



Monterey County Board of Supervisors

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

Board Order

Agreement No.: A-14077

Upon motion of Supervisor Phillips, seconded by Supervisor Parker and carried by those members present, the Board of Supervisors hereby:

- a. Approved and authorize the Contracts/Purchasing Officer or Contracts/Purchasing Supervisor to sign retroactive Countywide Service Agreements for the provision of Tree Pruning and Removal Services to the County of Monterey with: New Image Landscape Company; South Bay Tree Care, Inc.; Tope's Tree Service, Inc.; and West Coast Arborists, Inc. The initial term of the Agreements will begin July 1, 2018 and terminate June 30, 2021, with an option to extend the Agreements for two (2) additional one (1) year periods. Work contracted under this Agreement shall not exceed \$10,000 per project, with an annual aggregate amount not to exceed \$250,000.00 for all Agreements issued under RFP #10659 in accordance with the terms and conditions set within each Agreement; and
- b. Approved and authorize the Contracts/Purchasing Officer or Contracts/Purchasing Supervisor to sign additional Countrywide Service Agreements for Tree Pruning and Removal Services with qualified contractors who meet the minimum requirements of the County of Monterey.

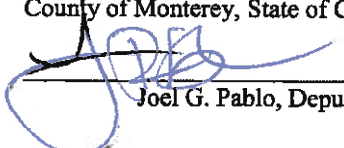
PASSED AND ADOPTED on this 24th day of July 2018, by the following vote, to wit:

AYES: Supervisors Alejo, Salinas, Phillips, Parker and Adams
NOES: None
ABSENT: None

I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 81 for the meeting July 24, 2018.

Dated: July 24, 2018
File ID: 18-738

Valerie Ralph, Clerk of the Board of Supervisors
County of Monterey, State of California


Joel G. Pablo, Deputy

**COUNTYWIDE SERVICES AGREEMENT BETWEEN
COUNTY OF MONTEREY
AND
NEW IMAGE LANDSCAPE COMPANY
RFP 10659 – COUNTYWIDE TREE PRUNING AND REMOVAL SERVICES**

This **Agreement** is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter “County”) and: **NEW IMAGE LANDSCAPE COMPANY**, (hereinafter “CONTRACTOR”).

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

1.0 GENERAL DESCRIPTION.

- 1.01 The County hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibit A** in conformity with the terms of this Agreement. The goods and/or services are generally described as follows:

Provide: Tree pruning and removal services for the County of Monterey.

2.0 TERM OF AGREEMENT.

- 2.01 The term of this Agreement will be for a period of three (3) years from **July 1, 2018 to June 30, 2021** with the option to extend the Agreement for two (2) additional one (1) year periods, for a cumulative not to exceed total term of five (5) years, unless sooner terminated pursuant to the terms of this Agreement.
- 2.02 This Agreement is of no force or effect until signed by both CONTRACTOR and County with County signing last, and **CONTRACTOR may not commence work before County signs this Agreement.**
- 2.03 The County reserves the right to cancel this Agreement, or any extension of this Agreement, without cause, with a thirty day (30) written notice, or with cause immediately.

3.0 SCOPE OF SERVICES AND ADDITIONAL PROVISIONS.

- 3.01 The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:
- Exhibit A Scope of Services**
 - Exhibit B Pricing Sheet**
 - Exhibit C Incorporation of Request for Proposals (RFP) #10659 and Statement of Proposal Documents**

**The following documents are on file with the Office of Contracts/Purchasing:
RFP #10659,
CONTRACTOR’s Proposal Package dated April 5, 2018.**

4.0 PAYMENT PROVISIONS.

- 4.01 It is mutually understood and agreed by both parties that the County shall pay CONTRACTOR in accordance with the payment provisions set forth in **EXHIBIT B Pricing Sheet**, attached hereto, subject to the limitations set forth in the Agreement.
- 4.02 Prices shall remain firm for the initial term of this Agreement.
 - 4.02.01 Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety days (90) prior to the expiration of this Agreement.
 - 4.02.02 Rate changes are not binding unless mutually agreed upon in writing by the County and CONTRACTOR.
- 4.03 County does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement.
- 4.04 Any discount offered by the CONTRACTOR must allow for payment after receipt and acceptance of services, material or equipment and correct invoice, whichever is later. In no case will a discount be considered that required payment in less than 30 days.
- 4.05 CONTRACTOR shall levy no additional fees or surcharges of any kind during the term of this Agreement without first obtaining approval from County in writing.
- 4.06 Tax:
 - 4.06.01 Pricing as per this Agreement is inclusive of all applicable taxes.
 - 4.06.02 County is registered with the Internal Revenue Service, San Francisco office, and registration number 94-6000524. The County is exempt from Federal Transportation Tax, an exemption certificate is not required where shipping documents show Monterey County as consignee.

5.0 PERFORMANCE STANDARDS.

- 5.01 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of the County, or immediate family of an employee of the County.
- 5.02 CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
- 5.03 CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

6.0 INVOICES.

- 6.01 Invoice amounts shall be billed directly to the ordering department.
- 6.02 CONTRACTOR shall reference **RFP #10659** on all invoices submitted to County to the attention of Contract Administrator. CONTRACTOR shall submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. The County shall certify the invoice, either in the requested amount or in such other amount as the County approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

7.0 TERMINATION.

- 7.01 During the term of this Agreement, the County may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.
- 7.02 The County may cancel and terminate this Agreement for good cause upon written notice to CONTRACTOR and providing a reasonable time to cure the defective services. "Good cause" includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If County terminates this Agreement for good cause, the County may be relieved of the payment of any consideration to CONTRACTOR, and the County may proceed with the work in any manner, which County deems proper. The cost to the County shall be deducted from any sum due the CONTRACTOR under this Agreement.
- 7.03 The County's payments to CONTRACTOR under this Agreement are funded by local, state and federal governments. If funds from local, state and federal sources are not obtained and continued at a level sufficient to allow for the County's purchase of the indicated quantity of services, then the County may give written notice of this fact to CONTRACTOR, and the obligations of the parties under this Agreement shall terminate immediately, or on such date thereafter, as the County may specify in its notice, unless in the meanwhile the parties enter into a written amendment modifying this Agreement.

8.0 INDEMNIFICATION.

- 8.01 CONTRACTOR shall indemnify, defend, and hold harmless the County of Monterey, its officers, agents and employees from any claim, liability, loss, injury, or damage to the extend caused by CONTRACTOR's negligence under this Agreement arising out of, or in connection with, performance of this Agreement by CONTRACTOR and/or its agents, employees or sub-contractors, excepting only loss, injury, or damage caused by the negligence or willful misconduct of personnel employed by the County. The prevailing

party shall reimburse the other for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the CONTRACTOR is obligated to indemnify, defend and hold harmless the County under this Agreement.

- 8.02 Notwithstanding the above, CONTRACTOR's liability under this Agreement for all claims, suits, demands, losses or damages shall be limited to, in the total aggregate amount of the CONTRACTOR'S General Liability insurance policy. In no event, whatsoever, shall either party to this Agreement be liable to the other for any incidental, indirect or consequential damages, including lost profit or business loss.

9.0 INSURANCE REQUIREMENTS.

9.01 Evidence of Coverage:

Prior to commencement of this Agreement, the Contractor shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the CONTRACTOR upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County's, Contracts/Purchasing Department, unless otherwise directed. The CONTRACTOR shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and such, insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

9.02 Qualifying Insurers:

All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Purchasing Manager.

- 9.03 Insurance Coverage Requirements: Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Modification (Justification attached; subject to approval).

Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Modification (Justification attached; subject to approval).

Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

Modification (Justification attached; subject to approval).

Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made while rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

Modification (Justification attached; subject to approval).

9.04 Other Insurance Requirements.

All insurance required by this Agreement shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that the County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Contractor and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is **ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000)**. The required endorsement form for Automobile Additional Insured endorsement is **ISO Form CA 20 48 02 99**.

Prior to the execution of this Agreement by the County, CONTRACTOR shall file certificates of insurance with the County's contract administrator and County's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

CONTRACTOR shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

10.0 RECORDS AND CONFIDENTIALITY.

- 10.01 Confidentiality. CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this Agreement, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR's obligations under this Agreement.
- 10.02 County Records. When this Agreement expires, or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this Agreement.
- 10.03 Maintenance of Records. CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three-year period, then CONTRACTOR shall retain said records until such action is resolved.
- 10.04 Access to and Audit of Records. The County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the County or as part of any audit of the County, to the examination and audit of the State Auditor pertaining

to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

- 10.05 Royalties and Inventions. County shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of County.

11.0 NON-DISCRIMINATION.

- 11.01 During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

12.0 COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANTS.

- 12.01 If this Agreement has been or will be funded with monies received by the County pursuant to a contract with the state or federal government in which the County is the grantee, CONTRACTOR will comply with all the provisions of said contract, to the extent applicable to CONTRACTOR as a subgrantee under said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, County will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.

13.0 INDEPENDENT CONTRACTOR.

- 13.01 In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent contractor and not as an employee of the County. No offer or obligation of permanent employment with the County or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from County any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold County harmless from any and all liability which County may incur because of CONTRACTOR's failure to pay such taxes.

