

**AGREEMENT WITH LORAL HORTICULTURAL SERVICES INC.
FOR CITYWIDE TREE PLANTING SERVICES**

This Agreement, made and entered into this day of _____, by and between the **CITY OF SAN MATEO**, a municipal corporation existing under the laws of the State of California ("CITY"), and **LORAL HORTICULTURAL SERVICES INC.**, a corporation ("CONTRACTOR"), whose address is 704 South Amphlett Blvd, San Mateo, CA 94402.

RECITALS:

A. CITY desires certain Tree Planting Services hereinafter described.

B. CITY desires to engage CONTRACTOR to provide these Tree Planting Services by reason of its qualifications and experience for performing such services and CONTRACTOR has offered to provide the required services on the terms and in the manner set forth herein.

NOW, THEREFORE, IT IS AGREED as follows:

SECTION 1 - SCOPE OF SERVICES

The scope of services to be performed by CONTRACTOR under this Agreement is as described in Exhibit A to this Agreement, which is attached and incorporated by reference.

SECTION 2 - DUTIES OF CONTRACTOR

CONTRACTOR shall be responsible for the professional quality, technical accuracy and coordination of all work furnished by CONTRACTOR under this Agreement. CONTRACTOR shall, without additional compensation, correct or revise any errors or deficiencies in its work.

CONTRACTOR represents that it is qualified to furnish the services described under this Agreement.

CONTRACTOR shall be responsible for employing or engaging all persons necessary to perform the services of CONTRACTOR.

CONTRACTOR agrees to comply with the City's minimum wage ordinance as codified in Municipal Code Chapter 5.92, which differs from the state minimum wage and includes a Consumer Price Index escalator.

SECTION 3 - DUTIES OF CITY

CITY shall provide pertinent information regarding its requirements for the project.

CITY shall examine documents submitted by CONTRACTOR and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of CONTRACTOR'S work.

SECTION 4 - TERM

The services to be performed under this Agreement shall commence on the date of execution of this Agreement and be completed on November 25, 2025.

SECTION 5 - PAYMENT

Payment shall be made by CITY only for services rendered and upon submission of a payment request upon completion and CITY approval of the work performed. In consideration for the full performance of the services set forth in Exhibit A, CITY agrees to pay CONTRACTOR an amount not to exceed \$262,675.00, pursuant to rates stated in Exhibit B, attached and incorporated by reference.

SECTION 6 - TERMINATION

Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY shall have the right to terminate this Agreement or suspend work on the Project for any reason, upon ten (10) days' written notice to CONTRACTOR. CONTRACTOR agrees to cease all work under this Agreement upon receipt of said written notice.

SECTION 7 - OWNERSHIP OF DOCUMENTS

All documents prepared by CONTRACTOR in the performance of this Agreement are and shall be the property of CITY, whether the project for which they are made is executed or not.

SECTION 8 - CONFIDENTIALITY

All reports and documents prepared by CONTRACTOR in connection with the performance of this Agreement are confidential until released by CITY to the public. CONTRACTOR shall not make any such documents or information available to any individual or organization not employed by CONTRACTOR or CITY without the written consent of CITY before any such release.

SECTION 9 - INTEREST OF CONTRACTOR

CONTRACTOR covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services under this Agreement.

SECTION 10 - CONTRACTOR'S STATUS

It is expressly agreed that in the performance of the services required under this Agreement, CONTRACTOR shall at all times be considered an independent contractor as defined in Labor Code Section 3353, under control of the CITY as to the result of the work but not the means by which the result is accomplished. Nothing herein shall be construed to make CONTRACTOR an agent or employee of CITY while providing services under this Agreement.

SECTION 11 - INDEMNITY

CONTRACTOR agrees to hold harmless and indemnify CITY, its elected and appointed officials, employees, and agents from and against any and all claims, loss, liability, damage, and expense arising out of CONTRACTOR's performance of this Agreement, except for those claims arising out of CITY's sole negligence or willful misconduct. CONTRACTOR agrees to defend City, its elected and appointed officials, employees, and agents against any such claims. The CONTRACTOR'S duty to indemnify shall survive expiration or early termination of this Agreement.

