



## MAINTENANCE SERVICES AGREEMENT

### 1. PARTIES

This Agreement is made by and between the City of Cupertino, a municipal corporation ("City"), and Anderson's Tree Care Specialists ("Contractor"), a Corporation for Orchard Maintenance, and is effective on the last date signed below ("Effective Date").

### 2. SERVICES

Contractor agrees to provide the services and perform the tasks ("Services") set forth in detail in Scope of Services, attached here and incorporated as **Exhibit A**. Contractor further agrees to carry out its work in compliance with any applicable local, State, or Federal order regarding COVID-19.

### 3. TIME OF PERFORMANCE

**3.1** This Agreement begins on the Effective Date and ends on March 31, 2026 ("Contract Time"), unless terminated earlier as provided herein. Contractor's Services shall begin on the effective date and shall be completed by March 31, 2026. At the end of the term, the City shall have options to extend the term on a year-to-year basis up to an additional two years. The City shall exercise each one-year option by providing written notice to the Contractor at least 30 days prior to the expiration of the applicable term. Upon exercise of the option, the parties will amend Section 4.1 to reflect the increase in the contract compensation. The City's appropriate department head or the City Manager may extend the Contract Time through a written amendment to this Agreement, provided such extension does not include additional contract funds. Extensions requiring additional contract funds are subject to the City's purchasing policy.

**3.2 Schedule of Performance.** Contractor must deliver the Services in accordance with the Schedule of Performance, attached and incorporated here **Exhibit B**.

**3.3 Time is of the essence** for the performance of all the Services. Contractor must have sufficient time, resources, and qualified staff to deliver the Services on time.

### 4. COMPENSATION

**4.1 Maximum Compensation.** City will pay Contractor for satisfactory performance of the Services an amount that will be based on actual costs but that will be capped so as not to exceed \$65,746.00 annually, for a total of \$197,238.00 ("Contract Price"), based upon the scope of services in **Exhibit A** and the budget and rates included in **Exhibit C**, Compensation attached and incorporated here. The maximum compensation includes all expenses and reimbursements and will remain in place even if Contractor's actual costs exceed the capped amount. No extra work or payment is permitted without prior written approval of City. In the event the City exercises its

option set forth in Section 3.1, this Section 4.1 will be amended to increase the annual amount by \$65,746.00, as necessary.

**4.2 Invoices and Payments.** Monthly invoices must state a description of the deliverable completed and the amount due for the preceding month. Within thirty (30) days of completion of Services, Contractor must submit a requisition for final and complete payment of costs and pending claims for City approval. Failure to timely submit a complete and accurate payment requisition relieves City of any further payment or other obligations under the Agreement.

## **5. INDEPENDENT CONTRACTOR**

**5.1 Status.** Contractor is an independent contractor and not an employee, partner, or joint venture of City. Contractor is solely responsible for the means and methods of performing the Services and for the persons hired to work under this Agreement. Contractor is not entitled to health benefits, worker's compensation, or other benefits from the City.

**5.2 Contractor's Qualifications.** Contractor warrants on behalf of itself and its subcontractors that they have the qualifications and skills to perform the Services in a competent and professional manner and according to the highest standards and best practices in the industry.

**5.3 Permits and Licenses.** Contractor warrants on behalf of itself and its subcontractors that they are properly licensed, registered, and/or certified to perform the Services as required by law and have procured a City Business License, if required by the Cupertino Municipal Code.

**5.4 Subcontractors.** Only Contractor's employees are authorized to work under this Agreement. Prior written approval from City is required for any subcontractor, and the terms and conditions of this Agreement will apply to any approved subcontractor.

**5.5 Tools, Materials, and Equipment.** Contractor will supply all tools, materials and equipment required to perform the Services under this Agreement.

**5.6 Payment of Benefits and Taxes.** Contractor is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes. Contractor and any of its employees, agents, and subcontractors shall not have any claim under this Agreement or otherwise against City for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance, medical care, hospital care, insurance benefits, social security, disability, unemployment, workers compensation or employee benefits of any kind. Contractor shall be solely liable for and obligated to pay directly all applicable taxes, fees, contributions, or charges applicable to Contractor's business including, but not limited to, federal and state income taxes. City shall have no obligation whatsoever to pay or withhold any taxes or benefits on behalf of Contractor. Should any court, arbitrator, or administrative authority, including but not limited to the California Public Employees Retirement System (PERS), the Internal Revenue Service or the State Employment Development Division, determine that Contractor, or any of its employees, agents, or subcontractors, is an employee for any purpose, then Contractor agrees to a reduction in amounts payable under this Agreement, or to promptly remit to City any payments due by the City as a result of such determination, so that the City's total expenses under this Agreement are not greater than they would have been had the determination not been made.



## **6. PROPRIETARY/CONFIDENTIAL INFORMATION**

In performing this Agreement, Contractor may have access to private or confidential information owned or controlled by the City, which may contain proprietary or confidential details the disclosure of which to third parties may be damaging to City. Contractor shall hold in confidence all City information provided by City to Contractor and use it only to perform this Agreement.

Contractor shall exercise the same standard of care to protect City information as a reasonably prudent contractor would use to protect its own proprietary data.

## **7. OWNERSHIP OF MATERIALS**

**7.1 Property Rights.** Any interest (including copyright interests) of Contractor in any product, memoranda, study, report, map, plan, drawing, specification, data, record, document, or other information or work, in any medium (collectively, "Work Product"), prepared by Contractor in connection with this Agreement will be the exclusive property of the City upon completion of the work to be performed hereunder or upon termination of this Agreement, to the extent requested by City. In any case, no Work Product shall be shown to any third-party without prior written approval of City.

**7.2 Copyright.** To the extent permitted by Title 17 of the U.S. Code, all Work Product arising out of this Agreement is considered "works for hire" and all copyrights to the Work Product will be the property of City. Alternatively, Contractor assigns to City all Work Product copyrights. Contractor may use copies of the Work Product for promotion only with City's written approval.

**7.3 Patents and Licenses.** Contractor must pay royalties or license fees required for authorized use of any third party intellectual property, including but not limited to patented, trademarked, or copyrighted intellectual property if incorporated into the Services or Work Product of this Agreement.

**7.4 Re-Use of Work Product.** Unless prohibited by law and without waiving any rights, City may use or modify the Work Product of Contractor or its sub-contractors prepared or created under this Agreement, to execute or implement any of the following:

- (a) The original Services for which Contractor was hired;
- (b) Completion of the original Services by others;
- (c) Subsequent additions to the original Services; and/or
- (d) Other City projects.

**7.5 Deliverables and Format.** Contractor must provide electronic and hard copies of the Work Product, on recycled paper and copied on both sides, except for one single-sided original.

## **8. RECORDS**

Contractor must maintain complete and accurate accounting records relating to its performance in accordance with generally accepted accounting principles. The records must include detailed information of Contractor's performance, benchmarks and deliverables, which must be available

to City for review and audit. The records and supporting documents must be kept separate from other records and must be maintained for four (4) years from the date of City's final payment.

Contractor acknowledges that certain documents generated or received by Contractor in connection with the performance of this Agreement, including but not limited to correspondence between Contractor and any third party, are public records under the California Public Records Act, California Government Code section 6250 et seq. Contractor shall comply with all laws regarding the retention of public records and shall make such records available to the City upon request by the City, or in such manner as the City reasonably directs that such records be provided.

