

**CITY OF CHULA VISTA  
CONTRACTOR SERVICES AGREEMENT  
WITH [KINGSBOROUGH ATLAS TREE SURGERY, INC.]  
TO PROVIDE [BRUSH CLEARANCE SERVICES]**

This Agreement is entered into effective as of September 27, 2022, by and between the City of Chula Vista, a chartered municipal corporation (“City”) and Kingsborough Atlas Tree Surgery, Inc., a California corporation (“Contractor”), (collectively, the “Parties” and, individually, a “Party”) with reference to the following facts:

**RECITALS**

WHEREAS, on August 5, 2022, City staff issued a Request for Bids for brush clearance services Barons Canyon, Bonita Long Canyon, Church Canyon, Goats Hill Canyon, Independence Canyon, and Lynwood Hills Canyon; and

WHEREAS, on August 23, 2022, two (2) bid were received from Kingsborough Atlas Tree Surgery, Inc. and Utility Tree Service, LLC respectively for the brush clearance services contract; and

WHEREAS, after completing review for responsiveness, staff determined Kingsborough Atlas Tree Surgery, Inc. to be the responsible lowest bidder, submitting a responsive bid based on bid line-item unit costs; and

WHEREAS, the City Council of the City of Chula Vista accepted the bids and awarded the brush clearance services contract to Kingsborough Atlas Tree Surgery, Inc. on September 27, 2022; and

WHEREAS Contractor warrants and represents that it is experienced and staffed in a manner such that it can deliver the services required of Contractor to City in accordance with the time frames and the terms and conditions of this Agreement.

**[End of Recitals. Next Page Starts Obligatory Provisions.]**

## OBLIGATORY PROVISIONS

NOW, THEREFORE, in consideration of the above recitals, the covenants contained herein, and other good and valuable considerations, the receipt and sufficiency of which the Parties hereby acknowledge, City and Contractor hereby agree as follows:

### 1. SERVICES

1.0. Contract Documents. This Agreement consists of the following contract documents (“Contract Documents”), all of which are incorporated into and made a part of this Agreement as if set forth in full:

1.0.1. This Agreement and all exhibits hereto, and any change orders, amendments, and supplemental agreements duly authorized and executed by authorized representatives of the City and Contractor.

1.0.2. All permits for the Project.

1.0.3. The City of Chula Vista’s Standard Special Provisions, Standard Special Provisions (“Greenbook”), Special Provisions, and Standard Plans.

1.0.4. All referenced specifications, plans, and materials.

1.0.5. The Project’s Notice to Bidders, Bid Requirements and Conditions, Bid Form, Special Provisions – General, Special Provisions – Technical, and Bid General Provisions.

1.0.6. The successful bidder’s bid documents submitted in response to the request for bid, and any post-bid documentation submitted prior to the award of the Project contract.

1.1. Required Services. Contractor agrees to perform the services, and deliver to City the “Deliverables” (if any) described in the attached Exhibit A, incorporated into the Agreement by this reference, within the time frames set forth therein, time being of the essence for this Agreement. The services and/or Deliverables described in Exhibit A shall be referred to herein as the “Required Services.”

1.2. Reductions in Scope of Work. City may independently, or upon request from, from time to time, reduce the Required Services to be performed by the Contractor/Service Provider under this Agreement. Upon doing so, City and Contractor agree to meet and confer in good faith for the purpose of negotiating a corresponding reduction in the compensation associated with the reduction.

1.3. Additional Services. Subject to compliance with the City’s Charter, codes, policies, procedures and ordinances governing procurement and purchasing authority, City may request Contractor provide additional services related to the Required Services (“Additional Services”). If so, City and Contractor agree to meet and confer in good faith for the purpose of negotiating an amendment to Exhibit A, to add the Additional Services. Unless otherwise agreed, compensation for the Additional Services shall be charged and paid consistent with the rates and terms already provided therein. Once added to Exhibit A, “Additional Services” shall also become “Required Services” for purposes of this Agreement.

1.4. Standard of Care. Contractor expressly warrants and agrees that any and all hereunder shall be performed in accordance with the highest standard of care exercised by members of the profession currently practicing under similar conditions and in similar locations.

1.5. No Waiver of Standard of Care. Where approval by City is required, it is understood to be conceptual approval only and does not relieve the Contractor of responsibility for complying with all laws, codes, industry standards, and liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of the Contractor or its subcontractors.

1.6. Security for Performance. In the event that Exhibit A Section 4 indicates the need for Contractor to provide additional security for performance of its duties under this Agreement, Contractor shall provide such additional security prior to commencement of its Required Services in the form and on the terms prescribed on Exhibit A, or as otherwise prescribed by the City Attorney.

1.7. Compliance with Laws. In its performance of the Required Services, Contractor shall comply with any and all applicable federal, state and local laws, including the Chula Vista Municipal Code.

1.8. Business License. Prior to commencement of work, Contractor shall obtain a business license from City.

1.9. Subcontractors. Prior to commencement of any work, Contractor shall submit for City's information and approval a list of any and all subcontractors to be used by Contractor in the performance of the Required Services. Contractor agrees to take appropriate measures necessary to ensure that all subcontractors and personnel utilized by the Contractor to complete its obligations under this Agreement comply with all applicable laws, regulations, ordinances, and policies, whether federal, state, or local. In addition, if any subcontractor is expected to fulfill any responsibilities of the Contractor under this Agreement, Contractor shall ensure that each and every subcontractor carries out the Contractor's responsibilities as set forth in this Agreement. The Contractor is fully responsible for the acts and omissions of all subcontractors of every tier for the Project (as defined in Exhibit A), and for all persons and entities either directly or indirectly employed by or under the control of any subcontractor in the same manner and to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by it or under its control pursuant to this Agreement.

1.9.1. Subcontract Indemnity. Contractor shall require all subcontracts for the Project to obligate each subcontractor, with respect to the work to be performed under that subcontract, to defend, indemnify, protect, and hold harmless the Indemnified Parties (as defined in Section 4.1) in the same manner and to the same extent that Contractor is required to defend, indemnify, protect, and hold harmless the Indemnified Parties under this Agreement.

1.9.2. Subcontract Insurance. Contractor shall require all subcontracts for the Project to obligate each subcontractor, with respect to the work to be performed under that subcontract, to procure and maintain insurance in the same manner and to the same extent that Contractor is required to procure and maintain insurance under the Agreement, including without limitation naming the City, its officers, officials, employees, and volunteers as additional insureds.

1.9.3. Subcontractor Licensure. Contractor shall require all subcontractors for the Project to be appropriately licensed before commencing work for the Project, and to remain licensed for the duration of their work performed under the subcontract. In the event that a subcontractor is not properly licensed at any time during the Project, Contractor shall immediately cease payment to that subcontractor and Contractor shall return to the City any payment made to that subcontractor for work performed during the period for which the subcontractor was not licensed.

1.9.4. Subcontractor Payments. Contractor shall pay its subcontractors for the Project not later than seven (7) days after receipt of each progress payment received in accordance with the provision in Section 7108.5 of the California Business and Professions Code. Any delay or postponement of payment may take place only for good cause and with the City's prior written approval. Any violation of Section 7108.5 shall subject the violating Contractor and its respective subcontractors to the penalties, sanctions, and other remedies of that section.

1.10. Term. This Agreement shall commence on the earlier to occur of the Effective Date or Contractor's commencement of the Required Services hereunder, and shall terminate when the Parties have complied with all their obligations hereunder; provided, however, provisions which expressly survive termination shall remain in effect.

## 2. COMPENSATION

2.1. General. For satisfactory performance of the Required Services, City agrees to compensate Contractor in the amount(s) and on the terms set forth in Exhibit A, Section 4. Standard terms for billing and payment are set forth in this Section 2.

2.2. Detailed Invoicing. Contractor agrees to provide City with a detailed invoice for services performed each month, within thirty (30) days of the end of the month in which the services were performed, unless otherwise specified in Exhibit A. Invoicing shall begin on the first of the month following the Effective Date of the Agreement. All charges must be presented in a line item format with each task separately explained in reasonable detail. Each invoice shall include the current monthly amount being billed, the amount invoiced to date, and the remaining amount available under any approved budget. Contractor must obtain prior written authorization from City for any fees or expenses that exceed the estimated budget.

2.3. Payment to Contractor. Upon receipt of a properly prepared invoice and confirmation that the Required Services detailed in the invoice have been satisfactorily performed, City shall pay Contractor for the invoice amount within thirty (30) days. Payment shall be made in accordance with the terms and conditions set forth in Exhibit A and section 2.4, below. At City's discretion, invoices not timely submitted may be subject to a penalty of up to five percent (5%) of the amount invoiced.

