

## REPORT TO CITY COUNCIL

**DATE:** JUNE 22, 2022

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** NATHAN HAMBURGER, CITY MANAGER

**BY:** JESSICA FORTE, DIRECTOR OF PUBLIC WORKS/CITY ENGINEER

**SUBJECT:** REQUEST FOR APPROVAL OF A CONTRACTOR SERVICES AGREEMENT WITH BURNS PACIFIC CONSTRUCTION, INC., FOR PUBLIC WORKS MAINTENANCE SERVICES

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Burns Pacific Construction, Inc. (Burns), has provided public works maintenance services to the City since 2011. The services include, but are not limited to, street maintenance, sidewalk repairs, catch basin cleaning, traffic sign maintenance, street striping/pavement marking, general clean-up, and emergency response, as needed.

On June 30, 2022, the City's contract with Burns is set to expire. While the majority of City contracts are put out to bid, Operations and Maintenance contracts are not required to be bid by the State of California. As Labor Rates are determined by the Department of Industrial Relations, it is anticipated that bidding would not result in any significant change to the contract's cost.

Burns Pacific's excellent record, knowledge of the City, and ability to react swiftly in both emergency and non-emergency events, makes their contract critical to the execution of daily operations. Staff recommends entering into a new three-year contract with, two 2-year extensions, with Burns for \$500,000 per year which is the same amount in the current contract.

Staff is making this recommendation based on the following reasons:

1. **Excellent Service:** Burn's work product has been exceptional, and have gained the confidence and trust from staff and the community. They have taken their role as the City's maintenance contractor seriously, and take great pride in the appearance of the City.
2. **Competitive Rates:** If approved, the contract would reflect current rates that account for all items typically included in contractor calculations of fully-burdened rates (i.e.: current prevailing hourly wage rates pursuant to the provisions of Section 1773 of the Labor Code for the State of California, costs of coverage for multiple insurance policies, and standard company mark-up percentage). Refer to "Exhibit B- Payment Rates and Schedule" of the draft agreement.

3. **Institutional Knowledge:** Burns has a firm understanding of the City's infrastructure and operations. Their involvement during weather-related events and other emergencies have been instrumental in ensuring the public's health and safety.

There are sufficient funds appropriated in the proposed Fiscal Year 2022/23 budget to cover the costs for these services. Staff's recommendation to extend a contract to Burns was supported by the Public Works Subcommittee in April 2022.

The proposed agreement has been reviewed by the City Attorney and approved as to form.

### **RECOMMENDATION**

Staff respectfully recommends the City Council approve a Contractor Services Agreement with Burns Pacific Construction, Inc., for public works maintenance services.

Attachment: Contractor Services Agreement

AGREEMENT FOR CONTRACTOR SERVICES  
WITH THE CITY OF AGOURA HILLS

NAME OF CONTRACTOR: Burns Pacific Construction, Inc.

RESPONSIBLE PRINCIPAL OF CONTRACTOR: Attn: Lisa Burns

CONTRACTOR'S ADDRESS: 505 E. Thousand Oaks Blvd.  
Thousand Oaks, CA 91360

CITY'S ADDRESS: City of Agoura Hills  
30001 Ladyface Court  
Agoura Hills, CA 91301  
Attn: City Manager

PREPARED BY: Kelly Fisher

COMMENCEMENT DATE: July 1, 2022

TERMINATION DATE: June 30, 2025

CONSIDERATION: Contract Price  
Not to Exceed: \$500,000/yr

**AGREEMENT FOR CONTRACTOR SERVICES BETWEEN  
THE CITY OF AGOURA HILLS AND BURNS PACIFIC  
CONSTRUCTION, INC.**

**THIS AGREEMENT** is made and effective as of July 1, 2022, between the City of Agoura Hills, a municipal corporation ("City") and Burns Pacific Construction, Inc. ("Contractor"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

**1. TERM**

This Agreement shall commence on July 1, 2022, and shall remain and continue in effect until tasks described herein are completed, but in no event later than June 30, 2025, unless sooner terminated pursuant to the provisions of this Agreement.

The City may, at its option, extend this Agreement for two additional terms of two years upon providing written notice of its intent to extend this Agreement to the Contractor not less than thirty (30) days prior to the expiration of the initial Term. Such extension shall be at the same price and conditions as set forth herein.

**2. SERVICES**

Contractor shall perform the services and tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. Contractor shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A.

**3. PERFORMANCE**

In meeting its obligations under this Agreement, Contractor shall at all times faithfully and competently perform all tasks described herein in a manner satisfactory to CITY and consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions.

**4. PREVAILING WAGES**

A. Prevailing wages are required on all CITY agreements involving construction, design, and preconstruction phases of construction (including, but not limited to, inspection and land surveying work), and maintenance (except for janitorial or security guards) for work on CITY property.

B. Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the City Council has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute by this Contractor from the Director of the Department of Industrial Relations. Copies may be obtained from the California Department of Industrial Relations Internet website at <http://www.dir.ca.gov>. Contractor shall provide a copy of prevailing wage rates to any staff or sub-contractor hired, and shall pay the adopted prevailing wage rates as a minimum. Contractor shall comply with the

provisions of Sections 1773.8, 1775, 1776, 1777.5, 1777.6, and 1813 of the Labor Code. Pursuant to the provisions of 1775 of the Labor Code, Contractor shall forfeit to the City, as a penalty, the sum of \$50.00 for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for any work done under this contract, by him or by any sub-contractor under him, in violation of the provisions of the Agreement..

## **5. PAYMENT**

A. The City agrees to pay Contractor monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, Payment Rates and Schedule, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. Any terms in Exhibit B other than the payment rates and schedule of payment are null and void. This amount shall not exceed One Million Five Hundred Thousand Dollars and Zero Cents (\$1,500,000.00) ("Contract Price") for the initial Term of the Agreement unless additional payment is approved as provided in this Agreement.

A. Contractor shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Contractor shall be compensated for any additional services in the amounts and in the manner as agreed to by the City Council and Contractor at the time City's written authorization is given to Contractor for the performance of said services.

B. Contractor shall submit invoices monthly for actual services performed. Invoices shall be submitted between the first and fifteenth business day of each month, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of Contractor's fees, it shall give written notice to Contractor within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. For all reimbursements authorized by this Agreement, Contractor shall provide receipts on all reimbursable expenses in excess of Fifty Dollars (\$50) in such form as approved by the Director of Finance.

## **6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE**

A. The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Contractor at least ten (10) days prior written notice. Upon receipt of said notice, the Contractor shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement, such suspension or termination shall not make void or invalidate the remainder of this Agreement.

B. In the event this Agreement is terminated pursuant to this Section, the City shall pay to Contractor the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of

the Agreement pursuant to this Section, the Contractor will submit an invoice to the City pursuant to Section entitled "**PAYMENT**" herein.

## **7. DEFAULT OF CONTRACTOR**

A The Contractor's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Contractor is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Contractor for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Contractor. If such failure by the Contractor to make progress in the performance of work hereunder arises out of causes beyond the Contractor's control, and without fault or negligence of the Contractor, it shall not be considered a default.

B. If the City Manager or his delegate determines that the Contractor is in default in the performance of any of the terms or conditions of this Agreement, it shall serve the Contractor with written notice of the default. The Contractor shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Contractor fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement."

## **8. OWNERSHIP OF DOCUMENTS**

A. Contractor shall maintain complete and accurate records with respect to sales, costs, expenses, receipts and other such information required by City that relate to the performance of services under this Agreement. Contractor shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Contractor shall provide free access to the representatives of City or its designees at reasonable times to such books and records, shall give City the right to examine and audit said books and records, shall permit City to make transcripts there from as necessary, and shall allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

B. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files containing data generated for the work, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused or otherwise disposed of by the City without the permission of the Contractor. With respect to computer files containing data generated for the work, Contractor shall make available to the City, upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.

## 9. INDEMNIFICATION

Contractor shall defend, indemnify, and hold the City, its officials, officers, employees, agents and independent Contractors serving in the role of City officials, and volunteers (collectively "Indemnitees") free and harmless from any and all claims, demands, causes of action, proceedings, costs, expenses, liabilities, losses, damages or injuries, in law or equity, to property or persons, including wrongful death (collectively "Claims"), in any manner arising out of or incident to any acts or omissions of Contractor, its officials, officers, employees, agents or sub-contractor in connection with the performance of this Agreement, including without limitation the payment of all consequential damages, attorneys' fees, and other related costs and expenses, except for such Claims arising out of the sole negligence or willful misconduct of the Indemnitees. With respect to any and all such Claims, Contractor shall defend Indemnitees at Contractor's own cost, expense, and risk and shall pay and satisfy any judgment, award, or decree that may be rendered against Indemnitees. Contractor shall reimburse Indemnitees for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Contractor or Indemnitees. All duties of Contractor under this Section shall survive termination of this Agreement.

## 10. INSURANCE REQUIREMENTS

Prior to commencement of work, Contractor shall procure, provide, and maintain, at Contractor's own expense, for the duration of this Agreement, insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees.

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1) Insurance Services Office Commercial General Liability form No. CG 00 01 11 85 or 88, or equivalent.

2) Insurance Services Office Business Auto Coverage form CA 00 01 06 92, or equivalent, covering Automobile Liability, code 1 (any auto). If the Contractor owns no automobiles, a non-owned auto endorsement to the General Liability policy described above is acceptable.

3) Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance. If the Contractor has no employees while performing under this Agreement, worker's compensation insurance is not required, but Contractor shall execute a declaration that it has no employees.

