

FIRST AMENDMENT TO AGREEMENT FOR SERVICES

This FIRST AMENDMENT TO AGREEMENT is dated for identification this 20th day of August 2019 and amends that certain Agreement for Services dated June 5, 2018, made by and between the Town of Los Gatos, ("Town,") and BrightView Tree Care Services Inc. ("Service Provider").

RECITALS

- A. Town and Service Provider entered into an Agreement for Services on June 5, 2018, ("Agreement"), a copy of which is attached hereto and incorporated by reference as Attachment 1 to this Amendment.
- B. Town desires to amend the Agreement for Services to provide additional funds for FY 2019/20.

AMENDMENT

1. 2.6 Compensation shall read: Compensation for the first year **shall not exceed \$247,000**, inclusive of all costs. Payment shall be based upon Town approval of each task.

Compensation for year two of this agreement **shall not exceed \$200,000** and shall be adjusted upward annually for the remaining term of this agreement by the change, if any, in the San Francisco – Oakland – San Jose Metropolitan Area Consumer Price Index for All Urban Consumers, all items (CPI). The adjustment shall be based upon the CPI published on December 31 of the preceding year.

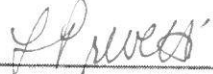
Compensation for years three through five of this agreement **shall not exceed \$100,000** annually and shall be adjusted upward annually for the remaining term of this agreement by the change, if any, in the San Francisco – Oakland – San Jose Metropolitan Area Consumer Price Index for All Urban Consumers, all items (CPI). The adjustment shall be based upon the CPI published on December 31 of the preceding year. If the CPI indicates a downward adjustment, compensation would remain at the base amount of \$100,000.

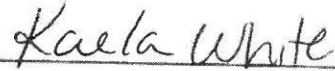
2. All other terms and conditions of the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the Town and Service Provider have executed this Amendment.

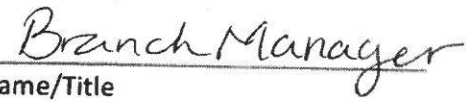
Town of Los Gatos

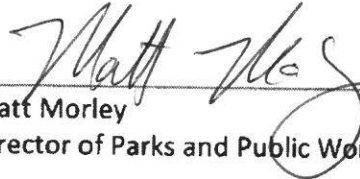
BrightView Tree Care Services Inc. by:

By: 
Laurel Prevetti, Town Manager




Department Approval:

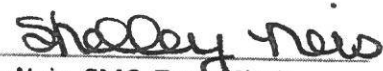

Name/Title


Matt Morley
Director of Parks and Public Works

Approved as to Form:

Attest:


Robert Schultz, Town Attorney


Shelley Neis, CMC, Town Clerk

AGREEMENT FOR SERVICES

THIS AGREEMENT is dated for identification this 5th of June 2018 and is made by and between TOWN OF LOS GATOS, a California municipal corporation, ("Town") and BrightView Tree Care Services, ("Service Provider"), whose address is 530 Aldo Avenue, San Jose, CA 95054. This Agreement is made with reference to the following facts.

I. RECITALS

- 1.1 The Town desires to engage Service Provider to provide tree trimming maintenance services.
- 1.2 The Service Provider represents and affirms that it is willing to perform the desired work pursuant to this Agreement.
- 1.3 Service Provider warrants it possesses the distinct professional skills, qualifications, experience, and resources necessary to timely perform the services described in this Agreement. Service Provider acknowledges Town has relied upon these warranties to retain Service Provider.

II. AGREEMENT

- 2.1 Scope of Services. Service Provider shall provide services as described in that certain Proposal sent to the Town on April 25, 2018, which is hereby incorporated by reference and attached as Exhibit A.
- 2.2 Term and Time of Performance. The effective date of this Agreement shall begin on **July 1, 2018** and will continue through **June 30, 2023**, subject to appropriation of funds, notwithstanding any other provision in this agreement.
- 2.3 Compliance with Laws. The Service Provider shall comply with all applicable laws, codes, ordinances, and regulations of governing federal, state and local laws. Service Provider represents and warrants to Town that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Service Provider to practice its profession. Service Provider shall maintain a Town of Los Gatos business license pursuant to Chapter 14 of the Code of the Town of Los Gatos.
- 2.4 Sole Responsibility. Service Provider shall be responsible for employing or engaging all persons necessary to perform the services under this Agreement.
- 2.5 Information/Report Handling. All documents furnished to Service Provider by the Town and all reports and supportive data prepared by the Service Provider under this Agreement are the Town's property and shall be delivered to the Town upon the completion of services or

