



# **REQUEST FOR PROPOSALS**

## **Tree Maintenance Services**

**March 2019**

## REQUEST FOR PROPOSAL

The City of Brentwood ("Brentwood" or "City") is accepting Proposals from qualified firms to provide Tree Maintenance Services for approximately 30,159 City owned trees in Brentwood, California.

The Contract for services resulting from this Request for Proposal (RFP) shall include the furnishing of all labor, materials and services as set forth in the Scope of Services section of this RFP. Copies of the RFP documents may be obtained from the City Parks and Recreation Department at the address listed below.

A Pre-Proposal conference will be held and interested parties are required to attend. The date will be April 11, 2019 at 9:00 a.m., local time in the City Community Center, Conference Room B at 35 Oak Street, Brentwood. Interested parties must attend the conference, which is MANDATORY to be able to submit a proposal.

Proposals are due to the City on or before 4:00 pm, local time, on Tuesday, April 30, 2019 at 150 City Park Way, Brentwood, California, 94513. Proposals received after that time or at any place other than the one stated above will not be considered. *Postmarks will also not be accepted.*

Proposals will be examined, evaluated, and as appropriate, recommended for approval to the Brentwood City Council at a meeting within approximately sixty (60) days after the final date of Proposal acceptance. City reserves the right to reject any and all Proposals, or to waive any irregularities or informalities in any Proposal or in the RFP procedures, or to postpone the final date of Proposal acceptance or award for good cause.

City hereby notifies all Contractors that it will affirmatively ensure that in regard to any contract entered into pursuant to this RFP, Disadvantaged Business Enterprises will be afforded full opportunity to submit Proposals in response to this request and will not be discriminated against on the basis of race, color, sex, national origin, ancestry, religion, sex, sexual preference, marital status, or gender identity in consideration for an award.

The successful Contractor must insure that employees and applicants for employment are not discriminated against on the basis of age, color, race, national origin, ancestry, religion, sex, sexual preference, marital status, or gender identity; and shall comply with the Americans with Disabilities Act.

Submittals shall be in accordance with the requirements set forth in the RFP documents. Submission of a Proposal shall constitute a firm offer to City. Any questions concerning this RFP should be addressed to Parks Maintenance Manager Aaron Wanden at (925) 516-5111 or sent to City of Brentwood, Parks and Recreation Department, Attention: Aaron Wanden at 150 City Park Way, Brentwood, CA 94513.

Bruce Mulder  
Director of Parks and Recreation  
City of Brentwood

March 2019

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## PROPOSAL INFORMATION FOR CONTRACTORS

### TENTATIVE SCHEDULE OF ACTIVITIES Request for Proposals for Tree Maintenance Services

The tentative schedule of key milestones related to the City of Brentwood Tree Maintenance Services is as follows:

Issuance of Request for Proposals	March 25, 2019
<b>Mandatory</b> Pre-Proposal Conference/Site Visit	April 11, 2019 at 9:00 a.m.
Written Questions Submission Deadline	April 18, 2019 at 5:00 p.m.
City Response to Written Questions	April 23, 2019
<b>Receipt of Proposals to City (by 4 p.m.)</b>	<b>April 30, 2019 at 4:00 p.m.</b>
Interviews (as needed)	Week of May 6, 2019
Staff Recommendation to City Council	May 28, 2019
Contract Award	May 28, 2019
First Day of Tree Maintenance Services	July 1, 2019

#### 1. SCOPE AND LOCATION OF WORK

The Tree Maintenance Services Contract (“Contract”) is an outcome based contract where the City has established specific standards as outcomes. The Contractor is responsible to develop a base bid necessary to maintain the expected outcome standards. The proposal is to be presented as what the total cost would be for items as described on the Proposal Forms. The City will inspect the work of the Contractor against the stated standards to determine compliance and payment.

The work to be performed under the Contract consists of the furnishing of all labor, insurance, materials and equipment needed to perform Tree Maintenance Services as further described in Scope of Services which is attached hereto as Exhibit G.

#### 2. EXAMINATION OF CONTRACT DOCUMENTS

Each Contractor shall thoroughly examine and be familiar with legal and procedural documents, general conditions, specifications, and addenda (if any) (the “Contract Documents”). Submission of a Proposal shall constitute acknowledgment, upon which City may rely, that the Contractor has thoroughly examined and is familiar with the Contract Documents. Failure or neglect of a Contractor to receive or examine any of the Contract Documents shall in no way relieve them of any obligation with respect to their Proposal or to the Contract. No claim for additional compensation will be allowed which is based upon a lack of knowledge of any Contract Documents.

#### 3. INTERPRETATION OF CONTRACT DOCUMENTS

No oral representation or interpretations will be made to any Contractor as to the meaning of the Contract Documents. Requests for interpretation shall be made in writing and delivered to the Parks & Recreation Department at least twelve (12) calendar days before the time announced for final date of Proposal acceptance. Interpretations, where necessary, will be made by the City in the form of a written addendum to the Contract Documents and, when issued, will be sent as promptly as is practical to all parties to whom the Proposal documents have been issued. All such addenda shall become part of the Contract. Verbal responses, if any, by City personnel will have no legal force or effect. Requests for information shall be directed to:

Aaron Wanden, Park Maintenance Manager  
City of Brentwood Parks & Recreation  
150 City Park Way  
Brentwood, CA 94513  
Phone: (925) 516-5111  
Fax: (925) 516-5447

It shall also be the Contractor's responsibility to call to the attention of the City any missing pages in the Contract Documents, including the addenda. These items shall be brought to the attention of Aaron Wanden at 150 City Park Way, Brentwood, CA 94513, phone (925) 516-5111 or faxed to (925) 516-5447 in writing, at least twelve (12) calendar days prior to the final date of Proposal acceptance.

#### 4. PROPOSALS

Proposals shall be in written form and must include, at a minimum, the information requested by the City. Additional pages may be attached to the Proposal, as supplemental, but not as replacement pages. All Proposals shall give all other information requested therein, and shall be signed by the Contractor or an authorized representative, with their address and contact information. Contractors must prepare and submit all required documents. Unauthorized conditions, omissions, limitations or provisos attached to a Proposal will render the Proposal non-responsive and may cause its rejection.

- If the Proposal is made by an individual, his or her name, signature, and post office address must be shown.
- If the Proposal is made by a firm or partnership, the name and post office address of the firm or partnership and the signature of at least one of the general partners must be shown.
- If the Proposal is made by a corporation, the Proposal shall show the name of the corporation and state under the laws of which the corporation is incorporated, the post office address of the corporation, and the signature of at least one officer authorized to sign on behalf of the corporation. Additionally, the Proposal shall include a document empowering the signator(s) to execute the Proposal and bind the corporation.
- If the Proposal is made by a joint venture, the Proposal shall be signed by at least one of the joint venture firms in a format meeting with the requirements outlined above. Additionally, the Proposal shall include a document empowering the signator(s) to execute the Proposal and bind the joint venture.

Each Proposal shall be enclosed in a sealed envelope, labeled and delivered to Aaron Wanden, Park Maintenance Manager, City of Brentwood Parks & Recreation, 150 City Park Way, Brentwood, California, 94513 by **April 30, 2019 at 4:00 p.m.** (the "deadline date"). Contractors are warned against making erasures or alterations of any kind, without initialing each and every such change. Proposals that contain erasures or irregularities of any kind, without such initialing, or omissions, may be rejected. No oral, telegraphic, or telephone (including facsimile) Proposals or modifications will be considered.

Proposal forms received after the deadline date and time will not be accepted. Postmarks will not be accepted.

No Contractor may withdraw its Proposal for a period of sixty (60) days after the date set for the opening of Proposals.

City reserves the right to reject any or all Proposals; to make any awards or any rejections in what it alone considers to be in the best interest of City, and waive any informalities or irregularities in the Proposals.

Proposal Requirements: Proposals must include, at a minimum, the following information:

- A. Introduction: Introduce the Proposal, including a statement of Contractor's approach for providing Tree Maintenance services to the City of Brentwood. Give the name of the company submitting the proposal, the mailing address, telephone and fax number and the name of the contact person.
- B. Statement of Qualifications/Responsiveness: Management personnel's experience with accounts of similar size and scope, company structure, and staff assigned to the resulting agreement. Include a detailed description of your company, employee position categories and current number of employees in each category. Include an outline of any experience your company has had in meeting the needs of other governmental organizations. Detail any involvement, past or current, relative to litigation or other disputes, if any concerning your performance with any clients to whom your company has provided services. List all contracts canceled or not extended and/or state any and all instances of being disqualified, removed, or otherwise prevent from completing the terms of any previous contracts over the past three years. Give names, street addresses, and phone numbers and explain the circumstances.

Pursuant to State Law and as further described in Section 6 of the Contract, all Contractors bidding on public works projects must register with the Department of Industrial Relations and pay an annual fee. All bidders will be required to demonstrate full compliance with the provisions of SB 854, and any bid that fails to provide such documentation shall be summarily rejected.

- C. Resources and Service Description: Include a comprehensive description of the resources and methodology that will be used to complete each element of the requested services. Special emphasis should be placed on how your company will "partner" with the City to provide innovative approaches and techniques in both the services provided today and in the way it will respond to future needs in this community. Include how you can build trust into the relationship between your company and the City.
- D. Staffing Process:
  - 1. Include a work plan of how you will staff and supervise the contract.
  - 2. Provide a complete overview of all training programs provided.
  - 3. Detail your company's employee retention program and philosophy.
  - 4. List the full or part time status of each employee that will be assigned to this contract.
  - 5. Description of designated on-site supervisor's role in delivery of contract services and availability of on-site supervisor and contingency plans when not available. Description of the line staff's role in the delivery of exceptional service.
- E. Liability Issues: Discuss how your company handles damage or theft claims.
- F. Logistical Issues: Describe how your company will make available the equipment and supplies (i.e., machinery, signs, cones, tools, chemicals, etc.) needed to perform all work, where will you be based and store equipment.