B. Minimum Limits of Insurance. Contractor shall maintain limits no less than:

1) General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage for all activities of the Contractor arising out of or in connection with work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rental vehicles.

3) Worker's Compensation as required by the State of California; Employer's Liability: One million dollars (\$1,000,000) per accident for bodily injury or disease.

C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City Manager. At the option of the City Manager, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Requirements Not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Vendor maintains higher limits than the minimums shown above, the Agency requires and shall be entitled to coverage for the higher limits maintained by the Vendor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Agency.

E. Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1) The City, its officers, officials, employees and volunteers are to be covered and named as additional insureds in respect to: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.

2) For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insured maintained by the City, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.



3) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

4) The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the City. Contractor agrees to oblige its insurance agent or broker and insurers to provide City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

F. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City. Self insurance shall not be considered to comply with these insurance requirements.

G. Verification of Coverage. **Contractor shall furnish the City with original endorsements, specifically naming the City of Agoura Hills, its officers, officials, employees and volunteers as additional insured, effecting coverage required by this clause.** The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms acceptable to the City. Insurance certificates and endorsements must be received and approved by City's Risk Manager prior to commencement of performance. Current insurance certificates and endorsements shall be kept on file with the City at all times during the term of this agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

H. Mailing Instructions. Insurance documents shall be mailed with the signed Agreement to the attention of the staff person indicated on the cover sheet of this Agreement, to the City of Agoura Hills, 30001 Ladyface Court, Agoura Hills, CA 91301. Executed Agreement(s) cannot be released nor may any work commence on a project until the signed Agreement and appropriate insurance documents are on file with the City Clerk.

## 11. INDEPENDENT CONTRACTOR

A. Contractor is and shall at all times remain as to the City a wholly independent Contractor. The personnel performing the services and tasks under this Agreement on behalf of Contractor shall not be City employees and shall at all times be under Contractor's exclusive direction and control. Contractor and all of Contractor's personnel shall possess the qualifications, permits, and licenses required by state and local law to perform the services and tasks under this Agreement, including, without limitation, a City business license as required by the Agoura Hills Municipal Code. Contractor shall determine the means, methods, and details by which Contractor's personnel will perform the services and tasks. Contractor shall be solely responsible for

the satisfactory work performance of all personnel engaged in performing the services and tasks, and compliance with the customary professional standards. Neither City nor any of its officers, employees, agents, or volunteers shall have control over the conduct of Contractor or any of Contractor's officers, employees, or agents.

B. Contractor shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of City. Contractor and Contractor's personnel shall not supervise any of City's employees; and City's employees shall not supervise Contractor's personnel. Contractor's personnel shall not wear or display any City uniform, badge, identification number, or other information identifying such individual as a City employee; and Contractor's personnel shall not use any City e-mail address or City telephone number in the performance of any of the services and tasks under this Agreement. Contractor shall acquire and maintain at its sole cost and expense such vehicles, equipment, and supplies as Contractor's personnel require to perform any of the services and tasks required by this Agreement. Contractor shall perform all services and tasks off of City premises at locations of Contractor's choice, except as otherwise may from time to time be necessary in order for Contractor's personnel to receive projects from City, review plans on file at City, pick up or deliver any work product related to Contractor's performance of any services and tasks under this Agreement, or as may be necessary to inspect or visit City locations and/or private property to perform the services and tasks. City may make a computer available to Contractor from time to time for Contractor's personnel to obtain information about, or to check on, the status of projects pertaining to the services and tasks performed under this Agreement. Contractor shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner.

C. No employee benefits shall be available to Contractor in connection with the performance of this Agreement. Except for the fees paid to Contractor as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Contractor for performing services and tasks hereunder for City. City shall not be liable for compensation or indemnification to Contractor for injury or sickness arising out of performing services and tasks hereunder. Contractor shall be responsible for and pay all salaries, wages, benefits and other amounts due to Contractor's personnel in connection with their performance of the services and tasks under this Agreement, and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to, Social Security taxes, other retirement or pension benefits, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance. Notwithstanding any other agency, state, or federal policy, rule, regulation, statute, or ordinance to the contrary, Contractor and any of its officers, employees, agents, and subcontractors providing any of the services and tasks under this Agreement shall not become entitled to, and hereby waive any claims to, any wages, salaries, compensation, benefit, or any incident of employment by City, including, but not limited to, eligibility to enroll in, or reinstate to membership in, the California Public Employees Retirement System ("PERS") as a City employee, and entitlement to any contribution to be paid by City for employer contributions or employee contributions for PERS benefits.