at the Town's written request. All reports, information, data, and exhibits prepared or assembled by Service Provider in connection with the performance of its services pursuant to this Agreement are confidential until released by the Town to the public, and the Service Provider shall not make any of these documents or information available to any individual or organization not employed by the Service Provider or the Town without the written consent of the Town before such release. The Town acknowledges that the reports to be prepared by the Service Provider pursuant to this Agreement are for the purpose of evaluating a defined project, and Town's use of the information contained in the reports prepared by the Service Provider in connection with other projects shall be solely at Town's risk, unless Service Provider expressly consents to such use in writing. Town further agrees that it will not appropriate any methodology or technique of Service Provider which is and has been confirmed in writing by Service Provider to be a trade secret of Service Provider.

- 2.6 Compensation. Compensation for services shall not exceed \$247,000 for the first year, inclusive of all costs. Payment shall be based upon Town approval of each task. Compensation for years two through five of this agreement shall not exceed \$100,000 and shall be adjusted upward annually for the remaining term of this agreement by the change, if any, in the San Francisco – Oakland – San Jose Metropolitan Area Consumer Price Index for All Urban Consumers, all items (CPI). The adjustment shall be based upon the CPI published on December 31 of the preceding year. If the CPI indicates a downward adjustment, compensation would remain at the base amount of \$100,000.
- 2.7 Failure to Perform. It is mutually agreed by SERVICE PROVIDER and TOWN that in the event that performance of the work by SERVICE PROVIDER under this Agreement is not completed as scheduled, TOWN will suffer damages and will incur other costs and expenses of a nature and amount which is difficult or impractical to determine. The Parties agree that by way of ascertaining and fixing the amount of damages, costs and expenses, and not by way of penalty, SERVICE PROVIDER shall pay to TOWN the sum of one hundred dollars (\$100.00) per location per scheduled service in liquidated damages for every missed service beyond three missed services in a month in addition to reducing the monthly payment by the cost of that service. In the event that the liquidated damages are not paid, SERVICE PROVIDER agrees that TOWN may deduct the amount of unpaid damages from any money due or that may become due to SERVICE PROVIDER under this Agreement.
- 2.8 Schedule. Service Provider shall provide a schedule to the Town prior to beginning work. The schedule shall identify dates of service for each location. Schedule changes shall be approved by the Town with 24-hour notice. Each missed location shall be considered a failure to perform, unless the contractor provides advance notice of schedule change.
- 2.9 Billing. Billing shall be monthly by invoice within thirty (30) days of the rendering of the service and shall be accompanied by a detailed explanation of the work performed by whom at what rate and on what date. Also, plans, specifications, documents or other pertinent materials shall be submitted for Town review, even if only in partial or draft form.

Payment shall be net thirty (30) days. All invoices and statements to the Town shall be addressed as follows:

Invoices:

Town of Los Gatos

Attn: Accounts Payable

P.O. Box 655

Los Gatos, CA 95031-0655

- 2.10 Availability of Records. Service Provider shall maintain the records supporting this billing for not less than three years following completion of the work under this Agreement. Service Provider shall make these records available to authorized personnel of the Town at the Service Provider offices during business hours upon written request of the Town.
- 2.11 Assignability and Subcontracting. The services to be performed under this Agreement are unique and personal to the Service Provider. No portion of these services shall be assigned or subcontracted without the written consent of the Town.
- 2.12 Independent Service Provider. It is understood that the Service Provider, in the performance of the work and services agreed to be performed, shall act as and be an independent Service Provider and not an agent or employee of the Town. As an independent Service Provider, he/she shall not obtain any rights to retirement benefits or other benefits which accrue to Town employee(s). With prior written consent, the Service Provider may perform some obligations under this Agreement by subcontracting but may not delegate ultimate responsibility for performance or assign or transfer interests under this Agreement. Service Provider agrees to testify in any litigation brought regarding the subject of the work to be performed under this Agreement. Service Provider shall be compensated for its costs and expenses in preparing for, traveling to, and testifying in such matters at its then current hourly rates of compensation, unless such litigation is brought by Service Provider or is based on allegations of Service Provider's negligent performance or wrongdoing.
- 2.13 Conflict of Interest. Service Provider understands that its professional responsibilities are solely to the Town. The Service Provider has and shall not obtain any holding or interest within the Town of Los Gatos. Service Provider has no business holdings or agreements with any individual member of the Staff or management of the Town or its representatives nor shall it enter into any such holdings or agreements. In addition, Service Provider warrants that it does not presently and shall not acquire any direct or indirect interest adverse to those of the Town in the subject of this Agreement, and it shall immediately disassociate itself from such an interest, should it discover it has done so and shall, at the Town's sole discretion, divest itself of such interest. Service Provider shall not knowingly and shall take reasonable steps to ensure that it does not employ a person having such an interest in this performance of this Agreement. If after employment of a person Service Provider discovers it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement Service Provider shall promptly notify Town of this

employment relationship, and shall, at the Town's sole discretion, sever any such employment relationship.

- 2.14 Equal Employment Opportunity. Service Provider warrants that it is an equal opportunity employer and shall comply with applicable regulations governing equal employment opportunity. Neither Service Provider nor its subService Providers do and neither shall discriminate against persons employed or seeking employment with them on the basis of age, sex, color, race, marital status, sexual orientation, ancestry, physical or mental disability, national origin, religion, or medical condition, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment & Housing Act.

III. INSURANCE AND INDEMNIFICATION

3.1 Minimum Scope of Insurance:

- i. Service Provider agrees to have and maintain, for the duration of the contract, General Liability insurance policies insuring him/her and his/her firm to an amount not less than: one million dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage.
- ii. Service Provider agrees to have and maintain for the duration of the contract, an Automobile Liability insurance policy ensuring him/her and his/her staff to an amount not less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.
- iii. Service Provider shall provide to the Town all certificates of insurance, with original endorsements effecting coverage. Service Provider agrees that all certificates and endorsements are to be received and approved by the Town before work commences.

General Liability:

- i. The Town, its officers, officials, employees and volunteers are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the Service Provider; products and completed operations of Service Provider, premises owned or used by the Service Provider.
- ii. The Service Provider's insurance coverage shall be primary insurance as respects the Town, its officers, officials, employees and volunteers. Any insurance or self-insurances maintained by the Town, its officers, officials, employees or volunteers shall be excess of the Service Provider's insurance and shall not contribute with it.

- iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Town, its officers, officials, employees or volunteers.
 - iv. The Service Provider's insurance shall apply separately to each insured against whom a claim is made, or suit is brought, except with respect to the limits of the insurer's liability.
- 3.2 All Coverages. Each insurance policy required in this item shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Town. Current certification of such insurance shall be kept on file at all times during the term of this agreement with the Town Clerk.
- 3.3 Workers' Compensation. In addition to these policies, Service Provider shall have and maintain Workers' Compensation insurance as required by California law and shall provide evidence of such policy to the Town before beginning services under this Agreement. Further, Service Provider shall ensure that all subService Providers employed by Service Provider provide the required Workers' Compensation insurance for their respective employees.
- 3.4 Indemnification. The Service Provider shall save, keep, hold harmless and indemnify and defend the Town its officers, agent, employees and volunteers from all damages, liabilities, penalties, costs, or expenses in law or equity that may at any time arise or be set up because of damages to property or personal injury received by reason of, or in the course of performing work which may be occasioned by a willful or negligent act or omissions of the Service Provider, or any of the Service Provider's officers, employees, or agents or any subService Provider.