- G. Chemicals: List the chemicals proposed for use in this Contract. Describe how each will be used.
- H. Equipment: Attach an equipment inventory listing all equipment and vehicles to be used for tree maintenance.
- I. Communication: A description of the systems your company uses to communicate between supervisors and/or office staff and field staff. Also describe the systems you use to assign, track, and evaluate work performed by your employees.
- J. Technology: Discuss any technology tools your company uses to stay innovative and responsive to the needs of the services you provide and will allow your staff to utilize City systems.
- K. Billing and Invoicing: Describe your company's billing and accounting system, as it will relate to this contract. Describe your capability to customize invoices to meet the City of Brentwood's needs. Attach samples of your company's billing forms and invoices.
- L. Reports: Discuss management reports and quality assurance methods and their frequency. Emphasize how you would customize reports for City that will show work accomplished, labor hours, materials consumed, and equipment utilized by site. Attach sample reports.
- M. Service Philosophy: Discuss what your company believes to be the most important component of the services you provide and explain why.
- N. Customer Service and Quality Assurance: Discuss your company's vision of customer service and quality. Describe the steps your company takes to insure that each person's role in your organization is understood as it relates to exceptional customer service and quality assurance program.
- O. Acceptance Statement: The proposal shall include an acceptance statement regarding the tree maintenance company's acceptance of the City's requirements for contractor services agreement, insurance and indemnification, business license, federal clauses and certificates that are presented herein. The tree maintenance company shall clearly state any and all exceptions. A principal, officer or owner of the company with authority to bind the tree maintenance company, shall sign this acceptance statement.
- P. Proposal Prices: Proposal prices shall include everything necessary for the completion of and fulfillment of the Contract, including but not limited to, furnishing all transportation, materials, equipment, and all management, superintendence, permits, labor and services, except as may be provided otherwise in the Contract Documents. The prices should be listed by as specifically described on the Proposal Forms. The basis of payment shall be on a monthly fixed price basis or as otherwise agreed to in writing by the City. The City reserves the right to award individual work areas to different contractors and/or negotiate cost proposals.
- Q. Additional Work: City has the authority to direct additional work including City initiated improvements and the addition of new sites. Additional work outside the Scope of Services will require written approval from City prior to the commencement of work. Costs for additional work completed by the Contractor prior to receiving written approval from the City shall be the responsibility of the Contractor.

Where there is a conflict between words and figures, the words shall govern and the figures shall be disregarded. Please refer to Exhibit G Scope of Services/Proposal Form in filling out the annual prices for various City facilities.

- R. Taxes: Proposal prices shall include all applicable federal, state, and local taxes.
- S. Pricing: The Contractor will agree to perform the described work for the prices indicated in the proposal and markup stipulated in the Contract or as negotiated by City for a period of five years from the start of Contract (July 1, 2019 – June 30, 2024). At the request of the Contractor, City will revise price to be effective for the next 12-month period on July 1<sup>st</sup> of each year. All price increases will be based on Bureau of Labor Statistics – Consumer Price Index – Urban Wage Earners and Clerical Workers for the San Francisco – Oakland – San Jose metropolitan area as of April 30<sup>th</sup> of each year. This increase shall not to exceed 3% in any one year, including any extensions in term of Contract. City also agrees to adjust payments to reflect changes in work quantities and to pay for new work assigned to Contractor at the contract rates then in effect. Adjustments to quantities may be requested by either party and is subject to field verification by City.

Contractor further agrees to accept new work assigned by City during each contract period at the costs quoted in the proposal or at adjusted costs for succeeding annual periods. Indicate what your material markup is (over wholesale price) for all work types performed.

The City will only award a contract if the cost of the agreement is at or below the approved site funding allotment.

#### **5. AWARD OF CONTRACT**

The award of contract, if any, will be made within approximately sixty (60) days after the Proposal opening to the Contractor(s) with the contract proposal(s) that are most advantageous and provides the best overall value to the City as outlined in the Selection Process. Each Proposal, as submitted, shall remain in effect for sixty (60) calendar days after the date the Proposals are opened. No Contractor may withdraw its Proposal during this time period. Comparing and evaluating the Proposals based on the Selection Criteria below shall determine the Contractor(s) selected by the City. Brentwood reserves, in its sole discretion, the right to reject any and all Proposals or to waive any irregularities or informalities in any Proposal or in the RFP procedures; and to award the contract to the Contractor(s) who best meet the City's requirements.

Contractor shall be bound to the prices on the Proposal Form for the duration of the contract term except as indicated within the contract to include options if awarded by City.

#### **6. COMPLIANCE WITH APPLICABLE LAWS**

Prior to award of a contract resulting from this solicitation, the Contractor shall furnish, upon Brentwood's request, verification of payment to its employees California's prevailing wages as required by law. In addition, upon Brentwood's request, Contractor shall promptly furnish verification that its employees have legal rights to work in the United States of America and in the State of California.

#### **7. RESERVED**

#### **8. CERTIFICATION CONCERNING CONTROL OF EMPLOYEE**

Contractor shall execute the Certification Concerning Control of Employee form included with the Contract Documents and submit it to Brentwood with their Proposal.

**9. CERTIFICATE REGARDING WORKERS COMPENSATION**

Contractor shall execute the Certificate Regarding Workers Compensation form included with the Contract Documents and submit it to Brentwood with their Proposal.

**10. TREE MAINTENANCE SERVICES COMPANY SELECTION PROCESS/CRITERIA**

The City will evaluate and rank Proposals based on selection criteria. Any proposal may be rejected if it is conditional, incomplete or contains irregularities. Minor or immaterial irregularities in a Proposal may be waived. Waiver of an irregularity shall in no way modify the Request for Proposals nor affect recommendation for award of the Contract. The criteria for the selection of the tree maintenance services company shall include:

- Ability of the Contractor to provide innovative approaches and techniques in the delivery of services and partnering with the City to reach high quality outcomes.
- Demonstration of exceptional ability to provide a high level of quality service standards under similar conditions to institutions, private or public of similar size and area requirements.
- Quality and performance assessments of work quality and working relationships with current and recent clients that indicate high levels of satisfaction and effectiveness.
- Ability to mobilize and abate as directed by City in a timely fashion.
- Proven competencies in the effective and efficient use of natural resources, implementation of best management practices, and use of integrated pest management.
- Policies that provide highly trained, competent staff at every level of the organization.
- Demonstration of a high level of stability and long term high quality performance of the Contractor.
- Well organized communication systems and electronic reporting capabilities that demonstrate an ability to complete tasks efficiently and effectively and do not require constant supervision by the City. Demonstrate the ability to electronically track inventory, pruning, asset inventory, and removals and replacements.
- Acceptance of this Contract will not affect performance in any other contract with the City of Brentwood.

**11. MODIFICATION OF PROPOSAL**

Modification of a Proposal already received will be considered only if the modification is received prior to the deadline date for receiving Proposals. All modifications shall be made in writing, executed, and submitted in the same form and manner as the original Proposal.

**12. POSTPONEMENT OF OPENING**

City reserves the right to postpone the date and time for receiving and/or opening Proposals.

**13. NON-COLLUSION AFFIDAVIT**

Section 7106 of the Public Contract Code requires that each Contractor execute a Non-Collusion Affidavit on certain City contracts. Contractor shall execute the Non-Collusion Affidavit included with the Contract Documents and submit it to City with the Proposal.

**14. DISQUALIFICATION OF CONTRACTOR**

If there is a reason to believe that collusion exists among any of the Contractors, none of the Proposals of the participants in such collusion will be considered, and City may likewise elect to reject all Proposals received.

**15. REJECTION OF PROPOSALS**

City reserves the right to reject any Proposals which are incomplete, obscure, or irregular, any Proposals which omit any one or more items for which Proposals are required; any Proposals which omit unit prices if unit prices are required; any Proposals in which unit prices are unbalanced in the opinion of City; any Proposals accompanied by insufficient or irregular Proposal guaranty; and any Proposals from Contractors who have previously failed to perform properly or to complete contracts of any nature on time.

**16. COMPLETING AND SIGNING FORMS**

The Contractor's attention is directed to the forms included in the Contract Documents, which must be completed and signed. Failure to properly complete and sign any forms may be cause for rejection of a Proposal.

**17. CONFLICT OF INTEREST**

No employee, director, officer, or agent of City shall participate in selection, award or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer or agent, any member of his/her immediate family, his or her partner, an organization which employs, or is about to employ, any of the above interest in the firm selected for award.

City's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from Contractors, potential Contractors, or has a financial or other interest in the firm selected for award parties to sub agreements.

**18. WARRANTY OF TITLE**

Contractor warrants to City, its successors, and assigns that the title to the materials, supplies or equipment covered by the Contract, when delivered to City or to its successors or assigns, is free from all liens and encumbrances.

**19. WARRANTY OF FITNESS**

Contractor warrants that all materials, supplies and products furnished meet the requirements and conditions of the Contract Documents and are fit for the purpose intended.

**20. RISK OF LOSS**

All loss or damage arising from any unforeseen obstruction or difficulties, either natural or artificial, which may be encountered in the execution of the work, or the furnishing of the supplies, materials, or equipment, or from any action of the elements prior to final written acceptance of the work, or of the supplies, materials or equipment, or from any act or omission not authorized by the Contract Documents on the part of the Contractor or any agent or person employed by it, shall be sustained and borne solely by the Contractor.

**21. CONTRACTOR'S INDEMNITY**

The City and its officers, agents, and employees connected with the Work shall not be answerable or accountable in any manner for any loss or damage that may happen to the Work or any part thereof; for any loss or damage to any of the materials or other things used or employed in performing the Work; for injury to or death of any person; or for damage to property from any cause except losses due to sole or active negligence of the City's officers, agents or employees.

To the fullest extent allowed by law, Contractor and Contractor's subcontractors shall defend, indemnify and hold harmless the City, its elected and appointed officers, contractors, employees, volunteers, and agents (the "City Parties"), from all liability, penalties, costs, losses, damages, expenses, causes of action, claims or judgments, including attorney's fees and other defense

costs, resulting from injury to or death sustained by any person (including Contractor's employees), or damage to property of any kind, or any other injury or damage whatsoever, which injury, death or damage arises out of or is in any way connected with the performance of the Services, regardless of the Contractor's fault or negligence, including any of the same resulting from City Parties' alleged or actual negligent act or omission; except that said indemnity shall not be applicable to injury, death or damage to property arising from the sole negligence or willful misconduct of the City Parties. This indemnification shall extend to claims asserted after termination of this Contract for whatever reason.

In addition to any remedy authorized by law, so much of the money due the Contractor under and by virtue of the Contract as shall be considered necessary by the City, may be retained by the City until disposition has been made of such suits or claims for damage.