D. Contractor shall indemnify and hold harmless City and its elected officials, officers, employees, servants, designated volunteers, and agents serving as independent contractors in the role of City officials, from any and all liability, damages, claims, costs, and expenses of any nature to the extent arising from, caused by, or relating to Contractor's personnel practices, or to the extent arising from, caused by, or relating to the violation of any of the provisions of this Section. In addition to all other remedies available under law, City shall have the right to offset against the amount of any fees due to Contractor under this Agreement any amount due to City from Contractor as a result of Contractor's failure to promptly pay to City any reimbursement or indemnification arising under this Section. This duty of indemnification is in addition to Contractor's duty to defend, indemnify, and hold harmless as set forth in any other provision of this Agreement.

## **12. PERS COMPLIANCE AND INDEMNIFICATION**

A. General Requirements. The parties acknowledge that City is a local agency member of PERS, and as such has certain pension reporting and contribution obligations to PERS on behalf of qualifying employees. Contractor agrees that, in providing its employees and any other personnel to City to perform the services and tasks under this Agreement, Contractor shall assure compliance with the Public Employees' Retirement Law, commencing at Government Code Section 20000, the regulations of PERS, and the Public Employees' Pension Reform Act of 2013, as amended. Without limitation to the foregoing, Contractor shall assure compliance with regard to personnel who have active or inactive membership in PERS and to those who are retired annuitants and in performing this Agreement shall not assign or utilize any of its personnel in a manner that will cause City to be in violation of the applicable retirement laws and regulations.

B. Indemnification. Contractor shall defend (with legal counsel approved by City, whose approval shall not be unreasonably withheld), indemnify, and hold harmless City, and its City and its elected officials, officers, employees, servants, designated volunteers, and agents serving as independent contractors in the role of City officials, from any and all liability, damages, claims, costs and expenses of any nature to the extent arising from, caused by, or relating to Contractor's violation of any provisions of this Section. This duty of indemnification is in addition to Contractor's duty to defend, indemnify, and hold harmless as set forth in any other provision of this Agreement.

## **13. LEGAL RESPONSIBILITIES**

The Contractor shall keep itself informed of all local, State and Federal ordinances, laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Contractor shall at all times observe and comply with all such ordinances, laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Contractor to comply with this section.

**14. RELEASE OF INFORMATION**

A. All information gained by Contractor in performance of this Agreement shall be considered confidential and shall not be released by Contractor without City's prior written authorization. Contractor, its officers, employees, agents or sub-contractors, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Contractor gives City notice of such court order or subpoena.

B. Contractor shall promptly notify City should Contractor, its officers, employees, agents or sub-contractor be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent Contractor and/or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

**15. NOTICES**

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by: (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by Notice. Notice shall be effective upon delivery to the addresses specified below or on the third business day following deposit with the document delivery service or United States Mail as provided above.

To City: City of Agoura Hills  
30001 Ladyface Court  
Agoura Hills, California 91301  
Attention: City Manager

To Contractor: **Burns Pacific Construction, Inc.**  
**505 E. Thousand Oaks Blvd.**  
**Thousand Oaks, CA 91360**  
**Attention: Lisa Burns**

**16. ASSIGNMENT**

The Contractor shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City. Upon termination of this Agreement, Contractor's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between the City Council and the Contractor.

**17. LICENSES**

At all times during the term of this Agreement, Contractor shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement.

**18. GOVERNING LAW**

The City and Contractor understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with geographic jurisdiction over the City of Agoura Hills. In the event such litigation is filed by one party against the other to enforce its rights under this Agreement, the prevailing party, as determined by the Court's judgment, shall be entitled to reasonable attorney fees and litigation expenses for the relief granted.

**19. PROHIBITED INTEREST**

No officer, or employee of the City of Agoura Hills shall have any financial interest, direct or indirect, in this Agreement, the proceeds thereof, the Contractor, or Contractor's sub-contractors for this project, during his/her tenure or for one year thereafter. The Contractor hereby warrants and represents to the City that no officer or employee of the City of Agoura Hills has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, or in the business of the Contractor or Contractor's sub-contractors on this project. Contractor further agrees to notify the City in the event any such interest is discovered whether or not such interest is prohibited by law or this Agreement.

**20. EXHIBITS**

Exhibits A and B constitute a part of this Agreement and are incorporated into this Agreement by this reference. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, the provisions of this Agreement shall control.

**21. ENTIRE AGREEMENT**

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or

written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

**22. AMENDMENT OF AGREEMENT**

This Agreement may be amended only by a writing signed by both parties. The City Manager is authorized to sign an amendment to this Agreement on the City Council's behalf and without the City Council's prior approval to make the following non-substantive modifications to the Agreement: (a) name changes; (b) extensions of time that do not result in monetary changes; (c) non-monetary changes in the scope of work; and (d) termination of the Agreement.

