

VENDOR AGREEMENT FOR PRODUCTS AND/OR SERVICES
FOR
Willow Tree Pruning

This Agreement is made and entered into as of the _____ day of _____, 20____ by and between the City of Foster City hereinafter called "CITY" and _____ hereinafter called "VENDOR".

RECITALS

This Agreement is entered into with reference to the following facts and circumstances:

- A. That CITY desires to engage VENDOR to provide a product and/or services to the CITY;
- B. That VENDOR is qualified to provide the product and/or services to the CITY and;
- C. That the CITY has elected to engage VENDOR upon the terms and conditions as hereinafter set forth.
 1. A. Services. The services to be performed by VENDOR under this Agreement are set forth in Exhibit A, which is, by this reference, incorporated herein and made a part hereof as though it were fully set forth herein.

Performance of the work specified in said Exhibit A is hereby made an obligation of VENDOR under this Agreement, subject to any changes that may be made subsequently hereto upon the mutual written agreement of the said parties.

Where in conflict, the terms of this Agreement supersede and prevail over any terms set forth in Exhibit A.

B. Product. The product to be supplied by VENDOR under this Agreement is set forth in Exhibit A which is, by this reference, incorporated herein and made a part hereof as though it were fully set forth herein.

Timely delivery of the product specified in said Exhibit A is hereby made an obligation of VENDOR under this Agreement, subject to any changes that may be made subsequently hereto upon the mutual written agreement of the said parties.

2. Term; Termination. (a) The term of this Agreement shall commence upon the date hereinabove written and shall expire upon the date enumerated in

Exhibit A, delivery of the product or completion of performance of services hereunder by VENDOR, whichever date shall first occur.

(b) Notwithstanding the provisions of (a) above, either party may terminate this Agreement without cause by giving written notice not less than thirty (30) days prior to the effective date of termination, which date shall be included in said notice. CITY shall compensate VENDOR for any product delivered and/or for services rendered, and reimburse VENDOR for costs and expenses incurred, to the date of termination, calculated in accordance with the provisions of paragraph 3. In ascertaining the services actually rendered to the date of termination, consideration shall be given both to completed work and work in process of completion. Nothing herein contained shall be deemed a limitation upon the right of CITY to terminate this Agreement for cause, or otherwise to exercise such rights or pursue such remedies as may accrue to CITY hereunder.

3. Compensation; Expenses; Payment. CITY shall compensate VENDOR for all products supplied or services performed by VENDOR hereunder as shown in Exhibit B attached hereto and by this reference incorporated herein.

Notwithstanding the foregoing, the combined total of compensation and reimbursement of costs payable hereunder shall not exceed the sum

Compensation and reimbursement of costs and expenses hereunder shall be payable upon VENDOR meeting contract milestones as defined in Exhibit B. Billing shall include an itemized statement, briefly describing by task and labor category or cost/expense items billed.

4. **Additional Services.** In the event CITY desires the delivery of additional products or performance of additional services not otherwise included within Exhibit A, such products or services shall be authorized in advance by CITY's City Manager (for contracts less than \$50,000) or City Council (for contracts \$50,000 or more) by motion duly made and carried. Such amendment to this Agreement shall include a description of the product to be delivered or services to be performed thereunder, the maximum compensation and reimbursement of costs and expenses payable therefor, the time of performance thereof, and such other matters as the parties deem appropriate. Except to the extent modified by written

amendment, all other terms and conditions of this Agreement shall be deemed incorporated in each such amendment.

5. Records. VENDOR shall keep and maintain accurate records of products delivered or of all time expended in performing services and costs and expenses incurred relating thereto. Said records shall be available to CITY for review and copying during regular business hours at VENDOR's place of business or as otherwise agreed upon by the parties.
6. Authorization. This Agreement becomes effective when endorsed by both parties in the space provided below.
7. Documents. All documents, plans, drawings, renderings, and other papers, or copies thereof, as finally rendered, prepared by VENDOR pursuant to the terms of this Agreement, shall, upon preparation and delivery to CITY, become the property of CITY
8. Relationship of Parties. It is understood that the relationship of VENDOR to the CITY is that of an independent contractor and all persons working for or under the direction of VENDOR are its agents or employees and not agents or employees of the CITY.
9. Schedule. VENDOR shall adhere to the schedule set forth in Exhibit A; provided, that CITY shall grant reasonable extensions of time for the delivery of products or performance of services occasioned by governmental reviews of VENDOR's work product or other unavoidable delays; provided, further, that such unavoidable delay shall not include strikes, lockouts, work stoppages, or other labor disturbances conducted by, or on behalf of, VENDOR's officers or employees.

VENDOR acknowledges the importance to CITY of timely delivery of products or services and agrees to put forth its best professional efforts to perform in a manner consistent with that schedule.