2.4. Retention Policy. City shall retain ten percent (10%) of the amount due for Required Services detailed on each invoice (the "holdback amount"). Upon City review and determination of Project Completion, the holdback amount will be issued to Contractor.

2.5. Reimbursement of Costs. City may reimburse Contractor's out-of-pocket costs incurred by Contractor in the performance of the Required Services if negotiated in advance and included in Exhibit A. Unless specifically provided in Exhibit A, Contractor shall be responsible for any and all out-of-pocket costs incurred by Contractor in the performance of the Required Services.

2.6. Exclusions. City shall not be responsible for payment to Contractor for any fees or costs in excess of any agreed upon budget, rate, or other maximum amount(s) provided for in Exhibit A. City shall also not be responsible for any cost: (a) incurred prior to the Effective Date; or (b) arising out of or related to the errors, omissions, negligence or acts of willful misconduct of Contractor, its agents, employees, or subcontractors.

2.7. Payment Not Final Approval. Contractor understands and agrees that payment to the Contractor or reimbursement for any Contractor costs related to the performance of Required Services does not constitute a City final decision regarding whether such payment or cost reimbursement is allowable and eligible for

payment under this Agreement, nor does it constitute a waiver of any violation by Contractor of the terms of this Agreement. If City determines that Contractor is not entitled to receive any amount of compensation already paid, City will notify Contractor in writing and Contractor shall promptly return such amount.

### 3. INSURANCE

3.1. Required Insurance. Contractor must procure and maintain, during the period of performance of Required Services under this Agreement, and for twelve months after completion of Required Services, the policies of insurance described on the attached Exhibit B, incorporated into the Agreement by this reference (the “Required Insurance”). The Required Insurance shall also comply with all other terms of this Section.

3.2. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions relating to the Required Insurance must be disclosed to and approved by City in advance of the commencement of work.

3.3. Standards for Insurers. Required Insurance must be placed with licensed insurers admitted to transact business in the State of California with a current A.M. Best’s rating of A V or better, or, if insurance is placed with a surplus lines insurer, insurer must be listed on the State of California List of Eligible Surplus Lines Insurers (LESLI) with a current A.M. Best’s rating of no less than A X. For Workers’ Compensation Insurance, insurance issued by the State Compensation Fund is also acceptable.

3.4. Subcontractors. Contractor must include and/or require to be included all subcontractors of every tier as insureds under its policies and/or furnish separate certificates and endorsements demonstrating separate coverage for those not under its policies. Any separate coverage for subcontractors of every tier must also comply with the terms of this Agreement.

3.5. Additional Insureds. City, its officers, officials, employees, agents, and volunteers must be named as additional insureds with respect to any policy of general liability, automobile, or pollution insurance specified as required in Exhibit B or as may otherwise be specified by City’s Risk Manager. The general liability additional insured coverage must be provided in the form of an endorsement to the Contractor’s insurance using ISO CG 2010 (11/85) or its equivalent; such endorsement must not exclude Products/Completed Operations coverage.

3.6. General Liability Coverage to be “Primary”. Contractor’s general liability coverage must be primary insurance as it pertains to the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers is wholly separate from the insurance provided by Contractor and in no way relieves Contractor from its responsibility to provide insurance.

3.7. No Cancellation. No Required Insurance policy may be canceled by either Party during the required insured period under this Agreement, except after thirty days’ prior written notice to the City by certified mail, return receipt requested. Prior to the effective date of any such cancellation Contractor must procure and put into effect equivalent coverage(s).

3.8. Waiver of Subrogation. Contractor’s insurer(s) will provide a Waiver of Subrogation in favor of the City for each Required Insurance policy under this Agreement. In addition, Contractor waives any right it may have or may obtain to subrogation for a claim against City.

3.9. Verification of Coverage. Prior to commencement of any work, Contractor shall furnish City with original certificates of insurance and any amendatory endorsements necessary to demonstrate to City that Contractor has obtained the Required Insurance in compliance with the terms of this Agreement. The words

“will endeavor” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents, or representatives” or any similar language must be deleted from all certificates. The required certificates and endorsements should otherwise be on industry standard forms. The City reserves the right to require, at any time, complete, certified copies of all required insurance policies, including endorsements evidencing the coverage required by these specifications.

3.10. Claims-Made Policy Requirements. If General Liability, Pollution and/or Asbestos Pollution Liability and/or Errors & Omissions coverage are required and are provided on a claims-made form, the following requirements also apply:

a. The “Retro Date” must be shown, and must be before the date of this Agreement or the beginning of the work required by this Agreement.

b. Insurance must be maintained, and evidence of insurance must be provided, for at least five (5) years after completion of the work required by this Agreement.

c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a “Retro Date” prior to the effective date of this Agreement, the Contractor must purchase “extended reporting” coverage for a minimum of five (5) years after completion of the work required by this Agreement.

d. A copy of the claims reporting requirements must be submitted to the City for review.

3.11. Not a Limitation of Other Obligations. Insurance provisions under this section shall not be construed to limit the Contractor obligations under this Agreement, including Indemnity.

3.12. Additional Coverage. To the extent that insurance coverage provided by Contractor maintains higher limits than the minimums appearing in Exhibit B, City requires and shall be entitled to coverage for higher limits maintained.

#### 4. INDEMNIFICATION

4.1. General. To the maximum extent allowed by law, Contractor shall protect, defend, indemnify and hold harmless City, its elected and appointed officers, agents, employees and volunteers (collectively, “Indemnified Parties”), from and against any and all claims, demands, causes of action, costs, expenses, (including reasonable attorneys’ fees and court costs), liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions, negligence, or willful misconduct of Contractor, its officials, officers, employees, agents, and contractors, arising out of or in connection with the performance of the Required Services, the results of such performance, or this Agreement. This indemnity provision does not include any claims, damages, liability, costs and expenses arising from the sole negligence, active negligence, or willful misconduct of the Indemnified Parties. Also covered is liability arising from, connected with, caused by or claimed to be caused by the active or passive negligent acts or omissions of the Indemnified Parties which may be in combination with the active or passive negligent acts or omissions of the Contractor, its employees, agents or officers, or any third party.

4.2. Modified Indemnity Where Agreement Involves Design Professional Services. Notwithstanding the foregoing, if the services provided under this Agreement are design professional services, as defined by California Civil Code section 2782.8, as may be amended from time to time, the defense and indemnity

obligation under Section 1, above, shall be limited to the extent required by California Civil Code section 2782.8.

4.3. Costs of Defense and Award. Included in Contractor's obligations under this Section 4 is Contractor's obligation to defend, at Contractor's own cost, expense and risk, any and all suits, actions or other legal proceedings that may be brought or instituted against one or more of the Indemnified Parties. Subject to the limitations in this Section 4, Contractor shall pay and satisfy any judgment, award or decree that may be rendered against one or more of the Indemnified Parties for any and all related legal expenses and costs incurred by any of them.

4.4. Contractor Obligations Not Limited or Modified. Contractor's obligations under this Section 4 shall not be limited to insurance proceeds, if any, received by the Indemnified Parties, or by any prior or subsequent declaration by the Contractor. Furthermore, Contractor's obligations under this Section 4 shall in no way limit, modify or excuse any of Contractor's other obligations or duties under this Agreement.

4.5. Enforcement Costs. Contractor agrees to pay any and all costs City incurs in enforcing Contractor's obligations under this Section 4.

4.6. Survival. Contractor's obligations under this Section 4 shall survive the termination of this Agreement.

## 5. FINANCIAL INTERESTS OF CONTRACTOR.

5.1. Form 700 Filing. The California Political Reform Act and the Chula Vista Conflict of Interest Code require certain government officials and Contractor performing work for government agencies to publicly disclose certain of their personal assets and income using a Statement of Economic Interests form (Form 700). In order to assure compliance with these requirements, Contractor shall comply with the disclosure requirements identified in the attached Exhibit C, incorporated into the Agreement by this reference.

5.2. Disclosures; Prohibited Interests. Independent of whether Contractor is required to file a Form 700, Contractor warrants and represents that it has disclosed to City any economic interests held by Contractor, or its employees or subcontractors who will be performing the Required Services, in any real property or project which is the subject of this Agreement. Contractor warrants and represents that it has not employed or retained any company or person, other than a bona fide employee or approved subcontractor working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants and represents that it has not paid or agreed to pay any company or person, other than a bona fide employee or approved subcontractor working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Contractor further warrants and represents that no officer or employee of City has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, the proceeds hereof, or in the business of Contractor or Contractor's subcontractors. Contractor further agrees to notify City in the event any such interest is discovered whether or not such interest is prohibited by law or this Agreement. For breach or violation of any of these warranties, City shall have the right to rescind this Agreement without liability.