**22. RECORDS/AUDIT**

Contractor and its subcontractors shall establish and maintain records pertaining to this Contract. Contractor's and subcontractors' accounting systems shall conform to generally accepted accounting principles and all records shall provide a breakdown of total costs charged under this Contract, including properly executed payrolls, time records, invoices and vouchers.

Contractor shall permit City and its authorized representatives to inspect and examine Contractor's books, records, accounts, and any and all data relevant to this Contract at any reasonable time for the purpose of auditing and verifying statements, invoices, or bills submitted by Contractor pursuant to this Contract and shall provide such assistance as may be reasonably required in the course of such inspection. City further reserves the right to examine and re-examine said books, records, accounts, and data during the three (3) year period following the termination of this Contract. Contractor shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatever for this three-year period.

Pursuant to California Government Code Section 10532, the parties to this Contract shall be subject to the examination and audit of representative of the Auditor General of the State of California for a period of three (3) years after final payment under the Contract. The examination and audit shall be confined to those matters connected with the performance of this Contract including, but not limited to, the cost of administering the Contract.

**23. IDENTIFICATION OF SUBCONTRACTORS**

Contractor(s) may use subcontractors for various functions or may put together a full-service proposal, utilizing subcontractors to supplement functions not provided directly by the lead contractor. All subcontractors must be identified by company name, address, city, state, zip code and phone number. Each subcontractor's work responsibility must be clearly called out.

Example:

<b>Subcontractor/Phone</b>	<b>Address</b>	<b>City, State, Zip</b>	<b>Services</b>
Trim This (925) 516-xxxx	456 Oak Street	Brentwood, CA 94513	Tree Pruning Services
Tree Trimmers 'R Us (925) 779-xxxx	123 Main Street	Antioch, CA 945XX	Tree Pruning Services

**24. CHANGES IN CONTRACT PRICE**

Other provisions of the Contract Documents notwithstanding, the Contract Price may be changed only by a Change Order or amendment duly authorized by the City Manager or his/her designee. The value of any work covered by a Change Order or amendment or of any claim for increase or

decrease in the Contract Price shall be determined by one or more of the following methods in the order of precedence listed below:

- Unit price previously approved.
- An agreed lump sum.
- The actual cost for labor, direct overhead, materials, supplies, equipment, and other services necessary to complete the work. In addition, there shall be added an amount to be agreed upon but not to exceed fifteen percent (15%) of the actual cost of the work to cover the cost of general overhead and profit (including subcontractor's overhead and profit).

Unless a change order has been so executed, it shall be conclusively presumed that all work performed is included in the Contract Price.

## **25. PROPOSAL PROTEST**

These procedures will apply to all procurement actions, whether by sealed Proposal, request for proposal or sole source and regardless of the stage of the procurement process at which the protest is filed.

- A Contractor may file a protest, in writing, stating the reasons for its protest addressed to Aaron Wanden within three (3) working days after the notice of pre-award or award or after the post-award circumstances on which the protest is based has come to its attention. A detailed description of the facts underlying the protest plus any supporting documentation should be submitted. The protest should be submitted to the Aaron Wanden at the Parks & Recreation Office 150 City Park Way, Brentwood, California 94513.
- The City shall investigate the matter and respond in writing within five (5) working days, specifying any action to be taken by Brentwood.
- If the Contractor is not satisfied with the decision of the City, the Contractor may appeal the decision in writing within three (3) working days to Brentwood's City Manager. The appeal shall be submitted to City Manager, 150 City Park Way, Brentwood, California 94513.
- The City Manager or his/her designee shall investigate and shall respond in writing specifying any differences between findings and those of the City. The City Manager or his/her designee shall also state the action to be taken by Brentwood or the fact that no action shall be taken. The decision of the City Manager or his/her designee is the final decision of City.
- The Contractor will be notified of its right to appeal to the appropriate state or local administrative or judicial authorities.
- In the event a protest has been timely filed before award, City shall not make award prior to five (5) calendar days after resolution of the protest, unless City makes a written determination that:
  - The items to be procured are urgently required;
  - Delivery or performance will be unduly delayed by failure to make the award promptly; or
  - Failure to make prompt award will otherwise cause undue harm to City.

## **26. INSURANCE**

Contractor shall, at no cost to City, obtain and maintain during the term of those insurance amounts listed in the attached Contract.

## **27. VANDALISM AND ACCIDENTAL DAMAGE**

City assumes responsibility for the cost of repairing or replacing appurtenances damaged by persons other than the Contractor or Contractor's agents. Vandalism or accidental damage repair costs shall be based on unit costs submitted by Contractor in the Proposal or on time and materials quotes for work not called out in proposal. Contractor(s) shall be responsible for reporting to City and repairing or replacing all appurtenances damaged by Contractor(s) or Contractor's agents. List unit costs for any repairs that you would encounter.

## **28. WATER MANAGEMENT PROGRAM FOR NEWLY PLANTED TREES**

The Contractor is responsible for:

- Notifying the City of any irrigation damage, caused by Contractor, vandalism, or other sources.
- Assuring that irrigation is operating properly for tree health and water conservation.
- Providing an irrigation schedule, in writing, to the City for each individual tree planted

## **29. TREE LOSS**

It is one of the Contractor's prime responsibilities to prevent loss of trees caused by pests, diseases, insects, soil conditions, nutrient, micro-climatic conditions, improper planting, or problems in watering.

Contractor agrees to be continuously alert in locating and defining problems and agrees to exercise prompt and proper corrective action. A preliminary written report shall be submitted for major corrective problems not covered in the contract along with the costs.

Contractor agrees to replace, at the Contractor's cost, any dead, stunted, or damaged trees that are the result primarily of the Contractor's negligence. Trees lost from Contractor's negligence shall be replaced, at Contractor's expense, within thirty (30) days of discovery. Replacement trees shall be comparable in size to the lost tree up to a maximum size of a twenty-four (24) inch box, or if smaller, the size shall be approved by the City.

Contractor shall not be held responsible for tree losses due to events beyond the Contractor's control; these events include, but are not limited to, disease or insect attack for which there is no legal recommended control, acts of vandalism, earthquakes, fires, frost damage, storms, and related events. Contractor shall report all such conditions to the City in writing within seventy-two (72) hours of occurrence, and submit a proposal for the work or repairs along with the costs. The Contractor shall obtain City's written permission/direction or authorization prior to proceeding with the work. Failure to notify the City within 72 hours of occurrence will result in replacement at the Contractor's cost as if the cause was Contractor negligence.

The City shall approve all replacement trees that differ in species. However, it is agreed that replacing trees shall not be used by the Contractor as a substitute or for proper care. The City will consider Contractor negligence a major breach of contract with full responsibility for costs and losses.

Dead trees and those in a state of decline shall be brought to the City's attention immediately. The City shall pay labor and material for tree replacement not caused by Contractor negligence on an actual time and material basis if authorized by an approved change order.

All new tree material and irrigation installations or repairs shall be guaranteed for a period of ninety (90) days for unhealthy tree installation and/or poor workmanship. Exceptions include damage or death of trees due to wind or storm, or vandalism, theft, or other willful acts over which the maintenance Contractor has no control. Existing trees shall be replaced by Contractor if they

die due to Contractor's negligence. All replacement trees and materials shall be inspected and approved by City prior to installation.

At the end or termination of the Contract, the City reserves the sole right to withhold final payment(s) in the amount necessary to replace any damaged or dying trees that are a result of Contractor negligence or at any site that's condition is in worse condition than when the Contract was accepted.

### **30. OUTCOME-BASED CONTRACT AND INSPECTION PROBLEM RESOLUTION PROCESS**

City will inspect the Contractor(s)' work and rate it according to the standards and inspection criteria, included in Exhibit E "Maintenance Standards". Contractor(s) will be paid for work rated as "meets standards". Contractor(s) will not be paid for work rated as "unsatisfactory" until conditions improve and rate as "meet standards." If an area does not meet City standards, it will be considered "unsatisfactory". Contractor(s) will not be paid additional amounts for remedial work required to improve "unsatisfactory" areas. City staff will work closely with contractor(s)' representatives to achieve the results described in the standards and inspection criteria. However, responsibility for meeting standards rests solely with the Contractor.

The Contractor will provide electronic versions of the "monthly inspections" to the City by the 10<sup>th</sup> of the following month as to each site's compliance with City standards. The inspection can be "noted exception" which only indicates areas which do not meet standards. In addition to the noted exceptions, an action plan with deadlines is to be provided to the City to indicate when corrections will be made. Failure to turn in inspections by the deadline will result in monthly payment being withheld until inspections are turned in.

For any site that fails to meet City standards as a result of some action that is Contractor's responsibility, the Contractor is to notify the City immediately and develop a plan to bring the site back to compliance. Should the City notice the Contractor of a site(s) that does not meet City standards, and the City has not been notified by the Contractor, the Contractor will be put on notice in writing to bring the site back into compliance.

If the City has to notify the Contractor a second time at the same site within twelve (12) months of the initial notice, the following penalty will occur:

1. The City will withhold the monthly payment for the site. If the conformance is reached within 3 days of notice by the City, the City will release eighty percent (80%) of the payment, keeping twenty percent (20%) as a penalty.

If at any time during a notice by the City, the Contractor does not bring the site into conformance within thirty (30) days, the following penalty will occur:

1. The City will keep the monthly payment as a penalty and withhold the next month's payment following the above mentioned conditions until conformance is reached or the Contract is terminated.

The Parties will observe the following problem resolution process:

- Written notice of problem
- Field conference with inspector/Contractor's field representative to identify problem and agree on solution as presented by Contractor
- Conference between City's representative and Contractor's principal
- Imposition of penalties and/or correcting defect at Contractor's cost
- Termination of Contract

**31. INSPECTION OF SITE OF WORK**

Contractors are required to inspect the site of the work in order to satisfy themselves, by personal examination or by such other means as they may prefer, of the location of the proposed work and the actual conditions of and at the site. Contractors may apply to the City for additional information and explanation before submitting proposals. However, no supplemental information requested or furnished shall vary the terms of the Contract Documents or affect the Contractor's sole responsibility to satisfy Contractor as to the conditions of the work to be performed. No claim for additional compensation will be allowed which is based upon a lack of knowledge of the actual conditions or location of the work.

Submission of a proposal by a Contractor shall constitute acknowledgment that the Contractor has relied, and is relying, on its own examination of (a) the site of the work; (b) access to the site; (c) all other data, matters, and things requisite to the fulfillment of the work and, on their own knowledge of existing facilities on and in the vicinity of the site of the work and not on any representation or warranty of the lack of knowledge of the above items.