14.0 NOTICES.

14.01 Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to the County and CONTRACTOR’S contract administrators at the addresses listed below:

FOR COUNTY: County of Monterey Contracts/Purchasing Dept.	FOR CONTRACTOR: NEW IMAGE LANDSCAPE COMPANY
Name and Title	Name and Title
1488 Schilling Place Salinas, CA 93901	3250 Darby Common Fremont, CA 94539
Address	Address
(831)755-4990	(510) 226-9191
Phone	Phone

15.0 MISCELLANEOUS PROVISIONS.

- 15.01 Conflict of Interest. CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the services required to be rendered under this Agreement.
- 15.02 Amendment. This Agreement may be amended or modified only by an instrument in writing signed by the County and the CONTRACTOR.
- 15.03 Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by the County and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 15.04 Contractor. The term “CONTRACTOR” as used in this Agreement includes CONTRACTOR’s officers, agents, and employees acting on CONTRACTOR’s behalf in the performance of this Agreement.
- 15.05 Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 15.06 Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the County. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the County. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.

- 15.07 Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of the County and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- 15.08 Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 15.09 Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 15.10 Time is an important element. Time is an important element in each and all the provisions of this Agreement.
- 15.11 Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.
- 15.12 Non-exclusive Agreement. This Agreement is non-exclusive and both County and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.
- 15.13 Construction of Agreement. The County and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- 15.14 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
- 15.15 Authority. Any individual executing this Agreement on behalf of the County or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.
- 15.16 Integration. This Agreement, including the exhibits, represent the entire Agreement between the County and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the County and the CONTRACTOR as of the effective date of this Agreement, which is the date that the County signs the Agreement.
- 15.17 Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

-----*This section left blank intentionally*-----

16.0 SIGNATURE PAGE.

IN WITNESS WHEREOF, County and CONTRACTOR have executed this Agreement as of the day and year written below.

COUNTY OF MONTEREY

CONTRACTOR

By: [Signature]
Contracts/Purchasing Officer

NEW IMAGE LANDSCAPE COMPANY
Contractor's Business Name*

Date: 7-27-18

By: _____
Department Head (if applicable)

By: [Signature]
(Signature of Chair, President, or Vice-President) *

Date: _____

Approved as to Form¹

Russell Takehara / VP/General Manager
Name and Title

By: [Signature]
Deputy County Counsel

Date: JUNE 19, 2018

Date: 7/13/18

By: [Signature]
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer) *

Approved as to Fiscal Provisions²

Irene Briggs, Treasurer
Name and Title

By: [Signature]
Auditor/Controller

Date: JUNE 18, 2018

Date: 7-5-18

Approved as to Liability Provisions³

By: _____
Risk Management

Date: _____

*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

¹Approval by County Counsel is required

²Approval by Auditor/Controller is required

³Approval by Risk Management is required only if changes are made in sections 8 or 9

EXHIBIT A – SCOPE OF SERVICES
(As listed within RFP #10659)

- 5.1 CONTRACTOR Minimum Work Performance Percentage: CONTRACTOR shall perform with his own organization contract work amounting to not less than 50 percent (50%) of the original total contract price, except that any designated 'Specialty Items' may be performed by subcontract and the amount of any such 'Specialty Items' so performed may be deducted from the original total AGREEMENT price before computing the amount of work required to be performed by CONTRACTOR with its organization.
- 5.2 All work shall be done on a work order basis as requested by the ordering County department.
- 5.2.1 CONTRACTOR agrees to conduct a thorough inspection of the grounds and evaluate the conditions of the tree pruning and/or removal project.
- 5.2.2 CONTRACTOR agrees to furnish qualified supervisor and all personnel necessary to accomplish the requested tree pruning and/or removal service(s).
- 5.2.3 If CONTRACTOR is an individual, CONTRACTOR is required to have at minimum three (3) years of experience/knowledge of Tree Pruning and Removal techniques, related tools and materials. If CONTRACTOR is a business, CONTRACTOR must have been in business in its present form, and performing work in the field of Tree Pruning and Removal, for a minimum of three (3) years.
- 5.2.4 CONTRACTOR shall have a foreman responsible for its work crew when services are being provided.
- 5.2.5 CONTRACTOR'S foreman should be able to communicate effectively both orally and in writing with County personnel.
- 5.2.6 CONTRACTOR 's employees shall pass a County background clearance, at the CONTRACTOR'S expense, to work in both restricted and high security areas.
- 5.2.7 CONTRACTOR agrees to provide high quality tree pruning and removal services using generally accepted and best tree care operation standards and methods for all services provided.
- 5.2.8 CONTRACTOR shall provide certified arborist services as requested by the County. CONTRACTOR shall notify County if certified Arborist services are not available.
- 5.2.9 CONTRACTOR shall provide emergency on-call tree pruning and removal services twenty-four hours per day, seven days per week (24/7). In the event of an emergency CONTRACTOR shall notify the requesting County department within one (1) hour of initial contact during regular working hours and two (2) hours of initial contact outside of regular working hours whether CONTRACTOR is able to provide emergency requested services.

5.3 CONTRACTOR agrees to furnish all material and equipment necessary to accomplish requested service(s).

5.3.1 All Contractor-supplied equipment shall be in good working order. Any damaged equipment or equipment in need of repair shall be removed from the worksite immediately.

5.3.2 CONTRACTOR shall use a bucket truck or manual climbing for requested services.

5.4 CONTRACTOR will adhere to appropriate safety precautions and requirements of the State of California, California State Contractors License Board, and CAL/OSHA regulations, as applicable, for the following County requested services:

5.4.1 Pruning Services

- Arboriculture pruning to correct structural problems or growth patterns which may be hazardous to the community or would eventually obstruct traffic or interfere with overhead utility wires;
- Arboriculture pruning of all dead, dying, diseased, interfering, objectionable, and weak branches;
- Work performed shall include pruning trees in accordance with the American National standard for Tree Care Operations – Tree, Shrub, and other Woody Plan Maintenance.
- CONTRACTOR shall removal all wood, debris, and chips from site on same day a tree is pruned as directed by the requesting County department.
- All specified pruning and removals at site of a designated tree must be completed including removal of logs and debris before initiating work on next tree.
- No more than one-fourth (1/4) of foliage on a mature tree must be removed during a pruning operation without prior approval of requesting County department.
- Pruning of trees to maintain and/or improve the health and structure of trees;
 - **Hazard Reduction:** Must consist of removal of all visible hazards with potential for damage to property or personal injury. Removal must include, but is not limited to dead wood, heavy or weak horizontal branches and weak crotches. Weak crotches are defined as split or rotted wood between tow trunks of limbs that may break and fall during high winds.
 - **Crown Cleaning:** Must consist of removal of dead, dying, disease, interfering, objectionable weakly attached, low vigor branches, and waterspouts on the main trunk as well as those within the leaf area one inch in diameter and greater. All dead wood, greater than 2 feet in length, must be removed regardless of diameter.
 - CONTRACTOR shall notify the requesting County department of any hazardous, dead, or diseased trees to determine the action to be taken.

5.4.2 Removal services, including stump removal

- Removal of trees that are dead, dying or have defects that cannot be cost effectively or practically treated or pose potential safety hazards.
- Hazardous tree removal services under normal and emergency circumstances. Removal services work performed must include removing trees in accordance with applicable Safety Requirements for Arboricultural Operations.

- Trees may be felled only when there is adequate felling area at least equal in radius to height of tree.
- Trees that cannot be felled due to adjacent trees, vegetation, roadways, buildings, structures, utilities and/or lack of adequate felling area must be topped or sectioned.
- Climbing hooks must only be worn for tree removals. CONTRACTOR must take all reasonable precautions to avoid damaging surrounding vegetation or lawn areas and prevent gouging and erosion of soils during tree removal operations.
- Direction for all stumps to be removed will be provided by the requesting County department.

5.4.3 All work is to be done in a manner not to damage other trees and to minimize damage to other plant materials.

- If damage to other trees occurs, CONTRACTOR is responsible for re-trimming of trees to arborist standards to minimize long-term damage.

5.5 CONTRACTOR is responsible for contacting and making necessary arrangements with the appropriate utility service agency during the removal of any necessary tree limbs, and/or branches that may create a hazard in the completion of the work or project assignment.

5.5.1 If damage to utility wires occurs, CONTRACTOR shall immediately notify the appropriate utility and the County.

5.5.2 CONTRACTOR is responsible for all claims for damage due to CONTRACTOR'S performance as set forth in the Sample AGREEMENT referenced below.

5.6 CONTRACTOR, during any work assignment, shall not impede County business, create a nuisance, or endanger County employees and/or the public.

