a material inducement for City to enter into this Agreement, Consultant 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, it meets all local, state, and federal requirements in performing the services, and it is experienced in performing the work and services contemplated herein. Consultant shall at all times faithfully, competently, and to the best of its ability, experience, and talent, perform all services described herein. Consultant covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more professional firms performing similar work under similar circumstances.

## **1.2 Consultant's Proposal.**

The Agreement between the Parties shall consist of the following: (1) this Agreement; (2) the Scope of Services; (3) the City's Request for Proposals No. 24-025; and, (4) the Consultant's signed, original proposal submitted to the City ("Consultant's Proposal"), (collectively referred to as the "Contract Documents"). The Contract Documents and Accepted Proposal shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the Scope of Services, Consultant's Proposal, and/or this Agreement, the terms of this Agreement shall govern.

## **1.3 Compliance with Law.**

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

## **1.4 Licenses, Permits, Fees, and Assessments.**

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

### **1.5 Familiarity with Work.**

By executing this Agreement, Consultant warrants that Consultant (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties, and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. If Consultant discovers any latent or unknown conditions that will materially affect the performance of the services hereunder, then Consultant shall immediately inform the City of such fact and shall not proceed except at City's risk until written instructions are received from the Contract Officer.

### **1.6 Care of Work.**

Consultant shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies, and/or other components thereof, to prevent losses or damages, and shall be responsible for all such damages to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence.

### **1.7 Prevailing Wages.**

Consultant is aware of the requirements of California Labor Code Section 1720, *et seq.* and 1770, *et seq.*, as well as California Code of Regulations, Title 8, Section 1600, *et seq.*, ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "Public Works" and "Maintenance" projects. It is the understanding of City and Consultant that the Prevailing Wage Laws may not apply to this Agreement because the Agreement does not involve any services subject to prevailing wage rates pursuant to the California Labor Code or regulations promulgated thereunder. However, Consultant shall defend, indemnify, and hold City, its elected officials, officers, employees, and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

### **1.8 Further Responsibilities of Parties.**

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

### **1.9 Additional Services.**

City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to, or deducting from said work. No such

extra work or change may be undertaken unless a written order is first given by the Contract Officer to the Consultant, describing in detail the extra work or change and the reason(s) therefor and incorporating therein any adjustment in (i) the Contract Sum for the actual cost of the extra work or change, and/or (ii) the time to perform this Agreement, which said adjustments shall be reflected in an amendment to the Agreement subject to the written approval of the Parties. Any amendment to this Agreement shall be reviewed and approved by the City Manager. In accordance with Rialto Municipal Code section 2.48.180, increases in compensation of this Agreement may be approved by the City Manager provided: (a) the initial Contract Sum was less than One Hundred Thousand Dollars (\$100,000) and the amended Contract Sum when considering any or all amendments will not exceed One Hundred Thousand Dollars (\$100,000); or (b) the agreement was approved by the City Council and the increases in compensation taken either separately or cumulatively do not exceed One Hundred Thousand Dollars (\$100,000). Any greater increases, taken either separately or cumulatively must be approved by the City Council. Payment for additional services rendered by Consultant under this Agreement requires the submission of the actual costs of Consultant's performance of the extra work with the invoice(s) for the extra work claim(s), as provided in Section 2.4. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other contractors.

No claim for an adjustment in the contract amount or time for performance shall be valid unless the procedures established in this Section are followed.

## **ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT**

### **2.1 Contract Sum.**

Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the "Schedule of Compensation" attached hereto as **Exhibit "B"** and incorporated herein by this reference. Upon commencement of this Agreement the total compensation, including reimbursement for actual expenses, shall not exceed **Five Hundred Fifty Thousand Dollars and Zero Cents (\$550,000.00)** (the "Contract Sum"). The Contract Sum may also be increased for additional services pursuant to Section 1.9.

### **2.2 Method of Compensation.**

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

### **2.3 Reimbursable Expenses.**

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

**2.4 Invoices.**

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

City may independently review each invoice submitted by the Consultant to determine whether the work performed, and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Consultant which are disputed by City, or as provided in Section 7.3, City will use its best efforts to cause Consultant to be paid within thirty (30) days of receipt of Consultant's correct and undisputed invoice; however, Consultant acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission.

**2.5 No Waiver.**

Review and payment by City to Consultant of any invoice for work performed by Consultant pursuant to this Agreement shall not be deemed a waiver of any defects in work performed by Consultant or of any rights or remedies provided herein or any applicable law.

**ARTICLE 3. PERFORMANCE SCHEDULE**

**3.1 Time of Essence.**

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

**3.2 Schedule of Performance.**

Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "C" and

incorporated herein by this reference. When requested by the Consultant, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer.

**3.3 Force Majeure.**

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Consultant shall, within ten (10) days of the commencement of such delay, notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer shall extend the time for performance in accordance with the procedures set forth in Section 1.9. The Contract Officer's determination shall be final and conclusive upon the Parties to this Agreement. In no event shall Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this Section.

**3.4 Term.**

Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect through completion of the services related to Request for Proposals No. 24-025, (the "Project"), and as identified in the Schedule of Performance, **Exhibit "C"**. The initial contract will be for three years, from July 1, 2024, through June 30, 2027. The City may extend the Contract for up to two (2) optional one (1) year term extensions based on satisfactory performance. All extensions are subject to satisfactory performance, additional negotiations, and City Council approval as necessary.

**ARTICLE 4. COORDINATION OF WORK**

**4.1 Representatives and Personnel of Consultant.**

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

<u>Patrick Mahoney</u> (Name)	<u>President</u> (Title)
<u>Richard Mahoney</u> (Name)	<u>Secretary</u> (Title)

It is expressly understood that the experience, knowledge, capability, and reputation of the foregoing Principals were a substantial inducement for City to enter into

this Agreement. Therefore, the Principals shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. All personnel of Consultant, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the Principals may not be replaced nor may their responsibilities be substantially reduced by Consultant without the express written approval of City. Additionally, Consultant shall utilize only competent personnel to perform services pursuant to this Agreement. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires to reassign any staff or subcontractor of Consultant, Consultant shall, immediately upon a Reassign Notice from City of such desire of City, reassign such persons or persons.

#### **4.2 Status of Consultant.**

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

#### **4.3 Contract Officer.**

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

#### **4.4 Independent Contractor.**

Neither the City nor any of its employees shall have any control over the manner, mode, or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Consultant's employees, servants, representatives, or agents, or in fixing their number, compensation, or hours of service. Consultant shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such

obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venturer or a member of any joint enterprise with Consultant.

#### **4.5 Prohibition Against Subcontracting or Assignment.**

The experience, knowledge, capability, and reputation of Consultant, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Consultant shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated, or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Consultant or any surety of Consultant of any liability hereunder without the express consent of City.

### **ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS**

#### **5.1 Insurance Coverages.**

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

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

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

(c) Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount

not less than \$1,000,000. Said policy shall include coverage for owned, non-owned, leased, and hired cars.

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

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

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

## **5.2 General Insurance Requirements.**

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

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

separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

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

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

### **5.3 — Indemnification.**

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

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

(b) Consultant will promptly pay any judgment rendered against the City, its officers, agents, or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Consultant hereunder; and Consultant agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Consultant for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Consultant hereunder, Consultant agrees

to pay to the City, its officers, agents, or employees, any and all costs and expenses incurred by the City, its officers, agents, or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

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

Notwithstanding the foregoing, to the extent that the Consultant's services are subject to California Civil Code Section 2782.8, the above indemnity, including the cost to defend, shall be limited to the extent required by Civil Code Section 2782.8.

