

**AGREEMENT WITH THE PROFESSIONAL TREE CARE COMPANY
FOR CRYSTAL SPRINGS EUCALYPTUS REMOVALS 2022**

This Agreement, made and entered into this 21st day of January, 2022, by and between the **CITY OF SAN MATEO**, a municipal corporation existing under the laws of the State of California ("CITY"), and **THE PROFESSIONAL TREE CARE COMPANY**, a CORPORATION, ("CONTRACTOR"), whose address is 2828 8TH AVE BERKELEY CA 94701.

R E C I T A L S :

A. CITY desires certain TREE REMOVAL services hereinafter described.

B. CITY desires to engage CONTRACTOR to provide these TREE REMOVAL 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

1. 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.
2. The Contract Documents: The complete Contract consists of the following: this Agreement, the Notice Inviting Sealed Bids, the accepted Bid, and the bid package, including the General Provisions, General Work Specifications, and Detailed Work Specifications.

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.

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 be completed on or about March 28th, 2022

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 a fee 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.

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.

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. All tree pruning shall be under the supervision of an ISA Certified Arborist® or ISA Board Certified Master Arborist®. All tree maintenance and care shall be performed by a qualified arborist with a C-61/D-49 California Contractors License.

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, 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. CONTRACTOR shall not 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:	Timothy Heartquist Tree Maintenance Specialist City of San Mateo 2001 Pacific Blvd San Mateo, CA 94403
To CONTRACTOR:	The Professional Tree Care Company Attn: Charlie Slesinger 2828 8 th Ave Berkeley, Ca, 94701

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.

IN WITNESS WHEREOF, CITY and CONTRACTOR have executed this Agreement the day and year first above written.

CITY OF SAN MATEO

CONTRACTOR

Sheila Canzian, Director of Parks and Recreation

Charles Slesinger

Charlie Slesinger, Bid Coordinator, The Professional Tree Care Company

APPROVED AS TO FORM

Gabrielle Whelan

Gabrielle Whelan, Assistant/City Attorney

EXHIBIT A

GENERAL PROVISIONS

- a) **Alterations:** The City reserves the right to increase by up to 25% the quantity of any item or portion of the work of same complexity as may be deemed necessary or advisable by the Managing Arborist or Tree Maintenance Specialist. The City also reserves the right to decrease the quantity of work based on available funds.
- b) **Control of the Work:** The City of San Mateo Managing Arborist or Tree Maintenance Specialist shall decide any and all questions which may arise as to the quality or acceptability of work performed and as to the manner of performance and rate of progress of the work; all questions which arise as to the interpretation of the plans and specifications; all questions as to the acceptable fulfillment of the contract on the part of the Contractor.
- c) **Conformity with Specifications and Allowable Deviation:** Deviations from these specifications, as may be required by unforeseen events or exigencies, will be mutually determined in all cases by the Managing Arborist or Tree Maintenance Specialist and the Contractor.
- d) **Temporary Suspension:** The Managing Arborist or Tree Maintenance Specialist may suspend the work wholly or in part, for such a period as may be deemed necessary, due to unsuitable weather, or to such other conditions as are considered unfavorable for the suitable prosecution of the work.
- e) **Coordination of Work:** The Contractor shall be responsible for coordinating all tree care work activity with the Managing Arborist or Tree Maintenance Specialist. Contractor shall establish a uniform time schedule for performance of routine tree work, which shall be in conformance with general contract work hours or special tree care work requirements. Each morning before starting work the Contractor's Supervisor shall notify the Managing Arborist or Tree Maintenance Specialist whether pruning crews will be working on that day and their location.
- f) **Traffic and Access:** The Contractor shall be responsible, during all phases of work, to provide for public safety and convenience. Operations shall be conducted in such a manner as to cause as little inconvenience as possible to abutting property owners. Convenient access to driveways, houses, and buildings along line of work shall be maintained. When necessary, the Contractor is responsible for supplying and affixing all safety and traffic control signs and devices (i.e. safety cones). If needed, the Contractor shall be responsible to arrange with the public utilities for any power shutdowns or marking of utility lines.
- g) **Inspection:** Each area of work will be inspected daily or as necessary. In the event the inspection report notes failure to satisfactorily maintain an area, the Contractor shall immediately rework the area as directed by the Managing Arborist or Tree Maintenance Specialist.
- h) **Correction of Unsatisfactory Work and Unauthorized Work:** All unsatisfactory work shall be remedied in a manner acceptable to the Managing Arborist or Tree Maintenance Specialist. No compensation will be allowed for such correction.

