



Item No. 9(G)

REPORT TO THE CITY COUNCIL

DATE: MAY 22, 2018

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: GEOFF ENGLISH, PUBLIC WORKS SPECIAL PROJECT COORDINATOR

RE: CONSIDERATION OF AWARD OF CONTRACT FOR ANNUAL TREE TRIMMING SERVICES

RECOMMENDATION:

It is recommended City Council award and contractor services agreement for annual tree trimming services to A & T Arborist in the amount \$82,109.00.

BACKGROUND:

Last year, the City Council approved a new contract Citywide tree trimming program. The goal of the program is to trim all street trees on a four to five year cycle. Street tree trimming improves the appearance of the City, better protects the health of the trees, and removes hazards to the public.

The City maintains approximately 2,131 trees, a majority of which are trees planted in the public right-of-way. All of the City-maintained trees require periodic risk reduction pruning and standard tree trimming maintenance to minimize tree limb failures that may cause damage or injury. City staff has previously completed some level of tree trimming work. However, the limited size of the City's Public Works Department maintenance crew and the increasing maintenance needs at other facilities has necessitated the reliance on private tree trimming firms.

The City Council previously allocated \$60,000 in the current fiscal year budget for contracting with a private tree trimming firm for this service. In FY 2016/17, a contract was awarded to Gutierrez Handyman & Tree Service to trim City-maintained street trees in the southeast quadrant. This contract has since expired. The intent of City staff is to have approximately one quarter of the city street trees trimmed each year.

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DISCUSSION:

On April 10, 2018, formal bid documents for tree trimming services were prepared and distributed. The services requested included three phases of tree trimming services:

1. Risk reduction tree trimming at City Park
2. Tree trimming to increase street light effectiveness
3. Annual street tree trimming

By the due date of May 4, 2018, four (4) firms submitted bids. (Attachment 1) The low bidding firm, Ortiz Tree Trimming out of King City was considered to be "non-responsive" as they are not registered with the State of California Department of Industrial Regulations and does not pay prevailing wage. The State of California Code of Regulations mandate that prevailing wage be paid for certain service contracts for public agencies. The mandate applies to work exceeding \$1,000 per contract and does apply to tree trimming services. City staff has provided the owner of Ortiz Tree Trimming with information about an upcoming workshop on prevailing wage conducted by the Central Coast Builders Association in Salinas.

The responsive low-bidder is A&T Arborists of Atascadero in the amount of \$146,133. The largest portion of the A&T Arborists was for the trimming of 602 street trees in Southwest quadrant of the city. A copy of the bid form is attached. (Attachment #2) The cost for trimming these 602 street trees is \$212 per tree. In order to keep the cost of this service within approved budget limits, the number of street to be trimmed in FY 2018/19 is proposed to be reduced to 300. If authorized, staff will identify specific blocks the street trees in highest need of risk reduction pruning.

It is recommended that the City Council award a contract to A&T Arborists in the amount of \$82,000 for tree trimming services. (Attachment #3)

COST ANALYSIS:

Award of this contract will result in expenditures of \$18,000 from Fiscal Year 2017/2018 and an additional \$63,000 from fiscal year 2018/19. There is currently a balance of approximately \$26,500 in contract services in the current FY for tree trimming services. A total of \$70,000 is budgeted in the next fiscal year for contracting this service.

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ENVIRONMENTAL REVIEW:

Staff has performed a preliminary environmental assessment of this project and has determined that it falls within the Categorical Exemption set forth in CEQA Guidelines, section 15301 as this contract is for the maintenance of existing facilities. Furthermore, none of the exceptions to Categorical Exemptions set forth in the CEQA Guidelines, section 15300.2 apply to this project.

ALTERNATIVES:

The following alternatives are provided for the Council's consideration:

1. Approve staff's recommendation to award the contract to A&T Arborists;
2. Do not approve staff's recommendation to award the contract and direct staff to revise and rebid the proposed tree trimming work;
3. Provide other direction to staff.

Exhibits:

1. Formal Bids Results- Tree Trimming Services
2. A&T Arborists Bid Form
3. Agreement

Submitted by: 
Geoff English, Public Works Special Project Coordinator

Approved by: 
Steven Adams, City Manager

City of King

212 S. Vanderhurst Avenue
King City, CA 93930
Ph.(831) 385-3281 Fax (831) 385-6887



KING CITY
C A L I F O R N I A

**OFFICIAL
BID OPENING RESULTS**

PROJECT: Bid Opening- 2018 Tree Trimming Service

**Date: 05/03/18 4:00 PM
City Council Chamber**

<u>Bidder's Name</u>	<u>Amount of Bid</u>
1. <u>Sam's Tree Service</u>	<u>\$557,222.00</u>
2. <u>A & T Arborists</u>	<u>\$146,133.00</u>
3. <u>Tope's Tree Service Inc.</u>	<u>\$195,668.00</u>
4. <u>Ortiz's Tree Service</u>	<u>\$71,700.00</u>
5. _____	_____
6. _____	_____
7. _____	_____
8. _____	_____
9. _____	_____
10. _____	_____
11. _____	_____
12. _____	_____

Bid Opening by: 
Witness: Lucia Arsonne

BASE FORMAL QUOTATION FORM

Pursuant to and in compliance with the *Request for Formal Quotation and Specifications* related to the project: **TREE TRIMMING SERVICES**

The undersigned bidder, having become thoroughly familiar with the stipulations listed on the Formal Quotation Form and with the aforementioned General Conditions and Specifications for the above mentioned project and with the local conditions affecting the performance and the cost of the work to be done, hereby proposes and agrees to fully provide the described services (including the furnishing of any and all labor, materials, tools, expendable equipment and transportation services necessary to fully deliver the equipment) in strict accordance with all applicable state and local laws for the total Quotation sum of:

QTY.	UNIT	DESCRIPTION	UNIT COST	TOTAL
1	LS	Phase I- City Park Risk Reduction Trimming	14328.00	14328.00
37	EA	Phase II- Street Light Tree Trimming	112.00	4181.00
602*	EA	Phase III- SW Quadrant Street Tree Trimming	212.00	127624.00
			TOTAL:	146,133.00

*- The actual number of trees may be different than listed. Additionally, the City, for budgetary limitations, may reduce the total number of trees to be trimmed in phase III.