**32. PROPOSALS ARE PUBLIC RECORDS**

Contractor is hereby informed that upon submittal of its proposal to the City in accordance with this RFP, the proposal is the property of the City.

- A. The City shall consider each proposal subject to the public disclosure requirements of the California Records Act (California Government Code sections 6250, etc. seq.), unless there is a legal exception to public disclosure.
- B. If Contractor believes that any portion of its proposal is subject to a legal exception to public disclosure, the Contractor shall: (1) clearly mark the relevant portions of its proposal as "Confidential" and (2) upon request from the City, identify the legal basis for exception from disclosure under the Public Records Act and (3) the Contractor shall defend, indemnify and hold harmless the City regarding any claim by any third party for the public disclosure of the "Confidential" portion of the proposal.

**33. COMPLETING AND SIGNING FORMS**

The Contractor's attention is directed to the forms included in the Contract Documents, which must be completed and signed. **FAILURE TO PROPERLY COMPLETE AND SIGN ANY FORMS MAY BE CAUSE FOR REJECTION OF A PROPOSAL.**

**34. SUBMITTAL REQUIREMENTS**

The firm shall submit four (4) copies of the technical and cost proposals for City of Brentwood Tree Maintenance Services to:

City of Brentwood  
Attention: Aaron Wanden, Park Maintenance Manager  
150 City Park Way  
Brentwood, CA 94513

City staff will accept proposals for City of Brentwood Tree Maintenance Services until **4:00 p.m. on April 30, 2019.** *Postmarks will not be accepted and late Proposals will not be considered.*

# GENERAL CONDITIONS

## 1. RENDITION OF SERVICES

The Contractor hereby agrees to undertake, carry out and complete all work established herein in a professional and timely manner satisfactory to Brentwood standards. Brentwood standards are described in Exhibit E.

## 2. CONTRACTOR'S STATUS

As stated in Section 18 of the Contract, neither the Contractor nor any party contracting with the Contractor shall be deemed to be an agent or employee of Brentwood. The Contractor is and shall be an independent contractor, and the legal relationship of any person performing work for the Contractor shall be one solely between said parties.

## 3. RELEASE OF INFORMATION

The Contractor shall not release any reports, information, or promotional materials prepared in connection with the Agreement without obtaining the prior permission of Brentwood by providing a copy to Brentwood for review, comments and approval.

## 4. NOTICE TO PROCEED

As soon as practical after execution of the Contract, and after receipt of acceptable insurance certificates by Brentwood, a written Notice to Proceed will be mailed to the Contractor. The effective date of the Notice to Proceed will be the date stated as such in the Notice, provided that the effective date will not be earlier than the day following the issuance of the Notice to Proceed.

## 5. ACCEPTANCE

A. Acceptance by Brentwood of any services furnished under the Contract shall occur only subsequent to the final review of authorized employees of Brentwood.

B. Brentwood shall reject, and refuse to pay for, any and all non-conforming services.

C. Nothing in this section shall limit or restrict the warranty and remedy obligations of the Contractor specified in this Contract.

## 6. LEGAL RELATIONS AND RESPONSIBILITIES

A. The Contractor shall keep fully informed concerning all requirements of law, including, but not limited to all federal, state, and local laws and regulations which in any manner affect the performance of work under this Contract. The Contractor shall at all times observe, and shall cause all employees and sub-contractors to observe, all such requirements of law and shall protect, indemnify, defend, and hold harmless Brentwood, its Directors, officers, agents and employees against all claims and liabilities arising from or based on the violation of any such requirement of law whether by the Contractor or their employees or sub-contractors. If any discrepancy or inconsistency is discovered in the Contract of the work in relation to any such requirements or laws, the Contractor shall immediately report the same to Brentwood.

B. If any part of these Contract Documents is declared invalid by a court of law, such decision will not affect the validity of the remaining portion, which shall remain in full force and effect.

**7. COMPLIANCE WITH LAWS AND REGULATIONS**

All services furnished pursuant to the Contract shall be in compliance with all federal and state laws and applicable local regulations and ordinances. Contractor shall, if requested by Brentwood, provide certification and evidence of such compliance.

**8. CONTRACT CHANGE ORDER / AMENDMENT**

A. Brentwood may at any time make alterations, deviations, additions to or deletions from the Contract Documents, and may increase or decrease the quantity of any item or portion of the work, or delete any item or portion of the work, and may require extra work, as determined by Brentwood to be necessary or advisable. All such work shall be performed under applicable provisions of the Contract Documents, unless specifically provided otherwise at the time the change is ordered.

B. Any such changes will be set forth in a written Contract Change Order/Amendment issued by Brentwood. The Contract Change Order/Amendment will specify: (1) the work to be done in connection with the change to be made; (2) the amount of the adjustment of the Contract price, if any, and the basis for compensation for the work ordered; and (3) the extent of the adjustment in the Contract time, if any. A Contract Change Order or Amendment shall not become effective until the City Manager or his/her has signed it.

C. No changes or deviations from the Contract Documents shall be made without an approved Contract change order, except in the case of emergency. In such case and upon receipt of a written directive signed by the City Manager or his/her designee, the Contractor shall proceed with the ordered work and Brentwood will prepare a written contract change order for approval and issuance to the Contractor as soon thereafter as practicable.

D. In the event, the Contractor encounters any unanticipated conditions or contingencies that may affect the Scope of Services and would result in an adjustment in the amount of cost of the Contract, the Contractor shall so advise Brentwood in writing immediately upon notice of such condition or contingency. The written notice shall explain the circumstances giving rise to the unforeseen condition or contingency and shall set forth the proposed adjustment in compensation resulting thereof.

E. Disagreement by the Contractor with Brentwood's determination of the need for, or amount of, an adjustment in Contract price or Contract time associated with an approved contract change order or amendment (or disagreement by the Contractor with Brentwood's determination that a change has not occurred and no contract change order or amendment is needed) shall not, under any circumstances relieve the Contractor from its obligation to promptly begin and diligently prosecute the work, including the change, as described in the approved contract change order or amendment.

**9. HAZARDOUS CHEMICALS AND WASTES**

The Contractor shall bear full and exclusive responsibility for any release of hazardous or non-hazardous chemicals or substances during the course of performance of this Contract. The Contractor shall immediately report any such release to Brentwood. The Contractor shall be solely responsible for all claims and expenses associated with the response to, removal and remediation of the release, including, without limit, payment of any fines or penalties levied against Brentwood by any agency as a result of such release and shall hold harmless, indemnify and defend Brentwood from any claims arising from such release. For purposes of this section only, the term "claims" shall include (i) all notices, orders, directives, administrative or judicial proceedings, fines, penalties, fees or charges imposed by any governmental agency with jurisdiction, and (ii) any claim, cause of action, or administrative or judicial

proceeding brought against Brentwood, its directors, or employees, or for any loss, cost (including reasonable attorney's fees), damage or liability, sustained or suffered by any person or entity, including Brentwood.

If the performance of the work outlined by these Contract Documents creates any hazardous wastes, those wastes shall be properly disposed of according to federal, state and local laws, at the expense of the Contractor. The Contractor shall dispose of the wastes under its own Environmental Protection Agency Generator Number. In no event shall Brentwood be identified as the generator. The Contractor shall notify Brentwood of any such hazardous wastes and Brentwood reserves the right to a copy of the results of any tests conducted on the wastes and, at its cost, to perform additional tests or examine those wastes, prior to its disposition. The Contractor shall hold harmless, indemnify and defend Brentwood from any claims arising from the disposal of the hazardous wastes, regardless of the absence of negligence or other malfeasance by Contractor.

#### **10. SAFETY**

Safety provisions shall conform to Cal-OSHA Safety Orders, and all other applicable federal, state, county, and local laws, ordinances, codes, and regulations in performing the work under this Contract. Where any of these are in conflict, the more stringent requirement shall be followed. The Contractor's failure to thoroughly familiarize itself with the aforementioned safety provisions shall not relieve it from compliance with the obligations and penalties set forth therein.

The Contractor shall develop and maintain for the duration of this contract, a safety program that will effectively incorporate and implement all required safety provisions. The Contractor shall appoint an employee who is qualified and authorized to supervise and enforce compliance with the safety program.

#### **11. RESPONSE TIME**

Contract supervision shall be immediately available at all times Contractor employees are working on sites, and must be available twenty-four (24) hours a day via fax, telephone or pager and must respond to an emergency situation/major discrepancy in the Contract within one hour of initial contact.

#### **12. QUALIFIED CONTRACTOR SUPERVISION**

All of Contractor's supervisors must be qualified, proficient in English, trained and capable of providing adequate supervision and direction of all Contractor's employees and must demonstrate verbal and written communication skills sufficient for the work required herein.

#### **13. CONTRACTOR'S EMPLOYEES**

Only Contractor's employees are allowed on premises. At all times, personnel shall wear uniforms. The City shall have the right to have Contractor remove from assignment to City facilities such employees of Contractor as shall be deemed incompetent, careless, insubordinate, or in any way objectionable, or any personnel whose actions may be contrary to the public interest or inconsistent with the best interest of the City. Contractor's employees shall not use tobacco products, drugs, alcohol or other items of this nature anywhere on premises or within 1,000 feet of City property.

#### **14. COMMENCEMENT OF WORK, PROGRESS, AND TIME FOR COMPLETION**

The Contractor shall begin work within ten (10) days after the date specified on the Notice to Proceed and shall diligently prosecute the same to completion within the time set forth in these

Contract Documents. Failure to diligently prosecute the work for more than three (3) working days shall constitute a breach of contract.