SECTION 12 - INSURANCE

Contractor shall procure and maintain for the duration of the contract the insurance specified in Exhibit C to this Agreement

SECTION 13 - NONASSIGNABILITY

Both parties hereto recognize that this Agreement is for the personal services of CONTRACTOR and cannot be transferred, assigned, or subcontracted by CONTRACTOR without the prior written consent of CITY.

SECTION 14 - RELIANCE UPON SKILL OF CONTRACTOR

It is mutually understood and agreed by and between the parties hereto that CONTRACTOR is skilled in the performance of the work agreed to be done under this Agreement and that CITY relies upon the skill of CONTRACTOR to do and perform the work in the most skillful manner, and CONTRACTOR agrees to thus perform the work. The acceptance of CONTRACTOR's work by CITY does not operate as a release of CONTRACTOR from said obligation.

SECTION 15 - WAIVERS

The waiver by either party of any breach or violation of any term, covenant, or condition of this Agreement or of any provisions of any ordinance or law shall not be deemed to be a waiver of such term, covenant, condition, ordinance or law or of any subsequent breach or violation of the same or of any other term, condition, ordinance, or law. The subsequent acceptance by either party of any fee or other money which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, covenant, or condition of this Agreement or of any applicable law or ordinance.

SECTION 16 - COSTS AND ATTORNEY FEES

Attorney fees in total amount not exceeding \$5000, shall be recoverable as costs (by the filing of a cost bill) by the prevailing party in any action or actions to enforce the provisions of this Agreement. The above \$5000 limit is the total of attorney fees recoverable whether in the trial court, appellate court, or otherwise, and regardless of the number of attorneys, trials, appeals, or actions. It

is the intent of this provision that neither party shall have to pay the other more than \$5000 for attorney fees arising out of an action, or actions to enforce the provisions of this Agreement.

SECTION 17 - NON-DISCRIMINATION

CONTRACTOR warrants that it is an Equal Opportunity Employer and shall comply with applicable regulations governing equal employment opportunity. Neither CONTRACTOR nor any of its subcontractors shall discriminate in the employment of any person because of race, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, or age, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment and Housing Act.

SECTION 18 - MEDIATION

Should any dispute arise out of this Agreement, any party may request that it be submitted to mediation. The parties shall meet in mediation within 30 days of a request. The mediator shall be agreed to by the mediating parties; in the absence of an agreement, the parties shall each submit one name from mediators listed by either the American Arbitration Association, the State Mediation and Conciliation Service, or other agreed-upon service. The mediator shall be selected by a blind draw.

The cost of mediation shall be borne equally by the parties. Neither party shall be deemed the prevailing party. No party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated settlement. The mediation process, once commenced by a meeting with the mediator, shall last until agreement is reached by the parties but not more than 60 days, unless the maximum time is extended by the parties.

SECTION 19 - LITIGATION

CONTRACTOR shall testify at CITY's request if litigation is brought against CITY in connection with CONTRACTOR's services under this Agreement. Unless the action is brought by CONTRACTOR, or is based upon CONTRACTOR's wrongdoing, CITY shall compensate CONTRACTOR for preparation for testimony, testimony, and travel at CONTRACTOR's standard hourly rates at the time of actual testimony.

SECTION 20 - NOTICES

All notices hereunder shall be given in writing and mailed, postage prepaid, addressed as follows:

To CITY:

Matthew Fried
City of San Mateo
330 W 20th Ave
San Mateo, CA 94403

To CONTRACTOR: Loral Horticultural Services Inc.
Attn: Mike Bergstrom
704 South Amphlett Blvd
San Mateo, CA 94402

**SECTION 21 - AGREEMENT CONTAINS ALL
UNDERSTANDINGS; AMENDMENT**

This document represents the entire and integrated agreement between CITY and CONTRACTOR and supersedes all prior negotiations, representations, and agreements, either written or oral.