Company Name: ATT Arborists

Company DIR #: 10000 - 26739

Mailing Address: PO Box 1311

Templeton, CA 93465

Phone Number: 805 - 434 - 0131

Fax Number: 805 - 466 - 1528

Email: salvarez@tcsn.net

Signature of Vendor Rep:  Date: 5/2/18

Return to: Geoff English
Public Works Special Project Coordinator
City of King
212 S. Vanderhurst Avenue
King City CA 93930

All questions or requests for additional information must be submitted via email to Geoff English at genGLISH@kingcity.com no later than Thursday, April 26, 2018 at 5pm.

**BIDS ARE DUE BY 2:00PM ON THURSDAY, MAY 3, 2018
FAXED OR EMAIL QUOTATIONS WILL NOT BE ACCEPTED**

**AGREEMENT FOR PUBLIC WORKS SERVICES
BETWEEN THE CITY OF KING AND
CENTRAL VALLEY STRIPING**

THIS AGREEMENT FOR PUBLIC WORKS SERVICES (herein "Agreement") is made and entered into this 22th day of May, 2018 ("Effective Date") by and between the City of King, a California municipal corporation ("City") and A&T Arborist, ("Contractor"). City and Contractor are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties".

RECITALS

A. City has sought, by issuance of a Formal of Bid Request for Quotation, the performance of the services defined and described particularly in Article 1 of this Agreement.

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

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

D. The Parties desire to formalize the selection of Contractor for 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. WORK OF CONTRACTOR

1.1 Scope of Work.

In compliance with all terms and conditions of this Agreement, the Contractor shall provide those services specified in the "Scope of Work" attached hereto as Exhibit "A" and incorporated herein by this reference, which may be referred to herein as the "services" or "work" hereunder. As a material inducement to the City entering into this Agreement, Contractor represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the work required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the work and services contemplated herein. Contractor shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Contractor covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be both of good quality as well as 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 first-class firms performing similar work under similar circumstances.

1.2 [Reserved]

1.3 Compliance with Law.

Contractor 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 Compliance with California Labor Law.

(a) Public Work. The Parties acknowledge that the work to be performed under this Agreement is a “public work” as defined in Labor Code Section 1720 and that this Agreement is therefore subject to the requirements of Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code relating to public works contracts and the rules and regulations established by the Department of Industrial Relations (“DIR”) implementing such statutes. The work performed under this Agreement is subject to compliance monitoring and enforcement by the DIR. Contractor shall post job site notices, as prescribed by regulation.

(b) Prevailing Wages. Contractor shall pay prevailing wages to the extent required by Labor Code Section 1771. Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages are on file at City Hall and will be made available to any interested party on request. By initiating any work under this Agreement, Contractor acknowledges receipt of a copy of the Department of Industrial Relations (DIR) determination of the prevailing rate of per diem wages, and Contractor shall post a copy of the same at each job site where work is performed under this Agreement.

(c) Penalty for Failure to Pay Prevailing Wages. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. The Contractor shall, as a penalty to the City, forfeit two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any public work done pursuant to this Agreement by Contractor or by any subcontractor.

(d) Payroll Records. Contractor shall comply with and be bound by the provisions of Labor Code Section 1776, which requires Contractor and each subcontractor to: keep accurate payroll records and verify such records in writing under penalty of perjury, as specified in Section 1776; certify and make such payroll records available for inspection as provided by Section 1776; and inform the City of the location of the records.

(e) Apprentices. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1777.5, 1777.6, and 1777.7 and California Code of Regulations Title 8, Section 200 *et seq.* concerning the employment of apprentices on public works projects.

Contractor shall be responsible for compliance with these aforementioned Sections for all apprenticeable occupations. Prior to commencing work under this Agreement, Contractor shall provide City with a copy of the information submitted to any applicable apprenticeship program. Within sixty (60) days after concluding work pursuant to this Agreement, Contractor and each of its subcontractors shall submit to the City a verified statement of the journeyman and apprentice hours performed under this Agreement.

(f) Eight-Hour Work Day. Contractor acknowledges that eight (8) hours labor constitutes a legal day's work. Contractor shall comply with and be bound by Labor Code Section 1810.

(g) Penalties for Excess Hours. Contractor shall comply with and be bound by the provisions of Labor Code Section 1813 concerning penalties for workers who work excess hours. The Contractor shall, as a penalty to the City, forfeit twenty-five dollars (\$25) for each worker employed in the performance of this Agreement by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code. Pursuant to Labor Code section 1815, work performed by employees of Contractor in excess of eight (8) hours per day, and forty (40) hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than one and one-half (1½) times the basic rate of pay.

(h) Workers' Compensation. California Labor Code Sections 1860 and 3700 provide that every employer will be required to secure the payment of compensation to its employees if it has employees. In accordance with the provisions of California Labor Code Section 1861, Contractor certifies as follows:

"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."

Contractor's Authorized Initials _____

(i) Contractor's Responsibility for Subcontractors. For every subcontractor who will perform work under this Agreement, Contractor shall be responsible for such subcontractor's compliance with Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code, and shall make such compliance a requirement in any contract with any subcontractor for work under this Agreement. Contractor shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractor's compliance, including without limitation, conducting a review of the certified payroll records of the subcontractor on a periodic basis or upon becoming aware of the failure of the subcontractor to pay the subcontractor's workers the specified prevailing rate of wages. Consultant shall diligently take corrective action to halt or rectify any such failure by any subcontractor.

1.5 Licenses, Permits, Fees and Assessments.

Contractor shall obtain at its sole cost and expense such licenses, permits, registrations, and approvals as may be required by law for the performance of the services required by this Agreement. Contractor 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 Contractor's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officials, officers, employees or agents of City, against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

1.6 Familiarity with Work.

(a) By executing this Agreement, Contractor warrants that Contractor (i) has thoroughly investigated and considered the scope of work 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, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder.

(b) Contractor shall promptly, and before the following conditions are disturbed, notify the City, in writing, of any: (i) material Contractor believes may be hazardous waste as defined in Section 25117 of the Health & Safety Code required to be removed to a Class I, II, or III disposal site in accordance with existing law; (ii) subsurface, unknown or latent conditions, materially different from those indicated; or (iii) unknown physical conditions at the site of any unusual nature, different from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement, and will materially affect the performance of the services hereunder.

(c) City shall promptly investigate the conditions, and if it finds that the conditions do materially differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the work, shall issue a change order per Section 1.10 of this Agreement.

