

AGREEMENT TO PERFORM SERVICES ASSOCIATED WITH TREE
INSTALLATION 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 Valley Crest Tree 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 supply, installation and eighteen (18) month warranty of two (2) 40-45 X 20-21, 120” box Sequoia sempervirens (Coast Redwood) trees 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 tree installation and warranty services associated with the installation of two (2) 40-45 X 20-21, 120” box Sequoia sempervirens (Coast Redwood) trees further described in Exhibit “A,” which is attached hereto 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.

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 eighteen (18) month warranty period. The agreement may be earlier terminated by City pursuant to Section 6.4.
- 3.2 Contractor shall complete the Installation Services by March 29, 2013.

ARTICLE 4 - PAYMENT AND NOTICE

- 4.1 For the performance of the Installation Services, City will pay Contractor the lump sum of Eighty Two Thousand Seven Hundred and Eighty Three Dollars (\$82,783.00) as full compensation for the Installation Services upon completion of the tree installation.
- 4.2 Payments for monthly maintenance and warranty services performed by Contractor, as specified in Exhibit A, by City to Contractor shall be made on a monthly basis within thirty (30) days after receipt and approval of Contractor's invoice, by warrant payable to Contractor. Cost for the monthly maintenance and warranty services shall be Nine-Hundred Dollars (\$900) per month. Total compensation for monthly maintenance and warranty services shall not exceed Sixteen Thousand Two Hundred Dollars (\$16,200).
- 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:

Tadd Russikoff, Branch Manager / VP
Valley Crest Tree Company
9500 Foothill Boulevard.
Sunland, CA 91040

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 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 thirty (30) days prior written notice to Consultant (delivered by certified mail, return receipt requested) of City's intent to terminate. If this Agreement is terminated by City, an adjustment to Consultant's compensation shall be made, but (1) no amount shall be allowed for anticipated profit or unperformed Services, and (2) any payment due Consultant at the time of termination may be adjusted to the extent of any additional costs to City occasioned by any default by Consultant.
- 6.5 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.
- 6.6 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.
- 6.7 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

VALLEY CREST TREE COMPANY

Pete Aguilar, Mayor

Tadd Russikoff, Branch Manager / VP

ATTEST:

Sam Irwin, City Clerk

EXHIBIT "A"

SCOPE OF SERVICES

- Provide two replacement *Sequoia sempervirens* (Coast Redwood) trees 40-45 x 20-21 contained in one-hundred twenty inch (120") box
- Provide transportation of the trees to the planting location in the City of Redlands
- Conduct planting of the trees (The contractor is responsible for field survey, Dig Alert, removal of the City infrastructure, digging of the tree well and installation of grate, unforeseen conditions, encroachment permit required by the City's Municipal Utilities and Engineering Department (MUED), including but not limited to: street closure permit, oversized load hauling permit, City tree permit, and replacement of all removed City infrastructure per applicable City standards, adhere to City work hour ordinance,)
- Demolition of Infrastructure but not limited to
 - Curb
 - Sidewalk
 - Street Lighting
 - Electrical
 - Earthen Material
- Replace all infrastructure per applicable City standards
 - Curb
 - Sidewalk
 - Street Lighting
 - Electrical
 - Earthen Material
- Removal and disposal of old tree balls / root structure
- Provide and install tree well grates over applicable City standards
- Construction of block cripple wall to prevent irrigation overspray into the tree well
- Provide applicable contractor's license
- Provide insurance
- Secure City business license
- Secure encroachment permit per MUED instructions
- Secure Street tree permits
- Pay prevailing wages
- Ongoing monthly maintenance services to be provided: performance of soil probing of the root ball prior to watering trees at least 1-3 times per week; adjustment of guy-wires as needed; re-carving of drainage basins as needed; monthly reports on the tree's health by a certified arborist and routine watering.
- Provide an eighteen month warranty for the health of the tree: In the event the tree dies during the maintenance period, Valley Crest Tree Company shall replace said plant materials (trees) with the same species and size of tree, if available from Valley Crest Tree Company nursery stock. If the said tree stock is not available from Valley Crest Tree Company, the replacement species will be in the largest size available from Valley Crest Tree Company nursery stock, at no cost to the City. If a replacement tree is required, the same access and planting terms will be in place as in the original planting. This warranty will not cover damage to the tree due to events beyond the control of Valley Crest Tree Company, i.e., extreme or unreasonable weather conditions, vandalism or fire.

EXHIBIT “B”

PROJECT SCHEDULE

The Services shall commence within ten (10) working days from the effective date of this Agreement.

Installation of trees and infrastructure is to be completed within before March 29, 2013.

Monthly warranty maintenance activities will conclude eighteen (18) months after satisfactory installation of the two replacement *Sequoia sempervirens* (Coast Redwood) trees.