#### **5.4 Sufficiency of Insurer or Surety.**

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

### **ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION**

#### **6.1 Records.**

Consultant shall keep, and require subcontractors to keep, such ledgers books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of 3 years following completion of the services hereunder, and the City shall have access to such records in

the event any audit is required. In the event of dissolution of Consultant's business, custody of the books and records may be given to City, and access shall be provided by Consultant's successor in interest.

## **6.2 Reports.**

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

## **6.3 Ownership of Documents.**

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

## **6.4 Confidentiality and Release of Information.**

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

(b) Consultant, its officers, employees, agents, or subcontractors, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the

work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

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

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

## **ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION**

### **7.1 California Law.**

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

### **7.2 Disputes; Default.**

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

### **7.3 Retention of Funds.**

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

### **7.4 Waiver.**

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

### **7.5 Rights and Remedies are Cumulative.**

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

### **7.6 Legal Action.**

In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct, or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

### **7.7 Termination Prior to Expiration of Term.**

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. City reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to Consultant, except that where termination is due to the fault of the Consultant,

the period of notice may be such shorter time as may be determined by the Contract Officer. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event of termination without cause pursuant to this Section, the City need not provide the Consultant with the opportunity to cure pursuant to Section 7.2.

#### **7.8 Termination for Default of Consultant.**

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

### **ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION**

#### **8.1 Non-liability of City Officers and Employees.**

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

#### **8.2 Conflict of Interest.**

Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent, or subcontractor without the express written consent of the Contract Officer. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

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

Additionally, pursuant to Rialto Municipal Code section 2.48.145, Consultant represents that it has disclosed whether it or its officers or employees is related to any officer or employee of the City by blood or marriage within the third degree which would subject such officer or employee to the prohibition of California Government Sections 87100 et. seq., Fair Political Practices Commission Regulation Section 18702, or Government Code Section 1090. To this end, by approving this Agreement, Consultant attests under penalty of perjury, personally and on behalf of Consultant, as well its officers, representatives, that it/they have no relationship, as described above, or financial interests, as such term is defined in California Government Section 87100 et. seq., Fair Political Practices Commission Regulation Section 18702, or Government Code Section 1090, with any City of Rialto elected or appointed official or employee, except as specifically disclosed to the City in writing.

### **8.3 Covenant Against Discrimination.**

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

### **8.4 Unauthorized Aliens.**

Consultant 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 Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorney's fees, incurred by City.

## **ARTICLE 9. MISCELLANEOUS PROVISIONS**

### **9.1 Facilities and Equipment.**

Except as otherwise provided, Consultant shall, at its own cost and expense, provide all facilities and equipment necessary to perform the services required by this Agreement. City shall make available to Consultant only physical facilities such as desks, filing cabinets, and conference space ("City Facilities"), as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of City. The location, quality, and time of furnishing of City Facilities shall be in the sole discretion of City. In no event shall City be required to furnish any facilities that may involve incurring any direct expense, including but not limited to computer, long distance telephone, network data, internet, or other communication charges, vehicles, and reproduction facilities.

**9.2 Payment of Taxes.**

Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any federal and state taxes.

**9.3 Notices.**

All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered, sent by pre-paid First Class U.S. Mail, registered or certified mail, postage prepaid, return receipt requested, or delivered or sent by facsimile with attached evidence of completed transmission, and shall be deemed received upon the earlier of (i) the date of delivery to the address of the person to receive such notice if delivered personally or by messenger or overnight courier; (ii) three (3) business days after the date of posting by the United States Post Office if by mail; or (iii) when sent if given by facsimile. Any notice, request, demand, direction, or other communication sent by facsimile must be confirmed within forty-eight (48) hours by letter mailed or delivered. Other forms of electronic transmission such as e-mails, text messages, instant messages are not acceptable manners of notice required hereunder. Notices or other communications shall be addressed as follows:

If to City: City of Rialto  
150 S. Palm Ave.  
Rialto, CA 92376  
Attn: City Manager  
Tel: (909) 820-2525  
Fax: (909) 820-2527

With copy to: Burke, Williams & Sorensen, LLP  
1770 Iowa Avenue, Suite 240  
Riverside, CA 92507  
Attn: Eric S. Vail, City Attorney  
Tel: (951) 788-0100  
Fax: (951) 788-5785

If to Consultant: West Coast Arborists, Inc  
9465 Schaefer Ave  
Ontario, CA 91761  
Patrick Mahoney/President  
(714) 991-1900/pmahoney@wcainc.com

Either Party may change its address by notifying the other Party of the change of address in writing.

**9.4 Interpretation.**

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

**9.5 Counterparts.**

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

**9.6 Integration; Amendment.**

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

**9.7 Severability.**

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

**9.8 Corporate Authority.**

The persons executing this Agreement on behalf of the Parties hereto warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said Party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

**9.9 Conflicting Terms**

Except as otherwise stated herein, if the terms of this Agreement conflict with the terms of any Exhibit hereto, or with the terms of any document incorporated by reference into this Agreement, the terms of this Agreement shall control.

**[SIGNATURES ON FOLLOWING PAGE]**

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

**CITY:**

**CITY OF RIALTO, a municipal corporation**

By: Michael Milhiser  
Michael Milhiser, Interim City Manager

**CONSULTANT:**

**West Coast Arborists, Inc., a California C Corporation**

By: [Signature]  
Signature

**ATTEST:**

By: Barbara A. McGee  
Barbara A. McGee, City Clerk

Patrick Mahoney  
Name

President  
Title

**APPROVED AS TO FORM:**

Burke, Williams & Sorensen, LLP

By: [Signature]  
Eric S. Vail, City Attorney

By: RICHARD MAHONEY  
Signature

Richard Mahoney  
Name

Secretary  
Title

**\*\*Two signatures are required if a corporation\*\***

EXHIBIT "A"

**SCOPE OF SERVICES**

**Scope of Work**

**1. WORK TO BE DONE BY CONTRACTOR**

a. Work will be performed at various times and locations within the service area of the City of Rialto. The Contractor is not authorized to perform any work under these specifications until the Contractor has received, from City designated personnel, notification to commence work. The notification will specify the location and type of work to be performed. If during the commencement of work, a discrepancy arises, the Contractor shall immediately notify the City's designated personnel. Work will include but is not limited to trimming, complete removal of trees and stumps, watering, disease/pest control, plantings, new tree care watering, staking, root pruning, skinning, and GIS inventory/internet database.

b. The Contractor is responsible to obtain from the City designated personnel information for grids in order to meet grid tree management standards for each grid type before starting work. It is understood by the Contractor that grid areas are to continue their normal operation during grid trimming. The Contractor is to provide and use all protective equipment necessary to protect the Contractor's employees.

c. The Contractor shall, prior to commencing work, be responsible for notifying the residents at each address with a door hanger of the intended municipal tree management service at least forty-eight hours prior to commencing work and a NO Parking sign shall be placed on the tree with the use of string ties, no nails or staples allowed.

d. Sufficient crews shall be maintained at all times to maintain Municipal Tree Management standards established by the City.

e. The Contractor shall submit a daily electronic report defining the work schedule, status, updates, any problems encountered, and any other information requested by City personnel. Daily report should be delivered to Public Works Director, Contract Administrator or designee, Contract Administrator and City inspector by 7:30 A.M. each weekday morning.

f. No work will be performed on the weekends with the exception of emergencies and pre-approved work by City designated personnel. Overtime work performed at the option of, or for the convenience of the Contractor will be inspected by the City at the expense of the Contractor.

g. Invoice will be paid in full when municipal tree management work is completed on time, City designated personnel agrees work is complete, and invoice is submitted.

h. All work performed by the Contractor will be at the sole expense of the Contractor as part of the agreement.

i. The Contractor shall provide an internet-based GIS inventory system for all grids and work performed in the City. This will include but not limited to tree varieties, species, diameter, height, location, and invoicing information. Contractor, at their expense, will be responsible to migrate and/or update existing City inventory data into contractor's internet-based inventory system within 90 days of contract implementation.

j. The Contractor will comply with all City of Rialto Municipal Codes, Article 38 of the High Voltage Electrical Safety Orders and Article 12 of the General Industry Safety Orders, Title 8 of the California Administrative Code, Clearance of Brush or Vegetative Growth from Electrical Lines, Item 15, Appendix II-A, Uniform Fire Code, California State Fire Marshall Code, General Order 95 National Electric safety Code, Occupational Safety and Health Act Federal and State and any other laws, codes and regulations required for safe municipal tree management activities.

k. All service requests sent to the Contractor via email will be labeled with one of the following priority levels:

- ASAP- The contractor is to respond within one hour.
- Priority 1- The contractor is to respond within forty-eight (48) hours.
- Priority 2- The contractor is to respond within fourteen (14) days.
- Priority 3- The contractor is to respond within thirty (30) days.

l. Non-emergency unscheduled work shall consist of additional work performed outside of the normal schedule and scope and within a reasonable amount of time not to exceed 30 days. As determined by the Contract Administrator or designee, out-of-cycle municipal tree management activities will be billed as a service request.

m. The Contractor guarantees all work provided by them against all defects for a period of six (6) months, unless noted otherwise, from the date of final acceptance. The Public Works Director, Contract Administrator or designee will confirm the date of final acceptance in writing. The Contractor agrees that if failure does occur in that six-month period, they will be held liable for all costs related to that failure caused by poor workmanship.

n. Contractor shall always employ three levels of supervision for the City of Rialto:

- Area Manager-ISA Certified Arborist to manage daily operations.
- Field Supervisor-ISA Certified Arborist, Certified Tree Worker/Certified Climber to oversee daily field operations.
- Working Foreman-Certified Tree Worker and Certified Climber to oversee crews working in field.

- o. Contractor will be responsible for removing vegetation including vines and ivy from trees at ground level. No tendrils will be left behind.
  
- p. All stumps that cannot be stump ground will be flush-cut at ground level and will be treated with an approved stump killer as directed by City-designated personnel. Contractor must be aware of the nature and mode of actions of herbicides so as not to injure or kill adjacent trees of the same species through underground crossing or grafting of the root system. Tree stumps may be removed at the request of City designated personnel.
  
- q. The Contractor will respond to emergency calls on a 24-hour basis. The Contractor shall have emergency crew on site within the established priority service levels.
  
- r. Trees with more than one trunk from the same rootstock visible from the ground will be considered as one unit.
  
- s. Telecommunication lines shall be cleared from strain or abrasion.

## **2. VOLUNTEER PARTICIPATION**

The Contractor when possible, will provide additional services as part of "Giving Back" to the community and various organizations. The Contractor will work with the City to make available extraordinary services to the City including, but not limited to, Arboriculture education, participation in Earth Day, other City events, and special community projects.

## **3. GREEN WASTE AND RECYCLING**

All tree branches produced as a result of the contractor's operations under this contract shall be reduced, reused, recycled, and/or transformed. Included in the monthly billing for tree maintenance the City will receive a green waste report detailing the amount of debris recycled and location. This report must be in compliance with Assembly Bill 939.

Contractor agrees to reduce, reuse, recycle or transform 100% of all material produced as a result of tree trimming operations. Woodchips or mulch generated from pruning operations within the City may first be dumped at a City designated and approved site. If the City has no use for woodchips or mulch generated from tree trimming operations and contractor has no other way to recycle or reuse the material, then Contractor agrees to transport the material to any state recognized recycling facility at no charge to the City. The contractor must meet all state reporting requirements and supply to the City waste tonnage reports for all recycled material with the monthly invoice.

Work sites shall be cleaned on a daily basis with no limbs, brush or debris left overnight.

**4. TRAINED PERSONNEL**

The Contractor shall assign only qualified/certified Tree Trimmers/Climber Specialists who have completed a minimum of 18 months of certified training in accordance with American National Standards Institute Z133.1 guidelines.

**5. DAMAGES**

All damages resulting from contractors' operations shall be repaired at the Contractor's expense.

**6. CITY REQUESTS**

The contractor shall respond within 1 hour of any request by the City to address tree issues.

**7. MUNICIPAL TREE MANAGEMENT- GENERAL GUIDELINES**

All City trees shall be pruned using only professionally accepted standards, as established by the International Society of Arboriculture (ISA), National Arborists Association (NAA), and American National Standards Institute (ANSI) Section Z133.1. All City trees shall be pruned in a manner that will encourage good development while preserving their health, structure, and natural appearance.

The contractor shall perform municipal tree management operations in accordance with the minimum standards set by the following agencies. Rialto Standards will supersede these minimum standards as stated in Article 2, Item 2.

- a. ANSI Standard A300 (Part 1) Pruning
- b. ISA Best Management Practices - Tree Pruning
- c. ISA Tree Pruning Guidelines
- d. Cal-trans Encroachment Permits, Utility and Tree Trimming Special Provisions (TR- 159)
- e. American National Standard Practice for Roadway Lighting (ANSI /I ESNA RP-800)
- f. California Public Utilities Commission General Order 95

**8. MUNICIPAL TREE MANAGEMENT- SPECIFIC STANDARD FOR THE CITY OF RIALTO**

Prevent branch and foliage interference with the requirements of safe public passage. Over residential streets limbs shall be maintained gradually from nine (9) feet at the curb to fifteen (15) feet over traffic lanes. Over arterial streets, limbs shall be maintained at a maximum height of fifteen (15) feet from grade to wood. Over sidewalks, limbs shall be maintained at a height of eight (8) feet from grade to wood. In City parks, over playground equipment, limbs shall be maintained at a height of eight (8) feet from highest point on playground equipment.

Contractor shall perform all work in accordance with Western Chapter ISA Pruning Standards, ANSI A300 Standards, and City Specifications.

Remove all dead and dying branches and branch stubs that are an inch or longer.

Remove all broken or loose branches.

Remove any live branches that interfere with the tree's structural strength and healthful development, which will include the following:

1. Limbs, which rub and abrade a more important branch.
2. Limbs of weak structure, which are not important to the framework of the tree.
3. Limbs, which if allowed to grow, would wedge apart the junction of more important branches.
4. Limbs forming multiple leaders in a single leader type tree.
5. Branches near the end of a limb, which will produce more weight or offer more resistance to wind than the limb is able to support.
6. Undesirable sucker and water sprout growth giving specific attention not to nick or damage the sprout "burl".
7. Selective removal of one or more developing leaders where multiple branch growth exists near the end of broken or stubbed limbs.
8. Selective removal of limbs obstructing buildings or other structures, streetlights, or traffic signs.
9. All loose Palm Frond bases will be removed from all Palm trees using a shovel or other City approved device.
10. Telecommunication lines to be cleared from strain or abrasion.
11. Cut back ends of branches to a suitable lateral limb to reduce weight where excessive overburden appears likely to result in breakage of supporting limbs. Caution must be taken not to create "lion-tailing" which is caused by removing all or most of the inner foliage. Lion-tailing places foliage weight at the ends of the branches and may result in sunburn, water sprouts, and weakened branch structure and limb breakage.
12. On mature trees only, clear water sprouts or sucker growth to a minimum height of eight (8) feet above ground level.
13. Maintain a balanced appearance when viewed from the opposite side of the street immediately opposite the tree.
14. Remove all vines entwined in trees and on tree trunks. Vine tendrils shall be removed without injury to the tree.
15. Clear all branches and foliage within four (4) to six (6) feet of primary electrical lines.
16. When pruning cuts are made to a suitable lateral limb, the remaining limb shall possess a basal thickness of at least 1/3 the diameter of the cut.

Such cuts shall be considered proper only when the remaining limb is vigorous enough to maintain adequate foliage to produce wood growth capable of call using the pruning cut within a reasonable amount of time.

17. All final pruning cuts shall be made in such a manner so as to favor the earliest possible covering of the wound by natural callus growth. Flush cuts shall not be made, and the branch collar shall not be removed.

18. Tree limbs and Palm frond bases 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. Ropes shall lower large limbs and branches that would damage the tree or other property while falling freely.

19. All tools used on a tree known to contain an infectious tree disease shall be properly disinfected immediately before and after completing work on the tree. All pests, disease, or structural weaknesses or defects observed by the contractor while performing this work shall be immediately reported to the City verbally and in writing including steps that will be taken by the contractor to prevent spreading. If any significant pest, disease, or structural weaknesses or defects are not reported for any reason the contractor will be held liable for all damages that occur.

20. The contractor will be responsible for removing bees and bee hives from trees at no additional cost to the City.

21. All pruning tools and saws used for tree pruning shall be kept sharpened at all times to result in final cut with an abrasive wood surface and secure bark. All trees six (6) inches in diameter (DBH) or less shall be pruned with hand tools only, Chainsaws will not be permitted on any trees with six (6) inches or less DBH.

22. Whenever pruning cuts are to be made, removing limbs too large to hold securely in one hand during the cutting operation, the limb shall be cut off first, one to two feet beyond the intended final cut. Then the final cut shall be made in a manner to prevent the tearing of bark and wood.

23. Live, healthy limbs with a diameter of four (4) inches or greater shall not be removed without prior approval from the City.

24. No more than twenty (20) percent of live wood may be removed from the crown of any tree. The exception to this is Live Oaks, which are limited to no more than ten (10) percent.

25. Any extraneous metal, wire, rubber, or other material interfering with the natural growth of the tree shall be removed.

26. The use of climbing spurs or spike shoes is strictly prohibited except in the case of aerial rescue and removals.

27. All pruning shall be performed in such a manner as to encourage and promote the natural growth and shape of the tree species. The Contractor shall not perform any of the following procedures, except in the process of tree removal:

- a. The severe cutting back of growing tips including topping, dehoming, heading back, pollarding, or hat racking.
- b. Flush cutting where a cut is made even with the surface of the trunk or limb, removing the branch collar and branch bark ridge.
- c. Stub cutting where branch removal results in the base of the branch removed protruding more than approximately 1/2 inch beyond the zone of the branch collar and branch bark ridge.
- d. Removal of a main healthy leader.
- e. The removal of all the inner branches and foliage also known as lion tailing.
- f. All guys, stakes, lodge poles, trunk guards, and ties shall be checked to avoid girdling and for leaning on an ongoing basis. Remove guys, stakes, lodge poles, trunk guards, and ties as required for the tree's health being careful not to induce a leaning tree.

## **9. TREE AND STUMP REMOVAL**

a. All tree removals include the removal of dead, weak or hazardous trees. While performing tree removal, damage to other trees, shrubs, and other features is prohibited. The Contractor will be required to remove and replace any trees, shrubs, or other features damaged by the removal process. All debris is to become the Contractor's property and disposed of offsite. Trees removed shall be cut down to the existing soil grade and shall include stump removal. Tree and stump removal shall occur on the same day or until USA marks have been identified and then stump shall be removed within 24 hours. Removal lists will be compiled by the City and submitted monthly or as needed. Job sites shall be cleaned daily, including raking of leaves and removal of all debris.

b. Stumps shall be ground to a depth of eighteen (18) inches below level of sidewalk or curb grade or until deep roots are no longer encountered. The contractor shall grind the stump a minimum distance of five (5) feet on either side of the outer circumference of the stump, or until surface roots are no longer encountered. Upon removal Contractor is responsible for filling void with materials three (3) inches above grade to allow for settling. The backfill shall contain approximately 60% soil and shall be over seeded with appropriate plantings. All holes shall be backfilled, as well as all debris cleaned up and hauled off on a daily basis with no debris left overnight.

## **10. INVENTORY SYSTEM**

Proposer is to host and maintain a detailed internet-based inventory system to include but not limited to the following:

Citywide inventory must be conducted and completed in-conjunction with the completion of each grid.

- a. Tree inventory includes:

- All trees trimmed, removed, planted, and worked on; and
  - All non-conforming/non-permitted trees and vegetation having the future potential growth within a five (5) year period to be in conflict of City of Rialto specific standards.
- b. All information collected will be the sole property of the City of Rialto.
  - c. Digital photos before and after trimming of all service requests.
  - d. Global Positioning (GPS) coordinate location.
  - e. Street address.
  - f. Species.
  - g. Estimated height.
  - h. Estimated diameter at shoulder height.
  - i. Type of service and date performed.
  - j. Removals and stump removals.
  - k. New plantings.
  - m. Note section for each address.
  - n. Sidewalk, curb/gutter, and any other damage caused by the tree.
  - o. The software shall have the capability of producing reports that can be exported to Microsoft Excel for graphic output for the purpose of displaying the data.
  - p. The software shall be capable of linking to the City of Rialto's GIS software with automatic data export.
  - q. The software shall also link to separate databases containing work history, work requests, etc.
  - r. The software shall manage an unlimited number of records and have the capability of adding additional tree sites should the City desire to input them.
  - s. The software shall allow for queries to be made by one field or a combination of fields; and
  - t. Any other City requested information must be provided.

## **11. TREE MANAGEMENT SERVICES**

### **1. Street Tree Pruning**

At the direction of City of Rialto, pruning will be done per pre-designed districts along street segments, grid, or prune routes on a set cycle to include trees of various sizes. Pruning consists of tree canopy raising over roadways, and sidewalks. At a minimum tree shall be pruned to provide a minimum clearance of (15) feet over traffic lanes and

seven to 8 feet over sidewalks. Small limbs, including suckers and water sprouts shall be cut close to the trunk or branches from which they arise. Pruning shall be performed in accordance with the standards set forth by the International Society of arboriculture pruning standards (best management practices) and the ANSI A300 standards

**2. Full Pruning/ Service Request Tree Pruning 0-12" diameter breast height.**

**3. Full Pruning/ Service Request Tree Pruning 13-24" diameter breast height.**

**4. Full Pruning/ Service Request Tree Pruning 25" + diameter breast height.**

At the request of the city, trees will be assigned for pruning outside of their set cycle for various reasons. Pruning may consist of tree canopy raising over roadways sidewalks and in parks locations; thinning, reducing, restoring and structural pruning the tree canopy in width and height the production; and for immature trees, re staking and slash or retying, as needed. In addition, pruning includes removal all dead, broken, damage, loose, diseased or insect infested limbs, branches, and stubs shall be removed. Trees shall be pruned to remove any obstructions around traffic control devices, traffic signs, and Street lights.

**5. King & Queen Palms (etc.)**

**6. Washingtonia Robusta Pruning**

**7. Date Palm Pruning**

Pruning shall be performed in accordance with the standards set forth by the International Society of arboriculture pruning standards (best management practices) and the ANSI- A300 standards. The trimming shall provide a systemically shape and aesthetically pleasing appearance typically of the species standard palm tree pruning will fall under this category and will include the removal of dead and declining fronds & seed pods. Excluding palm tree skinning.

**8. Palm Tree Skinning**

Palm tree skinning is the process of removing the outer layer of bark from a palm tree. Skinning a palm tree also helps to protect it from pests and disease and encourages the growth of new leaves and branches. This process involves cutting away the dead fronds at their base which is at the trunk of the tree.

**9. Tree and Stump Removal (regardless of diameter breast height)**

**10. Tree Only Removal (regardless of diameter breast height)**

**11. Stump only Removal (regardless of stump diameter)**

After City of Rialto determines that a tree requires removal, City staff will prepare a list of trees to be removed, will notify homeowners, and submits list to contractor. City staff is responsible for marking trees so that they are easily identified by underground services alerts and the contractor. Contractor calls underground service alert USA and prepares internal work orders. Contractor will remove tree and hauls all debris to state approved disposal site. Contractor grinds stumps to a depth of approximately eighteen

(18") inches. The hole will be backfilled with a combination of native soil and minimal stump grindings and compact it to avoid settlement.

**12. Root Pruning (typically >10' in length)**

At the direction of city staff, roads shall be pruned adjacent to the edge of the sidewalk, curb and gutter or other improvements. Root pruning cuts shall be performed using root pruning equipment specifically designed for this purpose with cutting teeth sharpened adequately to sever roots in a clean manner. Root pruning cuts adjacent to sidewalks and curb shall be four (4) inches wide and twelve (12) inches deep and a minimum of five (5) feet in each direction from the center line of the tree.

**13. Plant 15-gallon tree**

**14. Plant 15-gallon tree w/ Root Barrier**

**15. Plant 24" Box**

**16. Plant 24" Box w/ Root Barrier**

**17. Plant 36" Box**

City staff will locate and mark potential sites for new plantings. Planting lists will be compiled and submitted monthly or as needed. Tree planting includes the tree, stakes, ties, labor and initial watering at time of installation.

**18. Tree Watering**

At the direction of the city staff, watering is performed by a one-man crew with a water truck who will water various tree routes including newly planted trees, landscape median and young trees that are >3 years of age. Watering may also be performed on an as needed basis.

**19. Crew Rental/ Crown Reduction**

The crew and equipment can be modified to complete any type of miscellaneous task including special projects that may consist of extraordinary work as directed by city staff. The use of currently may be warranted due to inaccessibility by equipment, in park locations, slope settings, or nonlinear tree pruning. It is understood that this type of pruning will make the tree more secure during times of high winds.

**20. Specialty Equipment (e.g., Cranes, 95' Aerial Towers)**

On occasions the use of a crane or 95-foot aerial tower is necessary to safely operate the assigned tree operation. The prices include equipment and the operator.

**21. Emergency Response (Reg. Business Hours, Mon-Fri)**

**22. Emergency Response (Evening, Weekend, Holiday)**

The contractor shall be required to provide emergency on call response for damaged trees due to storms or other reasons. Emergency calls may occur at any given time. The contractor will be provided with locations and the work to be done at each location

via telephone from a city authorized representative. Emergency work shall begin within 90 minutes of the initial telephone call.

**23. Certified Arborist Services**

On occasions, the city requires tree evaluations including written reports. The contractor shall provide an hourly rate for a certified arborist that can respond to the city's request for the preparation of detailed arborist reports, tree risk assessment reports, tree evaluations and site inspections. Reporting can be generated on as little as one tree to an entire urban forest population and is handled on a case-by-case basis. The rate will be applied should the city request a certified arborist on site.

**24. Plant Health Care**

At the direction of the city staff, the contractor will provide plant health care services including but not limited to the following: spraying (canopy or trunk), injecting (for a systemic approach), or soil drenching as necessary to reduce a potentially harmful pest. This is done to maintain or improve the selected trees appearance, vitality, and safety, using the most cost effective and environmentally sensitive practice and treatments available. Plant healthcare involves routine monitoring and preventative treatments. All pesticides recommendations are to be made by an in-house pest control advisor in accordance with the department of pesticide regulations.

**A. Tree Canopy Spraying from ground level**

**B. Tree Canopy Spraying from Aerial Tower**

a. Description: Trunk spray of recommended material

**C. Insecticide or fungicide trunk banding**

a. Description: trunk spray of recommended material.

**D. PGR trunk banding**

a. Description: trunk spray of recommended material to regulate plant growth.

**E. insecticide or PGR soil applications (Cambistat)**

a. Description: recommended insecticide soil injection or drench material to regulate plant growth.

**F. Insecticide or fungicide soil application**

a. Description: soil applied drench of recommended material.

**G. soil injection fertilization**

a. Description: soil applied injection of recommended material

**H. soil drenching fertilization**

a. description: Applications of recommended material

**I. trunk injection (insecticide/miticide)**

a. description: trunk injected recommended material

**J. trunk injection (fungicide)**

a. description: trunk injected recommended material

**K. truck injection (insecticide & fungicide combo)**

a. description: combination of one-time trunk injection of two recommended materials

**L. Avermectin Class Insecticide Injection**

- a. description: recommended trunk injection of Emamentin Benzoate active ingredient
-

**EXHIBIT "B"**

**"SCHEDULE OF COMPENSATION"**

**City of Rialto**

Proposed Rates for RFB #24-025 Tree Maintenance Services  
(Re-Bid) Submitted by West Coast Arborists, Inc.

Item	Description	Unit Measure	FY24-25	FY25-26	FY26-27	FY27-28	FY28-29
			Proposed Rates	Unit Rates	Unit Rates	Unit Rates	Unit Rates
1	<b>Street Tree Pruning</b> <i>At the direction of CITY, pruning will be done per pre-designed districts along street segments, grids, or prune routes on a set cycle to include trees of various sizes. Pruning consists of tree canopy raising over roadways, and sidewalks. At a minimum, trees shall be pruned to provide a minimum clearance of fourteen (15) feet over the traffic lanes and seven (8) feet over sidewalks. Trees can be pruned to remove any obstruction around traffic control devises, traffic signs, and streetlights. Pruning shall be performed in accordance with the standards set forth by the International Society of Arboriculture Pruning Standards (Best Management Practices) and the ANSI A300 Standards.</i>	Each	\$ 75.00	\$ 75.00	\$ 75.00	\$ 80.00	\$ 85.00
2	<b>Full Prune/Service Request Tree Pruning 0-12" DBH</b>	Each	\$ 90.00	\$ 90.00	\$ 90.00	\$ 95.00	\$ 100.00
3	<b>Full Prune/Service Request Tree Pruning 13-24" DBH</b>	Each	\$ 170.00	\$ 170.00	\$ 170.00	\$ 180.00	\$ 190.00
4	<b>Full Prune/Service Request Tree Pruning 25" &amp; over DBH</b> <i>At the request of the City, trees will be assigned for pruning outside of their set cycle for various reasons. Pruning may consist of tree canopy raising over roadways, sidewalks, and in park locations; thinning, reducing, restoring and structurally pruning the tree canopy in width and height reduction; and for immature trees, re-staking and/or retying, as needed. In addition pruning includes removing all dead, broken, damaged, loose, diseased or insect infested limbs, branches, and stubs shall be removed. Small limbs, including suckers and waterspouts shall be cut close to the trunk or branch from which they arise. At a minimum, tree shall be pruned to provide a minimum clearance of fifteen (15) feet over the roadway and eight (8) feet over walkways. Trees shall be pruned to remove any obstruction around traffic control devises, traffic signs, and streetlights. Pruning shall be performed in accordance with the standards set forth by the International Society of Arboriculture Pruning Standards (Best Management Practices) and the ANSI A300 Standards.</i>	Each	\$ 325.00	\$ 325.00	\$ 325.00	\$ 375.00	\$ 395.00
5	<b>Coco/King Palm Pruning</b>	Each	\$ 70.00	\$ 70.00	\$ 70.00	\$ 80.00	\$ 85.00
6	<b>Washingtonia Robusta Pruning</b>	Each	\$ 95.00	\$ 95.00	\$ 95.00	\$ 105.00	\$ 110.00
7	<b>Date Palm Pruning</b> <i>Pruning shall be performed in accordance with the standards set forth by the International Society of Arboriculture Pruning Standards (Best Management Practices) and the ANSI A300 Standards. The trimming shall provide a symmetrical shape and aesthetically pleasing appearance typical of the species. Standard palm tree pruning will fall under this category and will include the removal of dead and declining fronds &amp; seed pods. Excludes skinning.</i>	Each	\$ 275.00	\$ 275.00	\$ 275.00	\$ 295.00	\$ 325.00
8	<b>Palm Tree Skinning</b>	Linear Foot	\$ 30.00	\$ 30.00	\$ 30.00	\$ 35.00	\$ 37.00
9	<b>Tree and Stump Removal (regardless of size)</b>	Dia. Inch	\$ 49.00	\$ 49.00	\$ 49.00	\$ 52.00	\$ 54.00
10	<b>Tree Only Removal (regardless of size)</b>	Dia. Inch	\$ 35.00	\$ 35.00	\$ 35.00	\$ 37.00	\$ 39.00
11	<b>Stump Only Removal (regardless of size)</b> <i>After CITY determines that a tree requires removal, CITY will prepare a list of trees to be removed, notifies homeowners, and submits lists to Contractor. CITY is responsible for marking trees so that they are easily identifiable by Underground Service Alert and the Contractor. Contractor calls Underground Service Alert (USA) and prepares internal work order. Crew removes tree and hauls all debris. Crew grinds stumps to a depth of approximately eighteen (18") inches. All holes will be backfilled with a combination of native soil and minimal stump grindings and compacted to avoid settlement.</i>	Dia. Inch	\$ 18.00	\$ 18.00	\$ 18.00	\$ 20.00	\$ 22.00

Item	Description	Unit Measure	FY24-25	FY25-26	FY26-27	FY27-28	FY28-29
			Proposed Rates	Unit Rates	Unit Rates	Unit Rates	Unit Rates
12	<b>Root Prune trees (typical 10 foot length)</b> <i>At the direction of City staff, roots shall be pruned adjacent to the edge of the sidewalk, curb and gutter or other improvements. Root pruning cuts shall be performed using root pruning equipment specifically designed for this purpose with cutting teeth sharpe ned adequately to sever roots in a clean manner. Root pruning cuts adjacent to the sidewalk and curb shall be four (4) inches wide and twelve (12) inches deep and a minimum of five (5) feet in each direction from the centerline of the tree.</i>	Linear Foot	\$ 20.00	\$ 20.00	\$ 20.00	\$ 22.00	\$ 24.00
5	<b>Plant 15-gallon tree</b>	Each	\$ 200.00	\$ 200.00	\$ 200.00	\$ 225.00	\$ 245.00
6	<b>Plant 15-gallon tree with Root Barrier</b>	Each	\$ 225.00	\$ 225.00	\$ 225.00	\$ 250.00	\$ 275.00
7	<b>Plant 24" box tree</b>	Each	\$ 400.00	\$ 400.00	\$ 400.00	\$ 425.00	\$ 445.00
8	<b>Plant 24" box tree with Root Barrier</b>	Each	\$ 425.00	\$ 425.00	\$ 425.00	\$ 450.00	\$ 475.00
9	<b>Plant 36" box tree</b> <i>Tree planting includes the tree, stakes, ties, labor and initial watering at time of installation as directed by City staff. Planting lists should be compiled by the Inspector and submitted monthly or as needed.</i>	Each	\$ 1,300.00	\$ 1,300.00	\$ 1,300.00	\$ 1,450.00	\$ 1,500.00
18	<b>Tree Watering</b> <i>At the direction of the City, watering is performed by a one-man crew with a water truck who will water various tree routes including newly planted trees, landscape median and young trees that are three (3) years old and younger. Watering may also be performed on an as-needed basis.</i>	Day	\$ 855.00	\$ 855.00	\$ 855.00	\$ 900.00	\$ 915.00
19	<b>Crew Rental</b> <i>The crew and equipment can be modified to complete any type of miscellaneous tasks including special projects that may consist of extraordinary work as directed by City staff. The use of crew rental may be warranted due to inaccessibility by equipment, in park locations, slope settings, or non-linear tree pruning.</i>	Man Hour	\$ 95.00	\$ 95.00	\$ 95.00	\$ 100.00	\$ 105.00
20	<b>Specialty Equipment (i.e., Crane, 95-ft Aerial Tower)</b> <i>On occasion the use of a crane or 95-foot aerial tower is necessary to safely operate the assigned tree operation. These prices of quipment include the operator.</i>	Hour	\$ 175.00	\$ 175.00	\$ 175.00	\$ 185.00	\$ 195.00
8	<b>Emergency Response (Reg. Business Hours, Mon-Fri)</b>	Man Hour	\$ 95.00	\$ 95.00	\$ 95.00	\$ 100.00	\$ 105.00
9	<b>Emergency Response (Evening, weekend, Holidays)</b> <i>The Contractor shall be required to provide emergency on call response for damaged trees due to storms or other reasons. Emergency calls may occur at any given time. The Contractor will be provided with locations and the work to be done at each location via telephone from a City authorized representative. Emergency work shall begin within 90 minutes of the initial telephone call.</i>	Man Hour	\$ 129.00	\$ 129.00	\$ 129.00	\$ 135.00	\$ 140.00
23	<b>Certified Arborist Services</b>	Hour	\$ 170.00	\$ 170.00	\$ 170.00	\$ 180.00	\$ 185.00

Item	Description	Unit Measure	FY24-25	FY25-26	FY26-27	FY27-28	FY28-29
			Proposed Rates	Unit Rates	Unit Rates	Unit Rates	Unit Rates
24	<b>Plant Health Care</b> <i>At the direction of the City, the Contractor will provide plant health care services including but not limited to the following: spraying, injecting, soil drenching as necessary to reduce a potentially harmful pest. This is done to maintain or improve the selected tree's appearance, vitality, and safety, using the most cost-effective and environmentally sensitive practices and treatments available. Plant Health Care involves routine monitoring and preventive treatments. All pesticide recommendations are to be made by an in-house Pest Control Advisor in accordance with the Department of Pesticide Regulations.</i>		See below				
10	<b>Tree Canopy Spraying from ground level</b>	per diameter inch	\$ 7.00	\$ 7.00	\$ 7.00	\$ 7.50	\$ 8.00
11	<b>Tree Canopy Spraying from aerial tower</b> Description: Foliar hydraulic spraying of recommended material.)	per diameter inch	\$ 7.00	\$ 7.00	\$ 7.00	\$ 7.50	\$ 8.00
c.	<b>Insecticide or Fungicide Trunk Banding</b> Description: Trunk spray of recommended material.	per diameter inch	\$ 8.00	\$ 8.00	\$ 8.00	\$ 8.50	\$ 9.00
d.	<b>PGR Trunk Banding</b> Description: Trunk spray of recommended material to regulate plant growth.	per diameter inch	\$ 7.00	\$ 7.00	\$ 7.00	\$ 7.50	\$ 8.00
e.	<b>Insecticide or PGR Soil Application (Cambistat)</b> Description: Recommended insecticide soil injection or drench material to regulate plant growth.	per diameter inch	\$ 7.00	\$ 7.00	\$ 7.00	\$ 7.50	\$ 8.00
f.	<b>Insecticide or Fungicide Soil Application</b> Description: Soil applied drench of recommended material.	per diameter inch	\$ 7.00	\$ 7.00	\$ 7.00	\$ 7.50	\$ 8.00
g.	<b>Soil Injection Fertilization</b> Description: Soil applied injection of recommended material.	per diameter inch	\$ 8.00	\$ 8.00	\$ 8.00	\$ 8.50	\$ 9.00
h.	<b>Soil Drenching Fertilization</b> Description: Soil application of recommended material.	per diameter inch	\$ 8.00	\$ 8.00	\$ 8.00	\$ 8.50	\$ 9.00
i.	<b>Trunk Injection (Insecticide/Miticide)</b> Description: Trunk injected recommended material.	per diameter inch	\$ 9.00	\$ 9.00	\$ 9.00	\$ 9.50	\$ 10.00
j.	<b>Trunk Injection (Fungicide)</b> Description: Trunk injected recommended material.	per diameter inch	\$ 9.00	\$ 9.00	\$ 9.00	\$ 9.50	\$ 10.00
k.	<b>Trunk Injection (Insecticide &amp; Fungicide Combo)</b> Description: Combination of one-time trunk injection of two recommended materials.	per diameter inch	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.50	\$ 11.00
l.	<b>Avermectin Class Insecticide Injection</b> Description: Recommended trunk injection of Emamectin benzoate active ingredient.	per diameter inch	\$ 11.00	\$ 11.00	\$ 11.00	\$ 11.50	\$ 12.00

Item	Description	Unit Measure	FY24-25	FY25-26	FY26-27	FY27-28	FY28-29
			Proposed Rates	Unit Rates	Unit Rates	Unit Rates	Unit Rates
<b>Alternative Bid Item #1</b>							
	<b>GPS Tree Inventory</b>	Tree Site	\$ 4.00	\$ 4.00	\$ 4.00	\$ 5.00	\$ 5.50
	<p><i>At the City's direction, contractor will provide the City with a Global Positioning System (GPS) tree inventory collected by an ISA Certified Arborist including coordinates for all trees in public spaces. This includes, but is not limited to, all publicly owned trees on street rights-of-way, parks, City facilities and open spaces such as medians, greenscapes, etc. The address information contained in inventory should be linked directly to a Geographical Information System (GIS) program, such as ArcView. The inventory collector will identify the trees by their global coordinates of longitude and latitude.</i></p>						
<b>Alternative Bid Item #2</b>							
	<b>Create a Street Tree Palette</b>	Lump Sum	\$ 5,000.00				
	<i>At the City's direction, work with City staff to develop an updated Street Tree Palette.</i>						
	<b>Create a Street Tree Planting Plan</b>	Lump Sum	\$ 15,000.00				
	<i>At the City's direction, work with City staff to develop an updated Street Tree Planting Plan for future planting opportunities.</i>						

**Alternative Bid Item #3**

**Create an Urban Forest Management Plan (UFMP)**

*At the City's direction, work with City staff to develop an UFMP. This includes presenting to City Council and train staff on the UFMP.*

Lump Sum	\$ 40,000.00

**COOPERATIVE PURCHASING**

It is intended that other public agencies (i.e., city, county, school district, special district, public authority, public agency, and other political sub-division of the State of California) and/or other City departments shall have the option to participate in any agreement created because of this Request for Proposal with the same terms and conditions as to the price of the product and/or service. The City shall incur no financial responsibility in connection with a purchase order from another public agency. Any public agency that "piggy-backs" on any negotiated contract between the City and Contractor shall accept sole responsibility for negotiating, placing orders, and making payment to Contractor. The Contractor may or may not agree to the cooperative purchasing clause. It is understood that not all terms, conditions, or scope of work from one agency contract for tree maintenance may not be fully acceptable to another agency. Agencies may modify specific items for the purpose of making the agreement acceptable and agreeable.

**EXHIBIT "C"**

**"SCHEDULE OF PERFORMANCE"**

Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed. The initial contract will be for three years, from July 1, 2024, through June 30, 2027. The City may extend the Contract for up to two (2) optional one (1) year term extensions based on satisfactory performance.

**EXHIBIT B**

**INSURANCE CERTIFICATES  
REQUIRED BY SECTION 5.2 OF  
RIALTO CONTRACT**



Tree Care Professionals Serving Communities Who Care About Trees  
September 23, 2024

www.WCAINC.com

Mr. Robert Ryan  
Maintenance & Operations Manager  
City of Costa Mesa  
77 Fair Drive  
Costa Mesa, CA 92628

**RE: Tree Maintenance Services**

Dear Mr. Ryan,

Over the past many years, West Coast Arborists, Inc. (WCA) and the City of Costa Mesa have established a highly productive and collaborative working relationship. Our shared objective remains to safeguard the vitality and well-being of the City's urban forest.

As we approach the end of the contract term, we propose a new contract for tree maintenance services, utilizing a "piggyback" approach based on the City of Rialto's current contract. Recently, the City of Rialto approved a new multi-year contract effective July 1, 2024.

The rates outlined in Rialto's contract are competitive within the industry, particularly for services such as grid tree pruning, tree removal, and tree planting. We are willing to offer identical unit prices, terms, and conditions as stipulated in Rialto's current contract. As part of a new contract, we agree to perform an update to the City's tree inventory at no additional cost.

Copies of Rialto's Request for Proposal (RFP), Council Agenda Report, and Price Schedule are attached to this correspondence. It's important to note that Rialto's Agreement includes a Cooperative Purchasing Provision, enabling other agencies to piggyback onto the contract.

We look forward to continuing our strong relationship and maintaining quality urban tree care service. If you have any questions or require additional information, don't hesitate to contact me at (800) 521-3714.

Sincerely,

Victor M. Gonzalez  
Vice President, Business Development

**West Coast Arborists, Inc.**

2200 E. Via Burton Street • Anaheim, CA 92806 • 714.991.1900 • 800.521.3714 • Fax 714.956.3745



# CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)  
06/06/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Aon Risk Insurance Services West, Inc. Los Angeles CA Office 707 Wilshire Boulevard Suite 2600 Los Angeles CA 90017-0460 USA	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): (866) 283-7122      FAX (A/C, No.): (800) 363-0105		
	<b>E-MAIL ADDRESS:</b>		
<b>INSURED</b> West Coast Arborists, Inc. 2200 E Via Burton Anaheim CA 92806 USA	<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
	INSURER A: Hartford Fire Insurance Co.		19682
	INSURER B:		
	INSURER C:		
	INSURER D:		
	INSURER E:		

**COVERAGES**      **CERTIFICATE NUMBER: 570106215996**      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. Limits shown are as requested

INSR LTR	TYPE OF INSURANCE	ADDITIONAL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:		72ECSS89301 SIR applies per policy terms & conditions	07/01/2024	07/01/2025	EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE \$4,000,000 PRODUCTS - COMP/OP AGG \$4,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY		72 CSE 589302	07/01/2024	07/01/2025	COMBINED SINGLE LIMIT (Ea accident) \$2,000,000 BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED    RETENTION					EACH OCCURRENCE AGGREGATE
A	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/ PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) if yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N / A	72WNS89300 Workers Comp AZ CA	07/01/2024	07/01/2025	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE-EA EMPLOYEE \$1,000,000 E.L. DISEASE-POLICY LIMIT \$1,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**  
 RE: All jobs performed by the named insured during the policy term, City of Costa Mesa, its elected and appointed boards, officers, agents and employees are included as Additional Insured in accordance with the policy provisions of the General Liability policy. General Liability policy evidenced herein are Primary and Non-contributory to other insurance available to an Additional insured, but only in accordance with the policy's provisions.

**CERTIFICATE HOLDER**      **CANCELLATION**

City of Costa Mesa Fourth Floor, Public Services 77 Fair Drive Costa Mesa CA 92626 USA	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE  <i>Aon Risk Insurance Services West, Inc.</i>
---	--

Holder Identifier : ABB

Certificate No : 570106215996



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - SCHEDULED PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
WHERE REQUIRED BY WRITTEN CONTRACT	WHERE REQUIRED BY WRITTEN CONTRACT

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

**A. Section II - Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III - Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
WHERE REQUIRED BY WRITTEN CONTRACT	WHERE REQUIRED BY WRITTEN CONTRACT
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II - Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B.** With respect to the insurance afforded to these additional insureds, the following is added to **Section III - Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## AMENDMENT OF OTHER INSURANCE CONDITION - PRIMARY OR PRIMARY AND NON-CONTRIBUTORY WHEN REQUIRED BY CONTRACT

This endorsement modifies insurance provided under the following:

PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART (EXCESS)  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART (EXCESS - BROAD FORM)

With respect to other insurance available to any person or organization who is an additional insured under this Coverage Part, the following replaces Paragraph 4., **Other Insurance** of **Section IV - PRODUCTS/COMPLETED OPERATIONS LIABILITY CONDITIONS**:

#### 4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

##### a. Primary Insurance When Required By Contract

If you have agreed in a written contract, written agreement or permit that this insurance be primary, then subject to the "self-insured retention", this insurance is primary. If other insurance is also primary, we will share with all that other insurance by the method described in Paragraph c, below.

##### b. Primary And Non-Contributory To Other Insurance When Required By Contract

If you have agreed in a written contract, written agreement, or permit that this

insurance is primary and non-contributory with the additional insured's own insurance, then subject to the "self-insured retention", this insurance is primary, and we will not seek contribution from that other insurance.

Paragraphs a. and b. do not apply to other insurance to which the additional insured has been added as an additional insured.

##### c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

**EXHIBIT C**  
**SCHEDULE OF PERFORMANCE**

Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed.

**EXHIBIT D**

**CITY COUNCIL POLICY 100-5**

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	1 of 3

BACKGROUND

Under the Federal Drug-Free Workplace Act of 1988, passed as part of omnibus drug legislation enacted November 18, 1988, contractors and grantees of Federal funds must certify that they will provide drug-free workplaces. At the present time, the City of Costa Mesa, as a sub-grantee of Federal funds under a variety of programs, is required to abide by this Act. The City Council has expressed its support of the national effort to eradicate drug abuse through the creation of a Substance Abuse Committee, institution of a City-wide D.A.R.E. program in all local schools and other activities in support of a drug-free community. This policy is intended to extend that effort to contractors and grantees of the City of Costa Mesa in the elimination of dangerous drugs in the workplace.

PURPOSE

It is the purpose of this Policy to:

1. Clearly state the City of Costa Mesa's commitment to a drug-free society.
2. Set forth guidelines to ensure that public, private, and nonprofit organizations receiving funds from the City of Costa Mesa share the commitment to a drug-free workplace.

**POLICY**

The City Manager, under direction by the City Council, shall take the necessary steps to see that the following provisions are included in all contracts and agreements entered into by the City of Costa Mesa involving the disbursement of funds.

1. Contractor or Sub-grantee hereby certifies that it will provide a drug-free workplace by:
  - a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in Contractor's and/or sub-grantee's workplace, specifically the job site or location included in this contract, and specifying the actions that will be taken against the employees for violation of such prohibition;

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	2 of 3

- b. Establishing a Drug-Free Awareness Program to inform employees about:
  - 1. The dangers of drug abuse in the workplace;
  - 2. Contractor's and/or sub-grantee's policy of maintaining a drug-free workplace;
  - 3. Any available drug counseling, rehabilitation and employee assistance programs; and
  - 4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- c. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by subparagraph A;
- d. Notifying the employee in the statement required by subparagraph 1 A that, as a condition of employment under the contract, the employee will:
  - 1. Abide by the terms of the statement; and
  - 2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- e. Notifying the City of Costa Mesa within ten (10) days after receiving notice under subparagraph 1 D 2 from an employee or otherwise receiving the actual notice of such conviction;
- f. Taking one of the following actions within thirty (30) days of receiving notice under subparagraph 1 D 2 with respect to an employee who is so convicted:
  - 1. Taking appropriate personnel action against such an employee, up to and including termination; or
  - 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health agency, law enforcement, or other appropriate agency;

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	3 of 3

g. Making a good faith effort to maintain a drug-free workplace through implementation of subparagraphs 1 A through 1 F, inclusive.

2. Contractor and/or sub-grantee shall be deemed to be in violation of this Policy if the City of Costa Mesa determines that:

- a. Contractor and/or sub-grantee has made a false certification under paragraph 1 above;
- b. Contractor and/or sub-grantee has violated the certification by failing to carry out the requirements of subparagraphs 1 A through 1 G above;
- c. Such number of employees of Contractor and/or sub-grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the contractor and/or sub-grantee has failed to make a good faith effort to provide a drug-free workplace.

3. ~~Should any contractor and/or sub-grantee be deemed to be in violation of this Policy pursuant to the provisions of 2 A, B, and C, a suspension, termination or debarment proceeding subject to applicable Federal, State, and local laws shall be conducted. Upon issuance of any final decision under this section requiring debarment of a contractor and/or sub-grantee, the contractor and/or sub-grantee shall be ineligible for award of any contract, agreement or grant from the City of Costa Mesa for a period specified in the decision, not to exceed five (5) years. Upon issuance of any final decision recommending against debarment of the contractor and/or sub-grantee, the contractor and/or sub-grantee shall be eligible for compensation as provided by law.~~