

**MEMORANDUM OF UNDERSTANDING  
FOR  
CITY FOREST RENEWAL 2.0**

The following Memorandum of Understanding (“MOU”) is between the California Urban Forests Council (“CaUFC”), West Coast Arborists, Inc. (“WCA, Inc.”) and the City of Costa Mesa (“City”), in reference to the City Forest Renewal 2.0 (“CFR 2.0”) project. For reference purposes, the CaUFC, WCA, Inc., and City shall be referred to individually as a “Party” and collectively as the “Parties.” This MOU shall become effective on the last date signed by the Parties.

CFR 2.0

The CFR 2.0 project is an Invest From the Ground Up Campaign under the CaUFC. The CaUFC has partnered with WCA, Inc. and cities throughout Southern California to improve the long-term health of their urban forests. CFR 2.0 is funded through CAL FIRE’s Urban Forest and Community Grant. CFR 2.0 will remove trees that are diseased, declining, posing a risk to human health, and/or are dead. Any tree removed will be replaced with two more trees planted by the City. We will also be working with our partner cities to improve the management of their urban forest.

Interested Parties

The CaUFC, WCA, Inc., and the City agree to work cooperatively on the CFR 2.0 project and the associated deliverables to honor the CaUFC contract agreement with the California Department of Forestry and Fire Protection (CAL FIRE). WCA, Inc. is contracted by CaUFC for completion of the CFR 2.0 project. WCA, Inc. project responsibilities include program management, assisting with policy improvement, and tree removal activities.

For purposes of this MOU, there are three major contributors to this process: Nancy Hughes representing CaUFC, Linda Mendez representing WCA, Inc., and Robert Ryan representing the City.

Duties and Responsibilities

CaUFC, WCA, Inc., and the City pledge to work together in a spirit of cooperation to complete the work.

All Parties shall comply with all relevant laws and regulations regarding documentation, reporting, use, etc. of any state funds in accordance with applicable state law and furnish administrative assistance services including but not limited to:

1. Adherence to the approved scope of work, below, and set out in the assigned project.
2. Retention of all records for three (3) years after the end of the contract term. This requirement applies to fiscal records, reports, and client information. If additional information is requested, the City agrees to make all records relating to the contract available upon request by CaUFC.

Decision Making

Decisions regarding implementation of the CFR 2.0 project within the City of Costa Mesa will be made by consensus of all Parties when there are proposed changes to the scope of work. Decision-making will be done jointly and in a spirit of cooperation. All decisions that are proposed and/or change the scope of work (verbal, written, or implied) must be agreed upon and authorized in writing by all Parties prior to commencing with the additional work. Otherwise, work can proceed as agreed upon for each party in the scope of work.

## Termination

In no event will this MOU be terminated with less than 30 days written notice to the other Parties. Any Party may terminate this MOU at any time, with or without cause, by giving the other Parties thirty (30) days written notice to terminate.

Upon notification that this MOU has been terminated, the City shall immediately stop all work under this MOU on the date and to the extent specified in the written Notice of Termination.

## Scope of Work

The scope of work for the CFR 2.0 project is set forth as follows:

- CaUFC will award the City with approximately 100 grant funded tree removals. The grant awarded to CaUFC will pay for the cost of tree removals that meet the grant criteria. Only trees that meet the criteria of being diseased, declining, pose a risk to human health, and/or are dead will be considered.
- The City will provide the locations for 100 trees the City identifies as being diseased, declining, pose a risk to human health, and/or are dead.
- The City will provide a minimum of one picture for each tree location provided for removal. The picture(s) must demonstrate the justification for removal. Picture(s) must be uploaded via ArborAccess to the correct tree site.
- WCA, Inc. must conduct final grant funded tree evaluations based on the locations provided by the City. Should a tree that is evaluated by WCA, Inc. not meet the grant requirements for removal, grant funds will not be used to remove the tree. For a tree to meet grant requirements for removal, it must be diseased, declining, pose a risk to human health, and/or are dead.
- WCA, Inc. will conduct all tree removals funded by this grant in the City at no cost to the City.
- All trees removed and replanted will adhere to ANSI A300 standards.
  - The City understands that the grant does not cover the cost of amended soil or turf replacement.
  - The City understands that where feasible, WCA, Inc. will repurpose wood for greater use.
- WCA, Inc. Street Tree Revival Program will utilize some salvageable urban wood to make products for the City to accept as a donation.
- The City will plant two times the number of trees removed by this grant, or approximately 200 trees, whichever number is greater. It is the responsibility of the City to report the location of the trees and other minimum data attributes for compliance with grant guidelines. All trees will be planted by City of Costa Mesa. The trees planted must adhere to CAL FIRE's grant guidelines and must be of the species agreed upon with WCA, Inc. The City will be responsible for the costs associated with all tree planting required by this grant. The City cannot use other funds from CAL FIRE's Urban and Community Forestry grant program to meet the planting requirements set forth by this MOU.
- The City shall ensure sufficient irrigation to grant-funded trees to maintain optimal health and growth through the establishment period. All tree maintenance is to be performed to the satisfaction of the CAL FIRE Urban Forestry representative.
- The City will add the newly planted trees to their current watering cycle, inventory system and maintenance plans for the trees' lifetime. The City will be responsible for all the costs associated with the trees that are planted for the purposes of this grant. Associated maintenance costs include routine trimming, plant health care, and tree removal.
- The City will provide WCA, Inc. with its current tree maintenance standards, tree related municipal codes, policies, etc. that pertain to current plans of tree care for analysis. The City understands that its tree maintenance policies or lack of, will be reviewed by WCA, Inc. at WCA, Inc.'s cost to identify areas for improved maintenance.
- The City will adopt or modify its policies to represent the California Urban Forests Council's (CaUFC) *Urban Forest Management Plan Template*, where applicable.
- The City staff that oversees the public urban forest will meet with CaUFC and WCA, Inc. a minimum