(d) In the event that a dispute arises between City and Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date set, but shall proceed with all work to be performed under the Agreement. Contractor shall retain any and all rights provided either by contract or by law, which pertain to the resolution of disputes and protests between the contracting parties.

1.7 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 hereafter specified, neither party shall be responsible for the service of the other.

1.8 Additional Work and Change Orders.

(a) 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 Work or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written change order is first given by the Contract Officer to the Contractor, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Contractor ("Change Order"). All Change Orders must be signed by the Contractor and Contract Officer prior to commencing the extra work thereunder.

(b) Any increase in compensation of up to ten percent (10%) of the Contract Sum or \$25,000, whichever is less; or any increase in the time to perform of up to one hundred eighty (180) days; and does not materially affect the Work and which are not detrimental to the Work or to the interest of the City, may be approved by the Contract Officer. Any increase in compensation of up to ten percent (10%) of the Contract Sum, or a total compensation amount up to \$25,000, whichever is less; or any increase in the time to perform of up to one hundred eighty (180) days; and does not materially affect the Work and which are not detrimental to the Work or to the interest of the City, may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively, must be approved by the City Council.

(c) Any adjustment in the Contract Sum for a Change Order must be in accordance with the unit prices set forth in the Bid Schedule in Exhibit "C". If the rates in the Schedule of Compensation do not cover the type of work in the Change Order, the cost of such work shall not exceed an amount agreed upon in writing and signed by Contractor and Contract Officer. If the cost of the Change Order cannot be agreed upon, the City will pay for actual work of the Change Order completed, to the satisfaction of the City, as follows:

(i) Labor: the cost of labor shall be the actual cost for wages of workers and subcontractors performing the work for the Change Order at the time such work is done. The use of labor classifications that would increase the cost of such work shall not be permitted.

(ii) Materials and Equipment: the cost of materials and equipment shall be at cost to Contractor or lowest current price which such materials and equipment are reasonably available at the time the work is done, whichever is lower.

(iii) If the cost of the extra work cannot be agreed upon, the Contractor must provide a daily report that includes invoices for labor, materials and equipment costs for the work under the Change Order. The daily report must include: list of names of workers, classifications, and hours worked; description and list of quantities of materials used; type of equipment, size, identification number, and hours of operation, including loading and transportation, if applicable; description of other City authorized services and expenditures in such

detail as the City may require. Failure to submit a daily report by the close of the next working day may, at the City's sole and absolute discretion, waive the Contractor's rights for that day.

(d) It is expressly understood by Contractor that the provisions of this Section 1.10 shall not apply to services specifically set forth in the Scope of Work. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Work may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other contractors.

(e) No claim for an increase in the Contract Sum or time for performance shall be valid unless the procedures established in this Section are followed.

1.9 Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

1.10 Trenching and Excavation.

In accordance with Public Contract Code Section 7104, whenever the digging of trenches or other excavations extend deeper than four feet below the surface, the Contractor shall promptly, and before the following conditions are disturbed, notify the City in writing of any: 1) Material that the Contractor believed may be material that is hazardous waste, as defined in Health and Safety Code Section 25117, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; 2) Subsurface or latent physical conditions at the site differing from those indicated; or 3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract. The City shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the work, the City shall issue a change order under the procedures described in the Contract. In the unlikely event that a dispute arises between the City and the Contractor regarding whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all work to be performed under the Contract. The Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties. Where applicable, Contractor shall comply with the trench or excavation permit requirement found in Labor Code Section 6500 and the excavation safety requirements found in Labor Code Section 6705.

ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.

2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Contractor the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed nineteen thousand, five hundred and five dollars and twenty cents (\$19,505.20) (the "Contract Sum"), unless additional compensation is approved pursuant to Section 1.10.

2.2 Method of Compensation.

The method of compensation may include: (i) a lump sum payment upon completion, (ii) payment in accordance with specified unit prices per measured quantities, tasks or the percentage of completion of the services less the contract retention;, (iii) payment for time and materials based upon the Contractor's rates as specified in the Schedule of Compensation, provided that (a) time estimates are provided for the performance of sub tasks, (b) contract retention is maintained and (c) the Contract Sum is not exceeded; 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 Contractor 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 Contractor is required to attend additional meetings to facilitate such coordination, Contractor shall not be entitled to any additional compensation for attending said meetings.

2.4 Invoices.

Each month Contractor 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, Contractor 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. Contractor shall not invoice City for any duplicate services performed by more than one person.

City shall, as soon as practicable, independently review each invoice submitted by the Contractor to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Contractor which are disputed by City, or as provided in Section 7.3, City will cause Contractor to be paid, subject to the Schedule of Compensation (Exhibit "C"), within thirty (30)

days of receipt of Contractor's correct and undisputed invoice; however, Contractor 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 that City does not cause Contractor to be paid within thirty (30) days of receipt of an undisputed and properly submitted invoice, Contractor shall be entitled to the payment of interest to the extent allowed under Public Contract Code Section 20104.50. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Contractor, not later than seven (7) days after receipt by the City, for correction and resubmission. Returned invoices shall be accompanied by a document setting forth in writing the reasons why the payment request was rejected. Review and payment by the City of any invoice provided by the Contractor shall not constitute a waiver of any rights or remedies provided herein or any applicable law. Notwithstanding, if the work is being funded by grant or other funding administered by a third party outside the control of the City, such as the County of Monterey, Contractor acknowledges and agrees this may increase processing time for payment, and no payment of interest shall accrue if the City has used reasonable efforts to cause the Contractor to be paid within thirty (30) days.

2.5 Waiver.

Payment to Contractor for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Contractor.

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.

Contractor 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 "D" and incorporated herein by this reference. When requested by the Contractor, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

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 Contractor, 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 Contractor 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's determination

shall be final and conclusive upon the parties to this Agreement. In no event shall Contractor be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Contractor's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Inspection and Final Acceptance.

City may inspect and accept or reject any of Contractor's work under this Agreement, either during performance or when completed. City shall reject or finally accept Contractor's work within forty-five (45) days after submitted to City. City shall accept work by a timely written acceptance, otherwise work shall be deemed to have been rejected. City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as to amount to fraud. Acceptance of any work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Articles 1 and 5, pertaining to warranty and indemnification and insurance, respectively.

