

## INDEPENDENT CONTRACTOR AGREEMENT

This agreement for the provision of green waste processing services associated (“Agreement”) is made and entered in this 26<sup>th</sup> day of July, 2012 (“Effective Date”), by and between the City of Redlands, a municipal corporation (“City”) and One Stop Landscape Supply (“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 conduct green waste processing services for the City’s green waste collection operations in the City (the “Services”). The Services shall be conducted at 13024 San Timoteo Canyon Road, Redlands, California, 92373 (the “Facility”) and Contractor shall determine the method, details and means of performing the Services and shall advise City of the same prior to the provision of any Services under this Agreement. Contractor further agrees to perform the Services to the best of its ability and in an efficient, safe and competent manner.
- 1.2 The Services shall be performed by Contractor in a professional manner, and Contractor represents that it has the skill and the professional expertise necessary to provide the Services to City at a level of competency presently maintained by other practicing professional Contractors in the industry providing like and similar types of Services.

### ARTICLE 2 – SERVICES OF CONTRACTOR

- 2.1 The Services that 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 applicable federal, state and local laws and regulations in the performance of this agreement including, but not limited to State prevailing wage laws.

### ARTICLE 3 – RESPONSIBILITIES OF CITY

- 3.1 City shall make available to Contractor information in its possession that may assist Contractor in performing the Services.
- 3.2 City designates Fred Cardenas, Quality of Life Director, as City’s representative with respect to performance of the Services, and such person shall have the authority to transmit instructions, receive information, interpret and define City’s policies and decisions with respect to performance of the Services.

#### ARTICLE 4 – PERFORMANCE OF SERVICES

- 4.1 Contractor shall perform and complete the Services in a prompt and diligent manner in accordance with the schedule set forth in Exhibit “B,” entitled “Project Schedule,” which is attached hereto and incorporated herein by reference. The Services shall commence within ten (10) days of the Effective Date of this Agreement.
- 4.2 If Contractor’s Services include deliverable electronic visual presentation materials, such materials shall be delivered in a form, and made available to the City, consistent with City Council adopted policy for the same. It shall be the obligation of Contractor to obtain a copy of such policy from City Staff.
- 4.3 During the term of this Agreement, City may request that Contractor perform Extra Services. As used herein, “Extra Services” means any work that is determined necessary by City for the proper completion of the Services, but which the Parties did not reasonably anticipate would be necessary at the time of execution of this Agreement. Provided the Extra Services do not exceed twenty percent (20%) of the compensation to be paid by City to Contractor for the Services, such Extra Services may be agreed to by official in accordance with Chapter 2.16 of the Redlands Municipal Code. Contractor shall not perform, nor be compensated for, Extra Services without such written authorization from City.

#### ARTICLE 5 – PAYMENTS TO CONTRACTOR

- 5.1 The total compensation for Contractor’s performance of the Services shall not exceed the amount of Four Hundred Thirteen Thousand Seven Hundred Eighty Dollars (\$413,780).
- 5.2 Contractor shall submit monthly invoices to City describing the Services performed during the preceding month. Contractor’s invoices shall include a brief description of the Services performed, the dates the Services were performed, the number of hours spent and by whom, and a description of reimbursable expenses related to the project. City shall pay Contractor no later than thirty (30) days after receipt and approval by City of Contractor’s invoice.
- 5.3 Each monthly invoice of Contractor shall deduct from the cost of the Services invoiced, an amount equal to the amount of tons of green waste tipped by Contractor during such month at City’s California Street Landfill, times \$4.75 per ton. In consideration of such deduction, City agrees that during the term of this Agreement, City shall not charge Contractor fees for Contractor’s tipping of green waste at City’s landfill.

