

AGREEMENT TO PROVIDE SEWER ROACH CONTROL

This agreement for the provision of sewer roach control (“Agreement”) is made and entered in this 20th day of September, 2016 (“Effective Date”), by and between the City of Redlands, a municipal corporation (“City”) and Golden Bell Products, Inc. (“Contractor”). City and Contractor are sometimes individually referred to herein as a “Party” and, together, as “Parties.” In consideration of the mutual promises contained herein, City and Contractor agree as follows:

ARTICLE 1 – ENGAGEMENT OF CONTRACTOR

- 1.1 City hereby engages Contractor to provide all labor, material and supplies required to coat sanitary sewer manholes with INSECTA, Insecticidal latex coating for sewer roach control (the “Services”).
- 1.2 Contractor and its subcontractors shall possess all appropriate State contractors’ licenses 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 more particularly described in Exhibit “A,” entitled “Scope of Services,” which is attached hereto and incorporated herein by reference.
- 2.2 Contractor shall comply with all applicable federal, state and local laws and regulations in the performance of the Services including, but not limited to, all applicable Labor Code and prevailing wage laws and non-discrimination laws, and the Americans 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 City’s Municipal Utilities and Engineering Department, located at the Civic Center, 35 Cajon Street, Suite 15A (Mailing: P.O. Box 3005), Redlands, California 92373.
- 2.3 Contractor acknowledges that if it violates the Labor Code provisions relating to prevailing wages that City may enforce such provisions by withholding payments to Contractor or its subcontractors pursuant to Labor Code section 1771.6.
- 2.4 If Contractor executes an agreement with a subcontractor to perform any portion of the Services, Contractor shall comply with Labor Code sections 1775 and 1777.7, and shall provide the subcontractor with copies of the provisions of Labor Code sections 1771, 1775, 1776, 1777.5, 1813 and 1815. Contractor acknowledges that the statutory provisions establishing 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 and its subcontractors shall comply with the provisions of Labor Code section 1776 regarding payroll records maintenance, certifications, retention and inspection.
- 2.6 Contractor acknowledges that eight (8) hours constitutes a legal day’s work pursuant to Labor Code section 1810.
- 2.7 Contractor shall 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.
- 2.8 Contractor shall guarantee the Services against defective materials or workmanship for a period of (2) two years from the date of City’s issuance of a Notice of Completion for the Services, except where longer

warranty periods are specifically provided by manufacturer of equipment installed in connection with the provision of the Services. During the (2) two year warranty period, should Contractor fail to remedy defective material and/or workmanship, or to make replacements within five (5) days after written notice by City, it is agreed that City may make such repairs and replacements and the actual cost of the required labor and materials shall be chargeable to and payable by Contractor or its surety.

All work which has been rejected by City, shall be remedied, or removed and replaced by the Contractor at its own expense. Any defective material or workmanship which may be discovered before final acceptance of the Services or within (2) two years from the completion date specified in the Notice of Completion, shall be corrected immediately by Contractor at its own expense notwithstanding that such defects may have been overlooked in previous inspections and estimates. Failure to inspect work at any stage shall not relieve the Contractor from any obligation to perform sound and reliable work as herein described. It is Contractor's responsibility to deliver at the time of final acceptance a completed project that complies in all details with this Agreement.

City will endeavor to locate any errors or defective materials or workmanship and call them to the attention of Contractor prior to subsequent work being performed. However, City is under no obligation to do so and shall not be held liable because errors or defective material or workmanship by Contractor are not discovered prior to subsequent work.

Nothing in this section shall be construed to limit the rights of City to immediately correct conditions which may be unsafe or which may pose a public health nuisance. Should said conditions later be found to be caused by defective material and/or workmanship, Contractor and its surety shall reimburse City for costs reasonably incurred while attending the situation.