3.5 Term.

Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding one (1) years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D").

ARTICLE 4. COORDINATION OF WORK

4.1 Representatives and Personnel of Contractor.

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

_____	_____
(Name)	(Title)
_____	_____
(Name)	(Title)
_____	_____
(Name)	(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 Contractor and devoting sufficient time to personally supervise the services hereunder. All personnel of Contractor, 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 Contractor without the express

written approval of City. Additionally, Contractor shall make every reasonable effort to maintain the stability and continuity of Contractor's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Contractor shall notify City of any changes in Contractor's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

4.2 Status of Contractor.

Contractor 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. Contractor shall not at any time or in any manner represent that Contractor or any of Contractor's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Contractor, nor any of Contractor'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. Contractor expressly waives any claim Contractor may have to any such rights.

4.3 Contract Officer.

The Contract Officer shall be the City Manager or such person as may be designated by the City Manager. It shall be the Contractor's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Contractor 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 Contractor, 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 Contractor's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Contractor 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. Contractor 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 Contractor in its business or otherwise or a joint venturer or a member of any joint enterprise with Contractor.

4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Contractor 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. All subcontractors shall

obtain, at its or Contractor's expense, such licenses, permits, registrations and approvals (including from the City) as may be required by law for the performance of any services or work under this Agreement. 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 Contractor, 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 Contractor or any surety of Contractor of any liability hereunder without the express consent of City.

ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS

5.1 Insurance Coverages.

The Contractor 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) Commercial 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) Workers Compensation Insurance. A policy of workers 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 the Contractor 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 Contractor 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 \$1,000,000.00. Said policy shall include coverage for owned, non-owned, leased, hired cars and any automobile.

(d) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements in Exhibit "B".

(e) Subcontractors. Contractor 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. For Commercial General Liability (CGL) coverage, subcontractors shall provide coverage with a format at least as broad as CG 20 38 04 13.

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 may apply in excess of, and not contribute with Contractor's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officials, officers, employees and agents and their respective insurers. Moreover, 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 at least ten (10) days prior written notice to City, or at least ten (10) days prior written notice to City in the case of cancellation for nonpayment. In the event any of said policies of insurance are cancelled, the Contractor 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 Contractor has provided the City with Certificates of Insurance, additional insured endorsement forms 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 and endorsements to 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.

All certificates shall name the City as additional insured (providing the appropriate endorsement) and shall conform to the following "cancellation" notice:

"CANCELLATION:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATED THEREOF, AT LEAST TEN (10) DAYS ADVANCED WRITTEN NOTICE OF CANCELLATION SHALL BE DELIVERED TO CITY AT (EXCEPT CANCELLATION DUE TO NONPAYMENT SHALL REQUIRE TEN (10) DAYS ADVANCED WRITTEN NOTICE)."

Contractor's Authorized Initials _____

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 Contractor performs; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or any automobiles owned, leased, hired or borrowed by Contractor. 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. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

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 Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. The Contractor agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which the Contractor may be held responsible for the payment of damages to any persons or property resulting from the Contractor's activities or the activities of any person or persons for which the Contractor is otherwise responsible nor shall it limit the Contractor's indemnification liabilities as provided in Section 5.3.

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

In the event of a conflict, the terms of Section 5.1 and 5.2 shall have precedence and prevail over any form of Certificate of Insurance, or any Insurance Endorsement, included in the Contract Documents.

5.3 Indemnification.

To the full extent permitted by law, Contractor agrees to indemnify, defend and hold harmless the City, its officers, employees, volunteers and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, 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 Contractor, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Contractor is legally liable ("indemnitors"), or arising from Contractor's or indemnitors' reckless or willful misconduct, or arising from Contractor's or indemnitors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Contractor 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) Contractor will promptly pay any judgment rendered against the Indemnified Parties 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 Contractor hereunder; and Contractor agrees to save and hold the Indemnified Parties harmless therefrom;

(c) In the event any Indemnified Party is made a party to any action or proceeding filed or prosecuted against Contractor 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 Contractor hereunder, Contractor agrees to pay to the Indemnified Party any and all costs and expenses incurred by the Indemnified Party in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

In addition, Contractor agrees to indemnify, defend and hold harmless the Indemnified Parties from any and all claims and liabilities for any infringement of patent rights, copyrights or trademark on any person or persons in consequence of the use by the Indemnified Parties of articles to be supplied by Contractor under this Agreement, and of which the Contractor is not the patentee or assignee or has not the lawful right to sell the same.

Contractor shall incorporate similar indemnity agreements with its subcontractors and if it fails to do so Contractor 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 Contractor in the performance of professional services and work 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 Contractor and shall survive termination of this Agreement.

5.4 Notification of Third-Party Claims.

City shall timely notify Contractor of the receipt of any third-party claim relating to the work under this Agreement. City shall be entitled to recover from Contractor its reasonable costs incurred in providing such notification.

5.5 Sufficiency of Insurer or Surety.

Insurance and bonds 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's 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 City Manager or Finance Director 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 Contractor agrees that the minimum limits of the insurance policies and the performance bond required by Section 5.5 may be changed accordingly upon receipt of written notice from the Risk Manager.

5.6 Substitution of Securities.

Pursuant to Public Contract Code Section 22300, substitution of eligible equivalent securities for any funds withheld to ensure performance under this Agreement may be permitted at the request and sole expense of the Contractor unless otherwise required by Section 22300.

Alternatively, the Contractor may, pursuant to an escrow agreement in a form prescribed by Public Contract Code Section 22300, request payment of retentions funds earned directly to the escrow agent at the sole expense of the Contractor unless otherwise required by Section 22300. The escrow agreement for security deposits in lieu of retention shall be substantially similar to the form provided in Public Contract Code Section 22300(f), which is incorporated herein by this reference.

5.7 Release of Securities.

City shall release the Performance and Labor Bonds when the following have occurred:

- (a) Contractor has made a written request for release and provided evidence of satisfaction of all other requirements under Article 5 of this Agreement;
- (b) the work has been accepted; and
- (c) after passage of the time within which lien claims are required to be made pursuant to applicable laws; if lien claims have been timely filed, City shall hold the Labor Bond until such claims have been resolved, Contractor has provided statutory bond, or otherwise as required by applicable law.

ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1 Records.