- 5.4 All notices shall be given in writing by personal delivery or by mail. Notices sent by mail should be addressed as follows:

City

Fred Cardenas, Director  
Quality of Life Department  
City of Redlands  
P.O. Box 3005  
Redlands, CA 92373

Contractor

Larry Curti, President  
One Stop Landscape Supply  
13024 San Timoteo Canyon Road  
Redlands, CA 92373

When so addressed, such notices shall be deemed given upon deposit in the United States Mail. Changes may be made in the names and addresses of the person to whom notices and payments are to be given by giving notice pursuant to this section 5.3.

ARTICLE 6 – INSURANCE AND INDEMNIFICATION

- 6.1 Insurance required by this Agreement shall be maintained by Contractor for the duration of its performance of the Services. Contractor shall not perform any Services unless and until the required insurance listed below is obtained by Contractor. Contractor shall provide City with certificates of insurance and endorsements evidencing such insurance prior to commencement of the Services. Insurance policies shall include a provision prohibiting cancellation or modification of the policy except upon thirty (30) days prior written notice to City.
- 6.2 Contractor shall secure and maintain Workers’ Compensation and Employer’s Liability insurance throughout the duration of its performance of the Services in accordance with the laws of the State of California, with an insurance carrier acceptable to City as described in Exhibit “C,” entitled “Workers’ Compensation Insurance Certification,” which is attached hereto and incorporated herein by this reference.
- 6.3 Contractor shall secure and maintain 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. City shall be named as an additional insured and such insurance shall be primary and non-contributing to any insurance or self-insurance maintained by City.
- 6.4 Contractor shall have business auto liability coverage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence, combined single limit bodily injury liability and property damage liability. This coverage shall include all Contractor owned vehicles used in connection with Contractor’s provision of the Services, hired and non-owned vehicles, and employee non-ownership vehicles. City shall be names as an additional insured and such insurance shall be primary and non-contributing to any insurance or self insurance maintained by City.

- 6.5 Contractor shall defend, indemnify and hold harmless City and its elected officials, employees and agents 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 and negligent act, omission or failure to act by Contractor, its officers, employees and agents in performing the Services.

#### ARTICLE 7 – CONFLICTS OF INTEREST

- 7.1 Contractor covenants and represents that it does not have any investment or interest in any real property that may be the subject of this Agreement or any other source of income, interest in real property or investment that would be affected in any manner or degree by the performance of Contractor's Services. Contractor further covenants and represents that in the performance of its duties hereunder, no person having any such interest shall perform any Services under this Agreement.
- 7.2 Contractor agrees it is not a designated employee within the meaning of the Political Reform Act because Contractor:
- A. Does not make or participate in:
- (i) the making or any City governmental decisions regarding approval of a rate, rule or regulation, or the adoption or enforcement of laws;
  - (ii) the issuance, denial, suspension or revocation of City permits, licenses, applications, certifications, approvals, orders or similar authorization or entitlements;
  - (iii) authoring City to enter into, modify or renew a contract;
  - (iv) granting City approval to a contract that requires City approval and to which City is a party, or to the specifications for such a contract;
  - (v) granting City approval to a plan, design, report, study or similar item;
  - (vi) adopting, or granting City approval of policies, standards or guidelines for City or for any subdivision thereof.
- B. Does not serve in a staff capacity with City and in that capacity, participate in making a governmental decision or otherwise perform the same or substantially the same duties for City that would otherwise be performed by an individual holding a position specified in City's Conflict of interest Code under Government Code section 87302.
- 7.3 In the event City officially determines that Contractor must disclose its financial interests, Contractor shall complete and file a Fair Political Practices Commission Form 700, State of Economic Interests with the City Clerks' office pursuant to the written instructions provided by the City Clerk.

#### ARTICLE 8 – GENERAL CONSIDERATIONS

- 8.1 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 the recovery of its reasonable attorneys' fees, including fees for the use of in-house counsel by a Party.