**23. AUTHORITY TO EXECUTE THIS AGREEMENT**

The person or persons executing this Agreement on behalf of Contractor warrants and represents that he or she has the authority to execute this Agreement on behalf of the Contractor and has the authority to bind Contractor to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

**CITY OF AGOURA HILLS**

\_\_\_\_\_  
Deborah Klein Lopez,  
Mayor

ATTEST:


\_\_\_\_\_  
Kimberly M. Rodrigues, MMC  
City Clerk  
Date Approved by City Council: \_\_\_\_\_


APPROVED AS TO FORM:

\_\_\_\_\_  
Candice K. Lee,  
City Attorney

**CONTRACTOR**

Burns Pacific Construction, Inc.  
505 E. Thousand Oaks Blvd.  
Thousand Oaks, CA 91360  
Attn: Lisa Burns  
(805) 371-4171

By:   
Name: Lisa A. Burns  
Title: President

By:   
Name: Lisa A. Burns  
Title: Secretary

**[Signatures of Two Corporate Officers Required]**

## EXHIBIT A

### TASKS TO BE PERFORMED

**Scope of Maintenance Services:** The work to be done consists of furnishing all material, equipment and labor as required by the contract documents for Public Works services within the City of Agoura Hills as directed by the City's Engineering Department staff.

#### I. General

- A. Attend kick-off meeting at the City to discuss roles of team personnel, schedule, critical activities, constraints, interface with the public and specific issues.
- B. The Contractor shall provide the names, addresses, and phone numbers of representative(s) responsible for the following:
  - 1. Emergency responses
  - 2. Person in responsible charge at the local office
  - 3. Person in responsible charge at the main office.
- C. The Contractor shall comply with all State and Federal requirements regarding affirmative action and provisions for minority hiring.
- D. All Contractors and subcontractors shall carry full insurance with City named as an additional insured as detailed in Attachment A.
- E. Maintain a safety program for all staff in compliance with all State and Federal laws.
- F. Insure all maintenance staff is properly trained and that all records for the training are kept in compliance with State and Federal laws.
- G. Perform the services with the degree of skill and diligence normally employed by operations and maintenance personnel performing the same or similar services.
- H. The provisions of the California Labor Code will be incorporated in and govern this contract. The successful contractor will be required to pay not less than the general prevailing rate of per diem wages as determined by the Department of Industrial Relations, copies of which are on file with the City and available upon request. The City may withhold processing any pay request for non-compliance with this requirement.
- I. The Contractor shall conduct the work required in such a manner as to cause the least amount of interference to the public and the general operations of the City.
- J. All subcontractors shall be licensed and bonded in the specialty for which they are contracted.
- K. Contractor shall not use any subcontractors without prior written approval by the City Engineer. Approval may be withheld until the Contractor has submitted a written statement concerning the use of proposed use of a subcontractor which statement shall contain all the information required by the City.



- L. The use of a subcontractor shall not create any contractual relationship between the subcontractor and City. The Contractor shall be fully responsible for any acts and omissions of his subcontractors, and any persons directly or indirectly employed by them.
- M. Subcontractors shall be subject to all terms and conditions of the agreement entered into by the City and Contractor.
- N. Contractor shall be responsible for complete supervision of all workers, work crews, and subcontractors. All supervisors shall be equipped at all times with a cellular telephone.
- O. Contractor shall comply with reasonable requests of the City Engineer as to preferred sequence for various types of work.
- P. Contractor shall perform no work in addition to scheduled work unless the additional work is approved in advance by the City Engineer.
- Q. The need for additional work may be identified by either the Contractor or the City Engineer. If identified by the Contractor, it shall not be performed without prior approval of the City Engineer. If identified by the City Engineer, the Contractor may proceed with such work.
- R. To insure effective communications, the contractor shall provide, and the City Engineer will approve, a work request form in order to obtain complete information on work needs and requests for service.
- S. Contractor shall keep records for work orders, payrolls, subcontracts, material and contractual service invoices, and equipment rental invoices. All such records shall, upon demand, be made available to the City for inspection and/or public records requests.
- T. Traffic control shall conform to Section 7-10 of the "Greenbook" Standards Specifications for Public Works Construction except that references to the California Department of Transportation Traffic Manual should be replaced with references to the California Manual on Uniform Traffic Control Devices.
- U. Traffic control plans shall be submitted by Contractor when requested for lane closures. The City Engineer must review and approve plans prior to beginning of work.
- V. Contractor shall implement Best Management Practices (BMPs) to prevent storm water pollution from entering natural streams and/or the City's storm drain systems. The BMPs implemented shall include, but not limited to, those appropriate for wet weather conditions. No separate payment will be made for compliance with these provisions.
- W. Contractor shall use reasonable efforts to prevent waste of utility resources (water, electric power, etc.) which are provided by the City.
- X. The Contractor shall observe and report to the City Engineer any problems that are of interest to the City, but outside the scope of work described within this proposal. Examples of such problems include, but are not limited to: Water main and sewer leaks, faulty utility trench repairs, spilled concrete, etc.
- Y. When directed by the City Engineer, the Contractor shall contact City residents and/or businesses on the City's behalf to discuss and resolve maintenance problems and/or concerns.