Contractor shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies, certified and accurate copies of payroll records in compliance with all applicable laws, 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 Contractor's business, custody of the books and records may be given to City, and access shall be provided by Contractor's successor in interest. Notwithstanding the above, the Contractor shall fully cooperate with the City in providing access to the books and records if a public records request is made and disclosure is required by law including but not limited to the California Public Records Act.

6.2 Reports.

Contractor 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. Contractor 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, Contractor agrees that if Contractor 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 Contractor is providing design services, the cost of the project being designed, Contractor shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Contractor 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 Contractor, 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 Contractor 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 Contractor will be at the City's sole risk and without liability to Contractor, and Contractor's guarantee and warranties shall not extend to such use, reuse or assignment. Contractor may retain copies of such documents for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City for all damages resulting therefrom. Moreover, Contractor with respect to any documents and materials that may qualify as "works made for hire" as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed "works made for hire" for the City.

6.4 Confidentiality and Release of Information.

(a) information gained or work product produced by Contractor in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Contractor. Contractor 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) Contractor, 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 Contractor gives City notice of such court order or subpoena.

(c) If Contractor, or any officer, employee, agent or subcontractor of Contractor, provides any information or work product in violation of this Agreement, then City

shall have the right to reimbursement and indemnity from Contractor for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Contractor's conduct.

(d) Contractor shall promptly notify City should Contractor, 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 Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. 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 Monterey, 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 Northern District of California, in the County of Santa Clara, State of California.

7.2 Disputes and Claims.

(a) Default; Cure. In the event that Contractor is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Contractor for any work performed after the date of default. Instead, the City may give notice to Contractor of the default and the reasons for the default. The notice shall include the timeframe in which Contractor 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 Contractor 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 Contractor 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 Contractor'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.

(b) Public Contract Code Sec. 9204 Claims Procedure (AB 626). AB 626, approved by the Governor on September 29, 2016, created a new Public Contract Code Section 9204, which specifies new procedural requirements for the filing of claims by a contractor, or by a contractor on behalf of a subcontractor, on any public works project effective January 1,

2017. The parties shall comply with the provisions of Public Resources Code Section 9204, which are fully set forth in Exhibit "E."

(c) Dispute Resolution. To the extent not superseded by Public Contract Code Section 9204, this Agreement is subject to the provisions of Article 1.5 (commencing at Section 20104) of Division 2, Part 3 of the California Public Contract Code regarding the resolution of public works claims of less than \$375,000. Article 1.5 mandates certain procedures for the filing of claims and supporting documentation by the Contractor, for the response to such claims by the City, for a mandatory meet and confer conference upon the request of the Contractor, for mandatory non-binding mediation in the event litigation is commenced, and for mandatory judicial arbitration upon the failure to resolve the dispute through mediation. This Agreement hereby incorporates the provisions of Article 1.5 as though fully set forth herein.

7.3 Retention of Funds.

Contractor hereby authorizes City to deduct from any amount payable to Contractor (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 Contractor's acts or omissions in performing or failing to perform Contractor'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 Contractor, 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 Contractor 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 Contractor 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. Notwithstanding any contrary provision herein, Contractor shall file a claim pursuant to Government Code Sections 905 et seq. and 910 et seq., in order to pursue a legal action under this Agreement.

7.7 Liquidated Damages.

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Contractor and its sureties shall be liable for and shall pay to the City the sum of one hundred dollars (\$ 100.00) as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit "D"). The City may withhold from any monies payable on account of services performed by the Contractor any accrued liquidated damages.

7.8 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. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Contractor, except that where termination is due to the fault of the Contractor, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Contractor reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Contractor may determine. Upon receipt of any notice of termination, Contractor shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Contractor has initiated termination, the Contractor 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 the Contractor has initiated termination, the Contractor shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

7.9 Termination for Default of Contractor.

If termination is due to the failure of the Contractor 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 Contractor 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 Contractor for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

7.10 Attorneys' Fees.

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

7.11 Unfair Business Practices Claims.

In entering into this Agreement, Contractor offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2, (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials related to this Agreement. This assignment shall be made and become effective at the time the City renders final payment to the Contractor without further acknowledgment of the Parties.

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 Contractor, 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 Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest.

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

8.3 Covenant Against Discrimination.

Contractor 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, marital status, national origin, ancestry, or other protected class in the performance of this Agreement. Contractor 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, gender, sexual orientation, marital status, national origin, ancestry, or other protected class.

8.4 Unauthorized Aliens.

Contractor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, *et seq.*, as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Additionally, Contractor acknowledges that Contractor, and all subcontractors hired by Contractor to perform services under this Agreement, are aware of and understand the Immigration Reform and Control Act ("IRCA"). Contractor is and shall remain in compliance with the IRCA and shall ensure that any subcontractors hired by Contractor to perform services under this Agreement are in compliance with the IRCA. Further, should Contractor so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement in violation of the law, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Contractor hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 Notices.

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer (with her/his name and City title), City of King, 212 South Vanderhurst Avenue, King City, CA 93930 and in the case of the Contractor, to the person at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section. All correspondence relating to this Agreement shall be serialized consecutively.

9.2 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.

9.3 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.

9.4 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 Contractor and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

9.5 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.

9.6 Warranty & Representation of Non-Collusion.

No official, officer, or employee of City has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of City participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interests found to be "remote" or "non-interests" pursuant to Government Code Sections 1091 or 1091.5. Contractor warrants and represents that it has not paid or given, and will not pay or give, to any third party including, but not limited to, any City official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded any agreement. Contractor further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any City official, officer, or

employee, as a result of consequence of obtaining or being awarded any agreement. Contractor is aware of and understands that any such act(s), omission(s) or other conduct resulting in such payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

Contractor's Authorized Initials _____

9.7 Authority to Act on Behalf of Entity.

The person(s) executing this Agreement on behalf of any entity that is a Party 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.

