

AGREEMENT TO PERFORM SERVICES ASSOCIATED WITH LANDFILL  
SECURITY FENCING PROJECT FOR THE CITY OF REDLANDS

This Agreement is made and entered into this 5th day of February, 2013 by and between the City of Redlands, a municipal corporation (“City”) and El Rod Fence Company (“Contractor”). City and Contractor are sometimes individually referred to herein as a “Party” and, together as the “Parties.”

In consideration of the mutual promises contained herein, City and Contractor agree as follows:

ARTICLE 1 - ENGAGEMENT OF CONTRACTOR

- 1.1 City hereby retains Contractor to provide the removal of existing fence and installation of new permanent and temporary fence and appurtenances as complete units for the California Street Landfill for the City’s Quality of Life Department (the “Services”).
- 1.2 Contractor and its subcontractors shall possess the appropriate State Contractor’s License required for the performance of the Services and shall not be debarred pursuant to Labor Code sections 1777.1 and 1777.7.

ARTICLE 2 - RESPONSIBILITIES OF CONTRACTOR

- 2.1 The specific Services which Contractor shall perform are to provide the removal of existing fence and installation of new permanent and temporary fence and appurtenances as complete units for the California Street Landfill further described in Specifications for **CALIFORNIA STREET LANDFILL – SECURITY FENCING PROJECT** which is attached hereto as Exhibit “A” and incorporated herein by this reference.
- 2.2 Contractor shall comply with all applicable Federal, State and local rules, laws and regulations in the performance of this Agreement including but not limited to all applicable Labor Code and prevailing wage laws commencing at Labor Code section 1770 et. seq. and non-discrimination laws including the American’s with Disabilities Act. Pursuant to Labor Code section 1773.2, copies of the prevailing rates of per diem wages as determined by the Director of the California Department of Industrial Relations for each craft, classification or type of worker needed to perform the Services are on file at the City’s Quality of Life Department, Civic Center, 35 Cajon Street, Suite 222 (P.O. Box. 3005 mailing) Redlands, California 92373.
- 2.3 If Contractor violates the Labor Code relating to the payment of prevailing wages, City may enforce the Labor Code by withholding of contract payments to Contractor pursuant to Labor Code section 1771.6.
- 2.4 If Contractor executes an agreement with a subcontractor to perform any Services under this Agreement, Contractor shall comply with Labor Code sections 1775 and 1777.7, including providing the subcontractor with copies of the provisions of sections 1771,

1775, 1776, 1777.5, 1813 and 1815 of the Labor Code. Contractor acknowledges that the statutory provisions for penalties for failure to comply with state wage and hour laws and to pay prevailing wages may be enforced by City pursuant to Labor Code sections 1775 and 1813.

- 2.5 Contractor acknowledges that eight (8) hours constitute a legal day's work pursuant to Labor Code section 1810. Contractor and its subcontractors shall comply with the provisions of Labor Code section 1776 regarding payroll records maintenance, certifications, retention and inspection. Contractor shall also comply with the provisions of Labor Code section 1777.5 as to apprenticeships, and Labor Code sections 1771, 1775, 1776, 1777.5, 1813 and 1815.
- 2.6 Contractor shall provide City with a payment bond in the form attached hereto as Exhibit "B" and in the amount of 100% of the Contract price within five (5) business days from the Effective Date of this Agreement.

### ARTICLE 3 - PERIOD OF SERVICE

- 3.1 The term of this Agreement shall commence on February 5, 2013 and terminate upon the completion, and City's acceptance of, the Services.
- 3.2 Contractor shall complete the Services by April 15, 2013.

### ARTICLE 4 - PAYMENT AND NOTICE

- 4.1 For the performance of the Services, City will pay Contractor the sum of Sixty Nine Thousand Eight Hundred and Nineteen Dollars (\$69,819.00) as full compensation for the Services.
- 4.2 Payments by City to Contractor shall be made within thirty (30) days after receipt and approval of Contractor's invoice, by warrant payable to Contractor.
- 4.3 All notices shall be made in writing and may be given by personal delivery or by mail. Notices sent by mail should be addressed as follows:

City:

Fred Cardenas, Quality of Life Director  
City of Redlands  
Quality of Life Department  
PO Box 3005  
Redlands, CA 92373

Contractor:

Bob El Rod, Owner/President  
El Rod Fence Company  
6459 Mission Blvd.  
Riverside, CA 92509

When so addressed, such notices shall be deemed given upon deposit in the United States mail; in all other instances, notices, bills and payments shall be deemed given at the time of actual

delivery. Changes may be made in the names and addresses of the person to whom notices, bills and payments are to be given by giving notice pursuant to this paragraph.