## 6. REMEDIES

6.1. Termination for Cause. If for any reason whatsoever Contractor shall fail to perform the Required Services under this Agreement in a proper or timely manner, or if Contractor shall violate any of the other

covenants, agreements or conditions of this Agreement (each a “Default”), in addition to any and all other rights and remedies City may have under this Agreement, at law or in equity, City shall have the right to terminate this Agreement by giving five (5) days written notice to Contractor. Such notice shall identify the Default and the Agreement termination date. If Contractor notifies City of its intent to cure such Default prior to City’s specified termination date, and City agrees that the specified Default is capable of being cured, City may grant Contractor up to ten (10) additional days after the designated termination date to effectuate such cure. In the event of a termination under this Section 6.1, Contractor shall immediately provide City any and all “Work Product” (defined in Section 7 below) prepared by Contractor as part of the Required Services. Such Work Product shall be City’s sole and exclusive property as provided in Section 7 hereof. Contractor may be entitled to compensation for work satisfactorily performed prior to Contractor’s receipt of the Default notice; provided, however, in no event shall such compensation exceed the amount that would have been payable under this Agreement for such work, and any such compensation shall be reduced by any costs incurred or projected to be incurred by City as a result of the Default.

6.2. Termination or Suspension for Convenience of City. City may suspend or terminate this Agreement, or any portion of the Required Services, at any time and for any reason, with or without cause, or for no reason by giving specific written notice to Contractor of such termination or suspension at least fifteen (15) days prior to the effective date thereof. Upon receipt of such notice, Contractor shall immediately cease all work under the Agreement and promptly deliver all “Work Product” (defined in Section 7 below) to City. Such Work Product shall be City’s sole and exclusive property as provided in Section 7 hereof. Contractor shall be entitled to receive just and equitable compensation for this Work Product in an amount equal to the amount due and payable under this Agreement for work satisfactorily performed as of the date of the termination/suspension notice plus any additional remaining Required Services requested or approved by City in advance that would maximize City’s value under the Agreement.

6.3. Waiver of Claims. In the event City terminates the Agreement in accordance with the terms of this Section, Contractor hereby expressly waives any and all claims for damages or compensation as a result of such termination except as expressly provided in this Section 6.

6.4. Administrative Claims Requirements and Procedures. No suit or arbitration shall be brought arising out of this Agreement against City unless a claim has first been presented in writing and filed with City and acted upon by City in accordance with the procedures set forth in Chapter 1.34 of the Chula Vista Municipal Code, as same may be amended, the provisions of which, including such policies and procedures used by City in the implementation of same, are incorporated herein by this reference. Upon request by City, Contractor shall meet and confer in good faith with City for the purpose of resolving any dispute over the terms of this Agreement.

6.5. Governing Law/Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action arising under or relating to this Agreement shall be brought only in San Diego County, State of California.

6.6. Service of Process. Contractor agrees that it is subject to personal jurisdiction in California. If Contractor is a foreign corporation, limited liability company, or partnership that is not registered with the California Secretary of State, Contractor irrevocably consents to service of process on Contractor by first class mail directed to the individual and address listed under “For Legal Notice,” in section 1.B. of Exhibit A to this Agreement, and that such service shall be effective five days after mailing.

## 7. OWNERSHIP AND USE OF WORK PRODUCT



All reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other materials or properties produced in whole or in part under this Agreement in connection with the performance of the Required Services (collectively “Work Product”) shall be the sole and exclusive property of City. No such Work Product shall be subject to private use, copyrights, or patent rights by Contractor in the United States or in any other country without the express, prior written consent of City. City shall have unrestricted authority to publish, disclose, distribute, and otherwise use, copyright or patent, in whole or in part, any such Work Product, without requiring any permission of Contractor, except as may be limited by the provisions of the Public Records Act or expressly prohibited by other applicable laws. With respect to computer files containing data generated as Work Product, Contractor shall make available to City, upon reasonable written request by City, the necessary functional computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files.

## 8. GENERAL PROVISIONS

8.1. Reserved.

8.2. Assignment. City would not have entered into this Agreement but for Contractor’s unique qualifications and traits. Contractor shall not assign any of its rights or responsibilities under this Agreement, nor any part hereof, without City’s prior written consent, which City may grant, condition, or deny in its sole discretion.

8.3. Authority. The person(s) executing this Agreement for Contractor warrants and represents that they have the authority to execute same on behalf of Contractor and to bind Contractor to its obligations hereunder without any further action or direction from Contractor or any board, principal, or officer thereof.

8.4. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one Agreement after each Party has signed such a counterpart.

8.5. Entire Agreement. This Agreement together with all exhibits attached hereto and other agreements expressly referred to herein, constitutes the entire Agreement between the Parties with respect to the subject matter contained herein. All exhibits referenced herein shall be attached hereto and are incorporated herein by reference. All prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, are superseded.

8.6. Record Retention. During the course of the Agreement and for three (3) years following completion of the Required Services, Contractor agrees to maintain, intact and readily accessible, all data, documents, reports, records, contracts, and supporting materials relating to the performance of the Agreement, including accounting for costs and expenses charged to City, including such records in the possession of subcontractors of every tier.

8.7. Further Assurances. The Parties agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required in order to carry out the provisions of this Agreement and the intentions of the Parties.

8.8. Independent Contractor. Contractor is and shall at all times remain as to City a wholly independent contractor. Neither City nor any of its officers, employees, agents, or volunteers shall have control over the conduct of Contractor or any of Contractor’s officers, employees, or agents (“Contractor Related Individuals”), except as set forth in this Agreement. No Contractor Related Individuals shall be deemed employees of City, and none of them shall be entitled to any benefits to which City employees are entitled,

including but not limited to overtime, retirement benefits, worker's compensation benefits, injury leave, or other leave benefits. Furthermore, City will not withhold state or federal income tax, social security tax or any other payroll tax with respect to any Contractor Related Individuals; instead, Contractor shall be solely responsible for the payment of same and shall hold the City harmless with respect to same. Contractor shall not at any time or in any manner represent that it or any of its Contractor Related Individuals are employees or agents of City. Contractor shall not incur or have the power to incur any debt, obligation, or liability whatsoever against City, or bind City in any manner.

8.9. Notices. All notices, demands or requests provided for or permitted to be given pursuant to this Agreement must be in writing. All notices, demands, and requests to be sent to any Party shall be deemed to have been properly given or served if personally served or deposited in the United States mail, addressed to such Party, postage prepaid, registered or certified, with return receipt requested, at the addresses identified in this Agreement at the places of business for each of the designated Parties as indicated in Exhibit A, or otherwise provided in writing.

8.10. No Waiver. The failure of City to insist, in any one or more instances, upon the performance of any provision of the Agreement, or to exercise any right in the Agreement, shall not be construed as a waiver or relinquishment of such provisions or rights. Any waiver of any breach of this Agreement shall not be held to be a waiver of any other or subsequent breach. Any waiver issued by the City of any provision of the Agreement shall only be effective if issued in writing by the City and shall be specific and apply only to the particular matter concerned and not to other similar or dissimilar matters.

8.11. No Limitation. The duties and obligations imposed by this Agreement and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees, and obligations imposed upon the Agreement or by this Agreement and all of the rights and remedies available to City thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies imposed or available by laws, regulations, or codes, by special warranty or guarantee or by other provisions of the Contract Documents.

8.12. Severability. If any term or provision or portion of a term or provision of this Agreement is declared invalid or unenforceable by any court of lawful jurisdiction, then the remaining terms and provisions or portions of terms or provisions will not be affected thereby and will remain in full force and effect.

**(End of Obligatory Provisions. Next page is signature page.)**

**SIGNATURE PAGE  
BRUSH CLEARANCE SERVICES AGREEMENT**

IN WITNESS WHEREOF, by executing this Agreement where indicated below, City and Contractor agree that they have read and understood all terms and conditions of the Agreement, that they fully agree and consent to be bound by same, and that they are freely entering into this Agreement as of the Effective Date.

Kingsborough Atlas Tree Surgery, Inc.