This document may be amended only by written instrument, signed by both CITY and CONTRACTOR.

SECTION 22 - GOVERNING LAW AND VENUE

This Agreement shall be governed by the laws of the State of California and, in the event of litigation, venue will be in the County of San Mateo.

[SIGNATURE PAGE FOLLOWS]

EXHIBIT A - SCOPE OF SERVICES

Summary of Scope of Services

- Receive delivery of approximately 260 trees (mixture of 15 gallon and 24" box) annually.
- Maintain tree health and vigor until planting.
- Plant trees in various locations throughout the City of San Mateo.
- Provide stump-grinding services as needed to plant trees according to specifications.
- Follow all applicable ANSI A300 Standards and BMPs and all specifications detailed below.
- City to provide trees and staging area at 2001 Pacific Blvd, San Mateo, CA 94403.
- Contractor to provide all labor and equipment necessary for scope of work, including receipt of tree deliveries.
- Contractor to provide all tree stakes, tree tie, soil (as needed), debris disposal, watering equipment, tree fencing, TreeDiapers.

Timing of Operations

Tree planting work will occur during the following time periods:

- YEAR 1 - November 25, 2023 – March 15, 2024
- YEAR 2 - November 15, 2024 – March 15, 2025

The complete list of tree planting locations will be provided to the contractor no later than November 20 in YEAR 1 and November 1 in YEAR 2.

All work must occur between the hours of 7:00 a.m. and 4:00 p.m. Monday through Friday. Contractor may not work on weekends, nor any holidays observed by the City of San Mateo. Once work has begun each year, the contractor must maintain a planting crew working on the project full-time until the project completion. This work is not to be done "on the fly," or suffer from multiple interruptions.

Contractor to maintain shared online log, updated daily, of all locations planted. There should never be ambiguity about what has/hasn't been completed.

Utility Conflicts

Contractor is responsible for calling USA to determine potential utility conflicts for all planting sites. Where existing utilities prevent the planting of the tree in line with the green paint marking on the curb, contractor must alert Managing Arborist (or designee) to adjust planting location. Some underground utilities will not be reflected by a USA investigation. One example anticipated is private irrigation piping in the tree planting area. Contractor assumes all responsibility for damage to underground utilities and irrigation, marked or not, and will promptly arrange for repairs to be made in the event of damage.

Tree Procurement, Delivery,

The City will tag and purchase all trees for this project at area nurseries.

The City will connect contractor with nurseries so that mutually agreed upon delivery may be scheduled.

Trees will be delivered to, and stored at, City of San Mateo Landscape Resources Yard (2001 Pacific Blvd). This is a secure site with access to water.

Contractor will provide equipment and labor to offload trees.

Upon delivery, contractor will refuse any material that does not meet American Association of Nursery Standards ANSI 760.1-2014. Contractor has authority to refuse any trees upon delivery, and shall notify CoSM of any rejected material.

Contractor to inspect all trees for an intact leader. If the leader is broken at the time of the planting, contractor will be responsible for replacement.

Storage

Once received, contractor assumes responsibility for watering and tree health and safety until trees are planted. City to supply access to water. Contractor to provide a hose.

Tree Transport to Job Site

Trees are to be loaded, transported, and planted in such a way as to not injure any parts of the tree during these activities. Trees should be tarped prior to transport.

Traffic Control

Where necessary, contractor is responsible for setting up necessary signage and protocols to ensure the safety of workers, pedestrians, and motorists, and to comply with state and local regulations.

'No Parking' Signs

Contractor is responsible for posting "No Parking" signs, if needed to perform work. All signs must be posted a minimum of 48 hours in advance of work. Signs may be valid for a period not to exceed two business days. The City will provide signs to contractor upon request.

Site Preparation

Some of the planting sites will have existing stumps, shrubbery, or small dead trees. Contractor is responsible for removing these items from the planting site.

Where stump grinding is necessary, contractor shall remove grindings from site to bring planting area to grade. Trees are not to be planted in a mixture any greater than 10% wood chips. See Figure 1.