Hours of Work. The Contractor shall perform all work during the working hours of 7:00 a.m. to 3:30 p.m., Monday through Friday (unless otherwise noted below). If the Contractor wishes to work during any other hours, a written request for that work shall be submitted including agreement to pay for overtime inspection from the Contractor, if necessary. Written permission must be received from the City prior to working. The request must be received at least two (2) working days in advance of any work. No work will be allowed on City of Brentwood Holidays except in the case of an emergency. If Contractor requests overtime work in which the City will incur costs, the City will subtract the costs associated with the overtime from the Contractor's payment as a "deduct". A listing of City of Brentwood Holidays is as follows:

July 4, 2019	Thursday	Independence Day
September 2, 2019	Monday	Labor Day
November 11, 2019	Monday	Veteran's Day
November 28, 2019	Thursday	Thanksgiving Day
November 29, 2019	Friday	Post-Thanksgiving Holiday
December 24, 2019	Tuesday	Christmas Eve Day
December 25, 2019	Wednesday	Christmas Day
December 31, 2019	Tuesday	New Year's Eve Day
January 1, 2020	Wednesday	New Year's Day
January 20, 2020	Monday	Martin Luther King's Birthday
February 17, 2020	Monday	President's Day
May 25, 2020	Monday	Memorial Day
July 3, 2020	Friday	Independence Day (observed)
September 7, 2020	Monday	Labor Day
November 11, 2020	Wednesday	Veteran's Day
November 26, 2020	Thursday	Thanksgiving Day
November 27, 2020	Friday	Holiday
December 24, 2020	Thursday	Christmas Eve Day Holiday
December 25, 2020	Friday	Christmas Day Holiday
December 31, 2020	Thursday	New Year's Eve Day

## **CONTRACT FOR TREE MAINTENANCE SERVICES**

This Contract for Landscape Maintenance Services (the "Contract") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by and between the City of Brentwood (the "City" or "City") and \_\_\_\_\_, a \_\_\_\_\_ (the "Contractor") (Each a "Party" and collectively, "Parties").

### **RECITALS**

- A. The City solicited a Request for Proposals (RFP) for Tree Maintenance Services in the manner prescribed by law; and
- B. Contractor responded to the RFP and represents that it is qualified and willing to provide such tree maintenance services; and
- C. After review of all proposals submitted, City determined that Contractor best met the selection criteria for the Work; and

### **AGREEMENT**

FOR VALUABLE CONSIDERATION, THE RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Contract Documents. The following documents are incorporated into and made part of this Contract by this reference:

- (a) Request for Proposals
- (b) Exhibit "A" – Power of Attorney
- (c) Exhibit "B" – Certificate Concerning Control of Employee
- (e) Exhibit "C" – Certificate Regarding Worker's Compensation
- (f) Exhibit "D" – Non-Collusion Affidavit
- (g) Exhibit "E" – City of Brentwood Tree Maintenance Standards
- (h) Exhibit "F" – Tree Inventory by Diameter Breast Height (DBH)
- (i) Exhibit "G" – Scope of Services / Proposal Form

The documents shall be referred to collectively as the "Contract Documents".

2. Scope.

2.1. Contractor shall furnish all necessary management, supervision, labor, materials, tools, supplies, equipment, plant, services, testing and/or any other act or thing required to diligently and fully perform and complete the work generally described as follows: Tree Maintenance Services (the "Work") as described in this Contract and in Exhibit "G" Scope of Services / Proposal Form.

2.2. The Work shall be performed in accordance, and Contractor shall comply, with, all requirements of the Contract Documents. Where there is a conflict between the requirements of the various Contract Documents, the more stringent requirement shall govern.

2.3. Without limiting the foregoing description, Contractor's scope of work includes, but is not limited to, the following:

- (a) Provide labor, material and equipment required for the Work.
- (b) Submit all required samples, product data, certificates, operations and maintenance instructions, guarantees, and other submittals as requested by City.
- (c) Obtain all necessary permits and approvals for the Work.
- (d) Protect all materials to be used in the Work in accordance with the specifications and local, state and federal law.
- (e) Protect existing facilities and personal property.
- (f) Prepare and submit a written monthly activity report to City for each day on which work is performed, including weekends and holidays when worked, and submit the reports to the City no later than the 10th day of the following month.
- (g) Unload, hoist and otherwise handle Contractor's own materials, supplies and equipment.
- (h) Coordinate with City-scheduled events.
- (i) Comply with all local codes and regulations that regulate and govern the Work.
- (j) Provide suitable and adequate sanitary conveniences that conform with local regulations at suitable locations for the use of Contractor's employees and its Sub-Contractors.

2.4. Contractor shall perform the Work with due care, in accordance with generally accepted practices for landscape maintenance services and the scope of Contractor's obligations under this Contract.

### 3. Price.

3.1. City agrees to pay, and Contractor agrees to accept, for full performance of the Work, the prices for landscape maintenance services and Additional Work set forth in this Contract. The total amount paid to Contractor for the term of the Contract shall not exceed \_\_\_\_\_ (\$ \_\_\_\_\_) (the "Contract Price") subject to adjustments for changes in the Work as may be directed in writing by City.

3.2. Contractor shall submit written applications for progress payments in a form satisfactory to City on or before the first day of each month on account of routine landscape maintenance services and Additional Work provided during the preceding month. For routine landscape maintenance services, the payment applications shall be based on the tasks satisfactorily completed. For properly authorized Additional Work, the payment applications shall identify each person performing Work, the time each person spends on each task (in units not to exceed one quarter hour) and shall be based on the rates in the Current Contract Rate Sheet.

3.3 Within thirty (30) days after receipt of each application for progress payment, City shall verify the accuracy of the progress payment application, correct the charges where appropriate, and make payment to Contractor in an amount equal to the amount of such application, as verified or corrected by City. No payment made hereunder shall be construed as evidence of acceptance of any part of the Work. City reserves the right to withhold payment from Contractor on account of Work not performed satisfactorily, delays in Contractor's performance of Work, or other defaults hereunder. City shall promptly notify Contractor of any invoiced amounts that City disputes, and City and Contractor shall work to promptly resolve any such disputes. Contractor shall not stop or delay performance of Work under this Agreement on account of payment disputes with City.

3.4. Payment to Contractor shall be considered as full compensation of all labor, supervision, materials, supplies, and equipment used in carrying out the Work. Contractor shall pay all taxes, including sales, use and income taxes, incurred in connection with performance of the Work.

3.5. City's failure to discover or object to any unsatisfactory work or billing prior to payment will not constitute a waiver of City's right to:

- (a) Require Contractor to correct such work or billings; or
- (b) Seek any other legal remedy.

3.6. As further described in Section 7 below, should work be requested by City or proposed by Contractor that is beyond the Work described in the Contract Documents, the Contractor shall provide a written request for consideration of Additional Work to the City. Contractor shall not provide Additional Work until Contractor has received written approval from the City to perform same. Should the Contractor elect to proceed prior to receiving written approval by the City for Additional Work, the Contractor does so at Contractor's own risk. In no event shall City pay for Additional Work made necessary by Contractor's errors or oversights. The City will pay for approved Additional Work at the rates set forth in this Contract.

3.7. Contractor agrees to furnish, as a condition of payment, payroll affidavits, receipts, vouchers, and other documents, in form satisfactory to City, prior to receipt of any payment.

4. Entire Agreement. This Contract and the documents incorporated herein by reference constitute the entire agreement between City and Contractor with regard to the subject matter of this agreement and supersede any prior written or oral representations.

5. Time.

5.1. Contractor shall continue performance of the Work without interruption.

5.2. Time is of the essence in the performance of this Contract.

5.3. Contractor shall provide City with scheduling information in a form acceptable to City, including any changes made by City in the scheduling of work. Contractor shall coordinate the Work with that of all other Contractors, Sub-Contractors and suppliers so as not to delay or damage their performance.

5.4. The initial term of this Contract shall be five (5) years. City may elect to extend the term, at its sole discretion, one additional five (5) year term, or parts thereof, by giving written notice to Contractor no later than sixty (60) days before the initial term ends. If City elects to extend the term, the compensation payable to Contractor under Section 3 may be adjusted as the Parties may mutually agree.

6. Labor Provisions

6.1 Discrimination Prohibited. Discrimination against any prospective or present employee engaged in the Work on grounds of race, color, ancestry, national origin, ethnicity, religion, sex, sexual orientation, age, disability, or marital status is strictly prohibited. Contractor and its Subcontractors are required to comply with all applicable Laws prohibiting

discrimination, including the California Fair Employment and Housing Act (Govt. Code § 12900 et seq.), Government Code § 11135, and Labor Code §§ 1735, 1777.5, 1777.6, and 3077.5.

#### 6.2 Labor Code Requirements.

- (a) *Eight Hour Day.* Pursuant to Labor Code § 1810, eight hours of labor constitute a legal day's work under this Contract.
- (b) *Penalty.* Pursuant to Labor Code § 1813, Contractor will forfeit to City as a penalty, the sum of \$25.00 for each day during which a worker employed by Contractor or any Subcontractor is required or permitted to work more than eight hours in any one calendar day or more than 40 hours per calendar week, except if such workers are paid overtime under Labor Code § 1815.
- (c) *Apprentices.* Contractor is responsible for compliance with the requirements governing employment and payment of apprentices, as set forth in Labor Code § 1777.5, which is fully incorporated by reference.
- (d) *Notices.* Pursuant to Labor Code § 1771.4, Contractor is required to post all job site notices prescribed by Laws.

6.3 **Prevailing Wages.** Each worker performing Work under this Contract that is covered under Labor Code §§ 1720 or 1720.9, including cleanup at the Project site, must be paid at a rate not less than the prevailing wage as defined in §§ 1771 and 1774 of the Labor Code. The prevailing wage rates are on file with the City and available online at <http://www.dir.ca.gov/dlsr>. Contractor must post a copy of the applicable prevailing rates at the Project site.

- (a) *Penalties.* Pursuant to Labor Code § 1775, Contractor and any Subcontractor will forfeit to City as a penalty up to \$200.00 for each calendar day, or portion a day, for each worker paid less than the applicable prevailing wage rate. Contractor must also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.
- (b) *Federal Requirements.* If this Project is subject to federal prevailing wage requirements in addition to California prevailing wage requirements, Contractor and its Subcontractors are required to pay the higher of the currently applicable state or federal prevailing wage rates.

6.4 **Payroll Records.** Contractor must comply with the provisions of Labor Code §§ 1776 and 1812 and all implementing regulations, including requirements for electronic submission of payroll records to the DIR.

- (a) *Contractor and Subcontractor Obligations.* Contractor and each Subcontractor must keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in connection with the Work. Each payroll record must contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
  - (1) The information contained in the payroll record is true and correct; and
  - (2) Contractor or the Subcontractor has complied with the requirements of Labor Code §§ 1771, 1811, and 1815 for any Work performed by its employees on the Project.