[SIGNATURES ON FOLLOWING PAGE]

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

CITY:

CITY OF KING, a municipal corporation

Steven Adams, City Manager

ATTEST:

Erica Sonne, Deputy City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

Shannon Chaffin, City Attorney

CONTRACTOR:

*By: _____
Name:
Title:

*By: _____
Name:
Title:

Address: _____

***CONTRACTOR'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE EVIDENCE OF AUTHORITY TO EXECUTE DOCUMENTS FOR ANY ENTITY CONTRACTOR MUST BE PROVIDED.**

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF MONTEREY

On _____, 2018 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

CAPACITY CLAIMED BY SIGNER	DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/> INDIVIDUAL	_____
<input type="checkbox"/> CORPORATE OFFICER	TITLE OR TYPE OF DOCUMENT
_____	_____
<input type="checkbox"/> PARTNER(S) TITLE(S) <input type="checkbox"/> LIMITED	NUMBER OF PAGES
<input type="checkbox"/> GENERAL	_____
<input type="checkbox"/> ATTORNEY-IN-FACT	DATE OF DOCUMENT
<input type="checkbox"/> TRUSTEE(S)	_____
<input type="checkbox"/> GUARDIAN/CONSERVATOR	SIGNER(S) OTHER THAN NAMED ABOVE
<input type="checkbox"/> OTHER _____	_____

SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF MONTEREY

On _____, 2018 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

CAPACITY CLAIMED BY SIGNER	DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> CORPORATE OFFICER <input type="checkbox"/> PARTNER(S) TITLE(S) <input type="checkbox"/> LIMITED <input type="checkbox"/> GENERAL <input type="checkbox"/> ATTORNEY-IN-FACT <input type="checkbox"/> TRUSTEE(S) <input type="checkbox"/> GUARDIAN/CONSERVATOR <input type="checkbox"/> OTHER _____ _____	_____ TITLE OR TYPE OF DOCUMENT _____ NUMBER OF PAGES _____ DATE OF DOCUMENT _____ SIGNER(S) OTHER THAN NAMED ABOVE

SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

EXHIBIT "A"

SCOPE OF WORK

Article I. PROJECT DESCRIPTION AND SPECIFICATIONS

TREE TRIMMING SERVICES

GENERAL CONDITIONS AND SPECIFICATIONS

1. The responsible low-bid contractor, following award by the City of King City Council shall enter the City's standard Contractor Agreement and provide all required insurance.
2. The responsible low-bid contractor will secure a City of King business license before starting any work.
3. The responsible low-bid contractor must be registered with the State of California Department of Industrial Regulations by the time of bid submittal.
4. The contractor shall be licensed in California with a Class D-49 Tree Service contractor's license.
5. All work shall be completed under the direction of a person who holds a current ISA (International Society of Arboriculture) Certified Arborist credential.
6. Contractor shall deliver a level of quality that is compatible with International Society of Arboriculture (ISA) standards, American National Standards Institute (ANSI) criteria and the standards and requirements described herein in providing tree trimming services.
7. Contractor shall complete all work to the satisfaction of and under the supervision of the City of King Public Works Supervisor or designated representative.
8. Contractor shall provide service that ensures the safety of employees and the public while minimizing inconvenience to the public and disruption of traffic while working in the City.
9. Contractor shall endeavor to maintain good public relations at its worksites and shall conduct its work in a manner which will cause the least possible interference with, or annoyance to, the public.

10. The Contractor should stop work on any specific tree where an active nesting bird site is encountered. The Contractor will contact the City for further direction regarding any further work on the tree in question.
11. Contractor shall meet the work schedule dates listed in the document below.
12. Upon completion of each tree trimming work phase, a walk-through with the Public Works Supervisor and other City representatives will be conducted.

TECHNICAL SPECIFICATIONS

I. TRAFFIC CONTROL

At no time shall the Contractor commence or carry on with work that presents a hazard to pedestrians or vehicular traffic. Prior to the commencement of, and for the duration of, any work in any area, Contractor shall be responsible for traffic control and safety regulations as related to any city, state or county requirements while working on streets, highways, medians and/or roadside strips.

The design and operation of work zone traffic controls must comply with US Department of Transportation/Federal 12 highway Administrative guidelines. All operations shall be conducted by Contractor to provide maximum safety for the public according to the most recent edition of the Work Area Traffic Control Handbook.

Contractor shall display standardized warning signage when staging or working in any area that is subject to pedestrian or vehicular traffic. Contractor shall be responsible for the placement of "Sidewalk Closed" signage at the perimeter of any sidewalk or pathway that leads pedestrian traffic into the work zone.

Any operation that results in a blockage of, or produces debris which could enter into, vehicular traffic zones will require the use of a flag person equipped with, and using, a SLOW/STOP traffic paddle. Work in two-way traffic zones will require the use of two (2) flag persons. The placement of a traffic paddle into a safety cone shall not be considered a substitute for the required flag person(s). Where Contractor's work is in progress, each street shall remain open to local traffic at all times unless prior arrangements have been made and approved by the City of King Public Works Supervisor or designated representative.

II. SITE CLEANUP

Contractor shall remove branches, limbs, logs or any other debris resulting from any tree operations and clean the work site and all areas associated with the work site promptly upon completion of each task. Contractor shall endeavor to prevent spillage on streets over which work or hauling is done, and any such spillage or debris deposited on street due to Contractor operations shall be immediately cleaned up. During production trimming and removals, debris shall be removed from public rights of way and private property within one (1) hour of the completion of work on the tree from which the debris was generated.

Rights of way shall not be used to stage unattended debris generated during regular work hours. All lawn areas shall be raked, all streets/sidewalks shall be swept, and all brush, branches will be removed at the Contractors expense. Areas are to be left in a condition equal to or better than that which existed prior to the commencement of tree operations. No material is to be allowed to enter any storm drain. The Contractor may dispose of the

chips and other tree debris at the City of King Corporation Yard, located at 1001 Industrial Way, King City. Coordination with the Public Works Supervisor is required.

III. PROPERTY DAMAGE

Should any structure or property be damaged during tree operations, Contractor shall immediately notify CITY and owners or authorities. Repairs to property damaged by Contractor shall be made within forty-eight (48) hours. In the event of damage to utility lines, Contractor shall report the damages to utility and make arrangements for the utility to make repairs. Repairs on private property shall be made in accordance with the appropriate building code under permits issued by CITY. The CITY will mark and flag irrigation heads and valve boxes in City Park in advance of any work, however the Contractor shall inspect the area in advance to limit damage to the irrigation system at this facility.

Any damage caused by Contractor shall be repaired or restored at Contractor's expense to a condition similar or equal to that existing before such damage, or Contractor shall repair such damage in a manner acceptable to the Public Works Supervisor.