#### ARTICLE 5 - INSURANCE AND INDEMNIFICATION

- 5.1 Except for Workers' Compensation insurance, all insurance required by this Agreement shall be maintained by Contractor for the duration of the term of this Agreement and shall be primary with respect to City and non-contributing to any insurance or self-insurance maintained by City. City shall be named an additional insured and Contractor shall provide City with certificates of insurance and endorsements evidencing such insurance prior to commencement of the Services. The insurance policies shall contain a provision prohibiting cancellation of the policies except upon thirty (30) days prior written notice to City.
- 5.2 Contractor shall maintain Workers' Compensation and Employer's Liability insurance for its employees throughout the duration of the term of this Agreement pursuant to Labor Code sections 3700 and 1860 and in an amount which meets the statutory requirement with an insurance carrier acceptable to City.
- 5.3 Contractor shall maintain in force throughout the duration of the Agreement comprehensive general liability insurance with carriers acceptable to City. Minimum coverage of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate for public liability, property damage and personal injury is required.
- 5.4 Contractor shall have business auto liability coverage, with minimum limits of one million (\$1,000,000) per occurrence, combined single limit for bodily injury liability and property damage liability. This coverage shall include all Contractor owned vehicles used on the project, hired and non-owned vehicles, and employee non-ownership vehicles.
- 5.5 Contractor shall indemnify, hold harmless and defend City and its elected officials, agents, and employees from and against any and all claims, losses or liability, including attorneys' fees, arising from injury or death to persons or damage to property occasioned by any act, omission or failure of Contractor, or Contractor's employees or agents, in performing the Services required by this Agreement.

#### ARTICLE 6 - GENERAL CONSIDERATIONS

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

- 6.2 Contractor shall not assign any of the Services except with the prior written approval of City and in strict compliance with the terms, provisions and conditions of this Agreement.
- 6.3 Contractor and City agree that Contractor is, for all purposes under this Agreement, an independent contractor with respect to its performance of the Services and not an employee of City. All personnel provided by Contractor pursuant to the provisions of this Agreement are employed by Contractor for its account only, and in no event shall Contractor or any personnel retained by it be deemed to have been employed by City or engaged by City for the account of or on behalf of City. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties.
- 6.4 Upon receipt of a termination notice, Contractor shall (1) promptly discontinue all Services and (2) deliver or otherwise make available to City, copies of any data, design calculations, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by Contractor in performing the Services required by this Agreement. Contractor shall be compensated on a pro-rata basis for any work completed up until notice of termination.
- 6.5 This Agreement, including the exhibits incorporated herein by reference, represents the entire agreement and understanding between the Parties as to the matters contained herein and any prior negotiations, proposals or oral agreements are superseded by this Agreement. Any amendment to this Agreement shall be in writing and approved by the City Council of City and signed by City and Contractor.
- 6.6 This Agreement shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, duly authorized representatives of the parties have signed in confirmation of this Agreement.

CITY OF REDLANDS

EL ROD FENCE COMPANY

\_\_\_\_\_  
Pete Aguilar, Mayor

\_\_\_\_\_  
Bob El Rod, Owner/President

ATTEST:

\_\_\_\_\_  
Sam Irwin, City Clerk

**EXHIBIT B- LABOR AND MATERIAL BOND**

**Whereas**, the City Council of the City of Redlands, State of California, and El Rod Fence Company (hereinafter designated as “Principal”) have entered into an agreement whereby Principal agrees to install and complete certain designated public improvements, which said agreement, dated February 5<sup>th</sup> 2013, and identified as **LANDFILL SECURITY FENCING PROJECT** is hereby referred to and made a part hereof; and

**Whereas**, under the terms of said agreement, Principal is required before entering upon the performance of the work, to file a good and sufficient payment bond with the City of Redlands to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code of the State of California.

**Now, therefore**, said Principal and the undersigned as corporate surety, are held firmly bound unto the City of Redlands and all contractors, subcontractors, laborers, material men and other persons employed in the performance of the aforesaid agreement and referred to in the aforesaid Code of Civil Procedure in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that said surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney’s fees, incurred by the City of Redlands in successfully enforcing such obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall insure to the benefit of any and all persons, companies and corporations entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of said agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition.

In witness whereof, this instrument has been duly executed by the Principal and surety above named, on \_\_\_\_\_ 20 \_\_\_\_.

(SEAL)

(SEAL)

\_\_\_\_\_  
(Contractor)

\_\_\_\_\_  
(Surety)

\_\_\_\_\_  
(Signature)

BY: \_\_\_\_\_  
(Signature)

Address: \_\_\_\_\_

Telephone (     ) \_\_\_\_\_

(Seal and Notarial Acknowledgment of Surety)