Pavement, concrete and rocks over 2-inches in any dimension shall be removed from the planting pit to a minimum 24-inch depth.

Where backfilling is necessary to bring planter pit soil to grade or to replace stump grindings or other debris, contractor to supply quality topsoil. See Figure 2.

Below is a summary of the planting requirements. **Contractor responsible for reviewing and ascribing to ISA BMP Tree Planting, 2nd Edition.**

Planter Pit

Follow ANSI A300 64.4 and ISA *BMP Tree Planting 2nd Edition*. Planter hole width to be minimum 1.5 times rootball diameter.

Planting Depth

The bottom of true trunk flare must be at or slightly above finished grade. As defined in ISA BMP Tree Planting 2nd Edition, If trunk flare is not visible at top of root ball/container, contractor shall expose trunk flare prior to planting. **Adventitious roots that have resulted from poor nursery practices do not constitute the TRUE trunk flare. Keep looking!**

Root Care

After container is removed, root ball shall be trimmed in the following way:

1. Thick circling roots – straighten and/or cut cleanly
2. Thin roots—make three to four vertical cuts ½ inch deep around the root ball. Spread bottom out if necessary.

Tree Placement

Locate tree in hole and rotate to direct main branches away from street and pedestrian passages.

Watering at Planting

Water must be added to root zone and surrounding soil to bring root zone to field capacity.

Berm

Contractor to form a soil berm no less than 3 inches but no greater than 6 inches around perimeter of root ball.

Staking

Refer to ANSI A300 Part 3 and BMP Tree Support Systems, 3rd Edition.

If tree is delivered with a stake in the box/container, that stake is to be removed during planting.

Each tree is to get three treated stakes that are a minimum of 8 feet in height and 2 inches in diameter. The three stakes shall be laterally stabilized by three cross braces. The cross braces, to be provided by the contractor, will be 19" wide x 3.75" high, cut from 5/8" plywood or fencing. The braces shall be nail/screwed to the stakes at about 5 feet high. Nails shall not protrude from the surface of the wood. (Note: past contractors have found redwood fence boards of adequate width for this task.) See Figure 3.

Contractor will use staple gun to fasten one 3" x 15" vinyl sign to each of the three cross braces (3 stickers per tree using 4-8 staples per sticker). Educational signs to be provided by CoSM. See Figure 4.

Stakes should not extend more than 18 inches above cross brace signs.

Sites with Tree Grates

Sites with existing tree grates will require grate-specific tree stakes. One (1) J.R. Partners R2 Grate Stake must be installed in accordance with manufacturer specifications. Alternative grate stakes must be approved by the Managing Arborist.

Tree Tie

Trees are to be secured with ties of a stretchable rubber material. Tie material and configuration should prevent main stem and branches from rubbing against staking and cross braces. Contractor to present tying methods to Managing Arborist for approval prior to contract start.

Ties shall be secured in a manner allowing movement of trunk to permit proper trunk taper development.

TreeDiapers

On a limited number of sites, primarily median islands, TreeDiapers must be installed according to the manufacturer's instructions. 15-gallon trees are to receive a Tree Diaper TD36R (Model#1036vA). 24-inch box trees are to receive a Tree Diaper TD48R (Model#1048). All vegetation beneath the TreeDiapers must be grubbed out prior to installation. On sites where TreeDiapers are installed, all ice plant and/or ivy must be grubbed out for radius of 6 feet from the tree.

Staffing and Supervision

One crew leader is to be assigned to work on this project for its entire duration. That crew leader shall be fluent in English and be able to accept instruction from the City's Managing Arborist (or designee). The name of this supervisor should be submitted with the proposal, and they shall have at all times a charged mobile phone on which City staff can reach them.

Post-planting Inspection and Performance Criteria

The Managing Arborist or designee will conduct detailed post-planting inspections to ensure trees are planted according to the contract specifications. Contractor responsible for correcting all deviations noted during the post-work inspection. No Exceptions.

