

SETTLEMENT AGREEMENT

This Settlement Agreement and Release (“Agreement”) is made and entered into this 16th day of October, 2012, by and between the City of Redlands (“City”), and the Redlands Seventh-Day Adventist Church and Southeastern California Conference of Seventh-day Adventists (together “Church”). The City and the Church are sometimes individually referred to herein as a “Party” and, together, as the “Parties.”

RECITALS

This Agreement is made and entered into by the Parties with reference to the following facts:

- A. The Redlands Seventh-Day Adventist Church is located at 520 Brookside Avenue, Redlands, California (the “Facility”).
- B. On June 23, 2009, the Church received approval of a Conditional Use Permit No. 946 (“CUP”) to expand the Church’s Facility.
- C. On August 31, 2012, during construction of the Facility pursuant to the CUP, the Church caused two City–owned coast redwood trees (the “Cut Trees”) to be cut and removed from City right-of-way.
- D. On September 18, 2012, the City and the Church began negotiations to resolve the dispute caused by the Church’s removal of the Cut Trees.
- E. By this Agreement, the City and the Church desire to settle their dispute with respect to the Church’s removal of the Cut Trees, and intend to reach a full and complete settlement of the dispute on the terms and conditions set forth below.

AGREEMENT

In consideration of the mutual promises contained herein, and for such other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The Church agrees to pay for the items set forth on Exhibit “A,” which is attached hereto and made a part hereof. If any of the items set forth on Exhibit “A” are unavailable, or because infeasible for the Parties to carry out, the Parties will negotiate in good faith to achieve a result close to the goal set forth in Exhibit “A.” The Church acknowledges and agrees that the costs attributable to the items listed in Exhibit “A” are estimates only, and do not represent the actual costs that the City may incur in connection with the purchasing, transporting, planting and maintenance of the Replacement Trees. The Church agrees to pay the City’s actual costs for each of the items listed in Exhibit “A” within ten (10) calendar days of the City’s presentation to the Church of a written invoice evidencing the City’s actual costs for such items.

2. The Church agrees to be solely responsible for the City's costs of purchasing, transporting and planting two mature coast redwoods in City right-of-way adjacent to the Facility (the "Replacement Trees"). The vendor, transporter and planter of the Replacement Trees shall be selected by the City and under the City's control. The Church agrees to be solely responsible for the costs of an eighteen (18) month warranty for the Replacement Trees and the corresponding maintenance plan from the vendor. The selection and planting of the Replacement Trees shall be under the supervision of an arborist selected by the City, which expense shall also be borne by the Church.

3. Upon satisfaction of all of the Church's obligations created by or arising out of this Agreement, the City agrees that (i) it will seek no compensation from the Church other than what is contemplated by the Agreement in connection with the Church's removal of the Cut Trees; (ii) that the Church shall have no liability if the Replacement Trees fail to thrive; and (iii) that the City will not initiate an action to revoke the CUP based on the Church's removal of the Cut Trees.

4. Within five (5) calendar days of the Effective Date of this Agreement, the City agrees to dismiss the Non-Traffic Citation No. G-109798 in the interest of justice.

RELEASES

5. Upon satisfaction of all of the Church's obligations created by or arising out of this Agreement, the City, on behalf of itself and each of its past, present and future agents, representatives, successors and assigns, assignees, and/or each person or entity acting or purporting to act for them, or on their behalf (collectively, the "Releasers") unconditionally and irrevocably remise, release, and forever discharge the Church and each of its respective past, present and future divisions, subdivisions, companies, subsidiaries, affiliates, departments, managers, licensees, sub licensees, trustees, creditors, partners, joint venturers, principals, officers, members, directors, employees, agents (except for Roseberry Tree Service), representatives, attorneys, predecessors, successors, assigns, assignees, administrators and each person or entity acting or purporting to act for the Church (collectively, the "Releasees") of and from any and all claims, demands, damages, debts, liabilities, accounts, obligations, costs, expenses, liens, actions and causes of action of every kind and nature whatever, whether now known or unknown, suspected or unsuspected, which the City now has, owns or holds, or at any time previously, had owned or held, against any of the Releasees, based upon or related to the Church's removal of the Cut Trees or the CUP which could have been raised concerning revocation of the CUP (which are collectively referred to as the "Released Matters").

6. The City acknowledges that it is familiar with California Civil Code section 1542 which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

The City waives and relinquishes any rights or benefits which it has or may have under California Civil Code section 1542.

7. This Agreement is entered into by the Parties freely and voluntarily, and with and upon the advice of counsel. The City warrants that it has been fully advised by its attorney regarding the advisability of executing this Agreement and with respect to the meaning of California Civil Code section 1542.

GENERAL PROVISIONS

8. The City understands that the Church's reasonable efforts will be applied to the obligations created by this Agreement but that some temporary, inadvertent errors may occur. In the event of any such errors, the City agrees to provide prompt written notice to the Church and to allow the Church a reasonable opportunity to cure the error. In no event shall such errors constitute a material breach under this Agreement.