TREE TRIMMING WORK PHASES

PHASE I- CITY PARK HAZARD REDUCTION TREE TRIMMING

Description: Approximately forty (45) mature trees located in City Park located at 401 Division Street, King City. (Aerial photograph outlining the area is attached. - Attachment #1) A majority of the trees are Black Walnut trees and Elm trees measuring 50- 80 feet in height. All of the trees are to be inspected and all trees are to be pruned in a manner to reduce the potential risk to park users and staff. This hazard reduction tree trimming will include but not be limited to; removal of "snags", broken branches, dead and dying limbs, removal of any limbs and branches that show signs of potential failure and removal of limbs with excessive tip weight that show current signs of potential failure. The City Park Hazard Reduction Phase I is not intended to be a comprehensive tree trimming that would include routine shaping and thinning. Hazard reduction is the primary focus of the tree trimming work in this park at this time.

Payment Method for Phase I: Phase I work will be paid on a lump sum basis for all trees at this location. The lump sum amount is to be indicated on the quotation sheet below.

Schedule for Phase I: Phase I work is a one-week project beginning on Monday June 4, 2018 and conclude before Friday, June 8, 2018. All work is to be completed Monday through Friday, between the hours of 8:00am and conclude by 5:00pm. No weekend work will be allowed. Any schedule change must be approved in advance by City staff.

PHASE II- STREET LIGHT TREE TRIMMING

Description: Thirty-seven (37) City-maintained street trees located in the public Right of Way throughout King City are to be trimmed and thinned to improve the effectiveness of

the street lights. The thirty-seven trees are numbered and highlighted on the four attached plan sheets. (Attachments II – V).

Attachment #II- Sheet #1- Thirteen (13) trees; 5, 9, 11, 14, 16, 17, 20, 22, 24, 25, 27, 30 and 32.

Attachment #III- Sheet #2- Eleven (11) trees; 40, 41, 42, 43, 44, 46, 53, 54, 56, 61 and 63

Attachment #IV- Sheet #3- Eleven (11) trees: 68, 70, 71, 72, 79, 80, 85, 86, 88, 90 and 91.

Attachment #V- Sheet #4- Two (2) trees: 105 and 106.

All of the thirty-seven trees are to be inspected and all trees are to be pruned and thinned in a manner to reduce the interference with the street lights ability to cast light onto the adjacent street and sidewalk. This street light tree trimming is intended to retain and not inflict permanent damage to the trees. Branches are to be cut back from the street light pole where feasible and the trees are to be thinned to allow light to shine through the tree, however all tree trimming should be done in a manner that the tree is balanced and as uniform as practical. No tree removals will be permitted and no more than 25% of the tree canopy may be removed from any tree.

Payment Method for Phase II: Phase II work will be paid on per unit basis with each tree being considered a unit and listed as each (EA) on the quotation sheet. The average unit cost for each tree is to be indicated on the quotation sheet below. All trees will be charged at the same rate.

Schedule for Phase II: Phase II work will begin on Monday June 11, 2018 and conclude before Friday, June 30, 2018. All work is to be completed Monday through Friday, between the hours of 8:00am and conclude by 5:00pm. No weekend work will be allowed. Any schedule change must be approved in advance by City staff.

PHASE III- SOUTHWEST (SW) QUADRANT TREE TRIMMING

Description: Approximately six hundred and two (602) street trees located in public Right of Way throughout King City and at the City Park located at 401 Division Street, King City. A list of the inventory of street trees located in the Southwest quadrant of the City is attached. (Attachment VI) The actual number of trees in the southwest quadrant may differ from this inventory. Additionally, the City for budgetary limitations, may reduce the number of trees to be trimmed in Phase III.

The trees are to be pruned in a manner to remove obstructions from pedestrians and vehicle, to remove potential hazards and to reshape where necessary. This street tree trimming will include but not be limited to; removal of "snags", broken branches, dead and dying limbs, removal of any limbs and branches that show signs of potential failure; removal of limbs with excessive tip weight, "skirting up" to remove overhead obstructions for pedestrian and vehicle traffic as well as general "shaping" to properly balance the trees. All street tree trimming work should be completed in a manner to improve the condition of the tree and to promote extended lifespan. No tree removals will be permitted and no more than 25% of the tree canopy may be removed from any tree.

Payment Method for Phase III: Phase II work will be paid on per unit basis with each tree being considered a unit and listed as each (EA) on the quotation sheet. The average unit cost for each tree is to be indicated on the quotation sheet below. All trees will be charged at the same rate.

Schedule for Phase III: Phase I work will begin on or after Monday July 9, 2018 and conclude before Friday, December 21, 2018. All work is to be completed Monday through Friday, between the hours of 8:00am and conclude by 5:00pm. No weekend work will be allowed. This phase of the project has great flexibility of scheduling. Any schedule change must be approved in advance by City staff.

EXHIBIT "B"

[NOT APPLICABLE]

EXHIBIT "C"

SCHEDULE OF COMPENSATION

- I.** Contractor shall perform all work at the rates submitted as part of Contractor's Proposal, as follows:.

QTY.	UNIT	DESCRIPTION	UNIT COST	TOTAL
1	LS	Phase I- City Park Risk Reduction Trimming	\$14,328.00	\$14,328.00
37	EA	Phase II- Street Light Tree Trimming	\$113.00	\$4,181.00
300	EA	Phase III- SW Quadrant Street Tree Trimming	\$212.00	\$63,600.00
TOTAL:				\$82,109.00

- II.** Within the budgeted amounts for each item of work, and with the approval of the Contract Officer, funds may be shifted from one item's sub budget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Work is approved per Section 1.10.
- III.** The City will compensate Contractor for the work performed upon submission of a valid invoice pursuant to Section 2.4.

EXHIBIT "D"

SCHEDULE OF PERFORMANCE

- I.** Contractor shall perform all work timely in accordance with the following schedule:

TREE TRIMMING SCHEDULE OF WORK PHASES

Monday, June 4, 2018-	Phase I- City Park Risk Reduction work begins
Friday, June 8, 2018-	Phase I- City Park Risk Reduction complete
Monday, June 11, 2018	Phase II- Street Light Trimming work to begin
Friday, June 30, 2018	Phase II- Street Light Trimming work complete
Monday, July 9, 2018	Phase III- SW Quadrant Street Trees to begin
Friday, December 21, 2018	Phase III- SW Quadrant Street Tree complete

Work shall only be performed between the hours of 7:00 a.m. and 7:00 p.m., on weekdays. Work shall not be performed on Saturdays, Sundays or legal holidays.