## **9. ASSIGNMENT**

Contractor shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of City. Any attempt to do so will be null and void. Any changes related to the financial control or business nature of Contractor as a legal entity is considered an assignment of the Agreement and subject to City approval, which shall not be unreasonably withheld. Control means fifty percent (50%) or more of the voting power of the business entity.

## **10. PUBLICITY / SIGNS**

Any publicity generated by Contractor for the project under this Agreement, during the term of this Agreement and for one year thereafter, will reference the City's contributions in making the project possible. The words "City of Cupertino" will be displayed in all pieces of publicity, including flyers, press releases, posters, brochures, public service announcements, interviews and newspaper articles. No signs may be posted, exhibited or displayed on or about City property, except signage required by law or this Contract, without prior written approval from the City.

## **11. INDEMNIFICATION**

**11.1** To the fullest extent allowed by law, and except for losses caused by the sole and active negligence or willful misconduct of City personnel, Contractor shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, officials, employees, agents, servants, volunteers, and consultants ("Indemnitees"), through legal counsel acceptable to City, from and against any and all liability, damages, claims, actions, causes of action, demands, charges, losses, costs, and expenses (including attorney fees, legal costs, and expenses related to litigation and dispute resolution proceedings) of every nature, arising directly or indirectly from this Agreement or in any manner relating to any of the following:

- (a) Breach of contract, obligations, representations, or warranties;
- (b) Negligent or willful acts or omissions committed during performance of the Services;
- (c) Personal injury, property damage, or economic loss resulting from the work or performance of Contractor or its subcontractors or sub-subcontractors;
- (d) Unauthorized use or disclosure of City's confidential and proprietary Information;
- (e) Claim of infringement or violation of a U.S. patent or copyright, trade secret, trademark, or service mark or other proprietary or intellectual property rights of any third party.

**11.2** Contractor must pay the costs City incurs in enforcing this provision. Contractor must

accept a tender of defense upon receiving notice from City of a third-party claim. At City's request, Contractor will assist City in the defense of a claim, dispute, or lawsuit arising out of this Agreement.

**11.3** Contractor's duties under this section are not limited to the Contract Price, workers' compensation payments, or the insurance or bond amounts required in the Agreement. Nothing in the Agreement shall be construed to give rise to an implied right of indemnity in favor of Contractor against City or any Indemnitee.

**11.4.** Contractor's payments may be deducted or offset to cover any money the City lost due to a claim or counterclaim arising out of this Agreement, a purchase order, or other transaction.

**11.5.** Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 11 from each and every subcontractor, or any other person or entity involved by, for, with, or on behalf of Contractor in the performance of this Agreement. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder.

**11.6.** This Section 11 shall survive termination of the Agreement.

## **12. INSURANCE**

Contractor shall comply with the Insurance Requirements, attached and incorporated here as **Exhibit D**, and must maintain the insurance for the duration of the Agreement, or longer as required by City. City will not execute the Agreement until City approves receipt of satisfactory certificates of insurance and endorsements evidencing the type, amount, class of operations covered, and the effective and expiration dates of coverage. Failure to comply with this provision may result in City, at its sole discretion and without notice, purchasing insurance for Contractor and deducting the costs from Contractor's compensation or terminating the Agreement.

## **13. COMPLIANCE WITH LAWS**

**13.1 General Laws.** Contractor shall comply with all local, state, and federal laws and regulations applicable to this Agreement. Contractor will promptly notify City of changes in the law or other conditions that may affect the Project or Contractor's ability to perform. Contractor is responsible for verifying the employment authorization of employees performing the Services, as required by the Immigration Reform and Control Act.

**13.2 Labor Laws.** Contractor shall comply with all labor laws applicable to this Agreement. If the Scope of Services includes a "public works" component, Contractor is required to comply with prevailing wage laws under Labor Code Section 1720 and other labor laws.

**13.3 Discrimination Laws.** Contractor shall not discriminate on the basis of race, religious creed, color, ancestry, national origin, ethnicity, handicap, disability, marital status, pregnancy, age, sex, gender, sexual orientation, gender identity, Acquired-Immune Deficiency Syndrome (AIDS), or any other protected classification. Contractor shall comply with all anti-discrimination laws, including Government Code Sections 12900 and 11135, and Labor Code Sections 1735, 1777, and 3077.5. Consistent with City policy prohibiting harassment and discrimination,

Contractor understands that harassment and discrimination directed toward a job applicant, an employee, a City employee, or any other person, by Contractor or its employees or sub-contractors will not be tolerated. Contractor agrees to provide records and documentation to the City on request necessary to monitor compliance with this provision.

**13.4 Conflicts of Interest.** Contractor shall comply with all conflict of interest laws applicable to this Agreement and must avoid any conflict of interest. Contractor warrants that no public official, employee, or member of a City board or commission who might have been involved in the making of this Agreement, has or will receive a direct or indirect financial interest in this Agreement, in violation of California Government Code Section 1090 et seq. Contractor may be required to file a conflict of interest form if Contractor makes certain governmental decisions or serves in a staff capacity, as defined in Section 18700 of Title 2 of the California Code of Regulations. Contractor agrees to abide by the City's rules governing gifts to public officials and employees.

**13.5 Remedies.** Any violation of Section 13 constitutes a material breach and may result in City suspending payments, requiring reimbursements or terminating this Agreement. City reserves all other rights and remedies available under the law and this Agreement, including the right to seek indemnification under Section 11 of this Agreement.

#### **14. PROJECT COORDINATION**

**City Project Manager.** The City assigns Jimmy Tan as the City's representative for all purposes under this Agreement, with authority to oversee the progress and performance of the Scope of Services. City reserves the right to substitute another Project manager at any time, and without prior notice to Contractor.

**Contractor Project Manager.** Subject to City approval, Contractor assigns Doug Anderson as its single Representative for all purposes under this Agreement, with authority to oversee the progress and performance of the Scope of Services. Contractor's Project manager is responsible for coordinating and scheduling the Services in accordance with the Scope of Services and the Schedule of Performance. Contractor must regularly update the City's Project Manager about the progress with the work or any delays, as required under the Scope of Services. City written approval is required prior to substituting a new Representative.

#### **15. ABANDONMENT OF PROJECT**

City may abandon or postpone the Project or parts therefor at any time. Contractor will be compensated for satisfactory Services performed through the date of abandonment, and will be given reasonable time to assemble the work and close out the Services. With City's pre-approval in writing, the time spent in closing out the Services will be compensated up to a maximum of ten percent (10%) of the total time expended to date in the performance of the Services.

#### **16. TERMINATION**

City may terminate this Agreement for cause or without cause at any time. Contractor will be paid for satisfactory Services rendered through the date of termination, but final payment will not be

made until Contractor closes out the Services and delivers the Work Product.

**17. GOVERNING LAW, VENUE, AND DISPUTE RESOLUTION**

This Agreement is governed by the laws of the State of California. Any lawsuits filed related to this Agreement must be filed with the Superior Court for the County of Santa Clara, State of California. Contractor must comply with the claims filing requirements under the Government Code prior to filing a civil action in court. If a dispute arises, Contractor must continue to provide the Services pending resolution of the dispute. If the Parties elect arbitration, the arbitrator's award must be supported by law and substantial evidence and include detailed written findings of law and fact.