## II. Street Maintenance

**Scope of Street Maintenance Services:** Work under this section shall consist of performing all street maintenance as authorized by the City Engineer including, but not limited to: repair or limited replacement of asphalt surfaces, full depth removal and replacement of pavement areas, patching pot holes, shoulder grading, sidewalk, parkway and trail maintenance, trimming of trees encroaching in public right-of-way or blocking line-of-sight, graffiti removal, emergency response to rock falls, mud slides, debris flows and other spills within the public right-of-way, damaged signs, and other work authorized by the City Engineer. Additionally, please provide a written understanding of the scope of the work.

- A. The Contractor shall perform inspections of public facilities as requested by the City Engineer. Contractor shall prepare and submit a report to the City Engineer based on the City's sidewalk inspection program.
- B. The Contractor shall provide a written proposal for City Engineer approval that includes total anticipated costs for each service request prior to beginning the work. Proposals shall include estimated labor hours and personnel required to complete the task.
- C. All work shall conform to the latest version of the "Greenbook" Standards Specifications for Public Works Construction unless otherwise approved by the City Engineer.
- D. Material delivered and used on the designated work, including sales tax if paid by the Contractor or his subcontractor shall be documented and verified by the City. Excess material will not be paid for by the City.
- E. Equipment rental, including necessary transportation for items having a value in excess of one thousand dollars (\$1,000) shall be documented and verified by the City.
- F. The City reserves the right to furnish materials and equipment for any type of project as the City Engineer deems expedient, and the Contractor shall have no claim for profit or added fees on the cost of such materials and equipment.

Pavement maintenance includes, but is not limited to, the removal and replacement of existing asphalt concrete pavement. Pavement shall be sawcut to a true line where new meets existing. Asphalt concrete shall be placed to the adjacent existing depth or four (4) inches, whichever is greater, on compacted base material (95% minimum compaction) of not less than six (6) inches. Asphalt concrete shall be compacted by a suitable method that will obtain the minimum required pavement compaction of 95% relative density. Tack coat shall be CSS-1H or equivalent with City Engineer approval. Asphalt concrete shall be Type III C2-AR-4000 or Type III C2-AR-8000.

- G. Crack sealing shall include cleaning all cracks with compressed air, applying sealant, and spreading light sand if traffic cannot be kept off cracks until sealant is set. Sealant shall be per Greenbook Standards and applied be per manufacturer's recommendation.

- H. Pavement striping and marking shall include striping both new and existing traffic lanes and/or various traffic legends using both paint and thermal plastic. The work under this section would generally be considered maintenance striping and marking. Large scale striping and marking may be done as part of a Capital Improvement Project or other method outside this contract. Further work may also include the painting of curbs, installation or replacement of traffic pavement markers, delineators or any other traffic line, marking, etc. typically associated with publicly traveled roads.
- I. Tree trimming and fallen tree removal shall include the cutting back of public property trees, bushes, or other vegetation that encroaches onto the public right-of-way or public property. Also includes shrubs and bush in and adjacent to creeks and channels.
- J. Traffic sign installation/repair/replacement shall include the replacement, repair, relocation or installation of new or existing traffic signs and any or all items associated with sign such as sign blanks, hardware, pole, and pipe. All signs within the public right-of-way are included except those that are affixed to and integrally part of the traffic signals.
- K. Critical traffic sign replacement shall occur within three (3) hours after notification. The signs considered critical are:
- Stop
  - One Way
  - Do Not Enter
  - No Right/Left Turn
  - Keep Right
  - Yield
  - Hazard
- L. Graffiti removal shall include all work associated with the elimination of graffiti either by using cleaning equipment or repainting of the item to obscure the graffiti.
- M. Sidewalk displacement grinding/cutting/patching shall include all work associated with the temporary patching or ramping of offset sidewalk, curb and gutter, or any other concrete area within the public right-of-way. The equipment used for sidewalk grinding and/or cutting shall be approved by the City Engineer.
- N. Sidewalk repair and replacement includes removing existing damaged sidewalk, removal of tree roots and cuttings, hauling away debris, compact existing base or preparation of subgrade placement of fill, and replacing section with new sidewalk.
- O. Barricade installation and repair shall include straightening, replacement, painting, or repair of damaged guardrail, barricades, or other devices similar in nature. All associated components such as nuts, bolts, panels, posts, etc. are included in this work.
- P. Roadside ditch cleaning shall include the removal of accumulated silt, gravel, debris, or vegetation from ditches with mechanical equipment or by hand to reestablish or improve original flow line.

- Q. Street sweeping/clean-up shall be performed by mechanical equipment or by hand on an emergency basis due to illegal dumping, storms, spills, automobile accidents, or other causes for debris to be left on any public road.
- R. Other related maintenance tasks shall include any other maintenance function that might be typically performed in the City that is not expressly included in the above.