Exceptions to the above hours of work will be permitted only after obtaining written authorization from the City.

- II.** The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.

EXHIBIT "E"

PUBLIC CONTRACT CODE SEC. 9204 NEW PUBLIC WORKS CLAIMS PROCEDURE

AB 626, approved by the Governor on September 29, 2016, created a new Public Contract Code Section 9204, which specifies new procedural requirements for claims submitted by a contractor on any public works project. These new requirements contain burdens for both private contractors and public entities. The text of this new legislation is set forth below:

Public Contract Code § 9204.

Legislative findings and declarations regarding timely and complete payment of contractors for public works projects; claims process

(a) The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.

(b) Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.

(c) For purposes of this section:

(1) "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

(A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.

(B) Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.

(C) Payment of an amount that is disputed by the public entity.

(2) "Contractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.

(3)(A) "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a

charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(B) "Public entity" shall not include the following:

(i) The Department of Water Resources as to any project under the jurisdiction of that department.

(ii) The Department of Transportation as to any project under the jurisdiction of that department.

(iii) The Department of Parks and Recreation as to any project under the jurisdiction of that department.

(iv) The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.

(v) The Military Department as to any project under the jurisdiction of that department.

(vi) The Department of General Services as to all other projects.

(vii) The High-Speed Rail Authority.

(4) "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

(5) "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier subcontractor.

(d)(1)(A) Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

(B) The claimant shall furnish reasonable documentation to support the claim.

(C) If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the

claimant a written statement identifying the disputed portion and the undisputed portion.

(D) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

(2)(A) If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(B) Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

(C) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(D) Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

(E) This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

(3) Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits

of the claim or the responsibility or qualifications of the claimant.

(4) Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

(5) If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

(e) The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

(f) A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

(g) This section applies to contracts entered into on or after January 1, 2017.

(h) Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

(i) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

Contractor's Certificate Regarding Worker's Compensation

Description of Contract:

**City of King
2018 Tree Trimming Project**

Labor Code Section 3700 Provides (in part):

"Every employer except the State shall secure the payment of compensation in one or more of the following ways:

(a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this State.

(b) By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees."

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.

Dated: _____, 20__

(Contractor)

By _____

(Official Title)

(SEAL)

(Labor Code Section 1861 provides that the above certificate must be signed and filed by the Contractor with the City prior to performing any work under this contract.



Item No. 9(1)

REPORT TO THE CITY COUNCIL

DATE: MAY 22, 2018

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: STEVEN ADAMS, CITY MANAGER

RE: CONSIDERATION OF KING CITY CHAMBER OF COMMERCE & AGRICULTURE CITY-WIDE YARD SALE AND SIDEWALK SALE

RECOMMENDATION:

It is recommended the City Council: 1) approve the King City Chamber of Commerce & Agriculture special event permit request for a City-wide Yard Sale and Sidewalk Sale on June 22, 2018 to June 24, 2018; 2) waive all garage sale permit fees and requirements during those days; and 3) waive fees for the special event permit.

BACKGROUND:

The King City Chamber of Commerce & Agriculture has submitted a special event permit request for a City-wide Yard Sale and Sidewalk Sale on June 22, 2018 to June 24, 2018. A copy of the request letter is attached. They have asked for Council authorization to promote the event and to waive any garage sale permit fees and requirements during those three days. They have also requested the special event permit fee be waived.

DISCUSSION:

The event is part of Beautification Week activities. The purpose is to enable residents and businesses to conveniently and successfully dispose of unwanted items, while diverting them from the landfill. Meanwhile, by encouraging residents and businesses to conduct them concurrently as part of a citywide event, it will help bring customers to the City. Therefore, there is a public benefit from the program and the City has approved this event and waiving the permit fees in the past.

**CITY COUNCIL
CONSIDERATION OF KING CITY CHAMBER OF COMMERCE &
AGRICULTURE CITY-WIDE YARD SALE AND SIDEWALK SALE
MAY 22, 2018
PAGE 2 OF 2**

COST ANALYSIS:

The permit fee is \$26. Garage sale permit fees are \$15. Therefore, there will be a minor loss of revenue, but the fee is set at an amount to reimburse the City for staff costs. As a result, the loss of revenue is offset by the staff time saved in not having to process the permits.

ALTERNATIVES:

The following alternatives are provided for City Council consideration:

1. Approve staff's recommendations;
2. Approve the event, but do not waive the permit fees;
3. Do not approve the event; or
4. Provide staff other direction.

ENVIRONMENTAL REVIEW:

The event is not considered a "project" for the purposes of the California Environmental Quality Act (CEQA). Therefore, it will not have the potential for resulting in either a direct physical change to the environment or a reasonably foreseeable indirect physical change in the environment. No further action is required under CEQA for City Council action.

Exhibits:

1. May 1, 2018 Letter from King City Chamber of Commerce & Agriculture

Prepared and Approved by:



Steven Adams, City Manager



King City Chamber of Commerce & Agriculture

200 Broadway St., Suite 40

King City, CA 93930

Phone (831) 385-3814

www.kingcitychamber.com kcchambermanager@kingcitychamber.com

Executive Officers

TJ Plew
President
Melissa Grindstaff
Vice President
Kathy Garcia
Treasurer
Becky Garcia
Secretary
Erin King
Past President

Board of Directors

Oscar Avalos
Marc Bloom
Rob Cullen
Adriana Granados
Kate Hestand
Jessica Potts
Sharon Pursley
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Janet Bessemer
Chamber Manager

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Newspapers
Salinas Valley Fair

May 1, 2018

Steve Adams
City of King
212 S. Vanderhurst St.
King City, CA 93930

Subject: City-Wide Yard Sale 2018

Honorable Mayor and Councilmembers:

The King City Chamber of Commerce & Agriculture requests permission again to promote a City-Wide Yard Sale, June 22nd – June 24th. The event would coincide with Beautification Week June 25th- July 1st. The intent of the City-Wide Yard Sale is threefold; it would allow residents and businesses to dispose of items, reducing the impact on landfill; it would attract people from neighboring areas to attend; and would kick off Beautification Week.

The Chamber requests that the City waive all Yard Sale fees during the event.

We request that the council consider and grant our request at its earliest convenience.

Thank you for your time and support.

Sincerely,

Janet Bessemer
Chamber Manager