CITY OF CHULA VISTA

BY: \_\_\_\_\_  
RICHARD KINGSBOROUGH  
CEO/FOUNDER |

BY: \_\_\_\_\_  
MARIA V. KACHADOORIAN  
CITY MANAGER |

APPROVED AS TO FORM

BY: \_\_\_\_\_  
GLEN R. GOOGINS  
CITY ATTORNEY

**EXHIBIT A**  
**SCOPE OF WORK AND PAYMENT TERMS**

**1. Contact People for Contract Administration and Legal Notice**

A. City Contract Administration:

Angelica Aguilar  
Assistant Director of Public Works  
1800 Maxwell Road, Chula Vista, CA 91911  
619-397-6088  
AAguilar@chulavistaca.gov

For Legal Notice Copy to:

City of Chula Vista  
City Attorney  
276 Fourth Avenue, Chula Vista, CA 91910  
619-691-5037  
CityAttorney@chulavistaca.gov

B. Contractor Contract Administration:

Kingsborough Atlas Tree Surgery, Inc.  
Richard Kingsborough, CEO/Founder  
1544 Ludwig Avenue  
Santa Rosa, CA 95407  
707-974-3093  
Rich@atlas-tree.com

For Legal Notice Copy to:

Tyler R. Willis, Director, Forest Management  
1544 Ludwig Avenue  
Santa Rosa, CA 95407  
707-787-7334  
tyler.willis@atlas-tree.com

**2. Required Services**

A. General Description:

The Contractor will furnish all work, materials, equipment, services, and labor necessary to fully complete brush clearance services for Chula Vista's named canyons in strict accordance with the Contract Documents.

B. Detailed Description:

The Contractor shall furnish and provide all labor, materials, equipment, tools, facilities, skill, and services necessary to complete, in a good and workmanlike manner, all brush clearance services, and all other Required Services within the named canyons throughout the City at the unit prices contained herein in strict accordance with the Contract Documents.

**3. Term:** In accordance with Section 1.10 of this Agreement, the term of this Agreement shall begin September 27, 2022 and end on March 31, 2023 for completion of all Required Services.

**4. Compensation:** The unit prices for completed and approved Required Services are reflected on the table below:

CANYON NAME/ACREAGE	TASK						CANYON TOTALS	Per Acre Cost
	Project Management	Prepare Work Plan	Tribal Notification	Field Coordination	Biological Monitoring and Reporting	Brush and Vegetation Management Services		
Barons Canyon (30.72 acres)	\$ 4,753.98	\$ 448.56	\$ 200.00	\$ 4,753.98	\$ 9,748.89	\$ 571,951.72	\$ 591,857.13	\$ 19,264.30
Bonita Long Canyon (40.89 acres)	\$ 6,326.88	\$ 596.96	\$ 200.00	\$ 6,326.88	\$ 12,974.41	\$ 761,299.01	\$ 787,724.14	\$ 19,265.41
Church Canyon (19.67 acres)	\$ 3,042.90	\$ 287.11	\$ 200.00	\$ 3,042.90	\$ 6,240.02	\$ 366,220.22	\$ 379,033.15	\$ 19,274.51
Goats Hill (43.08 ac)	\$ 6,666.45	\$ 629.00	\$ 200.00	\$ 6,666.45	\$ 13,670.76	\$ 802,072.91	\$ 829,905.57	\$ 19,263.17
Independence Canyon (8.62 acres)	\$ 1,333.29	\$ 125.80	\$ 200.00	\$ 1,333.29	\$ 2,734.15	\$ 160,489.04	\$ 166,215.57	\$ 19,290.38
Lynwood Hills (21.53 acres)	\$ 3,331.02	\$ 314.29	\$ 200.00	\$ 3,331.02	\$ 6,830.86	\$ 400,850.25	\$ 414,857.44	\$ 19,271.49
<b>TOTALS</b>	<b>\$ 25,454.52</b>	<b>\$ 2,401.72</b>	<b>\$ 1,200.00</b>	<b>\$ 25,454.52</b>	<b>\$ 52,199.09</b>	<b>\$ 3,062,883.15</b>	<b>\$ 3,169,593.00</b>	<b>\$ 19,267.81</b>

**Unit Prices.** Unit Prices shall include all labor, traffic control, equipment, materials, insurance, permit and license fees, disposal costs, profit, overhead, supervision, transportation, applicable sales tax, and all other costs to complete all necessary work for that line item.

**Payment.** As full compensation for completion of the Required Services, the City shall pay Contractor for the quantity or percentage of line item of work actually performed and approved by the City in accordance with the Contract Documents. **Payment shall be made for each acre of brush clearance and revegetation completed per canyon as noted in the table above.** The City’s obligation to pay Contractor under this Agreement is subject to and may be offset by charges owed by Contractor under this Agreement.

**5. Special Provisions:**

**Security for Performance:** Prior to commencement of the Required Services, Contractor shall procure Performance and Labor and Material Bonds for the Required Services. Such bonds are to be issued by a Surety authorized to transact such business in the State of California and listed as approved by the United States Department of Treasury Circular 570 with an underwriting limitation sufficient to issue bonds in the amount required by the Agreement. Approved entities are listed on the United States Department of Treasury’s website - [www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570.htm](http://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570.htm). Any renewal certificates required during the course of the Agreement must be renewed and received by the City within fifteen (15) days prior to expiration and must meet the same criteria. No substitutions shall be allowed.

**DIR/Prevailing Wages.** Contractor and its subcontractors of every tier shall comply with all Federal and State law prevailing wage requirements for all persons employed to perform the Required Services, including but not limited to payment of prevailing wages at the specified rates. The prevailing wage rates are determined by the Department of Industrial Relations (DIR) and are available on the DIR’s website.

Prior to commencing the Required Services, the Contractor shall provide the City with a list of its subcontractors and the classifications and wages of workers that will be employed to perform the Required Services. If Contractor desires to modify the list during the term of the Agreement, Contractor shall immediately provide an updated list to the City for City’s consideration. To verify compliance with State prevailing wage requirements, Contractor shall be registered with the DIR’s online registration of contractors and shall furnish and submit certified payrolls and other required documentation directly to the DIR. Contractor and its subcontractors of every tier shall comply with all requirements of Labor Code section 1776.

This Agreement is subject to compliance monitoring and enforcement by the DIR pursuant to Labor Code section 1771.4.

In addition to Federal and State law prevailing wage requirements, Contractor shall also comply with the following in its performance of the Required Services:

- Labor Code 1810: Hours in legal day's work;
- Labor Code 1813: Penalty for exceeding legal day's work; and
- Labor Code 1815: One and one-half time rate of pay.

Contractor acknowledges and agrees that a failure to comply with any requirements of this section authorizes the City to withhold payments under the Agreement. Nothing contained in, or not contained in, this section shall be construed to limit Contractor's obligations to comply with any applicable Federal, State, or local law or regulation.

Employment of Apprentices. Contractor and its subcontractors of every tier shall comply with all requirements for employment of apprentices as provided by any applicable law or regulation, including but not limited to Labor Code sections 1777.5, 1777.6, and 1777.7. Information regarding apprenticeship standards, wage schedules, and other requirements may be obtained from the DIR.

Non-Collusion Affidavit. Prior to commencing the Required Services, Contractor shall provide a fully executed and properly notarized Non-Collusion Affidavit, in the form attached hereto and incorporated herein as Exhibit D.

Workers' Compensation Insurance Declaration. Prior to commencing the Required Services, Contractor shall provide a fully executed and properly notarized Workers' Compensation Insurance Declaration, in the form attached hereto and incorporated herein as Exhibit E.

OPTIONAL (check if applicable):

Permitted Sub-Contractor:

Notwithstanding the completion date set forth in Section 3 above, City has the option to extend this Agreement for up to four (4) additional terms, defined as one-year increments from July 1<sup>st</sup> to June 30<sup>th</sup>. The City Manager or Director of Finance/Treasurer, or their designee, shall be authorized to exercise the extensions on behalf of the City. If the City exercises an option to extend, each extension shall be on the same terms and conditions contained herein, provided that the amounts specified in Section 4 above may be increased by up to the lower of the annual Regional Consumer Price Index (CPI-W) increases or 5% of the Contractor-quoted prices for each extension. The City shall give written notice to Contractor of the City's election to exercise the extension via the Notice of Exercise of Option to Extend document.

