

AGREEMENT BETWEEN THE CITY OF MANHATTAN BEACH AND WEST
COAST ARBORISTS, INC. FOR TREE SERVICES

THIS AGREEMENT is made by and between the City of Manhattan Beach (hereinafter called "City"), and West Coast Arborists, Inc., a California corporation (hereinafter called "Contractor").

RECITALS

A. City desires to have certain services and/or goods provided as set forth in Exhibit A (the "Scope of Work"), attached hereto and incorporated herein.

B. Contractor represents that it is qualified and able to perform the Scope of Work.

NOW, THEREFORE, the parties agree as follows:

Section 1. Contractor's Scope of Work.

(a) Contractor shall perform the Scope of Work described in Exhibit A in a manner satisfactory to City and consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions.

(b) City shall provide Contractor with a project schedule that sets forth the cycle of when the work described in the Scope of Work shall be performed (i.e. trees to be pruned every x months, etc.) ("Project Schedule"). Contractor shall adhere to the Project Schedule provided by City. City in its sole discretion may amend the Project Schedule at any time during the term of this Agreement.

Section 2. Term of Agreement.

(a) The term of this Agreement shall commence on March 16, 2013 and terminate on December 31, 2016, unless extended or terminated by the City as set forth herein.

(b) The City Manager or his designee may extend the term of this Agreement for up to three additional one-year terms pursuant to the same terms and conditions of this Agreement.

Section 3. Compensation.

(a) Compensation

For the term of this Agreement and any subsequent term approved by City, City agrees to compensate Contractor and Contractor agrees to accept in full satisfaction for the services performed and items provided (i.e. tree stock), compensation

based on the unit prices set forth in Exhibit B. The maximum amount of compensation provided to Contractor for each calendar year shall not exceed \$130,000.

(b) Expenses

The unit prices set forth in Exhibit B includes reimbursement for all actual and necessary expenditures reasonably incurred in the performance of this Agreement (including, but not limited to, all labor, materials, delivery, tax, assembly, and installation, as applicable). There shall be no claims for additional compensation for reimbursable expenses.

(c) Additional Services/Modifications to Services.

City shall have the right, in its sole discretion, to require Contractor to perform additional services not included in Exhibit A, Scope of Work, modify the Scope of Work, and omit portions of the Scope of Work. All additional work shall be performed at the same unit prices listed in Exhibit B. If the rate for such work is not listed in Exhibit B, Contractor shall submit a fair cost estimate for the work to be performed in writing, which is subject to City's prior written approval. Contractor may perform such work once City has approved a change order in writing.

Section 4. Method of Payment. Unless otherwise provided for herein, Contractor shall submit to City a detailed invoice, on a monthly basis, for the services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period and the amount due. Within 30 days of receipt of each invoice, City shall pay all undisputed amounts included on the invoice. City shall receive a two percent discount for payments received by Contractor within 20 days of the invoice date, as described in Exhibit B.

Section 5. Independent Contractor. The Parties agree, understand, and acknowledge that Contractor is not an employee of the City, but is solely an independent contractor. Contractor expressly acknowledges and agrees that City has no obligation to pay or withhold state or federal taxes or to provide workers' compensation or unemployment insurance or other employee benefits and that any person employed by Contractor shall not be in any way an employee of the City. As such, Contractor shall have the sole legal responsibility to remit all federal and state income and social security taxes and to provide for his/her own workers' compensation and unemployment insurance and that of his/her employees or subcontractors. Neither City nor any of its agents shall have control over the conduct of Contractor or any of Contractor's employees. Contractor shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of City. Contractor shall indemnify and hold harmless City and its elected officials, officers and employees, servants, designated volunteers, and agents serving as independent contractors in the role of City officials, from any and all liability, damages, claims, costs and expenses of any nature to the extent arising from Contractor's personnel practices. City shall have the right to offset against the amount of any fees due to Contractor under this Agreement any amount due to City from Contractor as a result of Contractor's failure to promptly pay to City any reimbursement or indemnification arising under this Section 5.

Section 6. Assignment. This Agreement shall not be assigned in whole or in part, by Contractor without the prior written approval of City. Any attempt by Contractor to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

Section 7. Responsible Principal(s).