**18. ATTORNEY FEES**

If City initiates legal action, files a complaint or cross-complaint, or pursues arbitration, appeal, or other proceedings to enforce its rights or a judgment in connection with this Agreement, the prevailing party will be entitled to reasonable attorney fees and costs.

**19. THIRD PARTY BENEFICIARIES**

There are no intended third party beneficiaries of this Agreement.

**20. WAIVER**

Neither acceptance of the Services nor payment thereof shall constitute a waiver of any contract provision. City's waiver of a breach shall not constitute waiver of another provision or breach.

**21. ENTIRE AGREEMENT**

This Agreement represents the full and complete understanding of every kind or nature between the Parties, and supersedes any other agreement(s) and understanding(s), either oral or written, between the Parties. Any modification of this Agreement will be effective only if in writing and signed by each Party's authorized representative. No verbal agreement or implied covenant will be valid to amend or abridge this Agreement. If there is any inconsistency between any term, clause, or provision of the main Agreement and any term, clause, or provision of the attachments or exhibits thereto, the terms of the main Agreement shall prevail and be controlling.

**22. INSERTED PROVISIONS**

Each provision and clause required by law for this Agreement is deemed to be included and will be inferred herein. Either party may request an amendment to cure mistaken insertions or omissions of required provisions. The Parties will collaborate to implement this Section, as appropriate.

**23. HEADINGS**

The headings in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit, or amplify the terms or provisions of this Agreement.

**24. SEVERABILITY/PARTIAL INVALIDITY**

If any term or provision of this Agreement, or their application to a particular situation, is found by the court to be void, invalid, illegal, or unenforceable, such term or provision shall remain in force and effect to the extent allowed by such ruling. All other terms and provisions of this Agreement or their application to specific situations shall remain in full force and effect. The Parties agree to work in good faith to amend this Agreement to carry out its intent.

**25. SURVIVAL**

All provisions which by their nature must continue after the Agreement expires or is terminated, including the Indemnification, Ownership of Materials/Work Product, Records, Governing Law, and Attorney Fees, shall survive the Agreement and remain in full force and effect.

**26. NOTICES**

All notices, requests and approvals must be sent in writing to the persons below, which will be considered effective on the date of personal delivery or the date confirmed by a reputable overnight delivery service, on the fifth calendar day after deposit in the United States Mail, postage prepaid, registered or certified, or the next business day following electronic submission:

<p>To City of Cupertino Office of the City Manager 10300 Torre Ave., Cupertino CA 95014</p> <p>Attention: Jimmy Tan Email: JimmyT@cupertino.org</p>	<p>To Contractor: Anderson's Tree Care Specialists 121 N 27th St  San Jose CA 95116</p> <p>Attention: Doug Anderson Email: doug@andersonstreecare.com</p>
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**27. EXECUTION**

The person executing this Agreement on behalf of Contractor represents and warrants that Contractor has full right, power, and authority to enter into and carry out all actions contemplated by this Agreement and that he or she is authorized to execute this Agreement, which constitutes a legally binding obligation of Contractor. This Agreement may be executed in counterparts, each one of which is deemed an original and all of which, taken together, constitute a single binding instrument.

**IN WITNESS WHEREOF**, the parties have caused the Agreement to be executed.

**CITY OF CUPERTINO**  
A Municipal Corporation

**CONTRACTOR**

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Orchard Maintenance



By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

By <sup>Doug Anderson</sup> \_\_\_\_\_

Name Doug Anderson

Title President

Date Mar 13, 2023

**APPROVED AS TO FORM:**

\_\_\_\_\_  
CHRISTOPHER D. JENSEN  
Cupertino City Attorney

**ATTEST:**

\_\_\_\_\_  
KIRSTEN SQUARCIA  
City Clerk

Date \_\_\_\_\_

## **EXHIBIT A**

### **SCOPE OF WORK**

#### **1. GENERAL REQUIREMENT**

- A. The Contractor shall furnish all labor, tools, equipment, materials, and supervision necessary to perform the pruning, fertilization, weed and pest control, tree removal and replacement, minor irrigation maintenance and other related services as described in this section.
- B. All work performed by Contractor shall conform to the latest International Society of Arboriculture (ISA), The American National Standard for Tree Pruning (ANSI A300) and specifications listed herein. Contractor shall comply with Standards of CAL-OSHA and the American National Standard Institute, Z133 Safety Requirements.
- C. Contractor shall exercise precautions as necessary when working adjacent to aerial and subterranean utilities. In the event that aerial utility wires present a hazard to the Contractor's personnel or others near the work site, work is to immediately cease, and the appropriate utility company notified. If the work requires excavation, the Contractor is responsible for appropriate notification of Underground Service Alert (USA).
- D. Contractor shall staff each project work site with a Supervisor who holds a current International Society of Arboriculture (ISA) Certified Arborist Credential. All Supervisors shall possess adequate technical background to ensure that all work is accomplished in compliance with applicable codes and regulations. All Contractor personnel engaged in the actual tree pruning shall hold, at minimum, a current ISA Certified Tree Worker credential. All other personnel (e.g. ground workers) shall have sufficient training so as to be capable of performing their functions in a safe and proficient manner.
- E. The Contractor shall comply with all local sound control and noise level rules, regulations, and ordinances. No internal combustion engine shall operate on the project without a muffler of the type recommended by the manufacturer. Should any muffler or other control device sustain damage, the Contractor shall promptly remove the equipment and shall not return said equipment to the job until the device is repaired or replaced. Said noise and vibration level requirements shall apply to all equipment on the job or related to the job, including, but not limited to truck, transit

mixers or transit equipment that may or may not be owned by the Contractor.

- F. Contractor shall comply with all air pollution control rules, regulations, ordinances, and statutes. The Contractor shall comply with the provisions of the Clean Air Act, as amended (42 W.S.C. 1957 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et. Seq.) and the regulations there under (40 C.F.R. part 15).
- G. The Contractor shall follow the appropriate best management practices contained in the California Storm Water Best Management Practice Handbook, which is available from the Santa Clara Valley Water District Non-Point Source Program.
- H. Upon completion of the scheduled work or at the end of the day, whatever occurs first, the Contractor shall clean the grounds occupied by Contractor in connection with the project, of all rubbish, debris, excess material, temporary structures, and equipment, leaving the entire site of the work in a neat and presentable condition.
- I. The Contractor shall be responsible for the installation and removal of the temporary construction signs upon the completion of the Work. All signs shall be kept graffiti free at all times.
- J. The Contractor shall submit work schedules to the Director of Public Works or his/her designee for approval as needed.
- K. Existing improvements in areas adjoining the property whereon tree pruning work is being performed shall be protected from injury or damage resulting from operations of the Contractor.
- L. Contractor is responsible for compliance with all laws applicable to orchard maintenance. Without limiting the generality of the foregoing, Contractor shall possess all permits and licenses required by the State of California, Department of Pesticide Regulation prior to the application of any pesticide or other regulated substance. Any pesticide used shall be listed on the State of California, Department of Pesticide Regulation's approved list and the Contractor shall submit all pesticide use reports to the County Agricultural Commissioner. Restricted materials, if used, shall be used and possessed only in accordance with a permit issued the County Agricultural Commissioner.
- M. Contractor is fully responsible for any and all damage done to public or private property that results from the Contractor's

operations. Without limiting the generality of the foregoing this shall include, but not be limited to, the repair, removal and replacement, at Contractor's expense, of shrubs, trees, vines, turf grass, groundcover or other landscape items that are lost or damaged due to negligence in pest and disease control practices, fungicide damage, or lack of proper maintenance and operations. This shall also include any damage done to buildings and other improvements due to the Contractor's negligence.