### **III. Drainage and Vegetation Maintenance**

- A. Catch basin cleaning shall include the inspection and removal of accumulated silt, gravel, debris, or vegetation from catch basins in accordance with NPDES regulations.
- B. Trash removal shall include the removal of all litter from City-owned drainage ditches, swales, or other drainage facilities.
- C. Controlling vegetation shall be required around drainage ditches or other drainage facilities using weed cutting equipment.
- D. Erosion damage repairs shall include various erosion control methods or repairs to prevent or correct erosion at drainage ditches or other drainage facilities. This may include using earth-moving equipment, wattles, silt fences, or any variety of repairs.
- E. Manhole and pipe cleaning shall include the cleaning of underground storm drain lines and/or manholes typically using a vacuum truck.

### **IV. Emergency Response**

- A. Work under this section shall consist of providing emergency response at any time including after regular working hours, on weekends, and on holidays. Emergency services may include, but not necessarily limited to the following:
  - Storm clean-up
  - Mud/Land slide clean-up
  - Placement of traffic barricades
  - Traffic control
  - Slope restoration
- B. Within ten (10) working days after the contract has been executed, the Contractor shall submit to the City Engineer for approval, a procedure for emergency response at any given time. After approval, the procedure shall be implemented immediately by the Contractor. The procedure may be modified at any given time by mutual agreement of the Contractor and City Engineer.
- C. A four (4) man crew must be on-call at all times. The maximum response time shall be 90 minutes at any time, except for emergency barricade service which shall be available within 60 minutes. The crew and necessary equipment must be at the work site and capable of operating within the maximum response time.
- D. The Contractor shall provide all temporary barricading as necessary due to unusual conditions within the public right-of-way. All Contractor field

crews must carry at least three (3) Type II barricades with flasher units in their vehicles at all times.

- E. If the Contractor observes or is contacted by City staff or Sheriff Department of an unsafe or unusual conditions within the public right-of-way, the Contractor is to immediately barricade this item and notify the City Engineer with all appropriate details. Traffic barricade service shall be available within one (1) hour at all times.

## **V. Annual Concrete Repair Project**

- A. Upon mutual agreement, the City Engineer may authorize the contractor to perform a large scale concrete repair as part of the City's annual concrete repair program.
- B. The City will provide repair locations to the contractor that will include repairing sidewalks, curb, gutters, and constructing ramps.
- C. Sidewalk repair and replacement includes removing existing damaged sidewalk, removal of tree roots and cuttings, hauling away debris, compact existing base or preparation of subgrade placement of fill, and replacing section with new sidewalk.
- D. Invoicing for this work shall be tracked and billed separately from other maintenance activities.

## **VI. Payment**

- A. All invoices shall contain at a minimum the following:
  - Name(s) and classification(s) of person(s) performing work
  - Hourly rate
  - Total number of hours worked
  - Total cost
  - Date and time when work was performed
  - Equipment used

## **EXHIBIT B**

### **PAYMENT RATES AND SCHEDULE**

The work outlined in the Scope of Services, Exhibit A, shall be provided on an hourly, time and materials basis. The payment rates shall be based on the following:

**BURNS PACIFIC CONSTRUCTION**  
**2021 / 2022 LABOR RATES**  
**CITY OF AGOURA HILLS**  
**07/01/21 - 06/30/22**

<b>LABOR*</b>	<b>EFF. 7/1/2021</b>	<b>PER HR./DAY</b>
<b>FOREMAN - All Our Foremen are now union operators</b>		
Straight Time	\$ 116.56	Hr.
Overtime	\$ 152.77	Hr.
Sunday/Holiday	\$ 190.69	Hr.
<b>OPERATOR</b>		
Straight Time	\$ 112.63	Hr.
Overtime	\$ 148.32	Hr.
Sunday/Holiday	\$ 184.01	Hr.
<b>TRUCK DRIVER</b>		
Straight Time	\$ 86.42	Hr.
Overtime	\$ 109.28	Hr.
Sunday/Holiday	\$ 131.59	Hr.
<b>LABORER</b>		
Straight Time	\$ 86.97	Hr.
Overtime	\$ 115.98	Hr.
Sunday/Holiday	\$ 142.74	Hr.

As in previous contracts, the labor rates will increase based on one of the following, whichever is greater: 1) The July, 2022 Consumer Price Index averaged over the prior 12 months for the Los Angeles area, or 2) the July 1, 2022 prevailing wage/union rate increases

**BURNS PACIFIC CONSTRUCTION**  
**2022 / 2024 EQUIPMENT RATES**  
**CITY OF AGOURA HILLS**  
**07/01/22 - 06/30/24**

<b>EQUIPMENT*</b>		
<b>TRUCKS</b>		
Pickup Trucks (Up to 12,000 GVW)	\$ 27.89	Hr.
Flatbed Trucks (12,000 - 20,000 GVW)	\$ 44.60	Hr.
Crew Trucks w/Tools (12,000 - 20,000 GVW)	\$ 44.60	Hr.
P-9   Ford 2-axle Manlift Bucket Truck (Tree Trimming)	\$ 50.18	Hr.
<b>DUMP TRUCKS</b>		
C-20   Chevrolet 350 Flatbed Utility / Dump Truck	\$ 53.66	Hr.
T-28   Ford F-550 Dump/Plow Truck	\$ 55.75	Hr.
T-29   Peterbilt 3-axle Dump Truck	\$ 51.30	Hr.
T-31   Peterbilt 4-axle Super-Ten Dump Truck	\$ 57.99	Hr.
<b>WATER TRUCKS: W-10   W-11   W-14</b>		
Freightliner or GMC 2000 Gal. Water Truck	\$ 44.60	Hr.
<b>ROCK BLADE TRUCKS</b>		
BT-28   2-axle 4-Wheel Drive Dump Truck with Rock Blade	\$ 83.64	Hr.
<b>TRANSPORT TRUCKS AND TRAILERS TO MOVE EQUIPMENT</b>		
T-32   Peterbilt Lowbed 567 3-axle Truck / 2-axle Lowbed Trailer	\$ 66.91	Hr.
BPC   Utility Trailer	\$ 22.31	Hr.
<b>SKIPLOADERS: S-3   S-8   S-9</b>		
J.D. 210LE Skiploader	\$ 50.18	Hr.
S-7   New Holland LV 80 Skiploader	\$ 50.18	Hr.
<b>BACKHOES</b>		
B-8 / B-9 / B-10 / B-11   CAT 420F2 Tier 4 4x4 Backhoe	\$ 72.49	Hr.
1500 lb. Breaker for Backhoe	\$ 334.55	Day
<b>SKID STEER LOADERS</b>		
L-8   CAT 289D Compact Track Loader (Skid Steer)	\$ 96.60	Hr.
L-12   CAT 299D2 Compact Track Loader (Skid Steer)	\$ 96.60	Hr.
L-13   Bobcat 763 Rubber Tire Skid Steer	\$ 66.91	Hr.
Breaker Attachment for Bobcat	\$ 178.43	Day
Cold Planer Attachment for Bobcat (289D)	\$ 332.48	Day
<b>RUBBER TIRE LOADERS</b>		
L-1   CAT 624 4wd Loader	\$ 80.00	Hr.
L-6   CAT 962M Loader	\$ 150.00	Hr.
<b>EXCAVATORS</b>		
E-4   CAT 321CLCR Excavator	\$ 122.66	Hr.
E-7   CAT 314CLCR Excavator	\$ 111.52	Hr.
E-11   CAT 305.5E2 Excavator	\$ 83.12	Hr.



<b>EQUIPMENT *</b>		
<b>DOZERS</b>		
D-1   CAT D8N Dozer w/Rippers	\$ 200.72	Hr.
D-6   CAT D6RXL Dozer w/Slopeboard & Rippers	\$ 122.66	Hr.
D-7   J.D. 550J Dozer w/Slopeboard & Rippers	\$ 89.21	Hr.
<b>COMPACTORS</b>		
CP-3   CAT CP433E Compactor	\$ 156.12	Hr.
<b>SPECIALTY EQUIPMENT</b>		
PW-1   High-pressure Hot/Cold Mobile Washer (Graffiti Removal)	\$ 223.03	Day
R-1   Dbl-smooth Drum Vibratory Roller (Pavement Repairs)	\$ 167.27	Day
<b>SMALL TOOLS: 4 HR. MINIMUM</b>		
Vibratory Plate Compactor	\$ 27.89	Hr.
Jumping Jack Compactor	\$ 27.89	Hr.
180 CFM Air Compressor w/90# Hammer Package	\$ 55.75	Hr.
Air Compressor Only	\$ 50.18	Hr.
Arrow Board	\$ 7.80	Hr.
Chainsaw - Any Size	\$ 53.66	Per Day
Concrete/Asphalt Saw	\$ 94.79	Per Day
Dry sidewalk grinder package	\$ 61.34	Hr.
Roto Hammer	\$ 96.60	Per Day
Trench Plate 8 x 6	\$ 5.20	Per Day
Weed Trimmer	\$ 124.68	Per Day
2" Water Pump	\$ 178.43	Per Day
4" Trash Pump	\$ 245.33	Per Day

\* FUEL SURCHARGE: In any given month where the gas price for regular gasoline consistently exceeds \$6.00/gallon, a fuel charge of 6% will be added to any and all equipment (gasoline or diesel run) used during that given month. As documentation for this benchmark for the surcharge, fuel receipts will be provided during that month where the fuel surcharge is applicable for all vehicles using regular gasoline.