(a) Contractor's Responsible Principal, Patrick Mahoney, shall be principally responsible for Contractor's obligations under this Agreement and shall serve as principal liaison between City and Contractor. Designation of another Responsible Principal by Contractor shall not be made without prior written consent of City.

(b) City's Responsible Principal shall be the City Manager or his designee who shall administer the terms of the Agreement on behalf of City.

Section 8. Personnel. Contractor represents that it has, or shall secure at its own expense, all personnel required to perform Contractor's Scope of Work under this Agreement. All personnel engaged in the work shall be qualified to perform such Scope of Work.

Section 9. Permits and Licenses. Contractor shall obtain and maintain during the term of this Agreement all necessary licenses, permits and certificates required by law for the provision of services under this Agreement, including a business license.

Section 10. Interests of Contractor. Contractor affirms that it presently has no interest and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of the Scope of Work contemplated by this Agreement. No person having any such interest shall be employed by or be associated with Contractor.

Section 11. Insurance.

(a) Contractor shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

(1) A policy or policies of Comprehensive General Liability Insurance, with minimum limits of Two Million Dollars (\$2,000,000) for each occurrence, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by Contractor.

(2) A policy or policies of Comprehensive Vehicle Liability insurance covering personal injury and property damage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence combined single limit, covering any vehicle utilized by Contractor in performing the Scope of Work required by this Agreement.

(3) Workers' compensation as required by the state of California.

(b) Contractor shall require each of its sub-contractors to maintain insurance coverage which meets all of the requirements of this Agreement.

(c) The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least a B+;VII in the latest edition of Best's Insurance Guide.

(d) Contractor agrees that if it does not keep the aforesaid insurance in full force and effect City may immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may take out the necessary insurance and pay, at Contractor's expense, the premium thereon.

(e) At all times during the term of this Agreement, Contractor shall maintain on file with the City Clerk a certificate or certificates of insurance on a form acceptable to the City, showing that the aforesaid policies are in effect in the required amounts. Contractor shall, prior to commencement of work under this Agreement, file with the City Clerk such certificate or certificates. The general liability and auto liability shall contain an endorsement naming City as an additional insured. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty (30) days prior written notice to City, and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement.

(f) The insurance provided by Contractor shall be primary to any coverage available to City. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation.

(g) Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, Contractor shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Contractor shall procure a bond guaranteeing payment of losses and expenses.

Section 12. Indemnification. Contractor shall defend, indemnify, and hold the City, its elected officials, officers, employees, volunteers, agents, and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees") free and harmless from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, bid protests, stop notices, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever (individually, a "Claim," collectively, "Claims"), in any manner arising out of or incident to the performance of the Agreement, including without limitation, the payment of all consequential damages and attorneys' fees and other related costs and expenses, except for such claim, liability or financial loss or damage arising from the sole negligence or willful misconduct of the City, as determined by final arbitration or court decision or by the agreement of the Parties. Contractor shall defend City, with counsel of City's choice, at Contractor's own cost, expense, and risk, and shall pay and satisfy any judgment, award, or decree that may be rendered against City. Contractor shall reimburse City for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Contractor or City. All duties of Contractor under this Section shall survive termination of this Agreement.

Section 13. Performance Bond. Contractor shall be required to furnish City with a Faithful Performance Bond in the amount of 100% of the annual contract amount. The Faithful Performance Bond shall be furnished to City upon execution of the Agreement. The surety(ies) who provides the bonds must be authorized by the Insurance Commissioner to transact the business of insurance in the State of California. The bond must be submitted on a form approved by the City Attorney.

Section 14. State Law regarding Workers' Compensation and Prevailing Wages. Contractor acknowledges the provisions of the State Labor Code requiring every employer to be insured against liability for workers' compensation, or to undertake self-insurance in accordance with the provisions of that code and certifies compliance with such provisions. Contractor further acknowledges the provisions of the State Labor Code requiring every employer to pay at least the minimum prevailing rate of per diem wages for each craft, classification, or type of workman needed to execute this contract.

Section 15. Contractor's License. Contractor shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect the licenses required by state and local law to perform the work required by this Agreement.

Section 16. Termination.

(a) City shall have the right to terminate this Agreement for any reason or for no reason upon five calendar days' written notice to Contractor. Contractor agrees to cease all work under this Agreement on or before the effective date of such notice.

