

Memorandum of Understanding

The following Memorandum of Understanding (“MOU”) is between the California Urban Forests Council (“CaUFC”), West Coast Arborists, Inc. (“WCA, Inc.”) and the City of Merced (“City”), regarding CIRCLE 4 – AMPLIFY the Urban Forest (“CIRCLE 4”) 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.

CIRCLE 4

The CIRCLE 4 project is an Invest From the Ground Up Campaign under the CaUFC. The CaUFC has partnered with WCA, Inc. and cities throughout California to improve the urban forests. CIRCLE 4 is funded through CAL FIRE’s Urban Forest and Community Grant Program. CIRCLE 4 will plant trees and deliver a full program on urban forestry to the community.

Interested Parties

The CaUFC, CaUFC’s partners, WCA, Inc., and the City agree to work cooperatively on the CIRCLE 4 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 CIRCLE 4 project and is responsible for program management and tree removal activities.

For purposes of this MOU, there are three major contributors to this process: Nancy Hughes representing CaUFC, David Pineda representing WCA, Inc., Juan Olmos representing the City.

Duties and Responsibilities

CaUFC, the CaUFC’s partners, 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 partner 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 CIRCLE 4 project within the City of Merced 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 cause, by giving the other parties thirty (30) days written notice to terminate. This MOU supersedes all previous agreements pertaining to the subject-matter of this MOU whether such previous agreement was written or oral.

Scope of Work

The scope of work describes the agreed upon project activities. The scope of work for the CIRCLE 4 project is set forth as follows:

1. CaUFC will provide the City approximately 65, 15-gallon trees which will include stock and labor to ensure proper installation by volunteers and WCA, Inc.
2. The City will provide the GPS locations and tree species for all trees to be planted for this grant by January 1st, 2022. The City will provide support for DigAlert delineation.
3. The City will select species from a predetermined list provided by WCA, Inc. The City agrees to incorporate underutilized, climate appropriate species. The list will be provided by May of 2021.
4. The City will aid the CaUFC and WCA, Inc. to host a tree planting event March 12, 2022 to coincide with the statewide effort to plant 2,000 trees in one day.
5. CaUFC, WCA, Inc., the City, and a local community group will join efforts to engage and deliver an educational tree workshop and tree planting event to the community and other local interested volunteers.
6. The City agrees to promote the tree workshop and tree planting event through existing City resources, including social media accounts.
7. The City will provide event logistic support, including pre-digging holes, staging trees day of event, and water resources day of tree planting. All associated costs are incumbent to the city.
8. The City agrees to provide tree care through incorporating new trees in management and maintenance plan activities, this includes protection from vandalism. This includes watering newly planted trees as soon as they are installed All associated costs are incumbent to the city.
9. The City will provide a facility suitable for a community workshop session regarding trees and urban forestry in the weeks prior to the tree planting event. Programming will be provided by WCA, Inc.
10. The City is responsible for procuring a sign and installing the sign for the duration of the grant. A California Climate Investments and CAL FIRE approved template will be provided by WCA, Inc.

11. WCA, Inc. will conduct post-plant monitoring to ensure the trees establish properly. This includes a structural prune one year after planting. The City is expected to respond to the recommendations made from the monitoring, in order to improve the tree's health.
12. CaUFC will provide funding for a limited amount of tree replacements for dead trees. If mortality is greater than what can be replaced by CaUFC grant funds, the City shall replace the dead trees at their own expense within the grant period.
13. The City will report trackable match time and hours to WCA, Inc. as necessary. There is no minimum requirement for match time and hours.

Timeline

The grant period is from August 2020 to March 2024. All parties agree that the CIRCLE 4 project will be completed by March 31, 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 Project.

Indemnification of Parties

To the full extent permitted by law, each party agrees to indemnify, defend and hold harmless each other's party, and their officers, employees and officials from and against any and all actions, (judicial, administrative, arbitration or regulatory) claims or demands, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, including attorney fees and costs incurred in defense thereof, that may be asserted or claimed by any person, firm or entity, arising out of or in connection with any negligent act or omission or willful misconduct during the course of its participation in the CIRCLE 4 Project.

Assumption of Risk

CaUFC and WCA, Inc. assumes no liability or responsibility for any personal property of the City or of their staff, volunteers, instructors, employees, contractors, consultants, guests, invitees, and agents brought to assist with the CIRCLE 4 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 CIRCLE 4 project, during the term of this MOU. CaUFC certifies that it has reviewed and agreed to the terms of this MOU.

Insurance

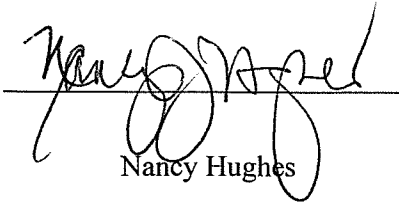
Prior to undertaking performance of work under this MOU, WCA, Inc., shall maintain and shall require its subcontractors, if any, to obtain and maintain insurance as described below:

Evidence of workers' compensation insurance as required by law. WCA, Inc. shall always maintain, where required by law, workers' compensation insurance, and shall hold the City, and does hereby hold the City, free and harmless from all liability which may arise by reason of injury to any employee of the WCA, Inc. during performing any work or labor under this MOU.

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 respective county court office.
- 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 both 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 CaUFC and WCA, Inc.
- H. 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.
- I. 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.



Nancy Hughes

Executive Director

California Urban Forests
Council

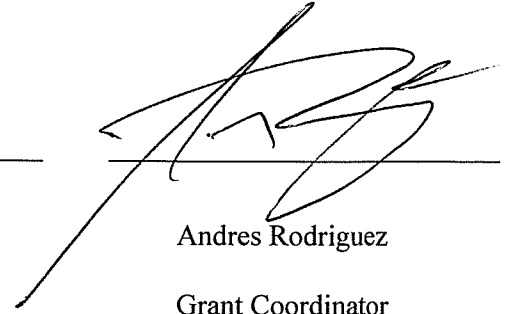
Date Executed:

Stephanie Dietz

City Manager

City of Merced

Date Executed:



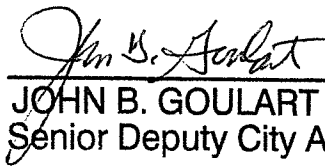
Andres Rodriguez

Grant Coordinator

West Coast Arborists

Date Executed:

APPROVED AS TO FORM:

 4-22-21
JOHN B. GOULART Date
Senior Deputy City Attorney