- N. Contractor is responsible for the protection and securing of its work sites. This may include opening and closing of said sites. The Contractor shall post signage in the Orchard for any applications or procedures in the interest of public safety. The City shall be notified at least 48 hours prior to any such closure.
- O. Contractor shall be required to respond promptly to any emergency situations reported by City staff and have the ability to be contacted at all times. If the City performs any work in the Orchard (e.g., for repair of the irrigation system), City shall notify Contractor a minimum of five (5) business days prior to any and all work that is scheduled to be performed in the orchard by the City, its contractors and/or employees except in an emergency in which case City will notify Contractor as soon as reasonably possible. If additional orchard maintenance is required as a consequence of work performed in the orchard by the City, its contractors and/or employees, this additional scope of work will be negotiated with the Contractor and, if approved, will be paid to the Contractor by the City.

## **2. TREE PRUNING**

All trimming/maintenance work shall be accordance with pruning standards as established in accordance with the standard practices for the fruit tree variety.

The specific techniques employed shall be consistent with industry practices for the size and species of the tree being trimmed/pruned. All dead, broken, damaged, loose, diseased or insect infested limbs, branches and stubs shall be removed from the site within five (5) days.

Contractor shall consult the Director of Public Works or his/her designee before making any cuts that could result in permanent disfigurement of the structure of any tree. If Contractor is, at any time, unclear on what

course of action to follow in the field, Contractor shall consult with the Director of Public Works or his/her designee.

- a. Contractor shall comply with Standards of CAL-OSHA and the American National Standard Institute Safety Requirements.
- b. No hooks, gaffs, spurs or climbers will be used by anyone employed for such trimming. Any vine plant growing on trees shall be removed at ground level.
- c. Final pruning cuts shall be made without leaving stubs. Cuts shall be made in a manner to promote fast callous growth.
- d. Contractor shall maintain at least one (1) English speaking arborist, on-site, at all times.
- e. When trimming fungus, disease or fire blight infected limbs or fronds, all pruning tools shall be cleaned after each cut with alcohol or bleach.
- f. Topping shall not be done without prior approval of the City.

### **3. FERTILIZATION**

The type of fertilizer, timing of fertilization, and application rates shall be consistent with the accepted standards for the varieties of fruit trees grown in the orchard and applied based on a lab analysis of soil and leaf samples taken at the appropriate time of year. Applications of fertilizer shall be applied in a manner consistent with label directions. Fertilizer must be approved by the City prior to each application. Supplemental fertilizer applications for areas showing poor growth may be requested by the City at Contractor's expense. Fertilizer shall be delivered to the site in the original unopened container bearing the manufacturer's guaranteed analysis. Any fertilizer that becomes caked or damaged, making it unsuitable for use, will not be permitted. Immediately following application at each site, the fertilizer shall be thoroughly watered into the soil. The Director of Public Works or his/her designee shall be notified one week prior to the date of the application by the Contractor.

### **4. WEED AND PEST CONTROL**

Contractor shall conduct maintenance in accordance with the City of Cupertino's Integrated Pest Management (IPM) Program. Deviation from the IPM Program may only be permitted with prior approval of the Director of Public Works or his/her designee. Applicator shall possess a valid California Department of Pesticide Regulation (DPR) applicator's

license or certificate.

A. Weeds

The Contractor shall be responsible for the control and elimination of weeds affecting trees. Weed growth must not exceed twelve (12) inches in height except for cover crops permitted to grow to its mature height. No pesticides may be used for weed control in the Orchard.

B. Deer

The Contractor is responsible for the protection of vulnerable trees from deer damage. This may be in the form of deer repellent or other methods approved by the City. Materials used for deer control must be approved by the City prior to use.

C. Gophers and Ground Squirrels

The Contractor is responsible for a consistent and humane trapping procedure.

**5. TREE REMOVAL and REPLACEMENT**

Specifications for Complete Tree Removal

- a. Trees that are dying or otherwise in poor health and in need of replacement are to be removed and replaced after consulting with the City.
- b. Trees shall be felled in a manner consistent with industry practices with the primary emphasis on the safety of the public and the protection of adjacent property. At no time shall branches, limbs or tree trunks be allowed to freefall and create damage of any type.
- c. While loading and handling debris, the Contractor shall maintain control at all times so as not to result in damage to the public rights of way or private property. In addition, the Contractor shall not drop logs or trunks so as to create undue noise or impact shock disturbances or damages to public and/or private property.
- d. Removal of entire tree, stump remaining shall be no higher than four (4) inches above soil grade and shall be removed within 48 hours after tree removal.
- e. Work shall begin within 10 days after each request and be diligently pursued until completion.
- f. Contractor shall make all arrangements necessary to have power or utility lines temporarily disconnected, if necessary, for the safe removal



of the tree.

- g. When the removal requires special or additional means, the Contractor shall discuss with the City and obtain authorization to proceed.
- h. The Contractor is responsible for the survival of trees for one year after planting. Where new trees are planted among established trees, the Contractor is to provide any necessary supplemental watering (over and above existing programmed irrigation) by hand to specific trees. Activating an entire station to water several plants will not be permitted. Plant material that fails within the one-year period is to be replaced promptly at the Contractor's cost. Proposals shall assume that 2 trees will be removed/planted per year at each site.

#### **6. MINOR IRRIGATION MAINTENANCE**

The Contractor will be responsible for performing minor irrigation maintenance. The Contractor will operate the irrigation as required to maintain proper tree health throughout the orchard. Watering shall be accomplished at times of the day or night to ensure the health of all trees, and so that the inconvenience to people using the area will be kept to a minimum. Any water runoff or overflow onto roadways, sidewalks, and hard surface areas shall be kept to an absolute minimum.

The Contractor will conduct a system check of the irrigation system prior to an irrigation event to ensure optimum operation and to report any repairs or concerns to the Director of Public Works or his/her designee prior to any work being done. Minor repairs such as broken drip irrigation lines and valve replacement shall be performed by the Contractor after receiving prior approval from the City. The Contractor shall be responsible for all components of the irrigation system from the riser up. The City will maintain the water main, service and valves.

#### **TYPICAL ANNUAL MAINTENANCE SCHEDULE**

1. Remove and replace 14 trees in March-April 2023
  - Trees to be removed to be identified by City staff
  - Replacement Species to be determined by desire and availability
2. Weed and Pest control four visits each once per quarter starting in March/April of 2023
3. Minor irrigation maintenance as required from May through September
4. Apricot pruning (180 trees; 170 at Varian; 10 at Blackberry Farm) after harvest in July or August 2023

5. Orange pruning (158 trees at Stocklmeir) in June or July 2023
6. Fertilize all trees in March/April 2023

# EXHIBIT B

## SCHEDULE OF PERFORMANCE

Contractor shall complete all work annually as specified in Exhibit A through the contract term of March 31, 2026.

This Schedule of Performance establishes the milestones for commencement and completion of the Tasks for Maintenance Services as specified in Exhibit A.

# EXHIBIT C

## COMPENSATION or RATE SHEET

### 1. MAINTENANCE SERVICES BUDGET

Contractor shall complete all work specified in Exhibit A for a not to exceed amount of \$65,746 annually, for a total of \$197,238.

**EXHIBIT D**  
***Insurance Requirements***  
***Design Professionals & Consultants Contracts***

Consultant shall procure prior to commencement of Services and maintain for the duration of the contract, at its own cost and expense, the following insurance policies and coverage with companies doing business in California and acceptable to City.

**INSURANCE POLICIES AND MINIMUMS REQUIRED**

1. ***Commercial General Liability*** (CGL) for bodily injury, property damage, personal injury liability for premises operations, products and completed operations, contractual liability, and personal and advertising injury with limits no less than **\$2,000,000** per occurrence (ISO Form CG 00 01). If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO Form CG 25 03 or 25 04) or it shall be twice the required occurrence limit.
  - a. It shall be a requirement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be made available to the Additional Insured and shall be (i) the minimum coverage/limits specified in this agreement; or (ii) the broader coverage and maximum limits of coverage of any insurance policy, whichever is greater.
  - b. Additional Insured coverage under Consultant's policy shall be "primary and non-contributory," will not seek contribution from City's insurance/self-insurance, and shall be at least as broad as ISO Form CG 20 10 (04/13).
  - c. The limits of insurance required may be satisfied by a combination of primary and umbrella or excess insurance, provided each policy complies with the requirements set forth in this Contract. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect City as a named insured.
2. ***Automobile Liability***: ISO CA 00 01 covering any auto (including owned, hired, and non-owned autos) with limits no less than **\$1,000,000** per accident for bodily injury and property damage.
3. ***Workers' Compensation***: As required by the State of California, with Statutory Limits and Employer's Liability Insurance of no less than **\$1,000,000** per occurrence for bodily injury or disease.  
☐ *Not required. Consultant has provided written verification of no employees.*
4. ***Professional Liability*** for professional acts, errors and omissions, as appropriate to Consultant's profession, with limits no less than **\$2,000,000** per occurrence or claim, **\$2,000,000** aggregate. If written on a claims made form:
  - a. The Retroactive Date must be shown and must be before the Effective Date of the Contract.
  - b. Insurance must be maintained for at least five (5) years after completion of the Services.
  - c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Contract Effective Date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of the Services.

## **OTHER INSURANCE PROVISIONS**

The aforementioned insurance shall be endorsed and have all the following conditions and provisions:

### ***Additional Insured Status***

The City of Cupertino, its City Council, officers, officials, employees, agents, servants and volunteers ("Additional Insureds") are to be covered as additional insureds on Consultant's CGL and automobile liability policies. General Liability coverage can be provided in the form of an endorsement to Consultant's insurance (at least as broad as ISO Form CG 20 10 (11/ 85) or both CG 20 10 and CG 20 37 forms, if later editions are used).

### ***Primary Coverage***

Coverage afforded to City/Additional Insureds shall be primary insurance. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Consultant's insurance and shall not contribute to it.

### ***Notice of Cancellation***

Each insurance policy shall state that coverage shall not be canceled or allowed to expire, except with written notice to City 30 days in advance or 10 days in advance if due to non-payment of premiums.

### ***Waiver of Subrogation***

Consultant waives any right to subrogation against City/Additional Insureds for recovery of damages to the extent said losses are covered by the insurance policies required herein. Specifically, the Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of City for all work performed by Consultant, its employees, agents and subconsultants. This provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

### ***Deductibles and Self-Insured Retentions***

Any deductible or self-insured retention must be declared to and approved by the City. At City's option, either: the insurer must reduce or eliminate the deductible or self-insured retentions as respects the City/Additional Insureds; or Consultant must show proof of ability to pay losses and costs related investigations, claim administration and defense expenses. The policy shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the insured or the City.

### ***Acceptability of Insurers***

Insurers must be licensed to do business in California with an A.M. Best Rating of A-VII, or better.

### ***Verification of Coverage***

Consultant must furnish acceptable insurance certificates and mandatory endorsements (or copies of the policies effecting the coverage required by this Contract), and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements prior to commencement of the Contract. City retains the right to demand verification of compliance at any time during the Contract term.

### ***Subconsultants***

Consultant shall require and verify that all subconsultants maintain insurance that meet the requirements of this Contract, including naming the City as an additional insured on subconsultant's insurance policies.

### ***Higher Insurance Limits***

If Consultant maintains broader coverage and/or higher limits than the minimums shown above, City shall be entitled to coverage for the higher insurance limits maintained by Consultant.

### ***Adequacy of Coverage***

City reserves the right to modify these insurance requirements/coverage based on the nature of the risk, prior experience, insurer or other special circumstances, with not less than ninety (90) days prior written notice.





ANDETRE-02

JYUAN

## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

3/13/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER License # 0757776 HUB International Insurance Services Inc. PO Box 3310 Santa Barbara, CA 93130-3310	CONTACT NAME: <b>Saengdao Vongpanya</b> PHONE (A/C, No, Ext): <b>(805) 361-1018</b> FAX (A/C, No): <b>(805) 832-6581</b> E-MAIL ADDRESS: <b>CAL-CC-CertReqs@hubinternational.com</b>														
INSURED  <b>Anderson's Tree Care Specialists, Inc.</b> <b>121 N. 27th Street</b> <b>San Jose, CA 95116</b>	<table><tr><th>INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr><tr><td>INSURER A : <b>NOVA Casualty Company</b></td><td><b>42552</b></td></tr><tr><td>INSURER B : <b>Infinity Select Insurance Company</b></td><td><b>20260</b></td></tr><tr><td>INSURER C : <b>Benchmark Insurance Company</b></td><td><b>41394</b></td></tr><tr><td>INSURER D :</td><td></td></tr><tr><td>INSURER E :</td><td></td></tr><tr><td>INSURER F :</td><td></td></tr></table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : <b>NOVA Casualty Company</b>	<b>42552</b>	INSURER B : <b>Infinity Select Insurance Company</b>	<b>20260</b>	INSURER C : <b>Benchmark Insurance Company</b>	<b>41394</b>	INSURER D :		INSURER E :		INSURER F :	
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INSURER D :															
INSURER E :															
INSURER F :															