EXHIBIT B - PAYMENT RATES

Invoices are to be submitted no more frequently than once per 14 days. Each invoice shall include the full species name and container size of each tree planted and the corresponding address where that tree was planted. Total services invoiced under this Agreement shall not exceed \$262,675.00.

Work shall be invoiced and will be paid according to the Schedule of Services and Service Descriptions below.

SCHEDULE OF SERVICES AND SERVICE DESCRIPTIONS

ITEM NO.	SERVICE DESCRIPTION	YEAR 1 UNIT PRICE	YEAR 2 UNIT PRICE
1	Standard Street Tree (15 gallon)	\$ 290.00	\$ 300.00
2	Standard Street Tree (24-inch box)	\$ 555.00	\$ 575.00
3	Street Tree w/ Existing Tree Grate (15 gallon)	\$ 525.00	\$ 540.00
4	Street Tree w/ Existing Tree Grate (24-inch box)	\$ 850.00	\$ 875.00
5	Park Tree (15 gallon)	\$ 325.00	\$ 340.00
6	Park Tree (24-inch box)	\$ 585.00	\$ 600.00
7	Park Tree w TreeDiaper (15 gallon)	\$ 425.00	\$ 440.00
8	Park Tree w TreeDiaper (24-inch box)	\$ 745.00	\$ 770.00

1. Standard Street Tree (15 gallon) – Planting of one (1) 15-gallon tree along a city street, using 3 tree stakes and cross-brace signage, as described in Exhibit A.
2. Standard Street Tree (24-inch box) - Planting of one (1) 24-inch box tree along a city street, using 3 tree stakes and cross-brace signage, as described in Exhibit A.
3. Street Tree w/ Existing Tree Grate (15 gallon) - Planting of one (1) 15-gallon tree in a planting site with an existing tree grate. Providing and installing one J.R. Partners R2 Grate Stake, as described in Exhibit A.
4. Street Tree w/ Existing Tree Grate (24-inch box) - Planting of one (1) 24-inch box tree in a planting site with an existing tree grate. Providing and installing one J.R. Partners R2 Grate Stake, as described in Exhibit A.
5. Park Tree (15 gallon) – Planting of one (1) 15-gallon tree in a city park, using 2 tree stakes. No cross-braces or signage.
6. Park Tree (24-inch box) – Planting of one (1) 24-inch box tree in a city park, using 2 tree stakes. No cross-braces or signage.

7. Park Tree w/ TreeDiaper (15 gallon) – Planting of one (1) 15-gallon tree in a park or park-like planting area, using 2 tree stakes. Providing and installing according to the manufacturer's instructions one (1) Tree Diaper TD36R (Model#1036vA). No cross-braces or signage.
8. Park Tree w/ TreeDiaper (24-inch box) – Planting of one (1) 24-inch box tree in a park or park-like planting area, using 2 tree stakes. Providing and installing according to the manufacturer's instructions one (1) Tree Diaper TD48R (Model#1048). No cross-braces or signage.

With the exception of the trees and the signage, the Contractor shall be provide all labor and materials required to successfully deliver the bid items above.

The City will purchase all plant material and signage.

EXHIBIT C

INSURANCE REQUIREMENTS

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an “occurrence” basis, including products-completed operations, personal & advertising injury, with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers’ Compensation:** as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.

If the contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the contractor.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City, its elected and appointed officials, employees, and agents are to be covered as insureds on the auto policy for liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor; and on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor’s insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

Primary Coverage

For any claims related to this contract, the **Contractor’s insurance coverage shall be primary** insurance as respects the City, its elected and appointed officials, employees, and agents. Any insurance or self-insurance maintained by the City, its elected and appointed officials, employees, or agents shall be excess of the Contractor’s insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall provide that **coverage shall not be canceled, except after thirty (30) days’ prior written notice** (10 days for non-payment) has been given to the City.

Waiver of Subrogation

Contractor hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

Verification of Coverage

Contractor shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.