IV. GENERAL TERMS

- 4.1 Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of a subsequent breach of the same or any other provision of this Agreement.
- 4.2 Governing Law. This Agreement, regardless of where executed, shall be governed by and construed to the laws of the State of California. Venue for any action regarding this Agreement shall be in the Superior Court of the County of Santa Clara.
- 4.3 Termination of Agreement. The Town and the Service Provider shall have the right to terminate this agreement with or without cause by giving not less than fifteen days (15) written notice of termination. In the event of termination, the Service Provider shall deliver to the Town all plans, files, documents, reports, performed to date by the Service Provider. In the event of such termination, Town shall pay Service Provider an amount that bears the

same ratio to the maximum contract price as the work delivered to the Town bears to completed services contemplated under this Agreement, unless such termination is made for cause, in which event, compensation, if any, shall be adjusted in light of the particular facts and circumstances involved in such termination.

- 4.4 Amendment. No modification, waiver, mutual termination, or amendment of this Agreement is effective unless made in writing and signed by the Town and the Service Provider.
- 4.5 Disputes. In any dispute over any aspect of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, including costs of appeal.
- 4.6 Prevailing Wages. In accordance with the provisions of Sections 1770 et seq., of the Labor Code, the Director of the Industrial Relations of the State of California has determined the general prevailing rate of wages applicable to the work to be done. Service Provider will be required to pay to all persons employed on the project by the Service Provider sums not less than the sums set forth in the documents entitled "General Prevailing Wage Determination made by the Director of Industrial Relations pursuant to California Labor Code, part 7, Chapter 1, Article 2, Sections 1770, 1773, 1773.1." These documents may be obtained from the State of California.

Pursuant to Labor Code section 1725.5, no Service Provider or subService Provider may be awarded a contract for public works on a public works project unless registered with the Department of Industrial Relations.

This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations and/or the Town of Los Gatos.

The Service Provider is required to post notices on Public Works requirements.

- 4.7 Notices. Any notice required to be given shall be deemed to be duly and properly given if mailed postage prepaid, and addressed to:

Town of Los Gatos
Attn: Town Clerk
110 E. Main Street
Los Gatos, CA 95030

BrightView Tree Care Services
530 Aldo Avenue
San Jose, CA 95054

or personally delivered to Service Provider to such address or such other address as Service Provider designates in writing to Town.

- 4.8 Order of Precedence. In the event of any conflict, contradiction, or ambiguity between the terms and conditions of this Agreement in respect of the Products or Services and any

attachments to this Agreement, then the terms and conditions of this Agreement shall prevail over attachments or other writings.

- 4.9 Entire Agreement. This Agreement, including all Exhibits, constitutes the complete and exclusive statement of the Agreement between the Town and Service Provider. No terms, conditions, understandings or agreements purporting to modify or vary this Agreement, unless hereafter made in writing and signed by the party to be bound, shall be binding on either party.

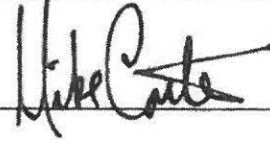
IN WITNESS WHEREOF, the Town and Service Provider have executed this Agreement.

Town of Los Gatos by:




Laurel Prevetti, Town Manager

BrightView Tree Care Services, Inc. by:



Mike Carter

Recommended by:

For 

Matt Morley, Director of Parks and Public Works

Vice President / General Manager

Title

Approved as to Form:



Robert Schultz, Town Attorney

**ATTACHMENT D
BID PRICE SHEET**

For all services described below, unless excluded by the Town in description of services below, the Town shall consider unit prices below to include all labor, equipment, fees of any kind, overhead, insurance, fuel, materials, surcharges, disposal fees, and any other costs associated with and necessary for the Bidder to perform such service. No qualifications, exemptions, or alterations of services described below will be allowed. Failure to comply will result in disqualification of bid.