of four times by March 30, 2023 to discuss its tree maintenance policies, identify areas of improvement, and formulate improvement plans for senior staff and/or City Council to consider.

- The City agrees to provide a facility suitable for an urban forest management related workshop to be conducted by WCA, Inc. for a maximum of three hours. A suitable facility shall include audio and visual capabilities, tables, and chairs for participants to utilize, table for giveaways and refreshments, and parking for vehicles available. A suitable facility shall be large enough to accommodate at least 30 and up to 50 participants.
- The City agrees to help CaUFC and WCA, Inc. circulate educational materials on healthy urban forests, where applicable. The local community group partner will post “Tree Posters” on each tree to be removed as a notice. The project flyer will be created by CaUFC and WCA, Inc., and approved by the City.
- The City agrees to utilize its social media platforms and City newsletter, in a manner and to the extent approved by the City, a minimum of four times to display material relating to the CFR 2.0 project. Material may include tree benefit statistics, links to learn more about the project and urban forestry. WCA, Inc. will create all outreach material and understands that there may be multiple revisions done prior to publishing.
- The City agrees to host a collaborative tree planting event or Arbor Day with assistance from the local community group, WCA, Inc., Western Chapter of the International Society of Arboriculture (WCISA), and CaUFC in the spirit of this grant by March of 2024. The volunteer driven Arbor Day event will have a theme on the benefits of trees and the end of life use, as well as education on pest issues in the urban forest. A portion of the tree plantings as replacements for removals for this grant must be done at this Arbor Day event. At this event, the City will provide CaUFC and WCA, Inc. the opportunity to display a booth and discuss the project with community members.
- The City is responsible for procuring a sign and installing the sign at the location of the Arbor Day tree planting event for the duration of the grant. A California Climate Investments and CAL FIRE approved template will be provided. CaUFC will provide the City the sign template that adheres to the usage of logos outlined in Appendix F of the 2019/2020 CAL FIRE Urban and Community Forestry Procedural Guidelines.
- Should a tree planted by the City die within the grant period, the City is responsible for replanting a tree of similar characteristics to ensure the obligation of the 2 for 1 replacement, and similarly report new tree data on trees as they are replaced.
- Grant funded tree removals by WCA, Inc. will not be performed until the City is able to provide streets/parks, species, and a start date for when the replacement trees will be planted.
- WCA, Inc. will host Urban Wood Open Houses in the Street Tree Revival Shop at their Anaheim offices, for local community groups, students, and volunteers throughout the grant period in compliance with COVID-19 restrictions.
- Depending on COVID-19 local public health restrictions and regulations of the City, the public events such as workshops, trainings, and volunteer tree planting events could be changed to meet those requirements.
- Any required reports or paperwork from City partners must be submitted by February 29, 2024, at the latest.

### Timeline

- The grant period is from September 1, 2020 to March 30, 2024.

All parties agree that the CFR 2.0 project will be completed by March 30, 2024, though periodic benchmarks may be set through the scope of work to support on-time project completion.

### Relationship of Parties

Each Party acknowledges and agrees that it is an independent entity from, and not an employee or agent of, any other Party of this MOU.

### Volunteer Indemnification

All volunteers shall sign the program's volunteer liability waiver prior to participating in any events associated with the CFR 2.0 project.

