

AGREEMENT FOR THE PURCHASE, REMOVAL AND PLANTING
OF CITY TREES

This agreement for the purchase, removal and planting of trees located in City's public rights-of-way ("Agreement") is made and entered into this 19th day of October, 2010 ("Effective Date"), by and between the City of Redlands, a municipal corporation ("City"), and Fox Nurseries, LLC ("Fox"). City and Fox are sometimes individually referred to herein as a "Party" and, together, as the "Parties."

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

ARTICLE 1 – PURCHASE OF CITY PALM TREES

- 1.1 City hereby agrees to sell, and Fox agrees to purchase, fifty three (53) City-owned Mexican Blue Palm Trees, at a price of Five Hundred Dollars (\$500) per tree, and two (2) City-owned Guadalupe Palm Trees at a price of Two Hundred Fifty Dollars (\$250) per tree (collectively the "Palm Trees") located in City's public rights-of-way as the eastbound/southbound of Colton Avenue between Dearborn Street and Wabash Avenue, for the total sum of Twenty Seven Thousand Dollars (\$27,000) (the "Purchase Price"). The specific Palm Trees which Fox is purchasing are identified on the map attached hereto as Exhibit "A," which is incorporated herein by this reference.
- 1.2 Fox shall pay to City the Purchase Price for the Palm Trees within ten (10) business days after the Effective Date of this Agreement.
- 1.3 Ownership of, and responsibility for, the Palm Trees shall vest in Fox at the time of Fox's payment of the Purchase Price to City. Upon Fox's removal of the Palm Trees, Fox shall manicure all nearby grass, clean the surrounding area and fill all holes to ensure the area is left in a presentable and safe manner.

ARTICLE 2 - RESPONSIBILITIES OF FOX

- 2.1 Fox shall cause the removal of the Palm Trees from City's rights-of-way (the "Tree Removal Work") within sixty (60) days after the Effective Date of this Agreement.
- 2.2 Fox shall plant fifty two (60) trees, of a 24" box size, comprised of thirty (30) Crape Myrtle trees and thirty (30) Eastern Redbud trees (the "Tree Planting Work"), in the City's rights-of-way at the locations specified in Exhibit "A". Fox shall supply at its sole cost, all dirt and top soil, planting mix, sand and nutrient soil required by City to effectively perform the Tree Planting Work.
- 2.3 The Tree Planting Work shall be performed by Fox in accordance with the specifications described in Exhibit "B," entitled "Planting Specifications," which is attached hereto and incorporated herein by this reference.

- 2.4 Fox shall commence and complete the Tree Planting Work between the months of October 2010 and April 2011. For a period of ninety (90) days after the Tree Planting Work, Fox shall provide deep-watering of such trees via water delivery by truck. Fox shall further guarantee and sustain the health of such trees for a period of one (1) year from the date of planting. Any trees deemed unhealthy by City during such guarantee period shall be replaced by Fox, at Fox's sole cost.
- 2.5 Fox shall possess all appropriate State contractor's licenses required for performing the Tree Removal Work and Tree Planting Work.
- 2.6 Fox shall notify Underground Alert of Southern California at least three (3) days prior to commencing any of the Work required by this Agreement. Fox should repair and replace any irrigation systems or equipment that is damaged as a result of, or in connection with, Fox's performance of its obligations under this Agreement. In addition, Fox shall install tall Fescue sod.
- 2.7 Fox shall comply with all applicable federal, state and local laws and regulations in the performance of the Tree Removal Work and Tree Planting Work including, but not limited, to any applicable prevailing wage laws commencing at Labor Code section 1770 et seq. and non-discrimination laws, including 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 undertake the Tree Removal Work and Tree Planting Work are on file at City's Quality of Life Department, located at the Civic Center, 35 Cajon Street, Suite 222 (Mailing: P.O. Box 3005), Redlands, California 92373.

ARTICLE 3 - NOTICE

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

City: Rick Cross
Quality of Life Department
City of Redlands
Post Office Box 3005
Redlands, CA 92373

Fox: David McDaniel
Purchasing Manager
Fox Nurseries, LLC
477 W. McKinley Avenue
Pomona, CA 91768

When so addressed, such notices shall be deemed given upon deposit in the United States mail; in all other instances, notices 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 are to be given by giving notice pursuant to this section 3.1.

ARTICLE 4 - INSURANCE AND INDEMNIFICATION

- 4.1 Fox's Insurance to be Primary. All insurance required by this Agreement shall be maintained by Fox for the duration of the Tree Removal Work and Tree Planting Work, and shall be primary with respect to City and non-contributing to any insurance or self-insurance maintained by City.
- 4.2 Workers' Compensation and Employer's Liability. Fox shall secure and maintain Workers' Compensation and Employer's Liability insurance for its employees throughout the duration of the Tree Removal Work and Tree Planting Work pursuant to Labor Code sections 3700 and 1860, in an amount which meets statutory requirements, with an insurance carrier acceptable to City. The insurance policy shall include a provision prohibiting the policy's modification or cancellation except upon thirty (30) days prior written notice to City. Fox shall execute and deliver to City a Worker's Compensation Insurance Certification in the form attached hereto as Exhibit "C" prior to commencement of the Tree Planting Work and Tree Removal Work.
- 4.3 Hold Harmless and Indemnification. Fox 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 act or omission of Fox, and its officers, employees and agents, in performing the Tree Removal Work and Tree Planting Work.
- 4.4 Comprehensive General Liability Insurance. Fox shall secure and maintain in force throughout the duration of the Tree Removal Work and Tree Planting Work 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 its modification of coverage limits or cancellation 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 Tree Removal Work and Tree Planting Work.
- 4.5 Business Auto Liability Insurance. Fox shall secure and maintain in force throughout the duration of the Tree Removal Work and Tree Planting Work, 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 consultant owned vehicles used for the Tree Removal Work and Tree Planting Work, 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 its modification of coverage or cancellation except upon thirty (30) days prior written notice to City. Certificate of insurance with

endorsements shall be delivered to City prior to commencement of the Tree Removal Work and Tree Planting Work.

ARTICLE 5 - GENERAL CONSIDERATIONS

- 5.1 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.
- 5.2 Fox and its contractors are, for all purposes under this Agreement, independent contractors with respect to the Tree Planting Work and Tree Removal Work and not employees of City. All personnel employed by Fox and its contractors to perform the Planting Work and Tree Removal Work are for their respective accounts only, and in no event shall Fox, or its contractors, or any personnel retained by them 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.
- 5.3 Unless earlier terminated as provided for below, this Agreement shall terminate upon completion and acceptance of the Tree Planting Work and Tree Removal Work by City.
- 5.4 City may terminate this Agreement for any reason, at any time at its sole discretion, upon five (5) calendar days prior written notice to Fox.
- 5.5 Upon receipt of a termination notice, Fox shall (1) promptly discontinue all work undertaken pursuant to this Agreement. Fox shall be compensated on a pro-rata basis for any work completed up until notice of termination.
- 5.6 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 the City Council and signed by City and Fox.
- 5.7 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

ATTEST:

By: _____
Pat Gilbreath, Mayor

City Clerk

FOX NURSERIES, LLC

By: _____
David McDaniel