- (b) *Certified Record.* A certified copy of an employee's payroll record must be made available for inspection or furnished to the employee or his or her authorized representative on request, to City, to the Division of Labor Standards Enforcement, to the Division of Apprenticeship Standards of the DIR, and as further required by the Labor Code.
- (c) *Enforcement.* Upon notice of noncompliance with Labor Code § 1776, Contractor or Subcontractor has ten days in which to comply with the requirements of this section. If Contractor or Subcontractor fails to do so within the ten-day period, Contractor or Subcontractor will forfeit a penalty of \$100.00 per day, or portion a day, for each worker for whom compliance is required, until strict compliance is achieved. Upon request by the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, these penalties will be withheld from payments then due to Contractor.

6.5 Labor Compliance. Pursuant to Labor Code § 1771.4, the Contract for this Project is subject to compliance monitoring and enforcement by the DIR. Contractor and its subcontractors must be currently registered with California Department of Industrial Relations ("DIR") pursuant to Labor Code section 1725.5 to perform any Work for this Contract. Pursuant to Labor Code section 1771.4, this Contract is subject to compliance monitoring and enforcement by DIR. Pursuant to Labor Code Section 1771.4, Contractor is required to post all job site notices required by law or regulations.

## 7. Changes in Work.

7.1. City may, from time to time, request changes to this Contract or the Work. Such requests shall be made in writing by the City's Project Manager, and shall describe in detail the proposed additions, deletions, or modifications to the Work. Contractor shall respond to such request in writing, with a statement of the costs, expenses and time required to perform the requested work. Neither the City's request nor the Contractor's response shall constitute a modification of this Contract. Any modification shall be contained in a written amendment to this Contract signed by an authorized representative on behalf of City. City's execution of the amendment shall constitute authorization to proceed with the changed work.

7.2. Contractor shall make no changes in the Work without written direction from the City. Contractor shall not be compensated for any change made without any such written direction.

7.3. If the City directs the Contractor in writing to make changes in the Work that materially affect the cost of performing the Work, the Contract Price will be adjusted based on one of the following:

- (a) Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices in Contractor's bid or proposal or this Contract to the quantities involved in the changed work;
- (b) By establishment of new unit prices and related quantities for the changed work;
- (c) By a combination of existing and new unit prices and related quantities for the changed work; or
- (d) By mutual acceptance of a lump sum.

8. Claims. If any dispute shall arise between City and Contractor regarding performance of the Work, or any alleged change in the Work, Contractor shall timely perform the disputed work and shall give written notice of a claim for additional compensation to City within ten (10) days after commencement of the disputed work. Contractor's failure to give written notice within the ten (10) day period constitutes an agreement by Contractor that it will receive no extra compensation for the disputed work.

9. Inspection of Work. Contractor shall make the Work accessible at all reasonable times for inspection by the City.

10. Assignment and Subcontracting.

10.1. Contractor shall give personal attention to the performance of the Contract and shall keep the Work under its control.

10.2. No Sub-Contractors will be recognized as such, and all persons engaged in the work of construction will be considered as employees of the Contractor, who will be held responsible for their work pursuant to the provisions of the Contract Documents.

10.3. No Sub-Contractor who is ineligible to bid on, be awarded or perform work on a public works project under Labor Code Sections 1777.1 or 1777.7 can bid, submit a proposal, be awarded or perform work as a Sub-Contractor on the Project. The Contractor is prohibited from performing work on the Project with a Sub-Contractor who is ineligible to perform work on a public works project under these sections of the Labor Code.

10.4. When a portion of the Work which has been subcontracted by the Contractor is not being prosecuted in a manner satisfactory to the City, the Sub-Contractor shall be removed immediately at the request of the City and shall not again be employed on the Work.

10.5. Contractor may not assign performance of the Contract except upon written consent of the City.

11. Termination and Suspension.

11.1. Should Contractor fail within five (5) working days from receipt of City's written notice to correct any contractual deficiencies, including but not limited to failure to perform the Work in accordance with the Contract Documents, failure to comply with the directions of City or failure pay its creditors, City may terminate this Contract for default. Following a termination for default, City shall have the right to take whatever steps it deems necessary to correct any deficient element of the Work and charge the cost thereof to Contractor, who shall be liable for the full cost of City's corrective action, including reasonable overhead, profit and attorneys' fees.

11.2. City may at any time terminate the Contract at City's convenience upon thirty (30) days written notice to Contractor. In the event of termination for convenience, Contractor shall recover only the actual cost of work completed to the date of termination, which cost shall be documented to City's satisfaction, plus a reasonable amount not to exceed fifteen percent (15%) of the actual cost of the Work performed for overhead and profit. Contractor shall not be entitled to any claim or lien against City for any additional compensation or damages in the event of such termination.

11.3. If City terminates Contractor for default, and if it is later determined that the termination was wrongful, such default termination shall automatically be converted to and treated

as a termination for convenience. In such event, Contractor shall be entitled to receive only the amounts payable under Section 11.2, and Contractor specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits.

11.4. City may, in writing, order Contractor to suspend all or any part of the Contractor's Work for the City's convenience or an account of events beyond City's control. If City suspends Contractor's performance for more than one hundred twenty (120) consecutive days, an adjustment to the Contractor's compensation may be made for increased costs, if any.

11.5. The performance of work under the Contract may be terminated by City, in its discretion, upon application therefore by the Contractor for unforeseen causes beyond the control and without the fault or negligence of the Contractor, including acts of God, acts of the public enemy, governmental acts, fires and epidemics, if such, causes irrecoverably disrupt or render impossible the Contractor's performance hereunder. An "act of God" shall mean an earthquake, flood, cyclone, or other cataclysmic phenomenon of nature beyond the power of the Contractor to foresee or make preparation in defense against.

## 12. Hold Harmless And Indemnification.

12.1. The City and its officers, agents, and employees thereof connected with the Work, shall not be answerable or accountable in any manner for any loss or damage that may happen to the Work or any part thereof; for any loss or damage to any of the materials or other things used or employed in performing the Work; for injury to or death of any person; or for damage to property from any cause except losses due to sole or active negligence of the City's officers, agents, or employees.

12.2. To the fullest extent allowed by law, Contractor and Contractor's subcontractors shall defend, indemnify and hold harmless the City, its elected and appointed officers, contractors, volunteers, employees and agents (the "City Parties"), from all liability, penalties, costs, losses, damages, expenses, causes of action, claims or judgments, including attorney's fees and other defense costs, resulting from injury to or death sustained by any person (including Contractor's employees), or damage to property of any kind, or any other injury or damage whatsoever, which injury, death or damage arises out of or is in any way connected with the performance of the Work, regardless of the Contractor's fault or negligence, including any of the same resulting from City Parties' alleged or actual negligent act or omission; except that said indemnity shall not be applicable to injury, death or damage to property arising from the sole negligence or willful misconduct of the City Parties. This indemnification shall extend to claims asserted after termination of this Contract for whatever reason.

12.3. In addition to any remedy authorized by law, so much of the money due the Contractor under and by virtue of the Contract as shall be considered necessary by the City, may be retained by the City until disposition has been made of such suits or claims for damage.

## 13. Insurance.

13.1. Contractor shall obtain, at its sole cost and expense, all insurance required by this section 13. Certificates of such insurance and copies of the insurance policies and endorsements shall be delivered to City within ten (10) days after being notified of the award of the Contract, and before execution of the Contract by the City.

13.2. The insurance requirements specified herein shall apply to all Sub-Contractors, although the limits of insurance may be reduced with the City's written consent. The

Contractor shall designate appropriate insurance limits for Sub-Contractors which shall be subject to the approval of the City. It shall be the responsibility of the Contractor to ensure that all Sub-Contractors comply with this provision, and to verify their compliance when requested by the City. The Contractor shall not allow any Sub-Contractor to commence work until all insurance required of the Sub-Contractor has been obtained and verified by the Contractor. Sub-Contractors shall furnish original certificates and endorsements as verification of insurance coverage. Upon request, Contractor shall deliver certificates of insurance or copies of the insurance policies and endorsements of all Sub-Contractors to City; provided, however, that this shall not relieve Contractor of its obligation to ascertain the existence of such insurance.

13.3. The insurance required by this Section 13 shall be maintained by Contractor in full force and effect at all times during prosecution of the Work and until the expiration of the warranty period following the final completion and acceptance thereof by City, and every policy shall be endorsed to state that it shall not be assigned, cancelled, or reduced in coverage without thirty (30) days' prior written notice to City. Every policy shall also be endorsed to state that the City shall be given written notice of nonrenewal at least thirty (30) days prior to the nonrenewal date.

13.4. The following are the minimum insurance requirements of this Contract:

- (a) Contractor shall maintain a Commercial General Liability insurance policy (on Insurance Services Office form number CG 0001 – “occurrence” form) insuring Contractor for an amount not less than Two Million Dollars (\$2,000,000.00) per occurrence with an annual aggregate limit of not less than Two Million Dollars (\$2,000,000.00) for bodily injury, personal injury and property damage.
- (b) Contractor shall maintain an Automobile Liability insurance policy (on Insurance Services Office form number CA 0001 covering Automobile Liability, code 1 "any auto," and endorsement CA 0025) insuring Contractor for an amount not less than One Million Dollars (\$1,000,000.00) combined single limit per accident for bodily injury and property damage.
- (c) Contractor shall maintain a Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Contractor as follows:
  - (1) This policy shall provide coverage for Workers' Compensation (Coverage A) in accordance with California law.
  - (2) This policy shall also provide coverage for One Million Dollars (\$1,000,000.00) Employers' Liability (Coverage B).
- (d) All of the following endorsements are required to be made a part of each of the required policies, except for the Workers' Compensation and Employers' Liability policies:
  - (1) "The City of Brentwood and its employees, officers, agents and Contractors are hereby added as additional insureds, but only as respects work done by, for on behalf of the named insured."
  - (2) "This policy shall be considered primary insurance as respects any other valid and collectible insurance, self-insurance or joint self-insurance the City may possess, including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance only and shall not contribute with it."
- (e) The City reserves the right to require complete, certified copies of all required insurance policies at any time.

- (f) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the additional insured parties.
- (g) Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (h) Insurance is to be placed with insurers with a Best's rating of no less than A:VII.
- (i) Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Contractor shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

13.5. Waiver of Subrogation. If the policies of insurance referred to in this section require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed or obtain such consent.

13.6. Insurance Requirements are Material Element of Performance. In the event of the breach of any provision of this section, or in the event of any notices received which indicate any required insurance coverage will be diminished or canceled, City, at its option, may, notwithstanding any other provisions of this Contract to the contrary, immediately declare a material breach of this Contract and suspend all further work pursuant to this Contract.