**EXHIBIT B**  
**INSURANCE REQUIREMENTS**

Contractor shall adhere to all terms and conditions of Section 3 of the Agreement and agrees to provide the following types and minimum amounts of insurance, as indicated by checking the applicable boxes (x):

	Type of Insurance	Minimum Amount	Form
<input checked="" type="checkbox"/>	General Liability: Including products and completed operations, personal and advertising injury	\$2,000,000 per occurrence for bodily injury, personal injury (including death), and property damage. If Commercial General Liability insurance with a general aggregate limit is used, either the general aggregate limit must apply separately to this Agreement or the general aggregate limit must be twice the required occurrence limit  Additional Insured Endorsement or Blanket AI Endorsement for City*  Waiver of Recovery Endorsement	Insurance Services Office Form CG 00 01  <i>*Must be primary and must not exclude Products/Completed Operations</i>
<input checked="" type="checkbox"/>	Automobile Liability	\$1,000,000 per accident for bodily injury, including death, and property damage	Insurance Services Office Form CA 00 01 Code 1-Any Auto Code 8-Hired Code 9-Non Owned
<input checked="" type="checkbox"/>	Workers' Compensation Employer's Liability	\$1,000,000 each accident \$1,000,000 disease policy limit \$1,000,000 disease each employee Waiver of Recovery Endorsement	

**EXHIBIT C**  
**CONTRACTOR CONFLICT OF INTEREST DESIGNATION**

The Political Reform Act<sup>1</sup> and the Chula Vista Conflict of Interest Code<sup>2</sup> (“Code”) require designated state and local government officials, including some Contractor, to make certain public disclosures using a Statement of Economic Interests form (Form 700). Once filed, a Form 700 is a public document, accessible to any member of the public. In addition, Contractors designated to file the Form 700 are also required to comply with certain ethics training requirements.<sup>3</sup>

A. Contractor **IS** a corporation or limited liability company and is therefore EXCLUDED<sup>4</sup> from disclosure.

B. Contractor is **NOT** a corporation or limited liability company and disclosure designation is as follows:

**APPLICABLE DESIGNATIONS FOR INDIVIDUAL(S) ASSIGNED TO PROVIDE SERVICES**

(Category descriptions available at [www.chulavistaca.gov/departments/city-clerk/conflict-of-interest-code](http://www.chulavistaca.gov/departments/city-clerk/conflict-of-interest-code).)

<i>Name</i>	<i>Email Address</i>	<i>Applicable Designation</i>
Enter Name of Each Individual Who Will Be Providing Service Under the Contract – <i>If individuals have different disclosure requirements, duplicate this row and complete separately for each individual</i>	Enter email address(es)	<input type="checkbox"/> <b>A. Full Disclosure</b> <input type="checkbox"/> <b>B. Limited Disclosure</b> ( <i>select one or more of the categories under which the Contractor shall file</i> ): <input type="checkbox"/> 1. <input type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. Justification:  <input type="checkbox"/> <b>C. Excluded from Disclosure</b>

**1. Required Filers**

Each individual who will be performing services for the City pursuant to the Agreement and who meets the definition of “Contractor,” pursuant to FPPC Regulation 18700.3, must file a Form 700.

**2. Required Filing Deadlines**

Each initial Form 700 required under this Agreement shall be filed with the Office of the City Clerk via the City's online filing system, NetFile, within 30 days of the approval of the Agreement. Additional Form 700 filings will be required annually on April 1 during the term of the Agreement, and within 30 days of the termination of the Agreement.

**3. Filing Designation**

The City Department Director will designate each individual who will be providing services to the City pursuant to the Agreement as *full disclosure*, *limited disclosure*, or *excluded from disclosure*, based on an analysis of the services the Contractor will provide. Notwithstanding this designation or anything in the Agreement, the Contractor is ultimately responsible for complying with FPPC regulations and filing requirements. If you have any questions regarding filing requirements, please do not hesitate to contact the City Clerk at (619)691-5041, or the FPPC at 1-866-ASK-FPPC, or (866) 275-3772 \*2.

Pursuant to the duly adopted City of Chula Vista Conflict of Interest Code, this document shall serve as the written determination of the Contractor’s requirement to comply with the disclosure requirements set forth in the Code.

**Completed by:** Samuel O. A. Oludunfe, City Forester & Open Space Manager

1 Cal. Gov. Code §§81000 *et seq.*; FPPC Regs. 18700.3 and 18704.

2 Chula Vista Municipal Code §§2.02.010-2.02.040.

3 Cal. Gov. Code §§53234, *et seq.*

4 CA FPPC Adv. A-15-147 (*Chadwick*) (2015); *Davis v. Fresno Unified School District* (2015) 237 Cal.App.4<sup>th</sup> 261; FPPC Reg. 18700.3 (Consultant defined as an “individual” who participates in making a governmental decision; “individual” does not include corporation or limited liability company).



**EXHIBIT D**  
**NON-COLLUSION AFFIDAVIT**

To the City of Chula Vista, Director of Engineering & Capital Projects:

The undersigned, in submitting a bid for performing the following work by Contract being duly sworn, deposes and says:

That he/she has not, either directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding and has not accepted any deposit from any subcontractor or material supplier through any bid depository, the by-laws, rules, and regulations of which prohibit or prevent the Contractor from considering any bid from any subcontractor or material supplier, which is not processed through said bid depository, or which prevent any subcontractor or material supplier from bidding to any Contractor who does not use the facilities or accept bids from or through such bid depository in connection with this Contract.

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Business Address

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Company

---

Place of Residence

---

Signature of Bidder

**(Attach Proper Notarization)**

**EXHIBIT E**  
**WORKERS' COMPENSATION INSURANCE DECLARATION**

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

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
State Contractor's License No.

\_\_\_\_\_  
Address

\_\_\_\_\_  
City/State

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

**(Attach Proper Notarization)**

**EXHIBIT F**  
**SPECIAL PROVISIONS – TECHNICAL**

**1 SCOPE OF WORK**

"Behave" fire modeling has identified named canyons as fire hazard areas.

The named canyons present a unique fire safety challenge as adjacent construction was completed prior to fuel modification requirements. Subsequent establishment of open space areas within the canyons has allowed for the accumulation of vegetative biomass proximate to residential structures that are not compliant with the latest structural code improvements.

The named canyons are natural preserves protected by the Multiple Species Conservation Subarea Plan (MSCP) adopted in 2003. Thick stands of native lemonade berry (*Rhus integrifolia*) and non-native *Acacia redolens* as well as non-native grasses and other weeds, with slopes up to 55%, have increased fuel buildup in the interface between the residences around the named canyons and the preserve areas.

The Contractor shall reference and follow all requirements applicable in the following documents:

- 1) City of Chula Vista Multiple Species Conservation Subarea Plan (MSCP), Sections 7.4.4 and 7.4.5.1  
[http://www.chulavistaca.gov/City\\_Services/Development\\_Services/Planning\\_Building/Planning/Environmental/Habitat.asp](http://www.chulavistaca.gov/City_Services/Development_Services/Planning_Building/Planning/Environmental/Habitat.asp)
- 2) City of Chula Vista Area Specific Management Directives (ASMDs), Sections 8 and 9  
[http://www.chulavistaca.gov/City\\_Services/Development\\_Services/Planning\\_Building/PDF/04\\_asmd4\\_rpt.pdf](http://www.chulavistaca.gov/City_Services/Development_Services/Planning_Building/PDF/04_asmd4_rpt.pdf)
- 3) ANSI A300 – Standards for Tree Care Operations: Standard Practices (Pruning)  
<http://egov.ci.miami.fl.us/Legistarweb/Attachments/62250.pdf>

While a 10-foot clear area within the interface and outside the preserves has been established and maintained, it is inadequate to provide access for the Fire Department to defend these homes in the event of a fire occurrence. Although the MSCP provides guidelines for fuel load reduction in these areas, funding has not been included to address this important issue.

Modification of native and non-native plant materials **for fire safety** within a 60-foot swath along the named canyons' rims, **covering a total of 173.16 acres**, in accordance with the City's **MSCP and Area Specific Management Directives** (ASMDs), is the objective of this vegetation management project.

Moreover, the **entire 60-foot brush clearance area in named canyons will be revegetated** to stabilize the slopes and deter the growth of undesirable plant species.

The following native plant species will be used for the revegetation, by hydroseeding, of the named canyons:

*Argrostis pallens* (seashore bentgrass)  
*Lasthenia californica* (California goldfields)  
*Lupinus bicolor* (miniature lupine)  
*Lupinus succulentus* (hollowleaf lupine)

*Melica imperfecta* (little California melic)  
*Muhlenbergia microsperma* (littleseed muhly)  
*Nassella lepida* (foothill needlegrass)  
*Sisyrinchium bellum* (western blue-eyed-grass) and  
*Stipa pulchra* (purple needlegrass)

## **2 BRUSH MANAGEMENT ZONES/IMPLEMENTATION**

The primary goal is to increase the established defensible space zone between homes that are near the urban interface with the named canyons. The 60-foot fuel reduction zone is expected to provide the necessary area required for the Fire Department to defend a potential conflagration within the canyons.

Objectives are to:

- (a)(i). Implement Zone 2 brush management activities in accordance with the guidelines contained in the City's Multiple Species Conservation Program (MSCP) Subarea plan.
- (a)(ii). Reduce the height and density of existing stands of *Rhus integrifolia* to create a "mosaic" pattern of vegetation with adequate spacing between the shrubs to reduce the fire ladder effect.
- (a)(iii). Remove non-native species to further reduce the fuel loads.
- (a)(iv). Reduce non-native *Acacia redolens* density and remove all dead wood to reduce fuel load build up.
- (a)(v). Cut non-native grasses and weeds to 2 inches to reduce rapid ignition potential and competition for native species. Approved herbicides shall be applied immediately to cut non-native grasses and weeds to ensure their complete desiccation and deter their regrowth.
- (a)(vi). Protect native habitat by minimizing impact in the adjacent preserve.