## COVERAGES

## CERTIFICATE NUMBER:

## REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS																					
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X	X	ARBML1000008007	4/1/2022	4/1/2023	<table><tr><td>EACH OCCURRENCE</td><td>\$</td><td>1,000,000</td></tr><tr><td>DAMAGE TO RENTED PREMISES (Ea occurrence)</td><td>\$</td><td>100,000</td></tr><tr><td>MED EXP (Any one person)</td><td>\$</td><td>5,000</td></tr><tr><td>PERSONAL &amp; ADV INJURY</td><td>\$</td><td>1,000,000</td></tr><tr><td>GENERAL AGGREGATE</td><td>\$</td><td>2,000,000</td></tr><tr><td>PRODUCTS - COMP/OP AGG</td><td>\$</td><td>2,000,000</td></tr><tr><td></td><td>\$</td><td></td></tr></table>	EACH OCCURRENCE	\$	1,000,000	DAMAGE TO RENTED PREMISES (Ea occurrence)	\$	100,000	MED EXP (Any one person)	\$	5,000	PERSONAL & ADV INJURY	\$	1,000,000	GENERAL AGGREGATE	\$	2,000,000	PRODUCTS - COMP/OP AGG	\$	2,000,000		\$	
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B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	X		504610155516001	4/16/2022	4/16/2023	<table><tr><td>COMBINED SINGLE LIMIT (Ea accident)</td><td>\$</td><td>1,000,000</td></tr><tr><td>BODILY INJURY (Per person)</td><td>\$</td><td></td></tr><tr><td>BODILY INJURY (Per accident)</td><td>\$</td><td></td></tr><tr><td>PROPERTY DAMAGE (Per accident)</td><td>\$</td><td></td></tr><tr><td></td><td>\$</td><td></td></tr></table>	COMBINED SINGLE LIMIT (Ea accident)	\$	1,000,000	BODILY INJURY (Per person)	\$		BODILY INJURY (Per accident)	\$		PROPERTY DAMAGE (Per accident)	\$			\$							
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AGGREGATE	\$	2,000,000																										
	\$																											
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> Y	N/A	CST5024318	10/8/2022	10/8/2023	<table><tr><td><input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER</td><td></td><td></td></tr><tr><td>E.L. EACH ACCIDENT</td><td>\$</td><td>1,000,000</td></tr><tr><td>E.L. DISEASE - EA EMPLOYEE</td><td>\$</td><td>1,000,000</td></tr><tr><td>E.L. DISEASE - POLICY LIMIT</td><td>\$</td><td>1,000,000</td></tr></table>	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER			E.L. EACH ACCIDENT	\$	1,000,000	E.L. DISEASE - EA EMPLOYEE	\$	1,000,000	E.L. DISEASE - POLICY LIMIT	\$	1,000,000									
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E.L. DISEASE - POLICY LIMIT	\$	1,000,000																										
A	Arborist Prof Liab.			ARBML1000008007	4/1/2022	4/1/2023	<table><tr><td>Each Occurrence</td><td></td><td>1,000,000</td></tr></table>	Each Occurrence		1,000,000																		
Each Occurrence		1,000,000																										

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Job Ref: Consultation Contract Agreement-Public Works.

The City of Cupertino, its City Council, officers, officials, employees, agents, servants, and volunteers are included as Additional Insureds under the General Liability & Auto Liability policies, additional insured coverage applies when required by written contract per the attached forms #AGL20291118, CG 20 37 04 13 & 50461AIS01.

This insurance is considered Primary and Non-Contributory under the General Liability policy per attached form #AGL20291118.

Waiver of Subrogation under the General Liability & Workers Compensation policies applies per attached forms #AGL20291118 & WC 04 03 06 (Ed. 04-84).

Per Project Aggregate applies under the General Liability policy, per the attached form #AGL03801110.

SEE ATTACHED ACORD 201

## CERTIFICATE HOLDER

## CANCELLATION

City of Cupertino 10300 Torre Avenue Cupertino, CA 95014	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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## ADDITIONAL REMARKS SCHEDULE

AGENCY HUB International Insurance Services Inc.		License # 0757776	NAMED INSURED Anderson's Tree Care Specialists, Inc. 121 N. 27th Street San Jose, CA 95116
POLICY NUMBER SEE PAGE 1			
CARRIER SEE PAGE 1	NAIC CODE SEE P 1	EFFECTIVE DATE: SEE PAGE 1	

## ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance

## Description of Operations/Locations/Vehicles:

Umbrella Liability is following form.

This certificate replaces and voids the certificate previously issued on 9/30/2022.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **GENERAL LIABILITY EXTRA ENDORSEMENT – CALIFORNIA**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

#### **A. SECTION I – COVERAGES, COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY,**

Paragraph 2. **Exclusions** is amended as follows:

##### **1. EXPECTED OR INTENDED INJURY EXTENSION**

Paragraph a. **Expected Or Intended Injury** is deleted and replaced by the following:

- a. "Bodily Injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

##### **2. NON-OWNED WATERCRAFT EXTENSION**

Subparagraph (2) of g. **Aircraft, Auto Or Watercraft** is deleted and replaced by the following:

(2) A watercraft you do not own that is:

- a. Less than 52 feet long; and
- b. Not being used to carry persons or property for a charge;

This provision applies to any person who, with your consent, either uses or is responsible for the use of a watercraft.

This insurance is excess over any other valid and collectible insurance available to the insured whether primary, excess, or contingent.

##### **3. PROPERTY SOLD OR ABANDONED BY YOU**

Subparagraph (2) of j. **Damage To Property** is deleted and replaced by the following:

(2) Premises you sell, give away, or abandon, if the "property damage" arises out of any part of those premises, and occurred from hazards that were known by you or should have reasonably been known by you at the time the property was sold, given away or abandoned.

##### **4. The last paragraph of 2. Exclusions is deleted and replaced by the following:**

Exclusions c. through n. do not apply to damage to premises while rented to you, or temporarily occupied by you with the permission of the owner, when the damage is caused by fire, lightning, explosion, smoke or leaks from automatic fire protective systems. A separate limit of insurance applies to this coverage as described in **SECTION III – LIMITS OF INSURANCE**.

#### **B. ADDITIONAL INSURED**

1. **SECTION II – WHO IS AN INSURED** is amended to include, as an additional insured, any person(s) or organization(s) for whom a written contract or written agreement between you and such person(s) or organization(s) exists and requires such person(s) or organizations(s) to be added as an additional insured to your Policy. This additional insured status applies to liability because of "bodily injury", "property damage", or "personal and advertising injury", but shall not apply to any independent acts or omissions of such person or organization who qualifies as an additional insured.

- a. This endorsement applies only if the written contract or written agreement is:

- (1) Currently in effect or becomes effective during the term of this Policy; and
- (2) Executed prior to the "bodily injury", "property damage", or "personal and advertising injury".

- b. The insurance afforded to such additional insured only:

- (1) Applies to the extent permitted by law; and
- (2) Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured.

2. The insurance provided to the additional insured by this endorsement applies as follows:

- a. The person(s) or organization(s) is an additional insured but only for liability caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- (1) In connection with premises owned by or rented to you; or
- (2) In the performance of your ongoing operations.