#### 14. Laws To Be Observed.

14.1. Contractor shall keep itself fully informed of all existing and future state and federal laws and county and municipal ordinances and regulations which in any manner affect those engaged or employed in the Work, or the materials used in the Work, or which in any way affect the conduct of Work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same.

14.2. Contractor shall at all times observe and comply with, and shall cause all of its agents and employees to observe and comply with all such existing and future laws, ordinances, regulations, orders, and decrees of bodies or tribunals having any jurisdiction or authority over the Work and shall protect and indemnify the City, and all officers and employees thereof against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree by Contractor, its agents or employees. If any discrepancy or inconsistency is discovered in the plans, drawings, specifications, or Contract for the Work in relation to any such law, ordinance, regulation, order or decree, Contractor shall forthwith report the same to the City in writing.

14.3. Contractor must insure that employees and applicants for employment are not discriminated against on the basis of age, color, race, national origin, ancestry, religion, sex, sexual preference or marital status, and shall comply with the Americans with Disabilities Act.

15. Notices. All notices required under this Contract shall be given in writing, sent via facsimile or US Mail, addressed to the recipient at the address set forth below the signatures at the end of this Agreement.

**For City:**

City of Brentwood  
Attn: Aaron Wanden, Park Maint. Mgr.  
150 City Park Way  
Brentwood, CA 94513  
Phone No.: (925) 516-5444  
Facsimile No.: (925) 516-5447  
[awanden@brentwoodca.gov](mailto:awanden@brentwoodca.gov)

**Contractor:**

Contractor Name:  
Attn:  
Address:  
  
Phone No.:  
Facsimile No:  
Email:

16. Differing Site Conditions.

16.1. The Contractor shall promptly, and before the following conditions are disturbed, notify the City in writing of any:

- (a) Material that the Contractor believes may be hazardous waste, as defined in Section 25117 of the Health and Safety Code, which is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
- (b) Subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents, or
- (c) Unknown physical conditions at the site of any unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.

16.2. The City shall promptly investigate the conditions, and if it finds that such conditions do materially so differ, or do involve hazardous waste, and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the Work, it shall issue a change order under the provisions described in the Contract Documents.

16.3. No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice required in the Contract Documents.

16.4. In the event a dispute arises between the City and the Contractor as to 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, Contractor shall not be excused from completing the Work as provided in the Contract Documents. The Contractor shall proceed with the Work. The Contractor shall retain any and all rights provided either by this Contract or by law which pertain to the resolution of disputes and protests.

17. Records and Audits.

17.1. Contractor and its Sub-Contractors shall establish and maintain records pertaining to this Contract. Contractor's and Sub-Contractors' accounting systems shall conform to generally accepted accounting principles and all records shall provide a breakdown of total costs charged under this Contract, including properly executed payrolls, time records, invoices and vouchers.

17.2. During the term of this Contract, Contractor shall permit City and its authorized representatives to inspect and examine Contractor's books, records, accounts, and any and all data relevant to this Contract at any reasonable time for the purpose of auditing and verifying statements, invoices, or bills submitted by Contractor pursuant to this Contract and shall provide such assistance as may be reasonably required in the course of such inspection. City further reserves the right to examine and re-examine said books, records, accounts, and data during the three (3) year period following the termination of this Contract. Contractor shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatever for this three-year period.

18. Independent Contractor.

18.1. In performing the Work, Contractor shall be, and is, an independent Contractor and not an employee of City. Contractor shall have and exercise full control and supervision of the Work, and full control over the employment, direction, compensation and discharge of all persons assisting Contractor in the performance of the Work. Contractor shall be solely responsible for all matters relating to the payment of its employees, including compliance with social security, withholding and other all other regulations governing such matters

18.2. The relationship between City and Contractor is not exclusive. Contractor may perform services for and contract with as many additional clients, persons or companies as Contractor sees fit. City may contract with others for performance of the same or services similar to those covered by this Contract at its discretion.

18.3. Contractor shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, income and personal property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the Work to be performed by Contractor, and reimburse the City in full for any of the expenses listed in the first sentence of this Section 18.3 that City may be ordered to pay for Contractors employees, subcontractors, or subcontractors' employees.

18.4. Additional Charges. Charges from Contractor to City will not be honored or paid by City unless the charges are authorized and approved by City at the time the Work for which a charge is submitted is being performed.

18.5. Clean-up. Contractor will remove all debris, unused materials or equipment resulting from performance of the Work, no less often than daily. If Contractor fails to do so, City may, after twenty-four (24) hours' notice to Contractor, clean up the site and deduct the cost from monies due or to become due to the Contractor.

19. Non-Collusion Affidavit. In accordance with Public Contract Code Section 7106, the Contractor is required to execute a Non-Collusion Affidavit in the form attached hereto. Contractor shall submit the executed Affidavit to the City with the signed Contract.

20. Severability/Partial Invalidity. If any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained in this Contract.

21. Governing Law/Venue. This Contract shall be governed by the laws of the State of California. Any litigation regarding this Contract or its contents shall be filed in the County of Contra Costa, if in state court, or in the federal court assigned to Contra Costa County, if in federal court. Contractor waives the right to move any litigation out of Contra Costa County.

22. Counterparts. This Contract may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

23. Authorized Signatories. All parties to this Contract warrant and represent that they have the power and authority to enter into this Contract in the names, titles, and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s).

24. Conflicts 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 affect Contractor's performance of Work under this Contract. Contractor further covenants that in the performance of the Contract, no person having any such interest shall be employed by it as an officer, employee, agent or Sub-Contractor without the express written consent of City. Contractor agrees to at all times avoid conflicts of interest, or the appearance of any conflicts of interest, with the interests of the City in the performance of this Contract.

25. Remedies Not Exclusive. Except as provided in Sections 12.2 and 12.3, no remedy herein conferred upon or reserved to City is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

26. Successors and Assigns. All representations, covenants and warranties set forth in this Contract, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns. Other than City, Contractor and their successors and assigns, there are no other beneficiaries of this Contract.

27. Headings. The headings of the several sections, and any table of contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

28. No Waiver of Default. No delay or omission of City to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default of an acquiescence therein; and every power and remedy given by this Agreement to City shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of City.

29. Business License Requirement. Contractor shall at all times it is performing the Work have and maintain a City of Brentwood Business License.

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN FOUR YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN 10 YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS' STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CALIFORNIA 95826.

IN WITNESS WHEREOF, the City and Contractor have executed this Contract as of the date first above written.

CONTRACTOR:

CITY:

\* By: \_\_\_\_\_

By: \_\_\_\_\_

Gustavo "Gus" Vina, City Manager

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

\*\* By: \_\_\_\_\_

By: \_\_\_\_\_

Margaret Wimberly, City Clerk

Printed Name: \_\_\_\_\_

APPROVED AS TO FORM:

Title: \_\_\_\_\_

By: \_\_\_\_\_

Damien Brower, City Attorney

If required by City, proper notarial acknowledgment of execution by Consultant must be attached. If a Corporation, Agreement must be signed by one corporate officer from each of the following two groups.

**\*Group A.**  
Chairman,  
President, **or**  
Vice-President

**\*\*Group B.**  
Secretary,  
Assistant Secretary,  
CFO **or** Assistant Treasurer

**Otherwise**, the corporation **must** attach a resolution certified by the secretary or assistant secretary under corporate seal empowering the officer(s) signing to bind the corporation.

If an LLC:

The Agreement must be signed by a Managing Member **or** the LLC must attach a resolution empowering the signatory to bind the LLC.

If a partnership:

The Agreement must be signed by the Managing Partner **or** the Partner authorized to execute agreements of this type. Additional documentation, such as the partnership agreement, confirming this signature authority may be required.

If a sole proprietorship:

The Agreement must be signed by the owner.

## **CONTRACTORS CHECKLIST**

- Power of Attorney (Exhibit A) *not required for Corporations*
- Certification Concerning Control of Employee (Exhibit B)
- Certificate Regarding Workers Compensation (Exhibit C)
- Non-Collusion Affidavit (Exhibit D)
- Tree Maintenance Standards (Exhibit E)
- Tree Inventory by Diameter Breast Height (DBH) (Exhibit F)
- Scope of Services/Proposal Forms (Exhibit G)

**POWER OF ATTORNEY**

KNOW ALL PERSONS BY THESE PRESENTS. That \_\_\_\_\_ constituting all of the (general partners/venturers) of the (partnership/joint venture) known as \_\_\_\_\_ which is desirous of entering into a contract with the City of Brentwood, do hereby designate and appoint \_\_\_\_\_ one of the (general partners/venturers) hereinafter called the "Managing Sponsor," as their true and lawful attorney with the power, on their behalf and in the name and on behalf of the (partnership/joint venture), to execute a proposal for and to execute and enter into Contract for Tree Maintenance Services with the City of Brentwood, and to represent and bind the undersigned and the (partnership/joint venture), in all matters in connection with such proposal and contract; and the undersigned specifically acknowledge and agree that the execution of such proposal or contract by the Managing Sponsor shall constitute the agreement of each (general partner/venturer) to be jointly and severally liable for any and all of the duties and obligations of the (partnership/joint venture) arising from such proposal or contract.

IN WITNESS WHEREOF the undersigned have executed this Power of Attorney this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Company Name

By: \_\_\_\_\_

Title: \_\_\_\_\_

Subscribed and Sworn to before me  
This \_\_\_\_\_ day of \_\_\_\_\_, 2019

\_\_\_\_\_  
Notary Public in and for State of \_\_\_\_\_  
residing at \_\_\_\_\_

**REQUIRED CERTIFICATIONS**

The following forms must be completely and accurately filled out, signed, notarized (as required), and returned with Proposal.

**CERTIFICATE CONCERNING CONTROL OF EMPLOYEE**

The Contractor, by entering into this Contract with Brentwood to perform or provide work, services, or materials to Brentwood, does hereby certify and assure that in performing the services under this Contract, the Contractor shall act as an independent Contractor and shall have full control of the work and Contractors employees. Contractor and its employees in no circumstances whatsoever shall imply or be considered as an agent(s) or employee(s) of Brentwood. Contractor or a Subcontractor employees in no circumstances shall be entitled to part of any pension plan, insurance, bonus or any similar benefits which Brentwood provides its own employees. Should a court award Contractor's employees or a Subcontractor's employees, any such pension employees plan, insurance, bonus or any similar benefits which Brentwood provides its own employees, then Contractor shall pay all costs associated with such an award.