A. GENERAL SERVICES

	DESCRIPTION, WITH UNIT PRICE IN WORDS. (PRICE IS INCLUSIVE OF ALL APPLICABLE TAXES AND FEES)	UNIT PRICE	ESTIMATED UNITS	EXTENDED PRICE
1.	Annual routine trimming based on tree trimming in pre-designed districts, grids or parks on a set cycle, and includes all trees (small, medium, and large-sized).	Per-tree	700 @ \$95 each	\$ 66,500.00
2.	Service request tree trimming consist of trimming trees outside the grid trimming cycle.			
	0" - 6"	Per tree	3 @ \$72 each	\$ 216
	7" - 12"	Per tree	10 @ \$95 each	\$ 950
	13" - 18"	Per tree	10 @ \$144 each	\$ 1,450
	19" - 24"	Per tree	20 @ \$190 each	\$ 4,700
	25" and over	Per tree	10 @ \$210 each	\$ 2,850
3.	Tree removal (excludes stump removal)			
	0" - 6"	Per tree	5 @ \$95 each	\$ 475
	7" - 12"	Per tree	15 @ \$237 each	\$ 3,555
	13" - 18"	Per tree	20 @ \$522 each	\$ 10,440
	19" - 24"	Per tree	10 @ \$760 each	\$ 7,600
	25" and over	Per tree	5 @ \$1,920 each	\$ 9,600
4.	Stump removal			
	0" - 6"	Per stump	5 @ \$57 each	\$ 285
	7" - 12"	Per stump	15 @ \$114 each	\$ 1,710
	13" - 18"	Per stump	20 @ \$171 each	\$ 3,420
	19" - 24"	Per stump	10 @ \$228 each	\$ 2,280
	25" and over	Per stump	5 @ \$342 each	\$ 1,710
A.	SUB-TOTAL - GENERAL SERVICES			\$ 117,741.00

B. CREW RENTAL AND EMERGENCY SERVICES

	Fully equipped crew as defined. Includes all labor, equipment, tool, traffic control, disposal costs, and zero material markups	UNIT PRICE	ESTIMATED UNITS	EXTENDED PRICE
STRAIGHT TIME				
1.	4 Man crew with Equipment	Per hour	20 @ \$300	\$6,000
2.	3 Man crew with Equipment	Per hour	40 @ \$225	\$9,000
3.	2 Man crew with Equipment	Per hour	20 @ \$150	\$3,000
OVERTIME/WEEKENDS/EMERGENCY AFTER HOURS CALL OUT				
4.	4 Man crew with Equipment	Per hour	10 @ \$380	\$3,800
5.	3 Man crew with Equipment	Per hour	10 @ \$285	\$2,850
6.	2 Man crew with Equipment	Per hour	20 @ \$190	\$3,800
B.	SUB-TOTAL - CREW RENTAL & EMERGENCY SERVICES			\$ 28,450.00

C. OTHER COSTS

	DESCRIPTION, WITH UNIT PRICE IN WORDS. (PRICE IS INCLUSIVE OF ALL APPLICABLE TAXES AND FEES)	UNIT PRICE	ESTIMATED UNITS	EXTENDED PRICE
1.	Cost for crown, trees requiring trimming more than 25% of foliage at one time, or crown shaping or crown reduction. 0-6" 7-12" 13-18" 19-24" 25" and over	Per tree Per tree Per tree Per tree Per tree	3 @ \$72 each 10 @ \$95 each 10 @ \$145 each 10 @ \$235 each 20 @ \$285 each	\$ 216 \$ 950 \$ 1,450 \$ 2,350 \$ 5,700
2.	Specialty equipment - 50-ton crane per hour -95-foot aerial tower per hour	Per hour Per hour	5 @ \$265 each 15 @ \$250 each	\$ 1,325 \$ 3,750
3.	Tree planting and installation services: (Price includes labor, equipment, root irrigation device, and staking; assume trees to be provided by the Town) -15" gallon -24" box -36" box -48" box	Per tree Per tree Per tree Per tree	40 @ \$130 each 20 @ \$260 each 10 @ \$390 each 5 @ \$650 each	\$ 5,200 \$ 5,200 \$ 3,900 \$ 3,250
4.	Arborist services & report writing per hour	Per hour	10 @ \$120 each	\$ 1,200
5.	Tree watering per day (Assume 1 worker watering 8 hours)	Per day	40 @ \$600 each	\$ 24,000
6.	GPS tree inventory data collection	Per tree site	14,000 @ \$3 each	\$ 42,000
C.	SUB-TOTAL - OTHER COST			\$ 100,491.00
	GRAND TOTAL (A+B+C)			\$ 246,682.00