- b. If the additional insured is an architect, engineer, or surveyor, this insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional services including:
  - (1) The preparing, approving, or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or
  - (2) Supervisory, inspection, or engineering services.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional services by or for you.
- c. If the additional insured is a lessor of equipment, this insurance only applies to liability caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such additional insured and does not apply to any "occurrence" which takes place after the equipment lease expires.
- d. If the additional insured is a state or governmental agency or political subdivision and has issued a permit in connection with premises you own, rent, or control, this insurance applies only with respect to the following hazards for which the state or political subdivision has issued such permit:
  - (1) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners, or decoration and similar exposures;
  - (2) The construction, erection, or removal of elevators; or
  - (3) The ownership, maintenance, or use of any elevators covered by this insurance.
- e. If the additional insured is a state or governmental agency or political subdivision that has issued a permit or authorization with respect to operations performed by you or on your behalf, then this insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or "bodily injury", or "property damage" included within the "products-completed operations hazard".
- f. If the additional insured is a manager or lessor of insured premises, that person or organization is an additional insured but only with respect to liability caused, in whole or in part by the ownership, maintenance or use of that part of the premises leased to you.  
 This insurance does not apply to:
  - (1) Any "occurrence" that takes place after you cease to be a tenant in that premises.
  - (2) Structural alterations, new construction or demolition operations performed by or on behalf of the manager or lessor of insured premises.
- g. If the additional insured is a grantor of a franchise, that person(s) or organization(s) is only an additional insured with respect to liability as grantor of a franchise to you.
- h. If the additional insured is an owner or has some other interest in land that has been leased to you, that person(s) or organization(s) is only an additional insured with respect to liability caused, in whole or in part by the ownership, maintenance or use of that part of the land leased to you.  
 This insurance does not apply to:
  - (1) Any "occurrence" that takes place after you cease to lease that land;
  - (2) Structural alterations, new construction or demolition operations performed by or on behalf of the owner or other interest from whom land has been leased.
- i. If the additional insured is a mortgagee, assignee, or receiver, that person(s) or organization(s) is only an additional insured with respect to liability caused, in whole or in part, by the ownership, maintenance or use of the premises by you.  
 This insurance does not apply to structural alterations, new construction or demolition operations performed by or for that mortgagee, assignee, or receiver.
- j. If the additional insured has a controlling interest, that person(s) or organization(s) is an additional insured but only for liability caused, in whole or in part, by:
  - (1) Their financial control of you; or
  - (2) Premises they own, maintain or control while you lease or occupy those premises.

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that controlling interest.
- k. If the additional insured is a vendor, that person(s) or organization(s) is only an additional insured with respect to "bodily injury" or "property damage" caused, in whole or in part, by "your products" which are distributed or sold in the regular course of the vendor's business, but only if this Policy provides

coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

(1) This insurance afforded to the vendor does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, except when unpacked under the instructions of the manufacturer for the sole purpose of inspection, demonstration, testing or the substitution of parts and then repackaged in the original container;
- (e) Any failure by the vendor to make inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of "your products";
- (f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of "your products";
- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
  - (i) The exceptions contained in subparagraphs (d) or (f); or
  - (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of "your products".

(2) This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

3. With respect to the insurance afforded to an additional insured as provided in Paragraphs **B.1.** and **B.2.** above, the most we will pay on behalf of the additional insured is the amount of insurance:

- a. Required by the contract or agreement; or
  - b. Available under the applicable Limits of Insurance shown in the Declarations;
- whichever is less.

With respect to the insurance afforded to an additional insured as provided in paragraphs **B.1.** and **B.2.** above, this insurance shall not increase the applicable Limits of Insurance shown in the Declarations.

If an Additional Insured endorsement is attached to this Policy that specifically names a person or organization as an insured, then the above Paragraph **B. ADDITIONAL INSURED**s does not apply to such person(s) or organization(s).

4. **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, Paragraph 4. **Other Insurance**, is amended to include:

As respects the coverage provided by this endorsement, regardless of whether other insurance is available to an additional insured on a primary basis, this insurance will be primary and noncontributory if the written contract or written agreement between you and the additional insured specifically requires that this insurance be primary and noncontributory.

C. **SECTION II – WHO IS AN INSURED** is amended as follows:

**BROADENED NAMED INSURED**

Paragraph 3. is deleted and replaced by the following:

- 3. Any business entity organized under the laws of the United States of America (including any state thereof, its territories or possessions), or Canada (including any province thereof) will qualify as a Named Insured if there is no similar insurance available to that business entity, provided that one or more Named Insureds shown in the Declarations have, at the inception of the policy period, an ownership interest in such business entity of more than 50%. However, if a Named Insured has an ownership interest in a business entity of more than 50%, the business entity will not be a Named Insured if such business entity is an

## COMMERCIAL GENERAL LIABILITY

insured under any other liability policy or would be an insured under such policy but for its termination or the exhaustion of its Limit of Insurance.

- D. Paragraph 6. of **SECTION III – LIMITS OF INSURANCE** is deleted and replaced by the following:
6. Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under **SECTION I – COVERAGES, COVERAGE A** for damages because of “property damage” to any one premises while rented to you, or temporarily occupied by you with permission of the owner, when the damage is caused by fire, lightning, explosion, smoke, or leaks from automatic fire protective systems.
- E. **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS** are amended as follows:
1. **KNOWLEDGE AND NOTICE OF OCCURRENCE, OFFENSE, CLAIM OR SUIT**  
The notification requirements of Paragraphs 2.a. and 2.b. **Duties In The Event Of Occurrence, Offense, Claim Or Suit** apply only when the “occurrence”, offense, claim or “suit” is known to:
- a. You, if you are an individual;
  - b. A partner or member if you are a partnership or joint venture;
  - c. An officer or director if you are an entity other than a partnership, joint venture or limited liability company;
  - d. A member or manager if you are a limited liability company; or
  - e. An insurance manager, risk manager or other “employee” you designate prior to loss to give notice to us.
- Knowledge of an “occurrence”, offense, claim, or “suit” by your agent, servant or “employee” shall not in and of itself constitute knowledge by you unless an individual in one of the positions listed above has actual knowledge.
2. **FAILURE TO DISCLOSE HAZARDS**  
The following is added to Paragraph 6. **Representations**:  
If you unintentionally failed to disclose all hazards or prior “occurrences” existing at the inception of this Policy, but reported such error or omission to us as soon as practicable after discovery, then we will not deny coverage under this Coverage Part because of such failure.  
This provision does not affect our right to collect any additional premium or exercise our right of cancellation or non-renewal.
3. **WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US**  
The following is added to Paragraph 8. **Transfer Of Rights of Recovery Against Others To Us**:  
We waive any right of recovery we may have against any person or organization when such waiver is required by a written contract that you have agreed to prior to any “occurrence”, “suit” or the offense which caused the “bodily injury”, “property damage” or “personal and advertising injury”, provided that the “occurrence”, “suit” or the offense which caused the “bodily injury”, “property damage” or “personal and advertising injury” arises out of operations contemplated by such contract. The waiver applies only to the person or organization designated in such contract.
- F. **SECTION V – DEFINITIONS** is amended as follows:
1. **BODILY INJURY**  
The definition of “bodily injury” in Paragraph 3. is deleted and replaced by the following:  
“Bodily injury” means bodily injury, sickness or disease sustained by a person, including mental anguish or death resulting from any of these at any time.
2. **PERSONAL AND ADVERTISING INJURY**  
The definition of “personal and advertising injury” in Paragraph 14.b. is deleted and replaced by the following:  
Abuse of process; and malicious prosecution;

All other terms and conditions of the policy remain unchanged.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

### **SCHEDULE**

<b>Name Of Additional Insured Person(s) Or Organization(s)</b>	<b>Location And Description Of Completed Operations</b>
Blanket as required by written contract.	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

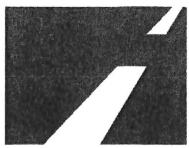
**B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

**Infinity Commercial Auto**

11700 Great Oaks Way, Suite 450

Alpharetta, GA 30022

Underwritten by: Infinity Select Insurance Company

Customer Service: (800) 722-3391

Claims Service: (800) 334-1661

**ADDITIONAL NAMED INSURED ENDORSEMENT**

Copy To	Policy ID Number	Expiration Date
Andersons Tree Care Specialists Inc 121 N 27th St San Jose, CA 95116-1119	504-61015-5516-001	04/16/2023 12:01 a.m.
	Named Insured	
	Andersons Tree Care Specialists Inc	
	This endorsement is attached to and forms a part of the listed policy. No changes will be effective prior to the time changes are requested.	