5.7 Any damage caused by CONTRACTOR must be repaired by CONTRACTOR in an appropriate and timely manner.

5.8 CONTRACTOR is expected to work hours that may vary due to the location of the work assignment.

5.8.1 Specified work time(s) may be required.

5.8.2 Work performed must be approved by the requesting department/division.

End of Exhibit A

EXHIBIT B – PRICING SHEET
 (As Provided with Proposal for RFP #10659)

Company Name: NEW IMAGE LANDSCAPE COMPANY

	HOURLY	PER TREE
PER TREE TAKEDOWN	\$315.00	
TREE PRUNING	\$285.00	
STUMP REMOVAL	\$95.00	
REMOVAL OF ALL DEBRIS (CUT WOOD, LIMBS, VEGETATIVE WASTE)	\$285.00	
DISPOSAL OF ALL DEBRIS	\$85.00/yd	
SITE CLEAN UP	\$750.00	
EMERGENCY SERVICES	\$750.00	
MISCELLANEOUS (Contractor may propose and price any additional services)		
15-gallons tree planting	\$195.00/each	
24-gallon tree planting	\$465.00/each	

End of Exhibit B

Draft V1 20180606

Services

**EXHIBIT C – INCORPORATION OF RFP #10659, ADDENDA #1, AND
STATEMENT OF PROPOSAL DOCUMENTS**

The County invited submittals for Request for Proposals (RFP) through RFP #10659, COUNTYWIDE TREE PRUNING AND REMOVAL SERVICES. NEW IMAGE LANDSCAPE COMPANY submitted a responsive and responsible proposal to perform the services listed in RFP #10659.

RFP #10659 and the Proposal submitted by NEW IMAGE LANDSCAPE COMPANY are hereby incorporated into the Agreement by this reference.

End of Exhibit C

**COUNTYWIDE SERVICES AGREEMENT BETWEEN
COUNTY OF MONTEREY
AND
SOUTH BAY TREE CARE, INC.
RFP 10659 – COUNTYWIDE TREE PRUNING AND REMOVAL SERVICES**

This Agreement is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter “County”) and: **SOUTH BAY TREE CARE, INC.**, (hereinafter “CONTRACTOR”).

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

1.0 GENERAL DESCRIPTION.

- 1.01 The County hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibit A** in conformity with the terms of this Agreement. The goods and/or services are generally described as follows:

Provide: Tree pruning and removal services for the County of Monterey.

2.0 TERM OF AGREEMENT.

- 2.01 The term of this Agreement will be for a period of three (3) years from **July 1, 2018 to June 30, 2021** with the option to extend the Agreement for two (2) additional one (1) year periods, for a cumulative not to exceed total term of five (5) years, unless sooner terminated pursuant to the terms of this Agreement.
- 2.02 This Agreement is of no force or effect until signed by both CONTRACTOR and County with County signing last, and **CONTRACTOR may not commence work before County signs this Agreement.**
- 2.03 The County reserves the right to cancel this Agreement, or any extension of this Agreement, without cause, with a thirty day (30) written notice, or with cause immediately.

3.0 SCOPE OF SERVICES AND ADDITIONAL PROVISIONS.

- 3.01 The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:
Exhibit A Scope of Services
Exhibit B Pricing Sheet
Exhibit C Incorporation of Request for Proposals (RFP) #10659 and Statement of Proposal Documents

**The following documents are on file with the Office of Contracts/Purchasing:
RFP #10659,
CONTRACTOR’s Proposal Package dated April 5, 2018.**

4.0 PAYMENT PROVISIONS.

- 4.01 It is mutually understood and agreed by both parties that the County shall pay CONTRACTOR in accordance with the payment provisions set forth in **EXHIBIT B Pricing Sheet**, attached hereto, subject to the limitations set forth in the Agreement.
- 4.02 Prices shall remain firm for the initial term of this Agreement.
 - 4.02.01 Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety days (90) prior to the expiration of this Agreement.
 - 4.02.02 Rate changes are not binding unless mutually agreed upon in writing by the County and CONTRACTOR.
- 4.03 County does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement.
- 4.04 Any discount offered by the CONTRACTOR must allow for payment after receipt and acceptance of services, material or equipment and correct invoice, whichever is later. In no case will a discount be considered that required payment in less than 30 days.
- 4.05 CONTRACTOR shall levy no additional fees or surcharges of any kind during the term of this Agreement without first obtaining approval from County in writing.
- 4.06 Tax:
 - 4.06.01 Pricing as per this Agreement is inclusive of all applicable taxes.
 - 4.06.02 County is registered with the Internal Revenue Service, San Francisco office, and registration number 94-6000524. The County is exempt from Federal Transportation Tax, an exemption certificate is not required where shipping documents show Monterey County as consignee.

5.0 PERFORMANCE STANDARDS.

- 5.01 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of the County, or immediate family of an employee of the County.
- 5.02 CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
- 5.03 CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

6.0 INVOICES.

- 6.01 Invoice amounts shall be billed directly to the ordering department.
- 6.02 CONTRACTOR shall reference **RFP #10659** on all invoices submitted to County to the attention of Contract Administrator. CONTRACTOR shall submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. The County shall certify the invoice, either in the requested amount or in such other amount as the County approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

7.0 TERMINATION.

- 7.01 During the term of this Agreement, the County may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.
- 7.02 The County may cancel and terminate this Agreement for good cause upon written notice to CONTRACTOR and providing a reasonable time to cure the defective services. "Good cause" includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If County terminates this Agreement for good cause, the County may be relieved of the payment of any consideration to CONTRACTOR, and the County may proceed with the work in any manner, which County deems proper. The cost to the County shall be deducted from any sum due the CONTRACTOR under this Agreement.
- 7.03 The County's payments to CONTRACTOR under this Agreement are funded by local, state and federal governments. If funds from local, state and federal sources are not obtained and continued at a level sufficient to allow for the County's purchase of the indicated quantity of services, then the County may give written notice of this fact to CONTRACTOR, and the obligations of the parties under this Agreement shall terminate immediately, or on such date thereafter, as the County may specify in its notice, unless in the meanwhile the parties enter into a written amendment modifying this Agreement.

8.0 INDEMNIFICATION.

- 8.01 CONTRACTOR shall indemnify, defend, and hold harmless the County of Monterey, its officers, agents and employees from any claim, liability, loss, injury, or damage to the extend caused by CONTRACTOR's negligence under this Agreement arising out of, or in connection with, performance of this Agreement by CONTRACTOR and/or its agents, employees or sub-contractors, excepting only loss, injury, or damage caused by the negligence or willful misconduct of personnel employed by the County. The prevailing

party shall reimburse the other for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the CONTRACTOR is obligated to indemnify, defend and hold harmless the County under this Agreement.

- 8.02 Notwithstanding the above, CONTRACTOR's liability under this Agreement for all claims, suits, demands, losses or damages shall be limited to, in the total aggregate amount of the CONTRACTOR'S General Liability insurance policy. In no event, whatsoever, shall either party to this Agreement be liable to the other for any incidental, indirect or consequential damages, including lost profit or business loss.

9.0 INSURANCE REQUIREMENTS.

9.01 Evidence of Coverage:

Prior to commencement of this Agreement, the Contractor shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the CONTRACTOR upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County's, Contracts/Purchasing Department, unless otherwise directed. The CONTRACTOR shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and such, insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

9.02 Qualifying Insurers:

All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Purchasing Manager.

- 9.03 Insurance Coverage Requirements: Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Modification (Justification attached; subject to approval).

Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Modification (Justification attached; subject to approval).

Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

Modification (Justification attached; subject to approval).

Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made while rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

Modification (Justification attached; subject to approval).

9.04 Other Insurance Requirements.

All insurance required by this Agreement shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that the County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Contractor and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is **ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000)**. The required endorsement form for Automobile Additional Insured endorsement is **ISO Form CA 20 48 02 99**.

Prior to the execution of this Agreement by the County, CONTRACTOR shall file certificates of insurance with the County's contract administrator and County's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

CONTRACTOR shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

10.0 RECORDS AND CONFIDENTIALITY.

- 10.01 Confidentiality. CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this Agreement, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR's obligations under this Agreement.
- 10.02 County Records. When this Agreement expires, or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this Agreement.
- 10.03 Maintenance of Records. CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three-year period, then CONTRACTOR shall retain said records until such action is resolved.
- 10.04 Access to and Audit of Records. The County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the County or as part of any audit of the County, to the examination and audit of the State Auditor pertaining

to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

- 10.05 Royalties and Inventions. County shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of County.

11.0 NON-DISCRIMINATION.

- 11.01 During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

12.0 COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANTS.

- 12.01 If this Agreement has been or will be funded with monies received by the County pursuant to a contract with the state or federal government in which the County is the grantee, CONTRACTOR will comply with all the provisions of said contract, to the extent applicable to CONTRACTOR as a subgrantee under said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, County will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.

13.0 INDEPENDENT CONTRACTOR.

- 13.01 In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent contractor and not as an employee of the County. No offer or obligation of permanent employment with the County or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from County any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold County harmless from any and all liability which County may incur because of CONTRACTOR's failure to pay such taxes.