ARTICLE 3 – PERIOD OF SERVICE

- 3.1 Contractor shall commence the Services upon City's delivery to Contractor of a written "Notice to Proceed."
- 3.2 Contractor shall complete the Services within sixty (60) calendar days from and after the date of the City's issuance to Contractor of the Notice to Proceed. A reasonable delay for potentially unfavorable weather will be mutually agreed upon by City and Contractor.

ARTICLE 4 – PAYMENT AND NOTICE

- 4.1 City shall pay Contractor up to the sum of Ninety Thousand Three Hundred Dollars (\$90,300) as complete compensation for the Services.
- 4.2 Payment by City to Contractor shall be made within thirty (30) days after City's receipt and approval of Contractor's invoice, by warrant payable to Contractor.
- 4.3 Any notice or other communication required, or which may be given, pursuant to this Agreement, shall be in writing. Any such notice shall be deemed delivered (i) on the date of delivery in person; (ii) five (5) days after deposit in first class registered mail, with return receipt requested; (iii) on the actual delivery date if deposited with an overnight courier; or (iv) on the date sent by facsimile, if confirmed with a copy sent contemporaneously by first class, certified, registered or express mail; in each case properly posted and fully prepaid to the appropriate address set forth below, or such other address as a Party may provide notice in accordance with this section:

City
Chris Diggs
City of Redlands
35 Cajon Street, Suite 15A
P.O. Box 3005 (mailing)
Redlands, CA 92373

Contractor
Michelle Webster
Golden Bell Products, Inc.
1200 N. Jefferson St. "M"
Anaheim, CA 92807

ARTICLE 5 – INSURANCE AND INDEMNIFICATION

- 5.1 All insurance required by this Agreement shall be maintained by Contractor throughout Contractor's performance of the Services, and shall be primary with respect to City and non-contributing to any insurance or self-insurance maintained by City.
- 5.2 Workers' Compensation and Employer's Liability insurance in the amount that meets statutory requirements with an insurance carrier acceptable to City, or certification to City that Contractor is self-insured or exempt from the workers' compensation laws of the State of California. Contractor shall provide City with Exhibit "B," entitled "Workers' Compensation Insurance Certification," which is attached hereto and incorporated herein by this reference prior to occupancy of the Premises.
- 5.3 Contractor shall secure and maintain in force throughout its performance of the Services comprehensive general liability insurance, with carriers acceptable to City, with 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. City shall be named as an additional insured and the insurance policy shall include a provision prohibiting modification of coverage limits or cancellation of the policy except upon thirty (30) days prior written notice to City. A certificate of insurance and endorsements shall be delivered to City prior to commencement of the Services.
- 5.4 Contractor shall secure and maintain in force throughout its performance of the Services business automobile liability coverage, with minimum limits of One Million Dollars (\$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 for the Services, hired and non-owned vehicles, and employee non-ownership vehicles. City shall be named as an additional insured and the insurance policy shall include a provision prohibiting modification of coverage limits or cancellation of the policy except upon thirty (30) days prior written notice to City. A certificate of insurance and endorsements shall be delivered to City prior to commencement of the Services.
- 5.5 Contractor shall indemnify, hold harmless and defend City and its elected officials, employees and agents from and against any and all claims, losses and liability, including attorneys' fees, arising from injury or death to persons or damage to property occasioned by any negligent or intentionally wrongful act or omission of Contractor, and its officers, employees and agents, in performing the Services.
- 5.6 Contractor is expressly prohibited from assigning any of the work associated with the Services without the prior written consent of City. In the event of agreement by the Parties to assign a portion of the Services, Contractor shall add the assignee as an additional insured to its insurance policies and provide City with the insurance endorsements prior to any work being performed by the assignee. Assignment does not include printing or other customary reimbursable expenses that may be provided for in 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 the use of in-house counsel by a Party.
- 6.2 All documents, records, drawings, electronic data files and data base, photographic prints and negatives, designs and specifications, cost estimates, and other documents developed by Contractor for the Services shall become the property of City and shall be delivered to City upon completion of the Services.
- 6.3 Contractor is, for all purposes under this Agreement, an independent contractor with respect to the performance of the Services and not an employee of City. All personnel employed by Contractor to perform the Services are 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 Unless earlier terminated as provided for below, this Agreement shall terminate upon completion and acceptance of the Project by City.
- 6.5 City may terminate this Agreement for any reason, at any time at its sole discretion, upon two (2) calendar days prior written notice to Contractor.
- 6.6 Upon receipt of a termination notice, Contractor shall (1) promptly discontinue all work associated with the 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. Contractor shall be compensated on a pro-rata basis for any work completed up until notice of termination.
- 6.7 This Agreement, including the exhibits incorporated by reference, represents the entire agreement and understanding between the Parties as to the matters contained herein and any prior negotiations, proposals and agreements relating to the subject matter hereof are superseded by this Agreement. Any amendment to this Agreement shall be in writing and approved by City and Contractor.
- 6.8 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 City and Contractor have signed in confirmation of this Agreement.