- 8.2 Contractor shall not assign any of the Services, except with the prior written approval of City and in strict compliance with the terms, and conditions of this Agreement.
- 8.3 Documents, records, drawings, designs, cost estimates, electronic data files, databases and any other documents developed by Contractor in connection with its performance of the Services, and any copyright interest in such documents, shall become the property of City and shall be delivered to City upon completion of the Services, or upon the request of City. Any reuse of such documents, and any use of incomplete documents, shall be at City's sole risk.
- 8.4 Contractor is for all purposes under this Agreement an independent contractor and shall perform the Services as an independent contractor. Neither City nor of its agents shall have control over the conduct of Contractor or Contractor's employees, except as herein set forth. Contractor shall supply necessary tools and instrumentalities required to perform the Services. Assigned personnel employed by Contractor are for its account only, and in no event shall Contractor or 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. Contractor shall have no authority, express by City for the account of, or on behalf of City. Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent, nor shall Contractor have any authority, express or implied, to bind City to any obligation.
- 8.5 Unless earlier terminated as provided for below, this Agreement shall terminate upon completion and acceptance of the Services by City; provided, however, this Agreement may be terminated by City, in its sole discretion, by providing ninety (90) days prior written notice to Contractor (delivered by certified mail, return receipt requested) of City's intent to terminate. If this Agreement is terminated by City, an adjustment to Contractor's compensation shall be made, but (1) no amount shall be allowed for anticipated profit or unperformed Services, and (2) any payment due Contractor at the time of termination may be adjusted to the extent of any additional costs to City occasioned by any default by Contractor. Upon receipt of a termination notice, Contractor shall immediately discontinue its provision of the Services and, within five (5) days of the date of the termination notice, deliver or otherwise make available to City, copies (in both hard copy and electronic form, where applicable) of project related data, drawings, specifications, reports, 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 Services completed up to the date of termination.
- 8.6 Contractor shall maintain books, ledgers, invoices, accounts and other records and documents evidencing costs and expenses related to the Services for a period of three (3) years, or for any longer period required by law, from the date of final payment to Contractor pursuant to this Agreement. Such books shall be available at reasonable times for examination by City at the office of Contractor.

8.7 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, written proposals or verbal agreements relating to such matters are superseded by this Agreement. Except as otherwise provided for herein, an amendment to this Agreement shall be in writing, approved by City and signed by City and Contractor.

8.8 This Agreement shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, duly authorized representative of the City and Contractor have signed in confirmation of this Agreement.

CITY OF REDLANDS

ONE STOP LANDSCAPE SUPPLY

By: \_\_\_\_\_  
Pete Aguilar, Mayor

By: \_\_\_\_\_  
Larry Curti, President

ATTEST:

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

**EXHIBIT “A”**

**SCOPE OF SERVICES**

**1. Services to be Provided:**

- A. Contractor shall accept residential green waste and wood waste from the City. The tonnage delivered to the Contractor by City collection vehicles shall be determined by the City.
- B. Contractor will provide the City with scale records to indicate the weight of green waste and wood waste delivered to One Stop Landscape Supply located at 13024 San Timoteo Canyon Roads, Redlands, California, 92373. The weight records shall provide the net weight of the material by vehicle and date.
- C. Contractor is allowed reasonable down time due to repair and maintenance of equipment. “Reasonable down time” shall be defined as less than two days each operating month. Contractor shall maintain adequate space to stockpile green waste during such reasonable down time for acceptance of material without a break in service.
- D. Contractor shall receive residential green waste and wood waste from the City during the following days and hours:  

Monday – Friday (except major holidays)	7:00 AM - 4:00 PM
Saturday	7:00 AM – 3:30 PM
- E. Contractor shall accept green waste as it is collected by the City. Contractor shall market all green waste and wood waste or otherwise divert all green waste and wood waste from landfilling. Only contaminants removed from the green waste are excluded from this condition. Contractor shall not transform ( i.e. destroy or incinerate ) in excess of 10% of the green waste without the written approval of the City.
- F. The City shall endeavor to reduce the level of contamination contained within green waste by diverting loads containing an inordinate amount of contamination to other disposal facilities. The City, in its sole discretion, shall determine the loads of green waste to be delivered to Contractor. The City shall also utilize a procedure for tagging automated carts identified by drivers as containing excessive contamination. The City shall refer repeat offenders to Code Enforcement for possible citation and follow-up.
- G. Contractor shall provide use of a phone to City employees in the event a City driver needs to contact their Supervisor regarding City business.