10. Indemnity. To the fullest extent allowed by law, VENDOR hereby agrees to defend, indemnify, and save harmless CITY and Estero Municipal Improvement District, its Council, boards, commissions, officers, employees and agents, from and against any and all claims, suits, actions liability, loss, damage, expense, cost (including, without limitation, costs and fees of litigation) of every nature, kind or description, which may be brought against, or suffered or sustained by, CITY or Estero Municipal Improvement District, its Council, boards, commissions, officers, employees or agents caused by, or alleged to have been caused by, the negligence, intentional tortious act or omission, or willful misconduct of VENDOR, its officers, employees, subcontractors or agents in the performance of any services or work pursuant to this Agreement.

The duty of VENDOR to indemnify and save harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code; provided, however, that nothing herein contained shall be construed to require VENDOR to indemnify CITY and Estero Municipal Improvement District, its Council, boards, commissions, officers, employees and agents against any responsibility or liability in contravention of Section 2782 of the California Civil Code.

VENDOR's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law.

The defense and indemnification obligations of this agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained within this Agreement.

11. Insurance. VENDOR shall acquire and maintain Workers' Compensation, employer's liability, commercial general liability, owned and non-owned and hired automobile liability insurance coverage relating to VENDOR's services to be performed hereunder covering CITY's risks in form subject to the approval of the City Attorney and/or CITY's Risk Manager. The minimum amounts of coverage corresponding to the aforesaid categories of insurance per insurable event shall be as follows:

| <u>Insurance Category</u> | <u>Minimum Limits</u> |
|------------------------------|--|
| Workers' Compensation | statutory minimum |
| Employer's Liability | \$1,000,000 per accident for bodily injury or disease |
| Commercial General Liability | \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, personal injury and property damage |
| Automobile Liability | \$1,000,000 per accident for bodily injury and property damage (coverage required to the extent applicable to VENDOR's vehicle usage in performing services hereunder) |

It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum

insurance coverage requirements and/or limits shall be available to the CITY as an Additional Insured. Furthermore, the requirements for coverage and limits shall be the greater of either (1) the minimum coverage and limits specified in this Agreement or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named Insured.

VENDOR agrees to include with all subcontractors in their subcontracts the same requirements and provisions of this agreement including the indemnity and insurance requirements to the extent they apply to the scope of the subcontractor's work. Subcontractors hired by VENDOR shall agree to be bound to VENDOR and CITY in the same manner and to the same extent as VENDOR is bound to CITY under this Agreement and its accompanying documents. Subcontractors shall further agree to include these same provisions with any sub-subcontractors. A copy of the indemnity and insurance provisions of this Agreement will be furnished to the Subcontractor upon request. VENDOR shall require all subcontractors to provide a valid certificate of insurance and the required endorsements included in the subcontract agreement and will provide proof of compliance to the CITY prior to commencement of any work by the subcontractor.

Concurrently with the execution of this Agreement, VENDOR shall, on the Insurance Coverage form provided in Exhibit D, or equivalent, furnish CITY with certificates and copies of all declaration and endorsement pages for the insurance policy or policies required hereunder. With respect to commercial general liability and automobile liability insurance coverage, VENDOR must obtain and provide the following original endorsements:

- (a) Precluding cancellation or reduction in per occurrence limits before the expiration of thirty (30) days (10 days for nonpayment) after CITY shall have received written notification of cancellation in coverage or reduction in per occurrence limits by first class mail;
- (b) Naming the CITY and Estero Municipal Improvement District, its Council, officers, boards, commissions, employees, and agents, as additional insureds; and
- (c) Providing the additional insured coverage under VENDOR's insurance policy shall be primary and non-contributory insurance with respect to CITY and Estero Municipal Improvement District, its Council, officers, boards, commissions, employees, and agents, and any insurance or self-insurance maintained by CITY for itself, its Council, officers, boards, commissions, employees, or agents shall be in excess of VENDOR's insurance and not contributory

with it. VENDOR and its insurer may not seek contribution from CITY's insurance or self-insurance.

The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of CITY, to the extent required by this Agreement, before the CITY's insurance or self-insurance may be called upon to protect CITY as a named Insured.

All self-insured retentions (SIR) must be disclosed to CITY for approval and shall not reduce the limits of liability coverage. Policies containing SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named VENDOR/Named Insured or CITY.

CITY reserves the right to obtain a full certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Any and all Subcontractors shall agree to be bound to VENDOR and CITY in the same manner and to the same extent as VENDOR is bound to CITY under this Agreement. Subcontractors shall further agree to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, in any agreement with sub-subcontractors to the extent that they apply to the scope of the sub-subcontractor's work. A copy of the indemnity and insurance provisions of this Agreement shall be furnished to any subcontractor upon request.

VENDOR shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five (5) years following completion of this project or service. In the event VENDOR fails to obtain or maintain completed operations coverage as required by this Agreement, the CITY at its sole discretion may purchase the coverage required and the cost will be paid by VENDOR.