CITY OF REDLANDS

GOLDEN BELL PRODUCTS, INC.

By: _____
N. Enrique Martinez, City Manager

By: _____
Michelle Webster, Program Manager

ATTEST:

Sam Irwin, City Clerk

EXHIBIT "A"

SCOPE OF SERVICES

Supply and apply **Insecta® 45600-1 insecticidal latex coating** in sanitary manholes.

Treat to depth of eighth (8) feet or less, with an approximate area of 100 square feet per manhole.

Prepare and treat according to manufacturer's specifications for preparation instructions.

Apply coating based on the manufacturer's recommended label rates, five (5) manholes per gallon, not to exceed three (3) pints per manhole.

Mark each manhole cover with an identifying white dote after treatment.

Provide proper supervision at the job site during all phases of work.

Contractor responsible for coordinating the work to be done. Work will take place in accessible alley, yards, parking lots, and streets.

Guarantee the application for two (2) full years from the date of treatment. If more than 50 living roaches are found in a manhole during the warranty period, the manhole must then be retreated by Golden Bell Products at no additional charge or obligation to City. Contractor will retreat any manhole in which inspections report live roaches within fourteen (14) calendar days after notification; providing more than 50 live roaches are found inside the manhole during two inspections occurring two days apart.

Report number and location of manholes treated when submitting billing invoices. Contractor will indicate in writing on each quarter section map, the number of manholes treated and applicator's name with the date of completion. This will serve as the record of application for the necessary Agencies and warranty information.

City will supply quarter section maps indicating exact locations of manholes and cleanouts.

City will make accessible all designated manholes to be coated. If not accessible Contractor will notify City to expose.

City will provide inspection and assistance where necessary.

No more than 60 calendar days will elapse between date of notice to proceed and completion of application. A reasonable time for potentially unfavorable weather will be mutually agreed upon by City and Contractor.

The cost of additional permits and/or licenses, other than those already required by the state, required within City limits to perform work within the City will be assumed by the City (such costs to be considered allowable expenses and included on each applicable invoice for reimbursement by City).

EXHIBIT "B"

WORKERS' COMPENSATION INSURANCE CERTIFICATION

Every employer, except the State, shall secure the payment of compensation in one or more of the following ways:

- (a) By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.
- (b) By securing from the Director of Industrial Relations, a certificate of consent to self-insure, either as an individual employer, or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees.

CHECK ONE

_____ I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work and activities required or permitted under this Agreement. (Labor Code §1861).

_____ I affirm that at all times, in performing the work and activities required or permitted under this Agreement, I shall not employ any person in any manner such that I become subject to the workers' compensation laws of California. However, at any time, if I employ any person such that I become subject to the workers' compensation laws of California, immediately I shall provide the City with a certificate of consent to self-insure, or a certification of workers' compensation insurance.

I certify under penalty of perjury under the laws of the State of California that the information and representations made in this certificate are true and correct.

Golden Bell Products, Inc.

Date: _____

By: _____
Michelle Webster, Program Manager