Additional Insured
City of Cupertino, its City Council, boa

Part A - Liability Coverage, is changed as follows:

The definition of insured is changed to include the additional insured named above. Adding an **insured** will not increase the limit of our liability. The insurance provided by this endorsement will be excess over any other valid and collectible insurance.

All other parts of this Policy remain unchanged.

INSURED COPY

AMEND DATE: 04/16/2022

50461AIS01

ENDORSEMENT: 2-1

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT - CALIFORNIA**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be 2% of the California workers' compensation premium otherwise due on such remuneration.

**Schedule****Person or Organization****Job Description**

Any person or organization as required by written contract

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

**(The Information below is required only when this endorsement is issued subsequent to preparation of the policy.)**

Endorsement Effective Date: 10/08/2022

Policy No.: CST5024318

Endorsement No.

Policy Effective Dates: 10/08/2022 - 10/08/2023

Insured: Anderson's Tree Care Specialists, Inc.

Carrier Name / Code: Benchmark Insurance Company A

**WC 04 03 06**  
(Ed. 04-84)

Countersigned by \_\_\_\_\_

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## DESIGNATED CONSTRUCTION PROJECT(S) AGGREGATE LIMIT AND TOTAL AGGREGATE LIMIT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### SCHEDULE

The following is added to the Limits of Insurance shown in the Declarations:

<b>Designated Construction Project Aggregate Limit (Other Than Products-Completed Operations)</b>	<b>\$ 1,000,000</b>
<b>Total Aggregate Limit (Other Than Products-Completed Operations)</b>	<b>\$ 5,000,000</b>
<b>Designated Construction Project(s): PER SCHED. ON FILE WITH THE COMPANY</b>	

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

- A. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under **SECTION I – COVERAGE A**, and for all medical expenses caused by accidents under **SECTION I – COVERAGE C**, which can be solely attributed to operations at a single designated construction project shown in the Schedule above:
1. The Designated Construction Project Aggregate Limit as shown in the above Schedule is the most we will pay for each construction project designated in the Schedule above.
  2. The Designated Construction Project Aggregate Limit is the most we will pay for the sum of all damages under **COVERAGE A**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under **COVERAGE C** regardless of the number of:
    - a. Insureds;
    - b. Claims made or "suits" brought;
    - c. Persons or organizations making claims or bringing "suits"; or
    - d. Designated construction projects shown in the Schedule above.
  3. Any payments made under **COVERAGE A** for damages or under **COVERAGE C** for medical expenses shall reduce the Designated Construction Project Aggregate Limit for that designated construction project. The Designated Construction Project Aggregate is subject to the Total Aggregate. However, such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce the Designated Construction Project Aggregate Limit for any other designated construction project shown in the Schedule above.
  4. The limits shown in the Declarations for Each Occurrence, Damage To Premises Rented To You and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Construction Project Aggregate Limit.

## COMMERCIAL GENERAL LIABILITY

- B. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under **SECTION I – COVERAGE A**, and for all medical expenses caused by accidents under **SECTION I – COVERAGE C**, which cannot be solely attributed to operations at a single designated construction project shown in the Schedule above:
1. Any payments made under **COVERAGE A** for damages or under **COVERAGE C** for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-Completed Operations Aggregate Limit, whichever is applicable; and
  2. Such payments shall not reduce any Designated Construction Project Aggregate Limit.
- C. The Total Aggregate Limit shown in the Schedule above is the most we will pay for all payments made under the Designated Project Aggregate Limit for all designated projects and all payments made under the General Aggregate. This includes:
1. Damages under **COVERAGE A** except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard";
  2. Damages under **COVERAGE B**; and
  3. Medical Expenses under **COVERAGE C**.
- D. When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-Completed Operations Aggregate Limit, and will not reduce the General Aggregate Limit or the Designated Construction Project Aggregate Limit.
- E. Any payments made for damages because of "personal and advertising injury" sustained by any one person or organization under **COVERAGE B**, remain subject to the Personal And Advertising Injury Limit and do not apply to the Designated Construction Project Aggregate Limit. Such payments shall reduce the General Aggregate Limit and the Total Aggregate Limit.
- F. Any payments made for damages or medical expenses to which the Designated Construction Project Aggregate Limit applies shall reduce both the Total Aggregate Limit shown in the Schedule above and the Designated Construction Project Aggregate Limit for that designated construction project. Such payments shall not reduce the General Aggregate Limit nor shall they reduce the Designated Construction Project Aggregate Limit for any other designated construction project shown in the Schedule above, subject to the Total Aggregate.
- G. Any payments made for damages or medical expenses to which the General Aggregate Limit applies shall reduce both the Total Aggregate Limit shown in the Schedule above and the General Aggregate Limit shown in the Declarations. Such payments shall not reduce the Designated Construction Project Aggregate Limit for any designated construction project shown in the Schedule above.
- H. If the applicable designated construction project has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.
- I. The provisions of **SECTION III – LIMITS OF INSURANCE** not otherwise modified by this endorsement shall continue to apply as stipulated.

All other terms and conditions of the policy remain unchanged.










# Anderson's Tree Care for Orchard Maintenance

Final Audit Report

2023-03-13

Created:	2023-03-13
By:	City of Cupertino (webmaster@cupertino.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAMe2rxosozSThfMzutJuhv803g_12tAYs

## "Anderson's Tree Care for Orchard Maintenance" History

-  Document created by City of Cupertino (webmaster@cupertino.org)  
2023-03-13 - 4:52:42 PM GMT- IP address: 35.229.54.2
-  Document emailed to Julia Kinst (juliak@cupertino.org) for approval  
2023-03-13 - 4:54:48 PM GMT
-  Document approved by Julia Kinst (juliak@cupertino.org)  
Approval Date: 2023-03-13 - 4:56:07 PM GMT - Time Source: server- IP address: 24.237.36.180
-  Document emailed to Doug Anderson (doug@andersonstreecare.com) for signature  
2023-03-13 - 4:56:08 PM GMT
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-  Email viewed by Doug Anderson (doug@andersonstreecare.com)  
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-  Document e-signed by Doug Anderson (doug@andersonstreecare.com)  
Signature Date: 2023-03-13 - 7:38:43 PM GMT - Time Source: server- IP address: 96.82.97.182
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