12. **WORKERS' COMPENSATION.** VENDOR certifies that he is aware of the provisions of the Labor Code of the State of California which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and VENDOR certifies that he will comply with such provisions before commencing the performance of the work of this agreement.
13. **NON-DISCRIMINATION.** The VENDOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The VENDOR will take affirmative action to ensure that

applicants are employed and the employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, advancement, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The VENDOR shall at all times be in compliance with the requirements of the Federal Americans With Disabilities Act (Public Law 101-336) which prohibits discrimination on the basis of disability by public entities. The VENDOR agrees to post in conspicuous places available to employees and applicants for employment any notices provided by the CITY setting forth the provisions of this non-discrimination clause.

14. Notice. All notices required by this Agreement shall be given to the CITY and VENDOR in writing, by first class mail, postage prepaid, addressed as follows:

CITY: City of Foster City
 610 Foster City Boulevard
 Foster City, CA 94404-2299
 Attention: Frank Fanara

VENDOR: Name _____
 Address _____
 City, State, Zip _____
 Attention: _____
 Email Address: _____

15. Non-Assignment. This Agreement is not assignable either in whole or in part.
16. Amendments. This Agreement may be amended or modified only by written agreement signed by both parties.
17. Validity. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
18. Governing Law. This Agreement shall be governed by the laws of the State of California and any suit or action initiated by either party shall be brought in the County of San Mateo, California. In the event of litigation between the parties hereto to enforce any provision of the Agreement, the unsuccessful party will pay the reasonable attorney's fees and expenses of litigation of the successful party.

19. Mediation. Should any dispute arise out of this Agreement, the parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. Neither party shall be permitted to file legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution. The costs of the mediator, if any, shall be paid equally by the parties. If a mediated settlement is reached neither party shall be deemed the prevailing party for purposes of the settlement and each party shall bear its own legal costs.
20. Conflict of Interest. VENDOR may serve other clients, but none who are active within the City of Foster City or who conduct business that would place VENDOR in a "conflict of interest" as that term is defined in State law.
21. Entire Agreement. This Agreement, including Exhibits A, B C, D, and E, comprises the entire Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first above written by their respective officers duly authorized in that behalf.

CITY OF FOSTER CITY

Dated: _____

_____, City Manager
(for contracts less than \$50,000)
[REMOVE signature line if \$50,000 or more]

Dated: _____

Sanjay Gehani, Mayor
(for contracts \$50,000 or more)
[REMOVE signature line if less than \$50,000]

ATTEST:

Dated: _____

Priscilla Schaus, City Clerk

APPROVED AS TO FORM

Dated: _____

Jean B. Savaree, City Attorney

VENDOR

Dated: _____

Type Name & Title of VENDOR Authorized to
Sign

EXHIBIT A

SCOPE OF WORK and SCHEDULE FOR Willow Tree Pruning

Scope of Deliverables:

Scope of Services: Pruning of seventy (70) Willow trees located in various city parks depicted in Exhibit C. Term of the agreement is for one year.