14.0 NOTICES.

14.01 Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to the County and CONTRACTOR’S contract administrators at the addresses listed below:

FOR COUNTY: County of Monterey Contracts/Purchasing Dept.	FOR CONTRACTOR: SOUTH BAY TREE CARE, INC.
Name and Title	Name and Title
1488 Schilling Place Salinas CA 93901	20225 Wilder Court Salinas CA 93907
Address	Address
(831)755-4990	(831) 663-2677
Phone	Phone

15.0 MISCELLANEOUS PROVISIONS.

- 15.01 Conflict of Interest. CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the services required to be rendered under this Agreement.
- 15.02 Amendment. This Agreement may be amended or modified only by an instrument in writing signed by the County and the CONTRACTOR.
- 15.03 Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by the County and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 15.04 Contractor. The term “CONTRACTOR” as used in this Agreement includes CONTRACTOR’s officers, agents, and employees acting on CONTRACTOR’s behalf in the performance of this Agreement.
- 15.05 Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 15.06 Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the County. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the County. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.

- 15.07 Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of the County and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- 15.08 Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 15.09 Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 15.10 Time is an important element. Time is an important element in each and all the provisions of this Agreement.
- 15.11 Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.
- 15.12 Non-exclusive Agreement. This Agreement is non-exclusive and both County and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.
- 15.13 Construction of Agreement. The County and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- 15.14 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
- 15.15 Authority. Any individual executing this Agreement on behalf of the County or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.
- 15.16 Integration. This Agreement, including the exhibits, represent the entire Agreement between the County and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the County and the CONTRACTOR as of the effective date of this Agreement, which is the date that the County signs the Agreement.
- 15.17 Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

-----*This section left blank intentionally*-----

16.0 SIGNATURE PAGE.

IN WITNESS WHEREOF, County and CONTRACTOR have executed this Agreement as of the day and year written below.

COUNTY OF MONTEREY

CONTRACTOR

By: [Signature]
Contracts/Purchasing Officer

SOUTH BAY TREE CARE, INC.
Contractor's Business Name*

Date: 7-27-18

By: _____
Department Head (if applicable)

By: [Signature]
(Signature of Chair, President, or Vice-President) *

Date: _____

Approved as to Form¹

Jorge Delacruz "President"
Name and Title

By: [Signature]
Deputy County Counsel

Date: June 18, 2018

Date: 7/3/18

By: [Signature]
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer) *

Approved as to Fiscal Provisions²

Sonia Delacruz "CFO"
Name and Title

By: [Signature]
Auditor/Controller

Date: June 18, 2018

Date: 7-5-18

Approved as to Liability Provisions³

By: _____
Risk Management

Date: _____

*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

¹Approval by County Counsel is required
²Approval by Auditor/Controller is required
³Approval by Risk Management is required only if changes are made in sections 8 or 9

EXHIBIT A – SCOPE OF SERVICES

(As listed within RFP #10659)

- 5.1 **CONTRACTOR Minimum Work Performance Percentage:** CONTRACTOR shall perform with his own organization contract work amounting to not less than 50 percent (50%) of the original total contract price, except that any designated 'Specialty Items' may be performed by subcontract and the amount of any such 'Specialty Items' so performed may be deducted from the original total AGREEMENT price before computing the amount of work required to be performed by CONTRACTOR with its organization.
- 5.2 All work shall be done on a work order basis as requested by the ordering County department.
- 5.2.1 CONTRACTOR agrees to conduct a thorough inspection of the grounds and evaluate the conditions of the tree pruning and/or removal project.
- 5.2.2 CONTRACTOR agrees to furnish qualified supervisor and all personnel necessary to accomplish the requested tree pruning and/or removal service(s).
- 5.2.3 If CONTRACTOR is an individual, CONTRACTOR is required to have at minimum three (3) years of experience/knowledge of Tree Pruning and Removal techniques, related tools and materials. If CONTRACTOR is a business, CONTRACTOR must have been in business in its present form, and performing work in the field of Tree Pruning and Removal, for a minimum of three (3) years.
- 5.2.4 CONTRACTOR shall have a foreman responsible for its work crew when services are being provided.
- 5.2.5 CONTRACTOR'S foreman should be able to communicate effectively both orally and in writing with County personnel.
- 5.2.6 CONTRACTOR 's employees shall pass a County background clearance, at the CONTRACTOR'S expense, to work in both restricted and high security areas.
- 5.2.7 CONTRACTOR agrees to provide high quality tree pruning and removal services using generally accepted and best tree care operation standards and methods for all services provided.
- 5.2.8 CONTRACTOR shall provide certified arborist services as requested by the County. CONTRACTOR shall notify County if certified Arborist services are not available.
- 5.2.9 CONTRACTOR shall provide emergency on-call tree pruning and removal services twenty-four hours per day, seven days per week (24/7). In the event of an emergency CONTRACTOR shall notify the requesting County department within one (1) hour of initial contact during regular working hours and two (2) hours of initial contact outside of regular working hours whether CONTRACTOR is able to provide emergency requested services.

5.3 CONTRACTOR agrees to furnish all material and equipment necessary to accomplish requested service(s).

5.3.1 All Contractor-supplied equipment shall be in good working order. Any damaged equipment or equipment in need of repair shall be removed from the worksite immediately.

5.3.2 CONTRACTOR shall use a bucket truck or manual climbing for requested services.

5.4 CONTRACTOR will adhere to appropriate safety precautions and requirements of the State of California, California State Contractors License Board, and CAL/OSHA regulations, as applicable, for the following County requested services:

5.4.1 Pruning Services

- Arboriculture pruning to correct structural problems or growth patterns which may be hazardous to the community or would eventually obstruct traffic or interfere with overhead utility wires;
- Arboriculture pruning of all dead, dying, diseased, interfering, objectionable, and weak branches;
- Work performed shall include pruning trees in accordance with the American National standard for Tree Care Operations – Tree, Shrub, and other Woody Plan Maintenance.
- CONTRACTOR shall removal all wood, debris, and chips from site on same day a tree is pruned as directed by the requesting County department.
- All specified pruning and removals at site of a designated tree must be completed including removal of logs and debris before initiating work on next tree.
- No more than one-fourth (1/4) of foliage on a mature tree must be removed during a pruning operation without prior approval of requesting County department.
- Pruning of trees to maintain and/or improve the health and structure of trees;
 - Hazard Reduction: Must consist of removal of all visible hazards with potential for damage to property or personal injury. Removal must include, but is not limited to dead wood, heavy or weak horizontal branches and weak crotches. Weak crotches are defined as split or rotted wood between tow trunks of limbs that may break and fall during high winds.
 - Crown Cleaning: Must consist of removal of dead, dying, disease, interfering, objectionable weakly attached, low vigor branches, and waterspouts on the main trunk as well as those within the leaf area one inch in diameter and greater. All dead wood, greater than 2 feet in length, must be removed regardless of diameter.
 - CONTRACTOR shall notify the requesting County department of any hazardous, dead, or diseased trees to determine the action to be taken.

5.4.2 Removal services, including stump removal

- Removal of trees that are dead, dying or have defects that cannot be cost effectively or practically treated or pose potential safety hazards.
- Hazardous tree removal services under normal and emergency circumstances. Removal services work performed must include removing trees in accordance with applicable Safety Requirements for Arboricultural Operations.

- Trees may be felled only when there is adequate felling area at least equal in radius to height of tree.
- Trees that cannot be felled due to adjacent trees, vegetation, roadways, buildings, structures, utilities and/or lack of adequate felling area must be topped or sectioned.
- Climbing hooks must only be worn for tree removals. CONTRACTOR must take all reasonable precautions to avoid damaging surrounding vegetation or lawn areas and prevent gouging and erosion of soils during tree removal operations.
- Direction for all stumps to be removed will be provided by the requesting County department.

5.4.3 All work is to be done in a manner not to damage other trees and to minimize damage to other plant materials.

- If damage to other trees occurs, CONTRACTOR is responsible for re-trimming of trees to arborist standards to minimize long-term damage.

5.5 CONTRACTOR is responsible for contacting and making necessary arrangements with the appropriate utility service agency during the removal of any necessary tree limbs, and/or branches that may create a hazard in the completion of the work or project assignment.

5.5.1 If damage to utility wires occurs, CONTRACTOR shall immediately notify the appropriate utility and the County.

5.5.2 CONTRACTOR is responsible for all claims for damage due to CONTRACTOR'S performance as set forth in the Sample AGREEMENT referenced below.

5.6 CONTRACTOR, during any work assignment, shall not impede County business, create a nuisance, or endanger County employees and/or the public.

5.7 Any damage caused by CONTRACTOR must be repaired by CONTRACTOR in an appropriate and timely manner.

5.8 CONTRACTOR is expected to work hours that may vary due to the location of the work assignment.

5.8.1 Specified work time(s) may be required.

5.8.2 Work performed must be approved by the requesting department/division.

End of Exhibit A

EXHIBIT B – PRICING SHEET
 (As Provided with Proposal for RFP #10659)

Company Name: SOUTH BAY TREE CARE, INC.