Furthermore, these goals and objectives will be in accordance with the City's Multiple Species Conservation Plan (MSCP) and Area Specific Management Directives (ASMDs).

Specifically:

- (b)(i). Actual brush cutting and clearance shall occur between September 1 and February 14 to avoid disturbing nesting gnatcatchers. Already cut brush may continue to be removed from the work site until March 31, 2023. Revegetation activities may continue to March 31, 2023. Each instance of space width – 10 feet, 30 feet, 40 feet, 50 feet, or 60 feet – shall be measured horizontally.
- (b)(ii). The project consists of implementing up to 60 feet of Zone 2 brush management activities. The project does not involve brush management on private lots.
- (b)(iii). The 60-foot-wide fuel reduction brush management activities proposed will occur within the limits authorized for brush management as described in the Chula Vista MSCP Subarea Plan's Brush Management Guidelines and Brush Management within the Central City Preserve, Sections 7.4.4 and 7.4.5.1:
  - In Zone 2, vegetation will be thinned and/or pruned to 24 inches in height and dead underbrush will be cleared and removed.
  - All brush management activities will be performed by hand using hand tools including loppers,

chainsaws, weed whips, hand pruners, and rakes.

- Non-native species will be reduced to 2 inches in height and treated with herbicide to reduce the potential for regrowth.

Full compensation for trimming, removal, and disposal of all landscape vegetation as required by this contract and all necessary items, labor, equipment, and manpower is considered included in the contract price paid for "**BRUSH CLEARANCE**" and no other compensation will therefore be allowed.

### **3 REVEGETATION OF BRUSH MANAGEMENT AREA**

The following native plant species will be used for the revegetation, by hydroseeding, of the entire 60-foot brush clearance area in the named canyons to stabilize the slopes and deter the growth of undesirable plant species:

*Argrostis pallens* (seashore bentgrass)  
*Lasthenia californica* (California goldfields)  
*Lupinus bicolor* (miniature lupine)  
*Lupinus succulentus* (hollowleaf lupine)  
*Melica imperfecta* (little California melic)  
*Muhlenbergia microsperma* (littleseed muhly)  
*Nassella lepida* (foothill needlegrass)  
*Sisyrinchium bellum* (western blue-eyed-grass); and  
*Stipa pulchra* (purple needlegrass)

A 90-day maintenance period of hydroseed establishment, including weed removal by hand, chemical (herbicide), and with the use of small equipment (e.g., line trimmer), will follow hydroseed germination.

Full compensation for site preparation, procurement of materials, mixing of hydroseed, application of hydroseed, establishment of hydroseeded materials, 90-day establishment period maintenance of hydroseeded areas, and the removal and disposal of all attendant debris as required by this contract, and the provision of all necessary items, labor, equipment, and manpower is considered included in the contract price paid for "**REVEGETATION OF BRUSH CLEARANCE AREA**" and no other compensation will therefore be allowed.

### **4 TREE TRIMMING**

- Remove all dead wood  $\geq 1$  inch in diameter from trees in project area.
- Thin tree crowns; do not remove more than 25% of any tree's crown in any case.
- Within the vegetation management space – Prune tree crowns extending to within 10 feet of any structure to maintain a minimum horizontal clearance of 10 feet. Prune tree crowns to maintain a minimum horizontal clearance of 10 feet from crowns of surrounding trees. Prune tree crowns to remove limbs located less than 8 feet above the ground surface adjacent to the trees.
- Where any shrub grouping is adjacent to a tree, there must be a minimum vertical space of 6 feet or three times the height of shrubs (whichever is greater) between the top of shrub grouping and the lowest branch of tree.

All tree work must be directed by an International Society of Arboriculture (ISA) Certified Arborist. All tree

work must comply with ANSI A300 – Standards for Tree Care Operations: Standard Practices (Pruning).

Full compensation for trimming, removal, and disposal of all landscape vegetation as required by this contract and all necessary items, labor equipment, and manpower is considered included in the contract price paid for "**BRUSH CLEARANCE**" and no other compensation will therefore be allowed.

## **5 BRUSH MANAGEMENT ASSESSMENT & OBSERVATION**

- A qualified biologist shall survey the project area within 1 week prior to the start of fuel reduction activities. The survey shall be conducted in the morning to maximize detection of bird species, specifically the gnatcatcher. The focus will be to identify the presence of any MSCP covered species, map the observed location, and flag the location in the field. The intent of this pre-implementation survey is to familiarize the biologist with the habitats within the project area and to gather data that can assist the biologist in developing additional recommendations to further avoid/minimize impacts to sensitive biological species.
- Based on the pre-implementation survey, a qualified biologist shall identify and delineate any highly sensitive areas to be avoided, and mark shrubs to aid pruning and thinning in such a way as to maintain the maximum allowable shrub cover and species diversity. It is anticipated that this task will be initiated prior to project implementation and continue as the project progresses. The biologist shall consider the habitat structure, species density and composition typically used by gnatcatchers to maintain the integrity of the habitat in concert with the needs to meet brush management goals.
- A qualified biological monitor will be present each day that trimming will occur to monitor and direct crews. As the project progresses, the biologist shall monitor brush management activities to preserve the integrity and function of existing habitats.

Full compensation for Brush Management Assessment and Observation as required by this contract and all necessary items, labor, equipment, and manpower is considered included in the contract price paid for "**BIOLOGISTS MONITORING AND OBSERVATION**" and no other compensation will therefore be allowed.

## **6 TEMPORARY FENCING FOR STAGING AREA**

The Contractor shall provide temporary fencing to enclose any staging areas required during the duration of work performed in this contract. The fencing shall be a minimum 6-foot-tall chain link with round metal fence posts, unless otherwise approved by the City Forester and Open Space Manager.

Full compensation for furnishing, installing, maintaining, and removal of all temporary fencing as required by this contract and all necessary items, labor, equipment, and manpower is considered included in the contract price paid for "**TEMPORARY FENCING FOR STAGING AREA**" and no other compensation will therefore be allowed.

## **7 CONTRACTOR INSTRUCTIONS**

The Contractor will receive training from environmental representatives on minimizing the impact to habitat when cutting and hauling. Further training and oversight will focus on identification and removal of non-native plants as well as identification and level of trimming and thinning required for native plants.

Contractor shall take all necessary precautions to avoid damaging Coastal Sage Scrub (CSS) and other native vegetation in project areas. Contractor shall take all necessary precautions to protect native habitat by minimizing impact in the preserve adjacent to project areas. Contractor shall take all necessary precautions to protect all trees that are to be retained.

Contractor shall set up photograph points with T-post at each site. A word document displaying “before” and “after” pictures will be submitted to City of Chula Vista at completion of project segments.

Depending on the location of access, temporary dumpster locations on City streets will be identified to minimize the hauling process.

Contract crews will stage equipment at predetermined staging areas in or near the named canyons.

Crews of  $\geq 10$  persons will perform primarily hand labor utilizing loppers, chainsaws, and string trimmers to cut existing brush and weeds to a desired density level. After raking and picking up the cut materials in burlap squares, the brush will be hauled on foot to the brush staging areas near the closest respective dumpsters. Depending on the Contractor and logistics of the location, a loader with a grapple may assist in loading the dumpsters from the brush staging area.

## **8 CLEARING AND GRUBBING, REMOVAL AND DISPOSAL OF EXISTING IMPROVEMENTS**

The Contractor shall clear and grub all objectionable material within the construction area in accordance with Section 300-1 of the Greenbook & Regional Supplement. All existing improvements required to be removed by construction of the new work as identified in the attached maps shall become the property of the Contractor & shall be removed and disposed of in accordance with the provisions of Section 300-1.3, Removal and Disposal of Materials, of the Greenbook, Regional Supplement, and as directed by the City Forester and Open Space Manager.

The Contractor has sole discretion on the means of hauling away the removal items. The Contractor may use Contractor’s own vehicles and employees to haul waste that is incidental to the contract. If the Contractor self-hauls waste material, he or she must designate the specific State permitted landfill or recycling facility that will be used to dispose of any waste material generated on the job. If the Contractor does not designate a State permitted disposal site, he or she shall obtain a hold harmless agreement acceptable to the City Risk Manager and the City Attorney.

If the Contractor subcontracts for waste hauling, he or she is obligated to use the franchised waste disposal company that has an agreement with the City (Currently Allied Waste Services owned by Republic Waste Services at (619) 421-9400). For questions regarding waste disposal requirements, call Allied Waste Services owned by Republic Waste Services, George Ortiz (619) 482-4058, cell number (619) 921-4932 or David Pote at (619) 482 - 4002, cell (619) 921 4982. For a listing of commercial recycling services, or construction, demolition, and yard waste sites, call the “I love a clean San Diego” at 1-800-237-2583 or online at [www.cleansd.org/recycle](http://www.cleansd.org/recycle).

