

**MAINTENANCE AND AS NEEDED SERVICES AGREEMENT
TREE CARE AND CONSULTING SERVICES
RFP #PWD 25-301**

THIS AGREEMENT is made and entered into this _____ day of June 2025 between XXX ("Contractor"), whose address is XXX, and the CITY OF PLEASANTON, a municipal corporation ("City").

RECITALS

- A. Contractor is qualified and experienced in providing annual tree trimming, stump grinding and removal, inventory and other Arborist and Consulting services, based on submitted proposal in response to the City of Pleasanton's Request for Proposals (**RFP**) #PWD 25.301 as set forth in **Exhibit A** of this Agreement.
- B. City finds it necessary and advisable to obtain work or services from Contractor on both a scheduled basis as set forth in **RFP #PWD 25.301**, as well as on an as-needed basis for emergency tree work and potential unscheduled maintenance or improvements for the City tree inventory, also described therein.

NOW THEREFORE, in consideration of the mutual covenants and conditions in this Agreement, City and Contractor agree as follows:

1. **Term.** The term of this Agreement commences on July 1, 2025 and will expire on June 30, 2028 unless the parties agree to extend the Agreement, by Amendment, for an additional two (2), one-year terms, not to exceed five (5) years total for this Agreement. If extended by Amendment, the cost of each one-year term may increase only by the change in the consumer price index for the San Francisco-Oakland-San Jose Metropolitan Area (all items index; all urban consumers) for the twelve (12) month period ending in April each year as published by the Bureau of Labor Statistics, U.S. Department of Labor.

For example, for a first extension of the term of the Agreement for July 1, 2028 to June 30, 2029, the change in the above-referenced CPI for May 1, 2027 to April 30, 2028 shall be used to adjust Contractor's Year 4 unit price / hourly rate / cost per hour set forth in Exhibit B. And, for a second extension of the term of the Agreement for July 1, 2029 to June 30, 2030, the change in the above-referenced CPI for May 1, 2028 to April 30, 2029 shall be used to cumulatively adjust Contractor's unit price / hourly rate / cost per hour from the first extension.

2. **Services to be performed.** Contractor shall perform, or cause to be performed, the work or services described in **Exhibit A**.

The work will generally consist of tree pruning and removal, stump grinding, inventory and data collection and related activities as described in the following documents of **RFP PWD 25.301**.

- A. Plans and specifications entitled Tree Care and Consulting Services and Addenda thereto if any.

B. Contract Amendments approved by the City Council and/or City Manager.

C. The proposal submitted to the City by the Contractor.

3. **Compensation.** Total compensation under this Agreement for all work of this Agreement shall not exceed \$xxx, of which, the total for each year shall not exceed:

Year 1 - \$

Year 2 - \$

Year 3 - \$

City shall pay Contractor for all work performed based on the bid proposal **RFP PWD 25.301, in Exhibit A.**

4. **Method of Payment.**

Payment shall be made within thirty (30) days of receipt of Contractor's invoice and approval by City. Contractor must include a monthly, or more frequent basis, a report of specific trees pruned, removed, stumps removed, trees added to the inventory, and emergency work. This report should accompany each invoice submitted for payment. It is essential that this report is complete and approved to facilitate the timely processing and remittance of payment.

Billing for tree pruning or tree removal can be changed from an hourly basis to a per tree basis based on diameter at standard height (DSH) by the Parks Division Manager at any time.

5. **Indemnification.** Contractor shall hold harmless, defend, and indemnify the City, its officers, agents and employees ("Indemnities"), against any and all claims, costs, demands, causes of action, suits, losses, expenses, attorney's fees, or liability, arising from or in any manner related to Contractor's (includes Contractor's employees, agents, or subcontractors) negligent act or omission, whether alleged or actual, regarding the work or services performed or caused to be performed pursuant to this Agreement and any amendments thereto. Contractor shall not, however, be obligated to indemnify Indemnities from claims arising from the sole negligence or willful misconduct of Indemnities. This indemnification includes any claim that the materials or equipment provided under this Agreement, or any tool, article or process used, constitutes an infringement of any patent issued by the United States. This indemnification provision shall survive termination or cancellation of the Agreement.
6. **Insurance.** During the term of this Agreement, Contractor shall maintain at its own cost and expense the following insurance coverage with insurers with an A.M. Best's rating of no less than A:VII. Contractor shall have the obligation to furnish City, as additional insured, the minimum coverages identified below, or such greater or broader coverage for City, if available in the Contractor's policies.
- a. **General Liability and Bodily Injury Insurance.** Commercial general liability insurance with limits of at least \$2,000,000 combined limit for bodily injury and property damage that provides that the City, its officers, employees and agents are named additional insured's under the policy as evidenced by an additional insured endorsement satisfactory to the City Attorney. The policy shall further state in writing either on the Certificate of Insurance or attached rider

that this insurance will operate as primary insurance for work performed by Contractor and its subcontractors, and that no other insurance effected by City or other named insured will be called on to cover a loss.

- b. Automobile Liability Insurance. Automobile liability insurance with limits not less than \$2,000,000 per person/per occurrence.
- c. Workers' Compensation Insurance. Workers' Compensation Insurance for all of Contractor's employees shall be in strict compliance with State laws, including a waiver of subrogation and Employer's Liability Insurance with limits of at least \$1,000,000.

For work or services deemed public works, by signing this Agreement, Contractor is certifying, pursuant to Section 1861 of the California Labor Code, that: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this Contract."