EXHIBIT B

VENDOR'S FEES and PAYMENT MILESTONES

Summary

Total Contract Services

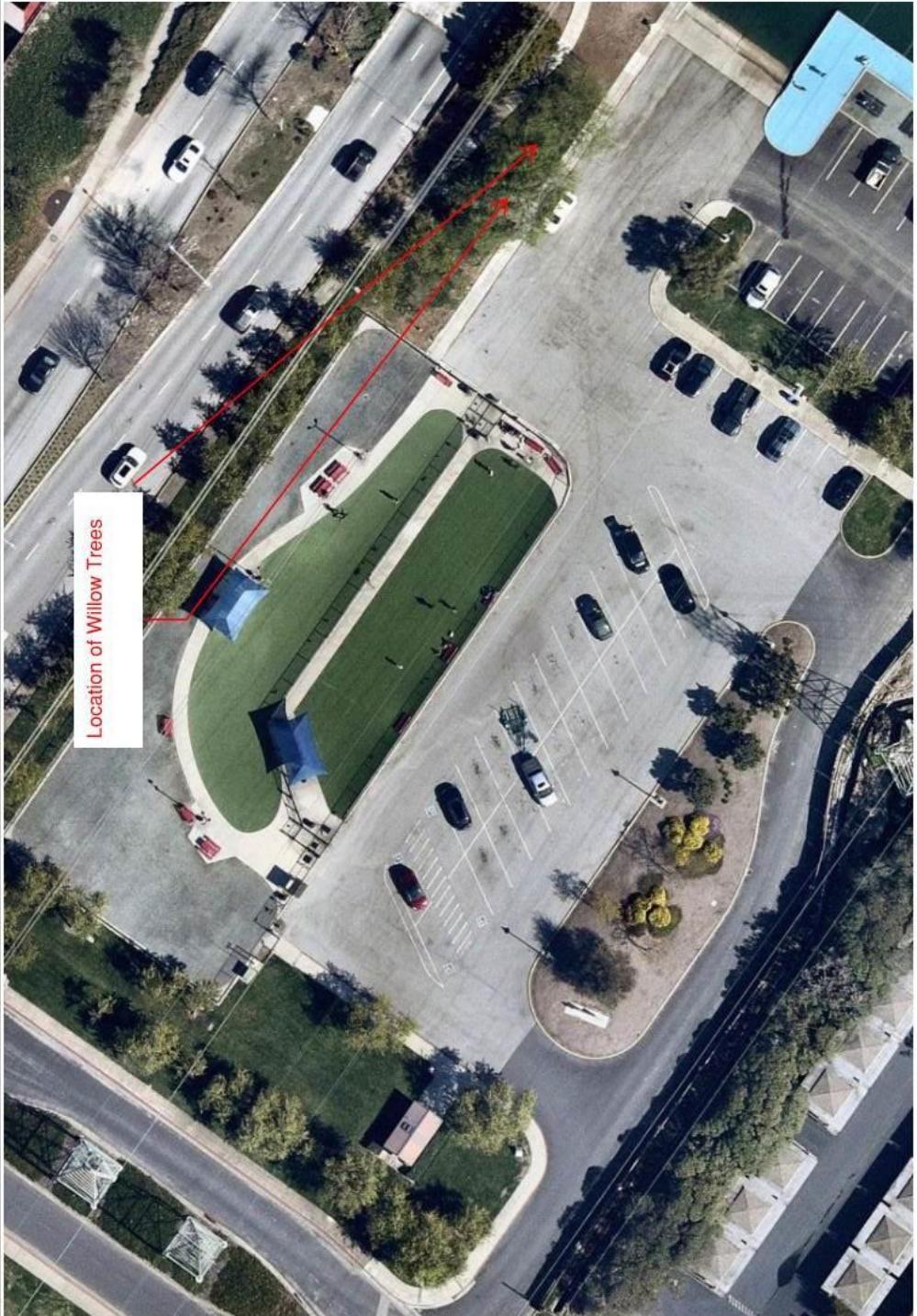
Itemized Fees

Project Payment Schedule: Lump Sum Payment upon Completion

| Site | Number of Trees to be Pruned | Proposed Cost |
|---------------------------------|-------------------------------------|----------------------|
| Boothbay (Tennis Courts) | 10 | |
| Farragut | 10 | |
| Port Royal | 4 | |
| Edgewater | 3 | |
| Gateshead | 4 | |
| Sea Cloud | 1 | |
| Marlin | 1 | |
| Ryan | 12 | |
| Gull | 2 | |
| Boat | 2 | |
| Shad | 2 | |
| Rec Center | 7 | |
| Teen Center | 4 | |
| Ketch | 4 | |
| Erckenbrack | 3 | |
| Total | 69 | |

EXHIBIT C
ADDITIONAL TERMS and CONDITIONS

Willow Tree Location Maps



| | | |
|---------------------|----------------|--|
| City of Foster City | Date: 4/1/2021 | Drawing Title: Willow Tree Map |
| | Scale: NTS | Project: Willow Tree Pruning Boat Park |



| | | |
|---------------------|----------------|---------------------------------------|
| City of Foster City | Date: 4/1/2021 | Drawing Title: Willow Tree Map |
| Scale: NTS | | Project: Willow Tree Boothbay Park |



| | | |
|---------------------|----------------|--|
| City of Foster City | Date: 4/1/2021 | Drawing Title: Willow Tree Map |
| | Scale: NTS | Project: Willow Tree Edgewater Park |