- H. Contractor shall provide paved road surfaces wherever green waste is processed or stored.
- I. Contractor shall provide spotting of City trucks when tipping.
- J. Contractor shall provide adequate queuing area so that City trucks do not line up on Public Streets.
- K. Contractor shall allow the City's representative to inspect their facilities during operating hours to assure compliance with the services agreement. Upon request, the Contractor shall provide the City with written certification of all green waste and wood waste having been diverted from landfill. Certification will document the end-use for said material.
- L. The City's RFQ and RFB for Processing Green Waste and the Contractor's proposal in response thereto is incorporated herein by reference, provided that any inconsistencies or differences between said documents and this agreement shall be resolved in favor of this agreement.
- M. The City may request the delivery of processed green waste from the Contractor for use as intermediate cover material and erosion control on side slopes at the California Street Landfill. Such requests are subject to the following conditions:
  - 1. The City shall request loads of processed green waste from the Contractor in proportion to their level of the bid award for processing the City's green waste. (Example – If the Contractor is awarded a bid for processing 80% of the City green waste, the City shall request 80% of its loads of processed green waste from that Contractor.) If the Contractor elects to utilize a different end use for processed green waste, the City shall have the option of requesting processed green waste from an alternate source.
  - 2. Contractor shall not be required to deliver processed green waste to the City. Contractor shall have the option of utilizing a different end use for processed green waste.
  - 3. Processed green waste delivered to the City by Contractor shall be charged a per ton fee in conformance with the City's adopted fee and rate schedule.
  - 4. Processed green waste delivered to the California Street Landfill by Contractor shall meet the City's specifications for particle reduction and cleanliness.
- N. Contractor shall give City trucks preference, as necessary, to provide a turn-around time of less than fifteen minutes from entry into the facility until the time the truck exits the facility. The following conditions shall apply to the application of remedies and penalties for failure to provide a fifteen minute turn-around:



1. The City shall provide the Contractor with specific information as to noncompliance with the required turn-around time as a condition of initiating remedies and penalties under this clause of the Scope of Services. Specific information shall consist of the dates and times in and times out of the facility.
2. The time a driver takes to clean-out a truck shall not be included in calculating turn-around time.
3. Contractor shall be required to meet and confer with the City's representative upon notification of three incidents where the turn-around time exceeded fifteen minutes within a calendar month. The Contractor's representative shall meet with the City's representative within five working days of notification by U.S. mail to discuss remedies for reducing the turn-around time.
4. The city shall penalize the contractor \$25 per incident for each time the turn-around time is exceeded following the City's meet and confer meeting with the Contractor's representative.
5. The process shall begin over again when a period of 30 days elapses without the Contractor exceeding the fifteen minute turn-around time.
6. Repeat incidences of exceeding a fifteen (15) minutes turn-around time may result in breach of contract at the City's discretion.

## **EXHIBIT “B”**

### **PROJECT SCHEDULE**

Contractor shall begin accepting green waste and wood waste from the City for processing and recycling upon execution of this Agreement and after providing the City with required documentation of compliance with the insurance provisions.

**WORKERS' COMPENSATION INSURANCE CERTIFICATION  
TO PERFORM FOR THE CITY OF REDLANDS**

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 in one or more insurer 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.

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 of this Agreement. (Labor Code §1861).

ONE STOP LANDSCAPE SUPPLY

By: \_\_\_\_\_  
Larry Curti, President

\_\_\_\_\_  
Date: