

**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 October, 2019 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and WEST COAST ARBORISTS, a California corporation ("Contractor").

WITNESSETH:

A. WHEREAS, City proposes to utilize the services of Contractor as an independent contractor to provide tree maintenance services, as more fully described herein; and

B. WHEREAS, 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. WHEREAS, the City of Encinitas competitively awarded Contractor a contract effective January 1, 2018 for planting, pruning, trimming, staking, raising, removal, disposal, stump grinding and chipping, inventorying, and documenting (collectively, "tree maintenance services"), attached hereto as Exhibit "A" and incorporated herein by this reference ("Encinitas Contract"); and

D. WHEREAS, the City desires to "piggyback" onto the Encinitas Contract, and Contractor consents to the "piggybacking"; and

E. WHEREAS, City and Contractor desire to contract for the tree maintenance services in accordance with the Encinitas Contract, subject to the modifications set forth herein; and

F. WHEREAS, 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. WHEREAS, 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 Encinitas Contract for the City in accordance with the terms of the Encinitas Contract, except as otherwise stated herein.
2. Except as otherwise stated herein, the terms and conditions of the Encinitas Contract shall form the basis of this Agreement, with the City having the rights, duties, and obligations of the City of Encinitas set forth in the Encinitas Contract.

3. If any provision of this Agreement conflicts with any provision of the Encinitas Contract, then the terms, conditions and provisions of this Agreement shall control.
4. The terms and conditions of the Encinitas Contract are modified, amended, or supplemented as follows:
 - a. All references in the Encinitas Contract to "City" shall be considered references to the City of Costa Mesa.
 - b. Section 4.0 shall be amended to add a subsection 4.4 to read as follows:

4.4 Contractor's annual compensation shall not exceed Six Hundred Sixteen Thousand Three Hundred Fifty-Two Dollars (\$616,352.00).
 - c. Section 5.0 shall be deleted in its entirety and replaced as follows:

5.1 Term. The term of this Agreement is for a period commencing on October 1, 2019, and ending on November 30, 2021, unless terminated earlier as set forth herein, or extended pursuant to Section 5.2 below.

5.2 Options to Extend. Provided that City is satisfied with Contractor's performance under this Agreement and Contractor is in full compliance with the terms and conditions of this Agreement, City shall, at its sole discretion and without obligation to Contractor, have the option to extend the term of this Agreement for one (1) successive two (2) year period. Any extensions will be memorialized through a written amendment to this Agreement. City and Contractor agree that City's ability to exercise such extensions is contingent upon extensions of the Encinitas Contract.

5.3 Agreement Price. Contractor agrees not to raise Contractor's prices during the initial term of the Agreement. Thereafter, Contractor may request in writing at least sixty (60) days prior to the expiration of the initial term, or any extension period, a contract extension and 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 contract extension and 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 increases shall be effective on the first day of any extension period and shall not be increased during any extension period.
 - d. Section 19.1 shall be amended to read as follows:

Contractor agrees and hereby stipulates that the proper venue and jurisdiction for resolution of any disputes between the parties arising out of this Agreement is a court of competent jurisdiction in Orange County, California.

- e. Section 21.1 shall be amended to provide the following contact information for City:

If to City: City of Costa Mesa
Attn: Bruce Lindemann
77 Fair Drive
Costa Mesa, CA 92626

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

- 5. The certificates of insurance required by Section 12.0 of the Encinitas Contract shall be attached hereto as Exhibit "B."
- 6. 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 "C" 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.
- 7. 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.

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.

CITY OF COSTA MESA,
A municipal corporation

Lori Ann Farrell Harrison
City Manager

Date: _____

CONTRACTOR

Signature

Date: _____

Name and Title

Social Security or Taxpayer ID Number

ATTEST:

Brenda Green
City Clerk

APPROVED AS TO FORM:

Kimberly Hall Barlow
City Attorney

Date: _____

APPROVED AS TO INSURANCE:

Ruth Wang
Risk Management

Date: _____

APPROVED AS TO CONTENT:

Bruce Lindemann
Project Manager

Date: _____

DEPARTMENTAL APPROVAL:

Raja Sethuraman
Public Services Director

Date: _____

APPROVED AS TO PURCHASING:

Kelly Telford
Finance Director

Date: _____

EXHIBIT A
CITY OF ENCINITAS AGREEMENT

EXHIBIT B
CERTIFICATES OF INSURANCE

EXHIBIT C

CITY COUNCIL POLICY 100-5

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
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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;

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- 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;

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- 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.