City of Foster City

Date: 4/1/2021

Scale:
NTS

Drawing Title:
Willow Tree Map

Project:
Willow Tree Pruning
Erckenbrack Park



City of Foster City

Date: 4/1/2021

Drawing Title:
Willow Tree Map

Scale:
NTS

Project:
Willow Tree Pruning
Farragut Park

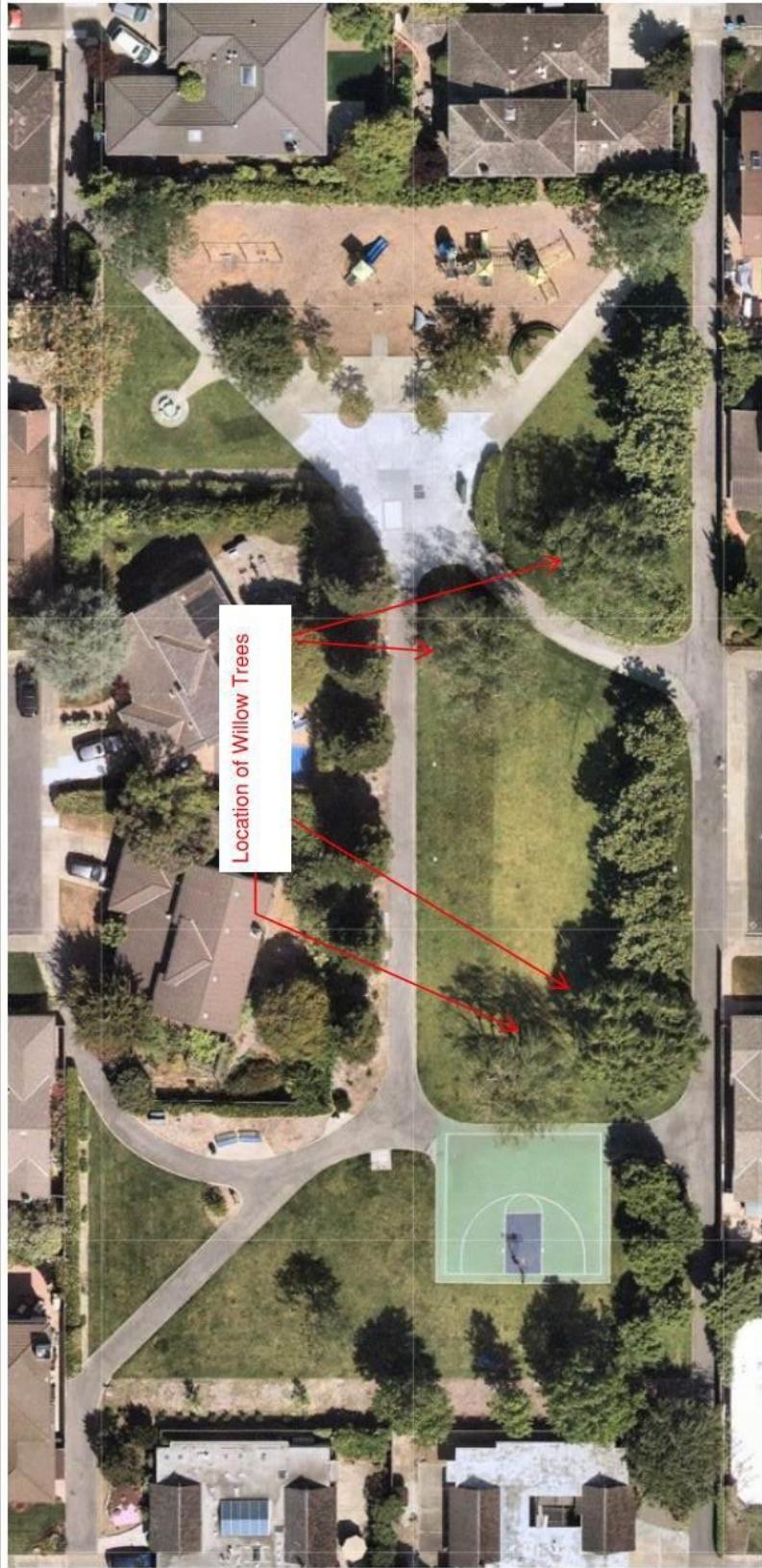


City of Foster City

Date: 4/1/2021
Scale:
NTS

Drawing Title:
Willow Tree Map

Project:
Willow Tree Gull Park



| | | |
|---------------------|----------------|---|
| City of Foster City | Date: 4/1/2021 | Drawing Title: Willow Tree Map |
| | Scale: NTS | Project: Willow Tree Pruning Ketch Park |
| | | |