For additional information or questions regarding waste disposal requirements and for a listing of commercial recycling services, or construction, demolition, and yard waste sites within the City of Chula Vista, call the City of Chula Vista Recycling Specialist Manuel Medrano at (619) 585-5766 or Martie Solomon at (619) 409-5844.

Full compensation for removal and disposal of all vegetative waste as required by construction of this contract and all necessary items, labor, equipment, and manpower is considered included in the contract price paid for

"WASTE MANAGEMENT" and no other compensation will therefore be allowed.

## **9 ROOT REMOVAL**

All roots of removed trees shall be removed by the Contractor to a depth of 12 inches below the finished grade. Trees and plants that are not to be removed shall be fully protected from damage by the Contractor at all expense. The Contractor shall notify the City Forester and Open Space Manager to have the City Arborist inspect the exposed roots upon completion of the removal of the existing improvements and prior to root pruning/subgrade preparation. The Contractor to the satisfaction of the City Forester and Open Space Manager shall do root pruning, old tree stump removal, and or root barrier installation. Without jeopardizing the health of the tree, the roots shall be cleanly cut with a saw at the edge or bottom and or root barrier of the excavation and removed surface. Jagged or ripped cut roots are not acceptable. The Contractor **shall** hire a Certified Arborist to perform this work.

Full compensation for this work shall be considered included in the contract price paid for "BRUSH CLEARANCE" and no additional compensation will therefore be allowed.

## **10 REMOVAL OF EXISTING TREES**

The Contractor shall remove existing trees/bushes as shown on the plan. All roots under the new concrete and pavement work shall be removed by the Contractor to a depth of 12 inches below the finished grade and to 2 feet outside the limits of the concrete and pavement work/replacement.

The Contractor shall notify the City Forester and Open Space Manager to have the City Arborist inspect the exposed roots upon completion of the removal of the existing improvements and prior to root pruning/subgrade preparation. Root pruning shall be performed to the satisfaction of the City Arborist/City Forester and Open Space Manager. All root pruning of trees within the work area that are to remain, shall be done with a machine designed for this purpose, e.g., a root pruner or a stump grinder. In lieu of this, roots may be exposed and individually cut with a sharp handsaw or chainsaw only. Under no circumstances should roots be torn, ripped out, or otherwise damaged with a backhoe or other equipment.

Trees and plants that are not to be removed shall be fully protected from damage by the Contractor at all expense. Tree branches that hang within 8 feet above finished curb and sidewalk grade shall be cut off to the boles. The Contractor shall remove additional tree branches under the direction of the City Forester, in such a manner that the tree will present a balanced appearance.

Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all work involved in the removal and disposal of existing trees, including stumps, roots (12 inches below finish grade), shall be considered as included in the contract unit price paid for "BRUSH CLEARANCE" and no additional compensation will therefore be allowed.

## **11 AVOIDANCE OF SIGNIFICANT IMPACTS TO MIGRATORY BIRDS AND OCCUPIED RAPTOR NESTS**

### **Citywide Vegetation Removal**

To avoid any direct impacts to raptors and/or any migratory birds, removal of habitat, including mature trees, that support active nests on the proposed area of disturbance should occur outside of the breeding season for these species (February 15 to August 31). **If removal of habitat on the proposed area of disturbance must occur during the breeding season, a City-approved biologist (see Appendices) will be retained to conduct a pre-construction survey to determine the presence or absence of nesting birds on the proposed area of disturbance. The pre-construction survey must be conducted within 10 calendar days prior to the start of construction activities (including removal of vegetation and trees).** The results of the pre-construction survey



will be reviewed and approved by the City of Chula Vista Development Services Director prior to initiating any construction activities. If nesting birds are detected, a letter report or mitigation plan as deemed appropriate by the Development Services Director will be prepared and will include proposed measures to be implemented to ensure that disturbance of breeding activities is avoided. The report or mitigation plan will be prepared and implemented to the satisfaction of the City's Development Services Director. If construction work is proposed outside the bird-breeding season (February 15 and August 31) and the construction area is found outside the Chula Vista MSCP Sub Area Plan, then, removal of non-native vegetation, including trees, may proceed without the

aforementioned restrictions.

Full compensation to retain a City-approved biologist to conduct the pre-construction survey, determine the presence or absence of nesting birds, provide results to the City, and if necessary prepare a report or mitigation plan shall be considered included in the contract unit price paid for “**BIOLOGISTS MONITORING AND OBSERVATION**” and no additional compensation will therefore be allowed.

## **12 STORM WATER POLLUTION PREVENTION**

In performing work under this contract, the Contractor shall comply with all federal, state, and local laws and regulations relating to storm water pollution prevention, including but not limited to:

- Federal Clean Water Act
- California Porter-Cologne Water Quality Control Act
- National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 (NPDES General Construction Permit), and any subsequent reissuances of or amendments thereto
- City of Chula Vista Municipal Code Chapter 14.20
- City of Chula Vista Development Storm Water Manual

The Contractor shall implement Best Management Practices (BMPs) to prevent the discharge of pollutants to storm water conveyance systems during all phases of construction until the project is completed, and the site is fully stabilized. Implementation of BMPs shall be to the maximum extent required by federal, state, and local laws and regulations, as well as any contract documents, including Contract Specifications and plans. The Director of Public Works or designee shall have sole discretion in determining if compliance with BMPs requirements has been met or not. The City reserves the right to require modifications in the field to BMPs requirements where the City determines that Contractor-selected BMPs are not effective in preventing the discharge of pollutants to the storm water conveyance system to the extent required by federal, state, and local laws and regulations.

Notwithstanding identification or selection of BMPs in the project’s Storm Water Pollution Prevention Plan (SWPPP) or Construction Storm Water Management Plan (CSWMP), the Contractor shall be fully responsible and obligated to implement all necessary BMPs to prevent the discharge of pollutants due to construction activities as required in this section. The Director of Public Works or designee, at their sole discretion, shall determine if implemented BMPs are adequate or if additional BMPs are necessary, in which case the Contractor shall implement additional BMPs needed to comply with the requirements of this section.

To ensure compliance with federal, state, or local storm water laws and regulations, the City may take enforcement action as follows:

- Stop all other work on the project at no cost to the City until the non-compliance is corrected; working days shall continue to be assessed
- Require revisions to plans at no cost to the City
- Require modifications/BMPs improvements in the field at no cost to the City
- Assess fines and penalties
- Other enforcement action, as may be appropriate

All costs incurred by the Contractor in complying with the provisions specified in this section are included in the contract unit price paid for the various items of work as contained in the proposal and no additional payments will be made for implementation of storm water pollution prevention measures.

For projects disturbing less than one acre of land, the Contractor shall complete and sign a CSWMP (Form 5504B). The Contractor shall select all applicable minimum and recommended BMPs from Tables A and B of Form 5504B and shall implement such BMPs during construction as necessary to prevent pollution of storm water conveyance systems. A completed and signed CSWMP shall be submitted to the City prior to issuance of a “Notice to Proceed”.

### **13 PUBLIC CONVENIENCE AND SAFETY (TRAFFIC CONTROL)**

Public convenience and safety shall be according to Section 7-10 of the Standard Specifications for Public Works Construction and Regional Supplement Amendments. The Contractor shall submit traffic control plans for work to be done two weeks before starting of work, for the Director of Public Works’ approval. The Contractor shall comply with the traffic control plans. Traffic control shall conform to the Manual on Uniform Traffic Control Devices, or MUTCD.

At least five (5) working days before commencing work, the Contractor shall submit its construction schedule to the City for approval. Based upon the construction schedule, the Contractor shall notify residents of the proposed work. Notification of residents shall be in the form of “Door Knocker” notices. The City shall provide the language to be included on the “Door Knocker” notices. The Contractor shall submit a sample of the “Door Knocker” notices to the City for approval.

The Contractor is responsible for making satisfactory arrangements with the various property owners concerning access to their property during the construction. The Contractor shall notify each affected resident in person at least forty-eight (48) hours before starting the project and closing the driveways (if any). The Contractor shall submit requests for changes in the schedule to the Engineer for approval, at least forty-eight (48) hours before the scheduled construction of the streets affected.

It is the responsibility of the Contractor performing work on a City street to install and maintain the approved traffic control devices and such additional traffic control devices (e.g., flag persons) as may be required to ensure safe movement of traffic motorists, bicyclists, and pedestrians and construction staking staff through and around the work area and provide maximum protection and safety to construction workers.