	HOURLY	PER TREE
PER TREE TAKEDOWN	\$285.00 3-man crew	Time and Material
TREE PRUNING	\$270.00 3-man crew	Time and Material
STUMP REMOVAL	\$75.00 Per man	Time and Material
REMOVAL OF ALL DEBRIS (CUT WOOD, LIMBS, VEGETATIVE WASTE)	\$225.00 3-man crew	Time and Material
DISPOSAL OF ALL DEBRIS	\$75.00 Per man	Time and Material
SITE CLEAN UP	\$225.00 3-man crew	Time and Material
EMERGENCY SERVICES	\$375.00 3-man crew	Time and Material
MISCELLANEOUS (Contractor may propose and price any additional services)	\$285 3-man crew	Time and Material

End of Exhibit B
 Draft V1 20180606
 Services

**EXHIBIT C – INCORPORATION OF RFP #10659, ADDENDA #1, AND
STATEMENT OF PROPOSAL DOCUMENTS**

The County invited submittals for Request for Proposals (RFP) through RFP #10659, COUNTYWIDE TREE PRUNING AND REMOVAL SERVICES. SOUTH BAY TREE CARE, INC. submitted a responsive and responsible proposal to perform the services listed in RFP #10659.

RFP #10659 and the Proposal submitted by SOUTH BAY TREE CARE, INC. are hereby incorporated into the Agreement by this reference.

End of Exhibit C

**COUNTYWIDE SERVICES AGREEMENT BETWEEN
COUNTY OF MONTEREY
AND
TOPE'S TREE SERVICE, INC.
RFP 10659 – COUNTYWIDE TREE PRUNING AND REMOVAL SERVICES**

This **Agreement** is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter "County") and: **TOPE'S TREE SERVICE, INC.**, (hereinafter "CONTRACTOR").

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

1.0 GENERAL DESCRIPTION.

- 1.01 The County hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibit A** in conformity with the terms of this Agreement. The goods and/or services are generally described as follows:

Provide: Tree pruning and removal services for the County of Monterey.

2.0 TERM OF AGREEMENT.

- 2.01 The term of this Agreement will be for a period of three (3) years from **July 1, 2018** to **June 30, 2021** with the option to extend the Agreement for two (2) additional one (1) year periods, for a cumulative not to exceed total term of five (5) years, unless sooner terminated pursuant to the terms of this Agreement.
- 2.02 This Agreement is of no force or effect until signed by both CONTRACTOR and County with County signing last, and **CONTRACTOR may not commence work before County signs this Agreement.**
- 2.03 The County reserves the right to cancel this Agreement, or any extension of this Agreement, without cause, with a thirty day (30) written notice, or with cause immediately.

3.0 SCOPE OF SERVICES AND ADDITIONAL PROVISIONS.

- 3.01 The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

Exhibit A Scope of Services

Exhibit B Pricing Sheet

Exhibit C Incorporation of Request for Proposals (RFP) #10659 and Statement of Proposal Documents

**The following documents are on file with the Office of Contracts/Purchasing:
RFP #10659,
CONTRACTOR's Proposal Package dated April 5, 2018.**

4.0 PAYMENT PROVISIONS.

- 4.01 It is mutually understood and agreed by both parties that the County shall pay CONTRACTOR in accordance with the payment provisions set forth in **EXHIBIT B Pricing Sheet**, attached hereto, subject to the limitations set forth in the Agreement.
- 4.02 Prices shall remain firm for the initial term of this Agreement.
 - 4.02.01 Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety days (90) prior to the expiration of this Agreement.
 - 4.02.02 Rate changes are not binding unless mutually agreed upon in writing by the County and CONTRACTOR.
- 4.03 County does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement.
- 4.04 Any discount offered by the CONTRACTOR must allow for payment after receipt and acceptance of services, material or equipment and correct invoice, whichever is later. In no case will a discount be considered that required payment in less than 30 days.
- 4.05 CONTRACTOR shall levy no additional fees or surcharges of any kind during the term of this Agreement without first obtaining approval from County in writing.
- 4.06 Tax:
 - 4.06.01 Pricing as per this Agreement is inclusive of all applicable taxes.
 - 4.06.02 County is registered with the Internal Revenue Service, San Francisco office, and registration number 94-6000524. The County is exempt from Federal Transportation Tax, an exemption certificate is not required where shipping documents show Monterey County as consignee.

5.0 PERFORMANCE STANDARDS.

- 5.01 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of the County, or immediate family of an employee of the County.
- 5.02 CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
- 5.03 CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

6.0 INVOICES.

- 6.01 Invoice amounts shall be billed directly to the ordering department.
- 6.02 CONTRACTOR shall reference **RFP #10659** on all invoices submitted to County to the attention of Contract Administrator. CONTRACTOR shall submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. The County shall certify the invoice, either in the requested amount or in such other amount as the County approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

7.0 TERMINATION.

- 7.01 During the term of this Agreement, the County may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.
- 7.02 The County may cancel and terminate this Agreement for good cause upon written notice to CONTRACTOR and providing a reasonable time to cure the defective services. "Good cause" includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If County terminates this Agreement for good cause, the County may be relieved of the payment of any consideration to CONTRACTOR, and the County may proceed with the work in any manner, which County deems proper. The cost to the County shall be deducted from any sum due the CONTRACTOR under this Agreement.
- 7.03 The County's payments to CONTRACTOR under this Agreement are funded by local, state and federal governments. If funds from local, state and federal sources are not obtained and continued at a level sufficient to allow for the County's purchase of the indicated quantity of services, then the County may give written notice of this fact to CONTRACTOR, and the obligations of the parties under this Agreement shall terminate immediately, or on such date thereafter, as the County may specify in its notice, unless in the meanwhile the parties enter into a written amendment modifying this Agreement.

8.0 INDEMNIFICATION.

- 8.01 CONTRACTOR shall indemnify, defend, and hold harmless the County of Monterey, its officers, agents and employees from any claim, liability, loss, injury, or damage to the extend caused by CONTRACTOR's negligence under this Agreement arising out of, or in connection with, performance of this Agreement by CONTRACTOR and/or its agents, employees or sub-contractors, excepting only loss, injury, or damage caused by the negligence or willful misconduct of personnel employed by the County. The prevailing

party shall reimburse the other for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the CONTRACTOR is obligated to indemnify, defend and hold harmless the County under this Agreement.

- 8.02 Notwithstanding the above, CONTRACTOR's liability under this Agreement for all claims, suits, demands, losses or damages shall be limited to, in the total aggregate amount of the CONTRACTOR'S General Liability insurance policy. In no event, whatsoever, shall either party to this Agreement be liable to the other for any incidental, indirect or consequential damages, including lost profit or business loss.

9.0 INSURANCE REQUIREMENTS.

9.01 Evidence of Coverage:

Prior to commencement of this Agreement, the Contractor shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the CONTRACTOR upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County's, Contracts/Purchasing Department, unless otherwise directed. The CONTRACTOR shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and such, insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

9.02 Qualifying Insurers:

All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Purchasing Manager.

- 9.03 Insurance Coverage Requirements: Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Modification (Justification attached; subject to approval).

Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Modification (Justification attached; subject to approval).

Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

Modification (Justification attached; subject to approval).

Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made while rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

Modification (Justification attached; subject to approval).

9.04 Other Insurance Requirements.

All insurance required by this Agreement shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that the County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Contractor and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is **ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000)**. The required endorsement form for Automobile Additional Insured endorsement is **ISO Form CA 20 48 02 99**.

Prior to the execution of this Agreement by the County, CONTRACTOR shall file certificates of insurance with the County's contract administrator and County's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

CONTRACTOR shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

10.0 RECORDS AND CONFIDENTIALITY.

- 10.01 Confidentiality. CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this Agreement, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR's obligations under this Agreement.
- 10.02 County Records. When this Agreement expires, or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this Agreement.
- 10.03 Maintenance of Records. CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three-year period, then CONTRACTOR shall retain said records until such action is resolved.
- 10.04 Access to and Audit of Records. The County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the County or as part of any audit of the County, to the examination and audit of the State Auditor pertaining

to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

- 10.05 Royalties and Inventions. County shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of County.

11.0 NON-DISCRIMINATION.

- 11.01 During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

12.0 COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANTS.

- 12.01 If this Agreement has been or will be funded with monies received by the County pursuant to a contract with the state or federal government in which the County is the grantee, CONTRACTOR will comply with all the provisions of said contract, to the extent applicable to CONTRACTOR as a subgrantee under said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, County will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.

13.0 INDEPENDENT CONTRACTOR.

- 13.01 In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent contractor and not as an employee of the County. No offer or obligation of permanent employment with the County or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from County any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold County harmless from any and all liability which County may incur because of CONTRACTOR's failure to pay such taxes.

14.0 NOTICES.

14.01 Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to the County and CONTRACTOR'S contract administrators at the addresses listed below:

FOR COUNTY: County of Monterey Contracts/Purchasing Dept.	FOR CONTRACTOR: TOPE'S TREE SERVICE, INC.
Name and Title	Name and Title
1488 Schilling Place Salinas CA 93901	PO Box 51964 Pacific Grove CA 93950
Address	Address
(831)755-4990	(831) 373-7765
Phone	Phone

15.0 MISCELLANEOUS PROVISIONS.

- 15.01 Conflict of Interest. CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the services required to be rendered under this Agreement.
- 15.02 Amendment. This Agreement may be amended or modified only by an instrument in writing signed by the County and the CONTRACTOR.
- 15.03 Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by the County and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 15.04 Contractor. The term "CONTRACTOR" as used in this Agreement includes CONTRACTOR's officers, agents, and employees acting on CONTRACTOR's behalf in the performance of this Agreement.
- 15.05 Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 15.06 Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the County. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the County. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.

- 15.07 Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of the County and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- 15.08 Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 15.09 Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 15.10 Time is an important element. Time is an important element in each and all the provisions of this Agreement.
- 15.11 Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.
- 15.12 Non-exclusive Agreement. This Agreement is non-exclusive and both County and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.
- 15.13 Construction of Agreement. The County and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- 15.14 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
- 15.15 Authority. Any individual executing this Agreement on behalf of the County or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.
- 15.16 Integration. This Agreement, including the exhibits, represent the entire Agreement between the County and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the County and the CONTRACTOR as of the effective date of this Agreement, which is the date that the County signs the Agreement.
- 15.17 Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

-----*This section left blank intentionally*-----

16.0 SIGNATURE PAGE.

IN WITNESS WHEREOF, County and CONTRACTOR have executed this Agreement as of the day and year written below.

COUNTY OF MONTEREY

CONTRACTOR

By: [Signature]
Contracts/Purchasing Officer

Date: 7-27-18

By: _____
Department Head (if applicable)

Date: _____

Approved as to Form¹

By: [Signature]
Deputy County Counsel

Date: 7/5/18

Approved as to Fiscal Provisions²

By: [Signature]
Auditor/Controller

Date: 7-18

Approved as to Liability Provisions³

By: _____
Risk Management

Date: _____

TOPE'S TREE SERVICE, INC.
Contractor's Business Name*

By: [Signature]
(Signature of Chair, President, or Vice-President) *

[Signature]
Name and Title

Date: 6/28/18

By: _____
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer) *

[Signature]
Name and Title Treasurer

Date: 6/28/18

*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

¹Approval by County Council is required

²Approval by Auditor/Controller is required

³Approval by Risk Management is required only if changes are made in sections 8 or 9

EXHIBIT A – SCOPE OF SERVICES
(As listed within RFP #10659)

- 5.1 CONTRACTOR Minimum Work Performance Percentage: CONTRACTOR shall perform with his own organization contract work amounting to not less than 50 percent (50%) of the original total contract price, except that any designated 'Specialty Items' may be performed by subcontract and the amount of any such 'Specialty Items' so performed may be deducted from the original total AGREEMENT price before computing the amount of work required to be performed by CONTRACTOR with its organization.
- 5.2 All work shall be done on a work order basis as requested by the ordering County department.
- 5.2.1 CONTRACTOR agrees to conduct a thorough inspection of the grounds and evaluate the conditions of the tree pruning and/or removal project.
- 5.2.2 CONTRACTOR agrees to furnish qualified supervisor and all personnel necessary to accomplish the requested tree pruning and/or removal service(s).
- 5.2.3 If CONTRACTOR is an individual, CONTRACTOR is required to have at minimum three (3) years of experience/knowledge of Tree Pruning and Removal techniques, related tools and materials. If CONTRACTOR is a business, CONTRACTOR must have been in business in its present form, and performing work in the field of Tree Pruning and Removal, for a minimum of three (3) years.
- 5.2.4 CONTRACTOR shall have a foreman responsible for its work crew when services are being provided.
- 5.2.5 CONTRACTOR'S foreman should be able to communicate effectively both orally and in writing with County personnel.
- 5.2.6 CONTRACTOR 's employees shall pass a County background clearance, at the CONTRACTOR'S expense, to work in both restricted and high security areas.
- 5.2.7 CONTRACTOR agrees to provide high quality tree pruning and removal services using generally accepted and best tree care operation standards and methods for all services provided.
- 5.2.8 CONTRACTOR shall provide certified arborist services as requested by the County. CONTRACTOR shall notify County if certified Arborist services are not available.
- 5.2.9 CONTRACTOR shall provide emergency on-call tree pruning and removal services twenty-four hours per day, seven days per week (24/7). In the event of an emergency CONTRACTOR shall notify the requesting County department within one (1) hour of initial contact during regular working hours and two (2) hours of initial contact outside of regular working hours whether CONTRACTOR is able to provide emergency requested services.

5.3 CONTRACTOR agrees to furnish all material and equipment necessary to accomplish requested service(s).

5.3.1 All Contractor-supplied equipment shall be in good working order. Any damaged equipment or equipment in need of repair shall be removed from the worksite immediately.

5.3.2 CONTRACTOR shall use a bucket truck or manual climbing for requested services.

5.4 CONTRACTOR will adhere to appropriate safety precautions and requirements of the State of California, California State Contractors License Board, and CAL/OSHA regulations, as applicable, for the following County requested services:

5.4.1 Pruning Services

- Arboriculture pruning to correct structural problems or growth patterns which may be hazardous to the community or would eventually obstruct traffic or interfere with overhead utility wires;
- Arboriculture pruning of all dead, dying, diseased, interfering, objectionable, and weak branches;
- Work performed shall include pruning trees in accordance with the American National standard for Tree Care Operations – Tree, Shrub, and other Woody Plan Maintenance.
- CONTRACTOR shall removal all wood, debris, and chips from site on same day a tree is pruned as directed by the requesting County department.
- All specified pruning and removals at site of a designated tree must be completed including removal of logs and debris before initiating work on next tree.
- No more than one-fourth (1/4) of foliage on a mature tree must be removed during a pruning operation without prior approval of requesting County department.
- Pruning of trees to maintain and/or improve the health and structure of trees;
 - **Hazard Reduction:** Must consist of removal of all visible hazards with potential for damage to property or personal injury. Removal must include, but is not limited to dead wood, heavy or weak horizontal branches and weak crotches. Weak crotches are defined as split or rotted wood between tow trunks of limbs that may break and fall during high winds.
 - **Crown Cleaning:** Must consist of removal of dead, dying, disease, interfering, objectionable weakly attached, low vigor branches, and waterspouts on the main trunk as well as those within the leaf area one inch in diameter and greater. All dead wood, greater than 2 feet in length, must be removed regardless of diameter.
 - CONTRACTOR shall notify the requesting County department of any hazardous, dead, or diseased trees to determine the action to be taken.

5.4.2 Removal services, including stump removal

- Removal of trees that are dead, dying or have defects that cannot be cost effectively or practically treated or pose potential safety hazards.
- Hazardous tree removal services under normal and emergency circumstances. Removal services work performed must include removing trees in accordance with applicable Safety Requirements for Arboricultural Operations.

- Trees may be felled only when there is adequate felling area at least equal in radius to height of tree.
- Trees that cannot be felled due to adjacent trees, vegetation, roadways, buildings, structures, utilities and/or lack of adequate felling area must be topped or sectioned.
- Climbing hooks must only be worn for tree removals. CONTRACTOR must take all reasonable precautions to avoid damaging surrounding vegetation or lawn areas and prevent gouging and erosion of soils during tree removal operations.
- Direction for all stumps to be removed will be provided by the requesting County department.

5.4.3 All work is to be done in a manner not to damage other trees and to minimize damage to other plant materials.

- If damage to other trees occurs, CONTRACTOR is responsible for re-trimming of trees to arborist standards to minimize long-term damage.

5.5 CONTRACTOR is responsible for contacting and making necessary arrangements with the appropriate utility service agency during the removal of any necessary tree limbs, and/or branches that may create a hazard in the completion of the work or project assignment.

5.5.1 If damage to utility wires occurs, CONTRACTOR shall immediately notify the appropriate utility and the County.

5.5.2 CONTRACTOR is responsible for all claims for damage due to CONTRACTOR'S performance as set forth in the Sample AGREEMENT referenced below.

5.6 CONTRACTOR, during any work assignment, shall not impede County business, create a nuisance, or endanger County employees and/or the public.

5.7 Any damage caused by CONTRACTOR must be repaired by CONTRACTOR in an appropriate and timely manner.

5.8 CONTRACTOR is expected to work hours that may vary due to the location of the work assignment.

5.8.1 Specified work time(s) may be required.

5.8.2 Work performed must be approved by the requesting department/division.

End of Exhibit A

EXHIBIT B – PRICING SHEET
(As Provided with Proposal for RFP #10659)

Company Name: TOPE’S TREE SERVICE, INC.

	HOURLY	PER TREE
PER TREE TAKEDOWN	\$75.00 Per man	\$200.00 - \$4,000.00
TREE PRUNING	\$75.00 Per man	\$150.00 - \$2,000.00
STUMP REMOVAL	\$150.00	\$200.00
REMOVAL OF ALL DEBRIS (CUT WOOD, LIMBS, VEGETATIVE WASTE)	\$75.00 Per man	\$75.00 - \$2,000.00
DISPOSAL OF ALL DEBRIS	\$75.00 Per man	
SITE CLEAN UP	\$60.00 Per man	
EMERGENCY SERVICES	\$112.50 per hour/per man	
MISCELLANEOUS (Contractor may propose and price any additional services)		
23 Ton Crane	\$150.00	
38 Ton Crane	\$250.00	
60 ft. Bucket	\$60.00	
75 ft. Bucket	\$75.00	
Skid Steer	\$90.00	
Wheel Loader	\$175.00	
Roll off Dumpster	\$400.00 per dumpster + dump fees	
Arborist Consulting with Tree Risk Assessment Qualifications	\$125.00	
18-inch Chipper and Truck	\$40.00	
24-inch Chipper and Truck	\$60.00	

End of Exhibit B

**EXHIBIT C – INCORPORATION OF RFP #10659, ADDENDA #1, AND
STATEMENT OF PROPOSAL DOCUMENTS**

The County invited submittals for Request for Proposals (RFP) through RFP #10659, COUNTYWIDE TREE PRUNING AND REMOVAL SERVICES. TOPE'S TREE SERVICE, INC. submitted a responsive and responsible proposal to perform the services listed in RFP #10659.

RFP #10659 and the Proposal submitted by TOPE'S TREE SERVICE, INC. are hereby incorporated into the Agreement by this reference.

End of Exhibit C

**COUNTYWIDE SERVICES AGREEMENT BETWEEN
COUNTY OF MONTEREY
AND
WEST COAST ARBORISTS, INC.
RFP 10659 – COUNTYWIDE TREE PRUNING AND REMOVAL SERVICES**

This Agreement is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter "County") and: WEST COAST ARBORISTS, INC., (hereinafter "CONTRACTOR").

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

1.0 GENERAL DESCRIPTION.

1.01 The County hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in Exhibit A in conformity with the terms of this Agreement. The goods and/or services are generally described as follows:

Provide: Tree pruning and removal services for the County of Monterey.

2.0 TERM OF AGREEMENT.

2.01 The term of this Agreement will be for a period of three (3) years from July 1, 2018 to June 30, 2021 with the option to extend the Agreement for two (2) additional one (1) year periods, for a cumulative not to exceed total term of five (5) years, unless sooner terminated pursuant to the terms of this Agreement.

2.02 This Agreement is of no force or effect until signed by both CONTRACTOR and County with County signing last, and CONTRACTOR may not commence work before County signs this Agreement.

2.03 The County reserves the right to cancel this Agreement, or any extension of this Agreement, without cause, with a thirty day (30) written notice, or with cause immediately.

3.0 SCOPE OF SERVICES AND ADDITIONAL PROVISIONS.

3.01 The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

Exhibit A Scope of Services

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Exhibit C Incorporation of Request for Proposals (RFP) #10659 and Statement of Proposal Documents

The following documents are on file with the Office of Contracts/Purchasing:

RFP #10659,

CONTRACTOR's Proposal Package dated April 5, 2018.

4.0 PAYMENT PROVISIONS.

- 4.01 It is mutually understood and agreed by both parties that the County shall pay CONTRACTOR in accordance with the payment provisions set forth in EXHIBIT B Pricing Sheet, attached hereto, subject to the limitations set forth in the Agreement.
- 4.02 Prices shall remain firm for the initial term of this Agreement.
 - 4.02.01 Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety days (90) prior to the expiration of this Agreement.
 - 4.02.02 Rate changes are not binding unless mutually agreed upon in writing by the County and CONTRACTOR.
- 4.03 County does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement.
- 4.04 Any discount offered by the CONTRACTOR must allow for payment after receipt and acceptance of services, material or equipment and correct invoice, whichever is later. In no case will a discount be considered that required payment in less than 30 days.
- 4.05 CONTRACTOR shall levy no additional fees or surcharges of any kind during the term of this Agreement without first obtaining approval from County in writing.
- 4.06 Tax:
 - 4.06.01 Pricing as per this Agreement is inclusive of all applicable taxes.
 - 4.06.02 County is registered with the Internal Revenue Service, San Francisco office, and registration number 94-6000524. The County is exempt from Federal Transportation Tax, an exemption certificate is not required where shipping documents show Monterey County as consignee.

5.0 PERFORMANCE STANDARDS.

- 5.01 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of the County, or immediate family of an employee of the County.
- 5.02 CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
- 5.03 CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

6.0 INVOICES.

- 6.01 Invoice amounts shall be billed directly to the ordering department.
- 6.02 CONTRACTOR shall reference RFP #10659 on all invoices submitted to County to the attention of Contract Administrator. CONTRACTOR shall submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. The County shall certify the invoice, either in the requested amount or in such other amount as the County approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

7.0 TERMINATION.

- 7.01 During the term of this Agreement, the County may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.
- 7.02 The County may cancel and terminate this Agreement for good cause upon written notice to CONTRACTOR and providing a reasonable time to cure the defective services. "Good cause" includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If County terminates this Agreement for good cause, the County may be relieved of the payment of any consideration to CONTRACTOR, and the County may proceed with the work in any manner, which County deems proper. The cost to the County shall be deducted from any sum due the CONTRACTOR under this Agreement.
- 7.03 The County's payments to CONTRACTOR under this Agreement are funded by local, state and federal governments. If funds from local, state and federal sources are not obtained and continued at a level sufficient to allow for the County's purchase of the indicated quantity of services, then the County may give written notice of this fact to CONTRACTOR, and the obligations of the parties under this Agreement shall terminate immediately, or on such date thereafter, as the County may specify in its notice, unless in the meanwhile the parties enter into a written amendment modifying this Agreement.

8.0 INDEMNIFICATION.

- 8.01 CONTRACTOR shall indemnify, defend, and hold harmless the County of Monterey, its officers, agents and employees from any claim, liability, loss, injury, or damage to the extend caused by CONTRACTOR's negligence under this Agreement arising out of, or in connection with, performance of this Agreement by CONTRACTOR and/or its agents, employees or sub-contractors, excepting only loss, injury, or damage caused by the negligence or willful misconduct of personnel employed by the County. The prevailing

party shall reimburse the other for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the CONTRACTOR is obligated to indemnify, defend and hold harmless the County under this Agreement.

- 8.02 Notwithstanding the above, CONTRACTOR's liability under this Agreement for all claims, suits, demands, losses or damages shall be limited to, in the total aggregate amount of the CONTRACTOR'S General Liability insurance policy. In no event, whatsoever, shall either party to this Agreement be liable to the other for any incidental, indirect or consequential damages, including lost profit or business loss.

9.0 INSURANCE REQUIREMENTS.

9.01 Evidence of Coverage:

Prior to commencement of this Agreement, the Contractor shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the CONTRACTOR upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County's, Contracts/Purchasing Department, unless otherwise directed. The CONTRACTOR shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and such, insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

9.02 Qualifying Insurers:

All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Purchasing Manager.

- 9.03 Insurance Coverage Requirements: Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Modification (Justification attached; subject to approval).

Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Modification (Justification attached; subject to approval).

Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

Modification (Justification attached; subject to approval).

Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made while rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

Modification (Justification attached; subject to approval).

9.04 Other Insurance Requirements.

All insurance required by this Agreement shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that the County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Contractor and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by the County, CONTRACTOR shall file certificates of insurance with the County's contract administrator and County's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

CONTRACTOR shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

10.0 RECORDS AND CONFIDENTIALITY.

- 10.01 Confidentiality. CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this Agreement, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR's obligations under this Agreement.
- 10.02 County Records. When this Agreement expires, or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this Agreement.
- 10.03 Maintenance of Records. CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three-year period, then CONTRACTOR shall retain said records until such action is resolved.
- 10.04 Access to and Audit of Records. The County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the County or as part of any audit of the County, to the examination and audit of the State Auditor pertaining

to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

- 10.05 Royalties and Inventions. County shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of County.

11.0 NON-DISCRIMINATION.

- 11.01 During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

12.0 COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANTS.

- 12.01 If this Agreement has been or will be funded with monies received by the County pursuant to a contract with the state or federal government in which the County is the grantee, CONTRACTOR will comply with all the provisions of said contract, to the extent applicable to CONTRACTOR as a subgrantee under said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, County will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.

13.0 INDEPENDENT CONTRACTOR.

- 13.01 In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent contractor and not as an employee of the County. No offer or obligation of permanent employment with the County or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from County any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold County harmless from any and all liability which County may incur because of CONTRACTOR's failure to pay such taxes.

14.0 NOTICES.

14.01 Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to the County and CONTRACTOR'S contract administrators at the addresses listed below:

FOR COUNTY: County of Monterey Contracts/Purchasing Dept.	FOR CONTRACTOR: WEST COAST ARBORISTS, INC.
Name and Title	Patrick Mahoney, President Name and Title
1488 Schilling Place Salinas CA 93901	390 Martin Avenue Santa Clara CA 95050
Address	Address
(831)755-4990	(408) 855-8660
Phone	Phone

15.0 MISCELLANEOUS PROVISIONS.

- 15.01 Conflict of Interest. CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the services required to be rendered under this Agreement.
- 15.02 Amendment. This Agreement may be amended or modified only by an instrument in writing signed by the County and the CONTRACTOR.
- 15.03 Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by the County and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 15.04 Contractor. The term "CONTRACTOR" as used in this Agreement includes CONTRACTOR's officers, agents, and employees acting on CONTRACTOR's behalf in the performance of this Agreement.
- 15.05 Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 15.06 Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the County. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the County. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.

- 15.07 Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of the County and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- 15.08 Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 15.09 Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 15.10 Time is an important element. Time is an important element in each and all the provisions of this Agreement.
- 15.11 Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.
- 15.12 Non-exclusive Agreement. This Agreement is non-exclusive and both County and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.
- 15.13 Construction of Agreement. The County and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- 15.14 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
- 15.15 Authority. Any individual executing this Agreement on behalf of the County or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.
- 15.16 Integration. This Agreement, including the exhibits, represent the entire Agreement between the County and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the County and the CONTRACTOR as of the effective date of this Agreement, which is the date that the County signs the Agreement.
- 15.17 Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

-----*This section left blank intentionally*-----

16.0 SIGNATURE PAGE.

IN WITNESS WHEREOF, County and CONTRACTOR have executed this Agreement as of the day and year written below.

COUNTY OF MONTEREY

CONTRACTOR

By: [Signature]
Contracts/Purchasing Officer

Date: 7-27-18

By: _____
Department Head (if applicable)

Date: _____

Approved as to Form¹

By: [Signature]
Deputy County Counsel

Date: 7/3/18

Approved as to Fiscal Provisions²

By: [Signature]
Auditor/Controller

Date: 5/18

WEST COAST ARBORISTS, INC.
Contractor's Business Name*

By: [Signature]
(Signature of Chair, President, or Vice-President) *

Patrick Mahoney, President
Name and Title

Date: 6/19/18

By: [Signature]
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer) *

Richard Mahoney, Secretary
Name and Title

Date: 6/19/18

Approved as to Liability Provisions³

By: _____
Risk Management

Date: _____

*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

¹Approval by County Counsel is required

²Approval by Auditor/Controller is required

³Approval by Risk Management is required only if changes are made in sections 8 or 9

EXHIBIT A – SCOPE OF SERVICES
(As listed within RFP #10659)

- 5.1 CONTRACTOR Minimum Work Performance Percentage: CONTRACTOR shall perform with his own organization contract work amounting to not less than 50 percent (50%) of the original total contract price, except that any designated 'Specialty Items' may be performed by subcontract and the amount of any such 'Specialty Items' so performed may be deducted from the original total AGREEMENT price before computing the amount of work required to be performed by CONTRACTOR with its organization.
- 5.2 All work shall be done on a work order basis as requested by the ordering County department.
- 5.2.1 CONTRACTOR agrees to conduct a thorough inspection of the grounds and evaluate the conditions of the tree pruning and/or removal project.
- 5.2.2 CONTRACTOR agrees to furnish qualified supervisor and all personnel necessary to accomplish the requested tree pruning and/or removal service(s).
- 5.2.3 If CONTRACTOR is an individual, CONTRACTOR is required to have at minimum three (3) years of experience/knowledge of Tree Pruning and Removal techniques, related tools and materials. If CONTRACTOR is a business, CONTRACTOR must have been in business in its present form, and performing work in the field of Tree Pruning and Removal, for a minimum of three (3) years.
- 5.2.4 CONTRACTOR shall have a foreman responsible for its work crew when services are being provided.
- 5.2.5 CONTRACTOR'S foreman should be able to communicate effectively both orally and in writing with County personnel.
- 5.2.6 CONTRACTOR 's employees shall pass a County background clearance, at the CONTRACTOR'S expense, to work in both restricted and high security areas.
- 5.2.7 CONTRACTOR agrees to provide high quality tree pruning and removal services using generally accepted and best tree care operation standards and methods for all services provided.
- 5.2.8 CONTRACTOR shall provide certified arborist services as requested by the County. CONTRACTOR shall notify County if certified Arborist services are not available.
- 5.2.9 CONTRACTOR shall provide emergency on-call tree pruning and removal services twenty-four hours per day, seven days per week (24/7). In the event of an emergency CONTRACTOR shall notify the requesting County department within one (1) hour of initial contact during regular working hours and two (2) hours of initial contact outside of regular working hours whether CONTRACTOR is able to provide emergency requested services.

5.3 CONTRACTOR agrees to furnish all material and equipment necessary to accomplish requested service(s).

5.3.1 All Contractor-supplied equipment shall be in good working order. Any damaged equipment or equipment in need of repair shall be removed from the worksite immediately.

5.3.2 CONTRACTOR shall use a bucket truck or manual climbing for requested services.

5.4 CONTRACTOR will adhere to appropriate safety precautions and requirements of the State of California, California State Contractors License Board, and CAL/OSHA regulations, as applicable, for the following County requested services:

5.4.1 Pruning Services

- Arboriculture pruning to correct structural problems or growth patterns which may be hazardous to the community or would eventually obstruct traffic or interfere with overhead utility wires;
- Arboriculture pruning of all dead, dying, diseased, interfering, objectionable, and weak branches;
- Work performed shall include pruning trees in accordance with the American National standard for Tree Care Operations – Tree, Shrub, and other Woody Plant Maintenance.
- CONTRACTOR shall removal all wood, debris, and chips from site on same day a tree is pruned as directed by the requesting County department.
- All specified pruning and removals at site of a designated tree must be completed including removal of logs and debris before initiating work on next tree.
- No more than one-fourth (1/4) of foliage on a mature tree must be removed during a pruning operation without prior approval of requesting County department.
- Pruning of trees to maintain and/or improve the health and structure of trees;
 - **Hazard Reduction:** Must consist of removal of all visible hazards with potential for damage to property or personal injury. Removal must include, but is not limited to dead wood, heavy or weak horizontal branches and weak crotches. Weak crotches are defined as split or rotted wood between tow trunks of limbs that may break and fall during high winds.
 - **Crown Cleaning:** Must consist of removal of dead, dying, disease, interfering, objectionable weakly attached, low vigor branches, and waterspouts on the main trunk as well as those within the leaf area one inch in diameter and greater. All dead wood, greater than 2 feet in length, must be removed regardless of diameter.
 - CONTRACTOR shall notify the requesting County department of any hazardous, dead, or diseased trees to determine the action to be taken.

5.4.2 Removal services, including stump removal

- Removal of trees that are dead, dying or have defects that cannot be cost effectively or practically treated or pose potential safety hazards.
- Hazardous tree removal services under normal and emergency circumstances. Removal services work performed must include removing trees in accordance with applicable Safety Requirements for Arboricultural Operations.

- Trees may be felled only when there is adequate felling area at least equal in radius to height of tree.
 - Trees that cannot be felled due to adjacent trees, vegetation, roadways, buildings, structures, utilities and/or lack of adequate felling area must be topped or sectioned.
 - Climbing hooks must only be worn for tree removals. CONTRACTOR must take all reasonable precautions to avoid damaging surrounding vegetation or lawn areas and prevent gouging and erosion of soils during tree removal operations.
 - Direction for all stumps to be removed will be provided by the requesting County department.
- 5.4.3 All work is to be done in a manner not to damage other trees and to minimize damage to other plant materials.
- If damage to other trees occurs, CONTRACTOR is responsible for re-trimming of trees to arborist standards to minimize long-term damage.
- 5.5 CONTRACTOR is responsible for contacting and making necessary arrangements with the appropriate utility service agency during the removal of any necessary tree limbs, and/or branches that may create a hazard in the completion of the work or project assignment.
- 5.5.1 If damage to utility wires occurs, CONTRACTOR shall immediately notify the appropriate utility and the County.
- 5.5.2 CONTRACTOR is responsible for all claims for damage due to CONTRACTOR'S performance as set forth in the Sample AGREEMENT referenced below.
- 5.6 CONTRACTOR, during any work assignment, shall not impede County business, create a nuisance, or endanger County employees and/or the public.
- 5.7 Any damage caused by CONTRACTOR must be repaired by CONTRACTOR in an appropriate and timely manner.
- 5.8 CONTRACTOR is expected to work hours that may vary due to the location of the work assignment.
- 5.8.1 Specified work time(s) may be required.
- 5.8.2 Work performed must be approved by the requesting department/division.

End of Exhibit A

EXHIBIT B – PRICING SHEET
 (As Provided with Proposal for RFP #10659)

Company Name: WEST COAST ARBORISTS, INC.

	HOURLY	PER TREE
PER TREE TAKEDOWN	\$89.00 Man Hour	
TREE PRUNING	\$89.00 Man Hour	
STUMP REMOVAL	\$89.00 Man Hour	
REMOVAL OF ALL DEBRIS (CUT WOOD, LIMBS, VEGETATIVE WASTE)	\$89.00 Man Hour	
DISPOSAL OF ALL DEBRIS	\$89.00 Man Hour	
SITE CLEAN UP	\$89.00 Man Hour	
EMERGENCY SERVICES	\$129.00 Man Hour	
MISCELLANEOUS (Contractor may propose and price any additional services)		
Specialty Equipment (Crane, Roll-off, Loader)	\$150.00	
Arborist Services	\$150.00	

End of Exhibit B

**EXHIBIT C – INCORPORATION OF RFP #10659, ADDENDA #1, AND
STATEMENT OF PROPOSAL DOCUMENTS**

The County invited submittals for Request for Proposals (RFP) through RFP #10659, COUNTYWIDE TREE PRUNING AND REMOVAL SERVICES. WEST COAST ARBORISTS, INC. submitted a responsive and responsible proposal to perform the services listed in RFP #10659.

RFP #10659 and the Proposal submitted by WEST COAST ARBORISTS, INC. are hereby incorporated into the Agreement by this reference.

End of Exhibit C