9. It is the understanding of the Parties that the releases this Agreement contains shall apply and extend to only the Parties and individuals and entities designated in this Agreement. This Agreement is between the Church and the City only, and is not intended to be, nor shall it be construed as being, for the benefit of any third party or parties, except as expressly stated herein.

10. The failure of the City to demand from the Church performance of any act under this Agreement shall not be construed as a waiver of the City's right to demand, at any subsequent time, such performance.

11. The provisions of this Agreement are severable, such that if any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such a determination shall not invalidate or render unenforceable any other provision of this Agreement.

12. This Agreement may be executed in counterparts and by facsimile or PDF signature, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.

13. Each Party agrees to execute any documents and to cooperate in any reasonable manner to effectuate the terms of this Agreement.

14. The Parties have participated in drafting this Agreement, and accordingly, any ambiguity herein shall not be construed for or against any Party.

15. This Agreement may not be altered, amended, modified or otherwise changed in any respect or particular except in writing duly executed by the Parties.

16. This Agreement shall be construed, enforced and administered in accordance with the laws of the State of California, without giving effect to the conflicts of laws principles

thereof.

17. By entering into this Agreement, no Party is admitting any liability, and this Agreement should not be construed as an admission of liability by any Party. The Parties understand, acknowledge and agree that the settlement reached, the making of this Agreement, and anything contained in this Agreement, constitutes a compromise of disputed claims involving legal and factual questions and issues and is not to be construed as an admission by any Party of liability under or noncompliance with any federal, state, or local law or regulation. This Agreement, and the settlement provided for herein, shall not be admissible in any lawsuit, administrative action, or any judicial or administrative proceeding if offered to show, demonstrate, evidence or support a contention of the City that the Church acted illegally, improperly, or in breach of law, contract or proper conduct.

18. No Party has made any statement or representation to the other Party regarding any fact relied upon by the other Party in entering into this Agreement, and each Party specifically does not rely upon any statement, representation or promise of any other Party in executing this Agreement, except as expressly stated in this Agreement.

19. This Agreement memorializes and constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof, and supersedes and replaces all prior negotiations, proposed agreements and agreements between Parties, whether written or unwritten. The Parties acknowledge that no person or entity, nor any agent or attorney of any person or entity, has made any promises, representations, or warranties whatsoever, express or implied, which are not expressly contained in this Agreement, and the Parties further acknowledge that they have not executed this Agreement in reliance upon any collateral promise, representation, warranty, or in reliance upon any belief as to any fact or matter not expressly recited in this Agreement.

20. This Agreement is binding upon and shall inure to the benefit of the Parties, and their respective agents, employees, shareholders, affiliates, parents, subsidiaries, directors, officers, heirs, insurers, assigns, and successors-in-interest.

21. The Parties agree to bear their own costs and attorneys' fees incurred in the investigation and preparation of this Agreement.

22. In the event any action is commenced to enforce or interpret any provision of this Agreement the prevailing Party in such action, in addition to costs and any other relief, shall be entitled to recover its reasonable attorneys' fees, including fees for use of in-house counsel by a Party.

CITY OF REDLANDS

By: _____
Pete Aguilar, Mayor

REDLANDS SEVENTH-DAY ADVENTIST
CHURCH

By: _____

SOUTHEASTERN CALIFORNIA
CONFERENCE OF SEVENTH-DAY
ADVENTISTS

By: _____

ATTEST:

Sam Irwin, City Clerk

EXHIBIT “A”

Scope of Work:

o 2 Replacement Trees 40-45 x 20-21	\$22,000 ea (\$44,000 + tax \$3,850)
o Planting (this cost assumes a very easy installation where crane and equipment can get right next to the plant site, and no wires, pipes, etc. in the way)	\$6,000 ea (\$12,000)
o Transportation – 1 tree per truck	@ \$720 ea (\$1,440)
o Demolition of Infrastructure (see below)	
- Curb	
- Sidewalk	
- Street Lighting	
- Electrical	
o Replace all infrastructure per City standards (demolition of infrastructure included in the following prices):	
- Mobilization	\$1,200
- Sidewalk	\$720
- Curb and gutter	\$600
- Asphalt repair	\$576 for 4x24 of street replacement
o Removal and Disposal of old tree balls (this is included in the replanting of the new trees)	
o Contractor License	(no charge)
o Insurance	(included in price)
o City business license	(\$102)
o Street tree permits	(\$25)
o Prevailing Wage (should be included in labor cost)	
o Arborist-evaluation of trees and oversee the planting	(\$1,690) and (\$1,155)
o Eighteen Month Warranty	(\$650 per month x 18 months total \$11,700)
 TOTAL	 \$79,058

(ALL PRICES ARE ESTIMATES ONLY AND DO NOT REFLECT THE CHURCH’S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT. THE CHURCH’S PAYMENT OBLIGATIONS ARE FOR THE ACTUAL COST INCURRED BY THE CITY FOR THE ITEMS LISTED IN THIS EXHIBIT AS SET FORTH IN SECTION 1 OF THIS AGREEMENT)