- d. Certificate of Insurance. Contractor shall file a certificate of insurance with the City prior to the City's execution of this Agreement, and prior to engaging in any operation or activity set forth in this Agreement. The Certificate of Insurance shall provide in writing that the insurance afforded by this Certificate shall not be suspended, voided, canceled, reduced in coverage or in limits without providing notice to the City in accordance with California Insurance Code section 677.2 which requires the notice of cancellation to: 1) include the effective date of the cancellation; 2) include the reasons for the cancellation; and 3) be given at least 30 days prior to the effective date of the cancellation, except that in the case of cancellation for nonpayment of premiums or for fraud, the notice shall be given no less than 10 days prior to the effective date of the cancellation. Notice shall be sent by certified mail, return receipt requested. In addition, the insured shall provide thirty (30) days prior written notice to the City of any cancellation, suspension, reduction of coverage or in limits, or voiding of the insurance coverage required by this agreement. The City reserves the right to require complete certified copies of policies.
- e. Subcontractors. Contractor shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage's for subcontractors shall be subject to all of the requirements stated in this Agreement, including but not limited to naming additional insureds.
- f. Waiver of Subrogation. The insurer agrees to waive all rights of subrogation against the City, its officers, employees and agents.
- g. Defense Costs. Coverage shall be provided on a "pay on behalf of" basis, with defense costs payable in addition to policy limits. There shall be no cross-liability exclusions.

- 7. **Independent Contractor.** The Contractor is an independent contractor retained by the City. All personnel employed by the Contractor, including subcontractors, and personnel of subcontractors, are not and shall not be employees of the City.
- 8. **Contractor’s Warranty.** Contractor shall bear the risk of loss or damage to any goods associated with the services until delivered to and accepted by City. Contractor further warrants that all work done and goods provided under this Agreement shall: a) meet all conditions of the Agreement; b) shall be free from all defects in design, material and workmanship; and 3) shall be fit for the purposes intended. If any defects occur within the 12 months following acceptance, Contractor shall be solely responsible for the correction of those defects.
- 9. **Labor Code/Prevailing Wages.** The work performed under this Agreement is a “public work” and prevailing wage laws shall apply. No less than the general prevailing rate of per diem wages, and not less than the general prevailing rate of per diem wages for holidays and overtime work, for each craft, classification or type of worker needed to execute the work under this Agreement shall be paid to all workers, laborers and mechanics, electricians, employed in the execution of the work by the Contractor or any subcontractor doing or contracting to do any part of the work. The appropriate determination of the Director of the California Department of Industrial Relations shall be filed at the City Clerk’s Office and available for inspection. Contractor shall post, at each job site, a copy of the prevailing rate of per diem wages.

To the extent applicable, Contractor shall comply with all requirements of the California Labor Code, including but not limited to, Labor Code sections: 1773.2 (regarding posting wage determinations at each job site); section 1776 (regarding the certification, maintenance, and availability for inspection of payroll records); section 1777.5 (regarding employment of apprentices); section 1810 (regarding a legal day’s work as 8 hours of labor); and section 1775 (regarding penalties for violations). The Contractor shall forfeit fifty dollars (\$50.00) for each calendar day or portion thereof for each worker paid less than the stipulated prevailing rates for any public work done under the Agreement by it or by any subcontractor under Contractor

- 10. **Notices.** All notices, demands, requests or approvals to be given under this Agreement shall be given in writing and conclusively shall be deemed served when delivered personally or on the second business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided.

To Contractor: _____

To City: City Manager
 City of Pleasanton
 P.O. Box 520
 Pleasanton, CA 94566

11. **Miscellaneous Provisions.**

- a. City may terminate this Agreement at any time, including failure to adhere to OSHA Safety Requirements, by mailing a notice to Contractor. Contractor shall be paid for that portion of work or services already completed by Contractor as approved by City.

- b. Contractor acknowledges that time is of the essence regarding the performance of this Agreement.
- c. Contractor shall not assign or transfer this Agreement.
- d. If either City or Contractor waives a breach of this Agreement, such waiver shall not constitute a waiver of other or succeeding breaches of this Agreement.
- e. This Agreement may only be modified by a writing signed by the authorized representative of both parties.
- f. Contractor covenants that it has obtained and will keep in effect during the term of the Agreement all certificates, licenses, including a City Business License, permits or the like required by any federal, state or local regulatory agency in order to perform the work under this Agreement.
- g. Contractor shall comply with all federal, state and local laws, regulations and rules, including but not limited to applicable safety and environmental laws. Contractor shall bear full and exclusive responsibility for any release of hazardous or non-hazardous substances and disposal of hazardous wastes.
- h. The Contractor will permit the City to audit, examine and make copies of all contracts, invoices, payrolls and other documents or data relating to this Agreement. Such records shall be maintained for three years from the date of final payment under this Agreement.
- i. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with U.S. federal E-Sign Act of 2000 (15 U.S. Code §7001 et seq.), California Uniform Electronic Transactions Act (Cal. Civil Code §1633.1 et seq.), or other applicable law) or other transmission method, and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.
- j. This Agreement shall be governed by the laws of the State of California, with venue for any action under this Agreement in Alameda County, California.
- k. This Agreement constitutes the entire understanding of the parties.

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

CITY OF PLEASANTON

CONTRACTOR –

Gerry Beaudin, City Manager

By:

Signature

Print name

ATTEST:

Title: _____

Jocelyn Kwong, City Clerk

*[If Contractor is a corporation, signatures must
comply with California Corporations Code §313]*

APPROVED AS TO FORM:

Signature

Daniel Sodergren, City Attorney

Print name

Title: _____