(b) In the event of termination or cancellation of this Agreement by City, due to no fault or failure of performance by Contractor, Contractor shall be paid based on the percentage of work satisfactorily performed at the time of termination. In no event shall Contractor be entitled to receive more than the amount that would be paid to Contractor for the yearly performance of the services required by this Agreement. Contractor shall have no other claim against City by reason of such termination, including any claim for compensation.

Section 17. City's Responsibility. City shall provide Contractor with all pertinent data, documents, and other requested information as is available for the proper performance of Contractor's Scope of Work.

Section 18. Information and Documents. All data, information, documents and drawings prepared for City and required to be furnished to City in connection with this Agreement shall become the property of City, and City may use all or any portion of the work submitted by Contractor and compensated by City pursuant to this Agreement as City deems appropriate.

Section 19. Records and Inspections. Contractor shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of ten (10) year(s). City shall have access, without charge, during normal business hours to such records, and the right to examine and audit the same and to make copies of transcripts therefrom, and to inspect all program data, documents, proceedings and activities.

Section 20. Changes in the Scope of Work. The City Council hereby authorizes the City Manager the right to order, in writing, changes in the Scope of Work (including any additions or deletions to or from the Scope of Work) as long as the cost for the Scope of Work and the cost of any work required by change orders in total does not exceed the maximum yearly compensation set forth herein. Any changes in the Scope of Work requested by Contractor must be made in writing and approved by both parties. The cost of any change in the Scope of Work (unless otherwise set forth herein) must be agreed to by both parties in writing.

Section 21. Notice. Any notices, bills, invoices, etc. required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during the receiving party's regular business hours or by facsimile before or during the receiving party's regular business hours; or (b) on the second business day following deposit in the United States mail, postage prepaid, to the addresses set forth below, or to such other addresses as the Parties may, from time to time, designate in writing pursuant to this section.

If to City: City of Manhattan Beach
 1400 Highland Avenue
 Manhattan Beach, California 90266
 Attn: City Manager

If to Contractor: West Coast Arborists, Inc.
 220 East Via Burton Street
 Anaheim CA 92806
 Attn: Patrick Mahoney

Section 22. Attorneys' Fees. If a party commences any legal, administrative, or other action against the other party arising out of or in connection with this Agreement, the prevailing party in such action shall be entitled to have and recover from the losing party all of its attorneys' fees and other costs incurred in connection therewith, in addition to such other relief as may be sought and awarded.

Section 23. Entire Agreement. This Agreement represents the entire integrated agreement between City and Contractor, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both City and Contractor.

Section 24. Exhibits; Precedence. All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail.

Section 25. Entire Agreement. This Agreement represents the entire integrated agreement between City and Contractor, and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both City and Contractor.

Section 26. Governing Law. The interpretation and implementation of this Agreement shall be governed by the domestic law of the State of California.

Section 27. Venue. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with geographic jurisdiction over the City of Manhattan Beach.

Section 28. City Not Obligated to Third Parties. City shall not be obligated or liable under this Agreement to any party other than Contractor.

Section 29. Severability. Invalidation of any provision contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof, or the application thereof to any other person or entity, and the same shall remain in full force and effect.


Section 30. Penalties. Contractor and City agree that if completion of certain services to be provided by Contractor under this Agreement as specified in Exhibit A and Exhibit B are delayed, not performed or performed in a manner outside of the specifications set forth herein, a penalty as described herein will be assessed each day that the service is not properly performed or not provided as required under the Agreement. This is in addition to City's other remedies allowed by law. When a penalty is assessed by the City, the City may deduct the amount from the current invoice or the Contractor may remit payment to the City within ten days of notification.

EXECUTED this ____ day of _____ 2013, at Manhattan Beach, California.

CITY OF MANHATTAN BEACH
A Municipal Corporation


for Mark Danaj
City Manager

ATTEST:

 10-20-17
Liza Tamura
City Clerk

APPROVED AS TO FORM:


Quinn M. Barrow
City Attorney

WEST COAST ARBORISTS, INC.

APPROVED BY FINANCE DEPARTMENT:

By: 
Name: Bruce Moe
Title: Finance Director


PATRICK MAHONEY
President


RICHARD MAHONEY
Assistant Secretary