City of Foster City

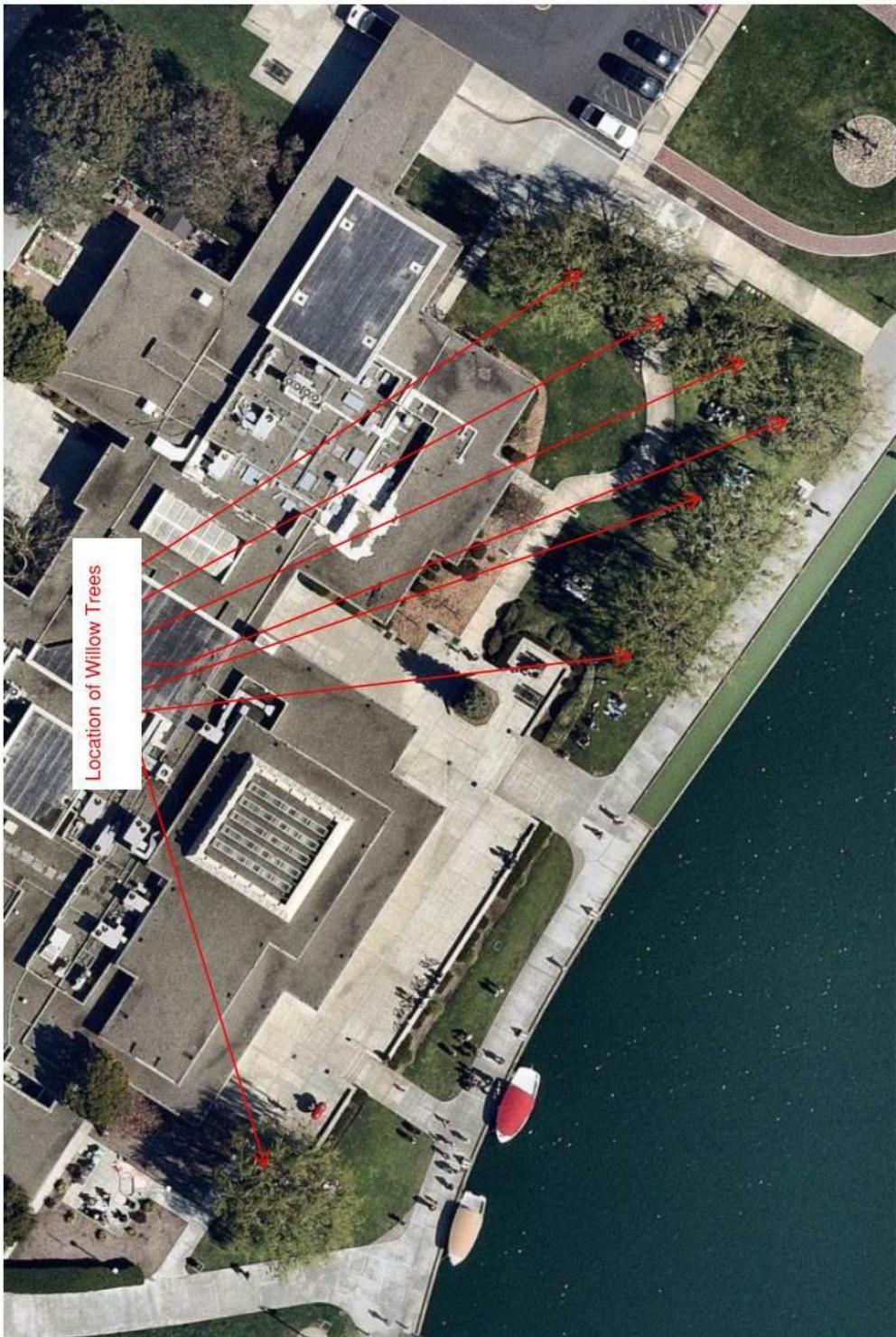
Date: 4/1/2021
Scale:
NTS

Drawing Title:
Willow Tree Map

Project:
Willow Tree Pruning
Marlin Park



| | | |
|---------------------|----------------|---|
| City of Foster City | Date: 4/1/2021 | Drawing Title: Willow Tree Map |
| | Scale: NTS | Project: Willow Tree Port Royal Park |