### Indemnification of City

To the full extent permitted by law, CaUFC and WCA, Inc. each agree to indemnify, defend and hold harmless the City, its officers, employees and agents against, and will hold and save them and each of them harmless from, any and all actions, judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, whether actual or threatened, that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work described in this MOU, operations or activities provided herein by CaUFC and/or WCA, Inc., or their officers, employees, agents, subconsultants, or invitees, or any individual or entity for which CaUFC and WCA, Inc. is legally liable, or arising from CaUFC's and/or WCA, Inc.'s reckless or willful misconduct, or arising from CaUFC's and WCA, Inc.'s negligent performance of or failure to perform any term, provision, covenant or condition of this MOU, and in connection therewith:

(a) CaUFC and WCA, Inc. will defend any action or actions filed in connection with any of said claims or liabilities, with counsel chosen by City, and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) CaUFC and WCA, Inc. will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of CaUFC and/or WCA, Inc. hereunder; and CaUFC and WCA, Inc. agree to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against CaUFC and/or WCA, Inc. for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work described in this MOU, operation or activities of provided herein by CaUFC and/or WCA, Inc., CaUFC and WCA, Inc. agree to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

### Assumption of Risk

CaUFC and WCA, Inc. assumes no liability or responsibility for any personal property of the City or of its staff, volunteers, instructors, employees, contractors, consultants, guests, invitees, and agents brought to assist with the CFR 2.0 project, during the term of this MOU. The City assumes no liability or responsibility for any personal property related to the CaUFC and WCA, Inc., or of their staff, volunteers, instructors, employees, contractors, consultants, guests, invitees, and agents brought to assist with the CFR 2.0 project, during the term of this MOU. CaUFC certifies that it has reviewed and agreed to the terms of this MOU.

## Insurance

Prior to undertaking performance of work under this MOU, WCA, Inc., shall maintain and shall require its subcontractors, if any, to obtain and maintain insurance as described below:

- A. Workers' compensation insurance as required by the State of California. WCA, Inc. agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers arising from work performed by WCA, Inc. for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.
- B. Commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit. Said policy shall contain a provision that the same cannot be cancelled without at least thirty (30) days prior written notice thereof to the City. The City, its officers, agents, and employees shall be additional named insureds on such policy.
- C. Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence for bodily injury and property damage. Said policy shall contain a provision that the same cannot be cancelled without at least thirty (30) days prior written notice thereof to the City. The City, its officers, agents, and employees shall be additional named insureds on such policy.
- D. General Provisions. All insurance shall do the following:
  - a. Include City and CaUFC and their elected and appointed officials, employees, and agents as additional insureds with respect to this MOU and the performance of duties in this MOU. The coverage shall contain no special limitations on the scope of its protection to the above-designated insureds.
  - b. Be primary with respect to any insurance or self-insurance programs of the CaUFC and City and their elected and appointed officials, employees, and agents.
  - c. Be evidenced, prior to commencement of services by properly executed policy endorsements in addition to a certificate of insurance.
  - d. No reductions or cancellation in insurance may be made without the written approval of the City's Risk Manager.

## Miscellaneous Terms

- A. Severability. If any term or portion of this MOU is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this MOU shall continue in full force and effect.
- B. Governing Law; Venue. The laws of the State of California shall govern this MOU without regard to principles of conflicts of laws. Any action to enforce or interpret this MOU shall be filed in the Superior Court of Orange County, California.
- C. Integration; Amendments. This MOU represents the entire and integrated MOU between CaUFC, WCA, Inc. and the City with respect to the subject matter hereof, and supersedes all prior negotiations, representations, or agreements, either written or oral with respect thereto. This MOU may be modified or amended only by a subsequent written agreement signed by all Parties.

- D. Attorneys' Fees. If a Party to this MOU brings any action, including an action for declaratory relief, to enforce or interpret the provisions of this MOU, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which such party may be entitled.
- E. Waiver. No waiver of any breach of any covenant or provision of this MOU shall be deemed a waiver of any other covenant or provision hereof, and no waiver shall be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act, and no extension shall be valid unless in writing and executed by the waiving party.
- F. No Third-Party Beneficiaries. Nothing contained in this MOU is intended to or shall be deemed to confer upon any person, other than the Parties, any rights or remedies hereunder.
- G. Assignment. No assignment, subletting, or transfer in whole or in part of this MOU shall be made or shall be effective without the prior written consent of the other Parties.
- H. Headings. The headings of the sections and exhibits of this MOU are inserted for convenience only. They do not constitute part of this MOU and are not to be used in its construction.
- I. Non-Liability of Officials, Employees and Agents. No officer, official, employee or agent of CaUFC and WCA, Inc. shall be personally liable to the City in the event of any default or breach by CaUFC or WCA, Inc. or for any amount which may become due to the City pursuant to this MOU.
- J. Authority. The undersigned expressly represents that he or she is authorized to execute this MOU on behalf of the City and that it meets each of the requirements set forth in the MOU, including but not limited to the insurance and workers compensation requirements.

*We the undersigned agree to this Memorandum of Understanding.*

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Nancy Hughes  
Executive Director  
California Urban Forests Council

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Lori Ann Farrell Harrison  
City Manager  
City of Costa Mesa

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Tim Crothers  
Plant Health Care Manager  
West Coast Arborists, Inc.

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Date Executed

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