Any violation of the provisions of this Certification shall be cause for termination of the Contract.

Signed

\_\_\_\_\_  
Authorized Representative of Contractor

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**CERTIFICATE REGARDING WORKERS COMPENSATION**

Contract with the CITY OF BRENTWOOD, 150 City Park Way, Brentwood, California 94513, for:

**Tree Maintenance Services**

Contract No. \_\_\_\_\_

Labor Code Section 3700:

“Every employer, except the State, and all political subdivisions or institutions thereof, shall secure the payment of compensation in one or more of the following ways:

- (a) By being insured against liability to pay compensation by one or more insurers, duly authorized to write compensation insurance in this State.
- (b) By securing from the Director of Industrial Relations a certificate on 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 employees.”

I am aware of the provisions of Section 3700 of the Labor Code, which require every employer to be insured against liability for worker's compensation or to undertake self-insurance. In accordance with the provisions of that code, I will comply with such provisions before commencing the performance of the work of this contract.

Dated: \_\_\_\_\_, 2019

(Contractor)

By \_\_\_\_\_

\_\_\_\_\_  
(Official Title)

(SEAL)

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

**NON-COLLUSION AFFIDAVIT**

State of \_\_\_\_\_

County of \_\_\_\_\_ ss.

\_\_\_\_\_, being first duly sworn, deposes and says that he or she is \_\_\_\_\_ (title) of \_\_\_\_\_, the party making the foregoing Proposal,

that the Proposal:

- is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation
- is genuine and not collusive or sham

that the Contractor:

- has not, directly or indirectly, induced or solicited any other Contractor to put in a false or sham Proposal
- has not, directly or indirectly, colluded, conspired, connived, or agreed with any Contractor or anyone else to put in a sham Proposal, or that anyone shall refrain from Proposing
- has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the Proposal price of the Contractor or any other Contractor, or to fix any overhead, profit, or cost element of the Proposal price, or of that of any other Contractor, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract
- assures that all statements contained in the Proposal are true
- has not, directly or indirectly, submitted his or her Proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, Proposal depository, or to any member or agent thereof to effectuate a collusive or sham Proposal.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Contractors Printed Name: \_\_\_\_\_

**City of Brentwood Tree Maintenance Standards**

(applicable sections from City of Brentwood Landscape Maintenance Standards)

**Section 3 Irrigation**

***It is the responsibility of the tree maintenance contractor to coordinate irrigation repairs with a City representative and the applicable maintenance contractor.***

**3.1 General**

3.1.1 For new plantings, shall be checked daily at each site during the warranty period.

3.1.5 Irrigation preventative maintenance system checks shall be done as needed; all zones will be checked for operation, and repairs made immediately.

**3.2 Delivery**

3.2.3 Each station shall be adjusted to meet the needs of the specific area unless authorized by the City, as well as, adjusted due to weather conditions.

**Section 4 Disease and Pest Control**

4.1 Trees shall be disease and pest free. Any signs of stress or damage to trees and/or a direct bother to the public or its safety shall be corrected by utilizing one of the three (3) steps indicated:

Preventative ~ a scheduled chemical or cultural program designed to prevent significant damage.

Corrective ~ application of chemical or mechanical controls designed to eliminate observed problems.

Integrated Pest Management ~ withholding any controls until such time as pests demonstrate damage to plant materials, or become a demonstrated irritant or safety concern to the public, such as in the case of wasps, ants, aphids, or similar pests.

**Section 8 Trees**

**8.1 General Standards**

8.1.1 Shall provide shade, wind breaks, sound attenuation, and otherwise enhance the park setting.

8.1.2 Maintained in compliance with Section 4 related to Disease and Pest Control, and Section 3 related to Irrigation standards.

8.1.3 Trees will conform to the general shape and height of the species: significantly deformed specimens will be removed.

8.1.4 Weed Control

8.1.4.1 Mechanical grass trimming around trees shall be accomplished in a way that will not scar the trunk in any way.

8.1.6 Trimming

8.1.6.1 Tree limbs will be at a safe height for the uses anticipated in the vicinity.

8.1.6.2 Trees will not exhibit broken or cracked limbs or other structural damage, and all suckers shall be removed.

8.1.7 Pruning

8.1.7.1 All trees will be evaluated for pruning as needed.

8.1.7.3 Trees shall be pruned according to the International Society of Arboriculture standards and ANSI A300.

8.1.8 Staking

8.1.8.1 Young trees should be properly staked to assist in support until roots are firmly established, especially in wind prone areas. Once firmly established, stakes should be removed with no protrusion above ground. Trees must be straight.

8.1.8.2 Ties on the stakes should be checked periodically to ensure they are adjusted properly.

8.1.8.3 Tight or damaged ties or stakes should be replaced or repaired.

8.1.9 Removal and Replacement

8.1.9.1 All damaged trees shall be removed and replaced within thirty (30) days of notice, unless determined by the City to delay replacement.

8.1.9.2 All Memorial trees shall be replaced within thirty (30) days of discovery.

8.1.9.3 All replacement trees shall be the same size and species of tree as the damaged tree. If the tree cannot be matched, the City will determine an appropriate replacement species.

<b>INVENTORY BY DIAMETER BREAST HEIGHT (DBH)</b>	
<b>DBH</b>	<b>City Owned</b>
31"+	36
25" - 30"	49
19" - 24"	245
0" - 18"	29,829
<b>Total</b>	<b>30,159</b>

**City of Brentwood Tree Maintenance Services**

**SCOPE OF SERVICES / PROPOSAL FORM**

**TREE MAINTENANCE TOTAL COST**

*Bid amounts shall include the pruning, inventory, inspections, and a Certified Arborist to be on-site 8 regularly scheduled hours per week.*

*Bid amounts below shall be based on a 5-Year Grid Pruning Plan in which approximately one fifth (1/5) of the trees listed will be pruned each year unless otherwise noted.*

29,825 City-Maintained Trees x \$\_\_\_\_\_ per tree)\* = Total \$\_\_\_\_\_

**Annual Pruning Tree Work:**

Palm Trees Located City-Wide 90 Palm Trees x \$\_\_\_\_\_ per tree)\* = Total \$\_\_\_\_\_

Annual Pruning and Seasonal Mistletoe Removal from  
Downtown Autumn Purple Ash and Chinese Elm Trees 45 x \$\_\_\_\_\_ per tree)\* = Total \$\_\_\_\_\_

**Bi-Annual Pruning Tree Work:**

Raywood Ash Trees Located Along Garin Parkway 215 x \$\_\_\_\_\_ per tree)\* = Total \$\_\_\_\_\_

*\* City will use the per tree price for any additional trees above the number listed or as a deduct for a lesser amount of work.*

**RATES AND FEES FOR ADDITIONAL WORK**

**SERVICE REQUEST PRUNING UNIT**

*dbh = diameter breast height*

0 – 6” dbh	\$ _____/tree
7 – 18” dbh	\$ _____/tree
19 – 24” dbh	\$ _____/tree
25 – 36” dbh	\$ _____/tree
37” dbh and over	\$ _____/tree

**TREE REMOVAL**

Tree and Stump Removal 0-24”	\$ _____/diameter inch
Tree and Stump Removal over 25”	\$ _____/diameter inch
Tree Only Removal 0-24”	\$ _____/diameter inch
Tree Only Removal over 25”	\$ _____/diameter inch
Stump Only Removal	\$ _____/inch
Root Pruning	\$ _____/linear foot x 24” deep
Root Barrier Installation (x 36” deep)	\$ _____/linear foot x 36” deep

*Refer to City of Brentwood Standard Plans & Specs Detail L-3*

**PROPOSAL FORM**

**RATES AND FEES FOR ADDITIONAL WORK - CONTINUED**

**TREE PLANTING - INCLUDING COST OF TREE AND LABOR**

15 Gallon Tree \$ \_\_\_\_\_/tree  
24 Inch Box Tree \$ \_\_\_\_\_/tree  
36 Inch Box Tree \$ \_\_\_\_\_/tree

**TREATMENT OF PESTICIDES**

0-12" dbh \$ \_\_\_\_\_/tree  
>12" dbh \$ \_\_\_\_\_/tree

**TREE WATERING**

Water \$ \_\_\_\_\_/per tree per day

**CREW RENTAL RATE**

3 Man Crew with Equipment \$ \_\_\_\_\_/hour  
1 Man Crew with Equipment \$ \_\_\_\_\_/hour

**EMERGENCY RESPONSE**

Evening, Weekend, or Holiday Call-Out \$ \_\_\_\_\_/man hour  
# \_\_\_\_\_ hours minimum

**TREE INVENTORY UPDATES**

Adding New Sites to software program \$ \_\_\_\_\_/per tree site

**SPECIALTY EQUIPMENT**

***Equipment to Evaluate Tree Failure/Hazard***

28 Ton Crane \$ \_\_\_\_\_/hour  
\_\_\_\_\_ \$ \_\_\_\_\_/hour  
\_\_\_\_\_ \$ \_\_\_\_\_/hour  
\_\_\_\_\_ \$ \_\_\_\_\_/hour

**CERTIFIED ARBORIST RATES**

Certified Arborist *(beyond the first day per week already included in lump sum price above)* \_\_\_\_\_/8 hour day/year

**City of Brentwood Tree Maintenance Services**

**PROPOSAL FORM SIGNATURE PAGE**

**Company Information:**

Company Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

\_\_\_\_\_

Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

**Proposal Submitted By:**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

If required by City, proper notarial acknowledgment of execution by Consultant must be attached. If a Corporation, Agreement must be signed by one corporate officer from each of the following two groups.

**\*Group A.**  
Chairman,  
President, **or**  
Vice-President

**\*\*Group B.**  
Secretary,  
Assistant Secretary,  
CFO **or** Assistant Treasurer

**Otherwise**, the corporation **must** attach a resolution certified by the secretary or assistant secretary under corporate seal empowering the officer(s) signing to bind the corporation.

If an LLC:

- The Agreement must be signed by a Managing Member **or** the LLC must attach a resolution empowering the signatory to bind the LLC.

If a partnership:

- The Agreement must be signed by the Managing Partner **or** the Partner authorized to execute agreements of this type. Additional documentation, such as the partnership agreement, confirming this signature authority may be required.

If a sole proprietorship:

- The Agreement must be signed by the owner.