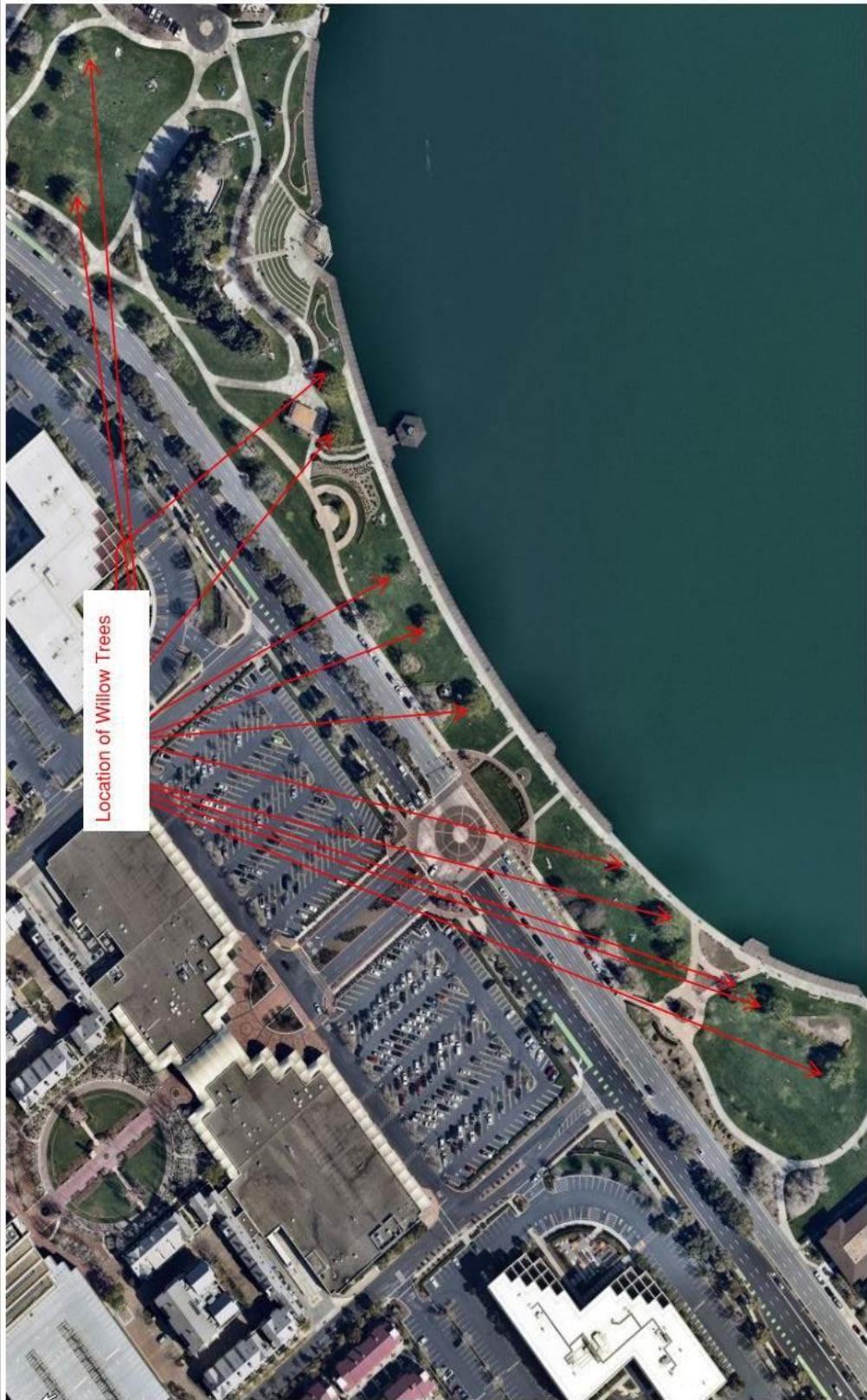


City of Foster City

Date: 4/1/2021
Scale:
NTS

Drawing Title:
Willow Tree Map

Project:
Willow Tree Pruning Recreation
Center at Ryan Park



City of Foster City

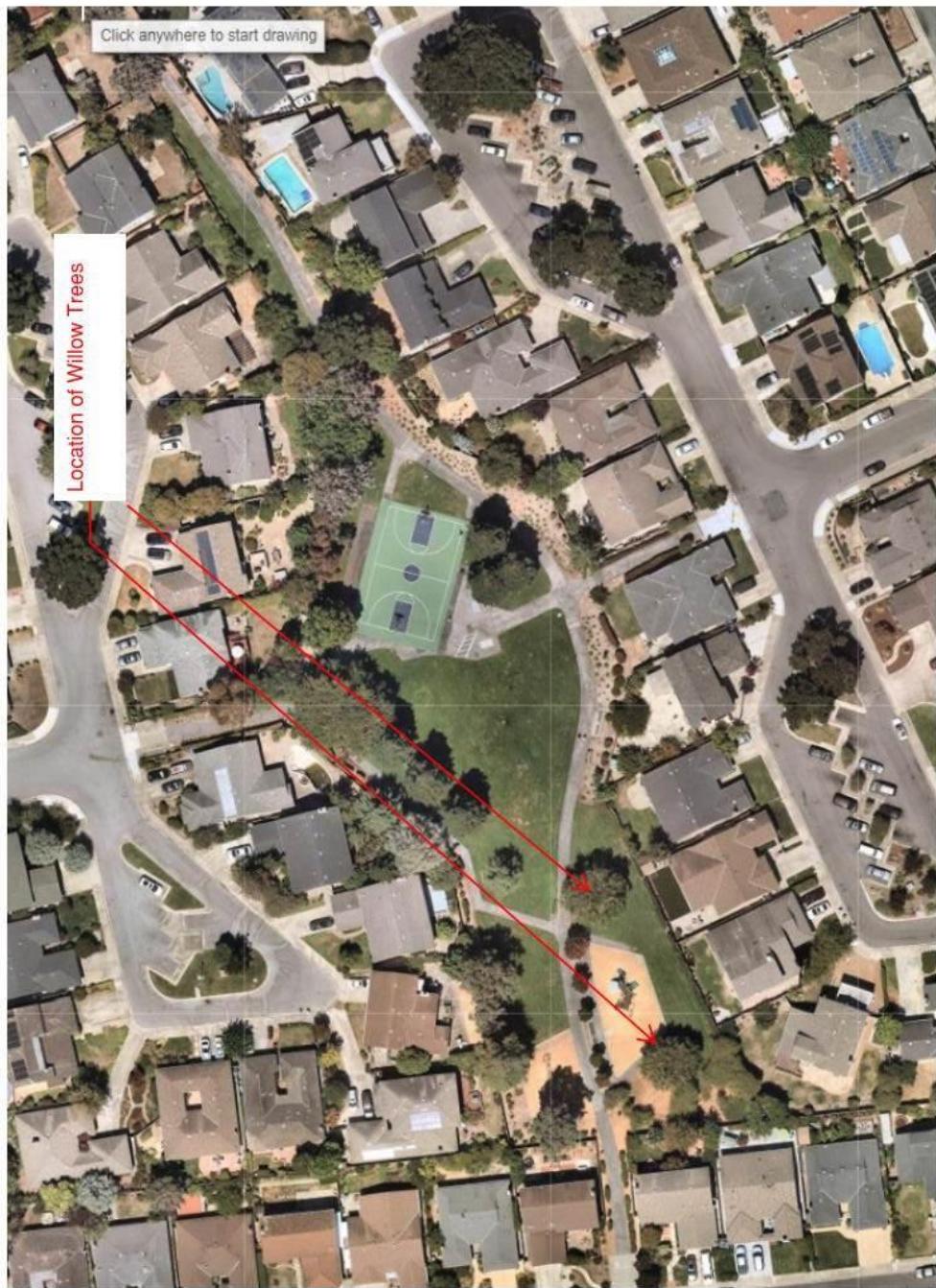
Date: 4/1/2021
Scale:
NTS

Drawing Title:
Willow Tree Map

Project:
Willow Tree Ryan Park



| | | |
|---------------------|----------------|-----------------------------------|
| City of Foster City | Date: 4/1/2021 | Drawing Title: Willow Tree Map |
| | Scale: NTS | Project: Willow Tree Pruning |



City of Foster City

Date: 4/1/2021
Scale:
NTS

Drawing Title:
Willow Tree Map

Project:
Willow Tree Pruning
Shad Park



| | | |
|---------------------|----------------|---|
| City of Foster City | Date: 4/1/2021 | Drawing Title: Willow Tree Map |
| | Scale: NTS | Project: Willow Tree Pruning Teen Center at Ryan Park |

EXHIBIT D

This INSURANCE COVERAGE FORM modifies or documents insurance provided under the following:

Named Insured: _____

Effective Work Date(s): _____

Description of Work/Locations/Vehicles: _____

ADDITIONAL INSURED: **City of Foster City/Esterio Municipal Improvement District (CITY)**

610 Foster City Boulevard, Foster City, CA 94404

Attention: _____

Contract Administrator

Endorsement and Certificates of Insurance Required

The Additional Insured, its elected or appointed officers, officials, employees and volunteers are included as insureds with regard to damages and defense of claims arising from: (Check all that apply)

| | Insurer | Policy No. |
|---|----------------|-------------------|
| <input type="checkbox"/> General Liability: (a) activities performed by or on behalf of the Named Insured, (b) products and completed operations of the Named Insured, (c) premises owned, leased occupied or used by the Named Insured, and/or (d) permits issued for operations performed by the Named Insured. {Note: MEETS OR EXCEEDS ISO Form # CG 20 10 11 85} | | |
| <input type="checkbox"/> Auto Liability: the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Named Insured, regardless of whether liability is attributable to the Named Insured or a combination of the Named Insured and the Additional Insured, its elected or appointed officers, officials, employees or volunteers. | | |
| <input type="checkbox"/> Other: | | |
| Certificates of Insurance Required (no endorsement needed) (Check all that apply) | Insurer | Policy No. |
| <input type="checkbox"/> Workers Compensation: work performed by employees of the Named Insured while those employees are engaged in work under the simultaneous directions and control of the Named Insured and the Additional Insured. | | |
| <input type="checkbox"/> Professional Liability: | | |

PRIMARY/NON-CONTRIBUTORY: This insurance is primary and is not additional to or contributing with any other insurance carried by or for the benefit of Additional Insureds.

SEVERABILITY OF INTEREST: The insurance afforded by this policy applies separately to each insured who is seeking coverage or against whom a claim is made or a suit is brought, except with respect to the insurer's limit of liability.

PROVISIONS REGARDING THE INSURED'S DUTIES AFTER ACCIDENT OR LOSS: Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the Additional Insured, its elected or appointed officers, officials, employees, or volunteers.

CANCELLATION NOTICE. The insurance afforded by this policy shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice (ten (10) days if canceled due to non-payment) by regular mail return receipt requested has been given to the Additional Insured. Such notice shall be addressed as shown above.

WAIVER OF SUBROGATION: The insurer(s) named above agree to waive all rights of subrogation against the CITY, its elected or appointed officers, officials, agents, volunteers and employees for losses paid under the terms of this policy which arise from work performed by the Named Insured for the CITY.

Nothing herein contained shall vary, alter or extend any provision or condition of the Policy other than as above stated.

SIGNATURE OF INSURER OR AUTHORIZED REPRESENTATIVE OF THE INSURER

I, _____ (print/type name), warrant that I have authority to bind the above-named insurance company and by my signature hereon do so bind this company.

SIGNATURE OF AUTHORIZED REPRESENTATIVE (original signature required)

ORGANIZATION: _____ **TITLE:** _____

ADDRESS: _____

TELEPHONE: () _____

DATE ISSUED: _____

Exhibit E
SPECIAL TERMS and CONDITIONS