The Contractor shall be fully responsible for the adequacy of any traffic plan used. He or she shall notify the City at least two (2) working days before starting any construction detour.

When an existing pedestrian access route is blocked by construction, alteration, maintenance or other temporary conditions, the traffic control plan shall include an alternate pedestrian access route complying to the maximum extent possible with the applicable requirements of the American with Disabilities Act (ADA) and the latest adopted edition of Manual Uniform of Traffic Control Devices (MUTCD) and California Supplements to the MUTCD.

The street shall always remain open to traffic. Flaggers may be necessary to provide safety. Contractor shall have stop signs available on site (for each intersection approach) for emergency use.

Prior to closing any lane, the Contractor is required to provide a traffic control plan for approval a minimum of two weeks prior to starting work.

The City reserves the right to observe the traffic control plans in use and direct the Contractor to make changes as field conditions warrant. Any changes will supersede the plans and will be done solely at the Contractor’s expense. The Contractor is responsible for maintaining all traffic control devices and conforming to the State of

California and City of Chula Vista standards and specifications. The Contractor shall replace all roadway striping

removed by the construction work

A separate traffic control plan for any work on arterial and collector streets shall be submitted for approval prior to the start of any work on these streets. The Contractor shall also submit separate traffic control plans for work within any major intersections, State rights-of-way, and other congested areas. The traffic control plan shall include phasing, existing striping, temporary striping during construction, and finished permanent striping.

The Contractor shall be responsible for preserving original locations and dimensions of all existing striping obliterated by the work. The Contractor shall be responsible for maintaining sufficient striping control points to be able to restore lane dimensions. The Contractor shall install and maintain temporary overlay yellow or white markers, whichever is applicable, where striping cannot be restored by the end of the workday. The Contractor shall replace all roadway striping and pavement markings removed by the construction work.

The cross traffic at intersection streets shall always be maintained. An asphalt ramp at 4:1 slope shall be constructed next to a construction zone travel lane where drop-off exceeds 0.15 feet (1.8"). Driving across newly placed asphalt into driveways will not be allowed until the pavement has cooled and become firm enough to prevent displacement and tracking.

The Contractor shall be responsible for adequate barricading of the work area and controlling of traffic near the project as specified in Sub Section 7-10, or as directed by the Engineer.

The Contractor shall arrange with Pacific Waste Services to maintain trash pick-up services for those property owners affected by the work. The Contractor shall notify the transit agencies of any delays to their buses. The Contractor shall notify all schools (public and private) where the work may affect school operations.

The Contractor is responsible for maintaining all traffic control devices and conforming to the State of California and City of Chula Vista Standards and Specifications. Contractor shall assume sole and complete responsibility for job site conditions during construction of this project.

The Contractor shall be responsible for maintenance of steel plates, shoring, and asphalt concrete. In any event, the Contractor shall cover all open trenches at the end of each day to prevent any pedestrian or traffic injury.

Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and all necessary traffic control as required by the City of Chula Vista is considered included in the contract unit price paid for **“PUBLIC CONVENIENCE AND SAFETY (TRAFFIC CONTROL)”** and no additional compensation will therefore be allowed.

## **14 PROTECTION AND RESTORATION OF EXISTING IMPROVEMENTS**

Protection and restoration of existing improvements shall conform to Section 7-9 of the Standard Specifications for Public Works Construction and as described below.

Trees, shrubs, and other plants that are not to be removed, and pole lines, fences, signs, markers and monuments, buildings and structures, conduits, pipelines under or above ground, sewer and water lines, all highway or street facilities, and any other improvements or facilities within or adjacent to the right-of-way shall be protected from injury or damage. If the objects are injured or damaged because of the Contractor's operations, they shall be replaced or restored at the Contractor's expense.

The Contractor shall review all roadside vegetation (e.g., trees, shrubs) prior to the start of construction to ensure

proper clearance for all construction equipment being utilized for all work involved in this contract. The Contractor shall be responsible for notifying the proper entities (City Arborist and/or private property) to ensure

that all vegetation requiring trimming is addressed prior to construction on those locations.

Should any work under this contract damage or cause to be damaged any item or items not scheduled to be removed, such items shall be restored to their original condition and position, or shall be replaced, all at the Contractor's expense. All repairs or replacements shall be performed to the satisfaction of the Project Engineer.

Full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all work involved in protecting or repairing property shall be considered as included in the **contract unit price paid for the various contract items of work** and no additional compensation will therefore be allowed.

The Contractor shall protect existing curb and pavement striping in place and replace existing red curb paint and other striping destroyed or damaged during removal.

The Contractor shall remove and reset street signs in conflict with the work or as directed by the Engineer. The Contractor shall replace signposts destroyed or damaged during removal. If required, the City will provide new signs. The concrete base of existing signpost shall be removed prior to resetting.

Full compensation for protecting and replacing existing striping and removing and resetting of signs shall be included in the prices paid for the various contract items of work and no additional compensation will therefore be allowed.

## **15 STORAGE, STAGING, AND STOCKPILING AREA**

The Contractor shall stage all equipment and stockpiles within the predetermined staging areas in or near the named canyons. These sites shall be clean and free of objectionable materials. Arrangement for these sites shall be the responsibility of the Contractor.

The Contractor must acquire the necessary City permit(s) to properly operate this area. Additionally, this area must meet all requirements stated in the Stockpile Management procedures and practices of the California Stormwater BMP Handbook to reduce or eliminate air and stormwater pollution.

Full compensation for storage, staging, and stockpiling area shall be included in the prices paid for the various contract items of work and no additional compensation will therefore be allowed.

## **16 CLEANING AND CLEAN-UP**

Contractor shall not permit the adjacent property, public or private, to become dirty and unsightly because of work under this section or specifications.

The Contractor shall carefully and continuously protect all areas included in the contract, including lawn areas, plant material, supports, etc., until final acceptance by the City. The Contractor shall repair and/or replace any damaged areas at no additional cost to the City.

Use water or other means to control dust generated by work noted herein per NPDES requirements. All water and equipment necessary to provide dust control shall be included in the unit price paid for various contract items of work.

## **17 VEHICLE LOAD RESTRICTIONS - VEHICLE CODE**

Pursuant to the authority contained in Vehicle Code Section 591, the City has determined that within those areas that are within the limits of the project and are open to public traffic, the Contractor shall comply with any or all the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code.

Vehicles used to transport materials on City streets must comply with State and City weight restrictions whenever they are operating on public streets. Overweight vehicles transporting materials on City streets, even for short distances, will be subject to citation by the Police Department unless a Transportation Permit is issued by the City Engineer after application by the Contractor.

## **18 CALL FOR INSPECTION**

The Contractor shall notify the City's Open Space Manager at (619) 397-6006 two working days before commencing work, and two working days in advance for calls for inspection. Any work performed without benefit of inspection shall be subject to rejection and removal.

## **19 CHANGE IN QUANTITY OF WORK**

The City shall have the option of increasing or decreasing the unit quantity for all bid items in the proposal any amount without a change in contract unit prices. There will be no adjustment in compensation. This does not limit the City's right to increase or decrease any quantities of work in the Contract as allowed by the Standard Specifications or other pertinent law.

## **20 LIQUIDATED DAMAGES**

Per Section 6-9 of the 2006 Regional Supplement to the 2006 Green Book "Execution of the Contract shall constitute agreement by the Agency and Contractor that \$250 per day for contracts with a value of \$100,000 or less, and \$500 per day for contracts with a value of over \$100,000 are the minimum values of the costs and actual damages caused by failure of the Contractor to complete the work within the allotted time. Such sums are liquidated damages and shall not be construed as a penalty, and such sums may be deducted from payments due the Contractor if such delay occurs."

## **21 OBSERVANCE OF CITY HOLIDAYS**

The City of Chula Vista observes the following holidays and all offices including Public Works Department will be closed. Therefore, inspection services will not be provided.

December Holidays	December 25
New Year's Day	January 1
Martin Luther King Jr. Birthday	3 <sup>rd</sup> Monday of January
Cesar Chavez Day	April 1
Memorial Day	Last Monday of May
Independence day	July 4
Labor Day	1 <sup>st</sup> Monday of September
Veteran's Day	November 11
Thanksgiving Day and Day after Thanksgiving	4 <sup>th</sup> Thursday and Friday of November

As specified in Section 2-11 of the Standard Specifications for Public Works Construction ("Greenbook"), "Work shall be done only in the presence of the engineer. Any work done without proper inspection will be subject to rejection." The Contractor must arrange all construction work to avoid performing work that requires inspection including traffic control during these days. Under Section 6-7.2, the above holidays are not considered working



days.

## **22 COMMENCEMENT OF WORK**

The Contractor shall begin work no later than fifteen (15) days after the execution of the contract, or as directed by the Director of Public Works or designee.