Any work done beyond the limits shown by the work specifications or established by the City or any extra work done without written authority, will be considered as unauthorized and will not be paid.

Upon failure on the part of the Contractor to comply forthwith with any order of the City made under the provisions of this article, the City shall have the authority to cause unsatisfactory work to be remedied and to deduct the costs thereof from any monies due or to become due the Contractor.

i) **Suspension of Contract:** If at any time, in the opinion of the Managing Arborist or Tree Maintenance Specialist, the Contractor has failed to supply adequate working force, adequate equipment, or has failed in any respect to prosecute work with the diligence and force specified and intended in and by the terms of the contract, notice thereof in writing will be served upon Contractor. Should Contractor neglect or refuse to provide means for a satisfactory compliance with the contract as directed by the City, within the time specified in such notice, the City in any case shall have the power to suspend the operation of the Contractor.

j) **Registration of Contractors:** Before submitting bids, Contractors shall be licensed in accordance with City of San Mateo and State of California Contractor Board requirements. The Contractor is also required to keep fully informed of all existing state and national laws and all municipal ordinances and regulations of the City of San Mateo which in any manner affect those engaged or employed in work and of all orders and decrees of bodies or tribunals with jurisdiction or authority.

k) **Subcontractors:** The use of subcontractors for performance of any portion of this contract is prohibited.

l) **Permits and Licenses:** The Contractor shall procure all permits and licenses, pay all charges and fees and give all notices necessary and incidental to the due and lawful prosecution of the work.

m) **Progress Payments, Monthly Billing:** Contractor shall submit in duplicate invoice for payment on a monthly basis to the following:

City of San Mateo
Parks Division
Attn: Managing Arborist/City Arborist
330 W. 20th Avenue
San Mateo, CA 94403

The invoice shall indicate the type of tree care work completed, and the quantity, species of trees, location and dates work was accomplished. Only inspected and approved work will be paid. Bills so submitted shall be paid by the Parks and Recreation Department.

- n) **Completion of Work and Liquidated Damages:** The Contractor shall complete all work called for under the contract in all parts and requirements by, **March 28th, 2022** unless agreed to otherwise by the City. If the Contractor fails to complete all work contracted to be done and performed within the time frame set forth in this contract, he shall become liable to the City for liquidated damages in the sum of One Hundred Dollars (\$100.00) for each and every day during which said work shall remain uncompleted beyond such time for completion or lawful extension thereof, which sum shall be presumed to be the amount of damage thereby sustained by City since it would be impracticable or extremely difficult to fix the actual damage; and the amount of liquidated damages may be deducted by City from monies due Contractor hereunder or his assigns and successors at the time of completion, and said Contractor hereunder, or his assigns and successors at the time of completion shall be liable to City for any excess.

Examination of the Site

The bidder shall carefully examine the City's tree population and the bid and contract forms therefore. The submission of a bid shall be conclusive evidence that the bidder has investigated and is satisfied as to the conditions to be encountered, as to the character, quality and scope of work to be performed, the quantity of materials to be furnished and as to the requirements of the bid, plans, specifications and contracts. All bidders will submit their bids with this knowledge.

The bidder represents that he or she is fully qualified to perform this examination and review.

If the bidder determines that any portion of the site or the plans and specifications present any interpretation problems of any kind, the bidder shall note such a determination upon this form. Failure to note any such determination shall be conclusive evidence of acceptance by the bidder of the sufficiency of the plans and specifications.

San Mateo Business License Guidelines

A business license shall be obtained as required by the San Mateo Municipal Code, Chapter 5, Section 5.06.010, the amount of which is based on the gross receipts received from doing business in the City of San Mateo.

Prevailing Wage Compliance Requirements

The minimum compensation to be paid for labor upon all work performed under this contract shall be the general prevailing wage scale established by the Director of Industrial Relations of the State of California in force the day this bid opening was announced. It is understood that it is the responsibility of the bidder to determine the correct scale. No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. **All bids are to be accompanied by proof of registration with the Department of Industrial Relations pursuant to Labor Code 1725.5.**

GENERAL WORK SPECIFICATIONS

- a) **Schedule of Operations.** Work shall be conducted on Monday through Friday with no work on any holiday recognized by the City. It is the City's intent that residents with questions or concerns will be able to contact city staff when contract tree work is in progress. Daily tree pruning operations shall commence no earlier than 7:00 A.M. and shall be completed each day no later than 5:00 P.M. See attachments for site specific details.

Each morning before starting work the Contractor's Supervisor shall notify the Managing Arborist or Tree Maintenance Specialist whether the pruning crew will be working on that day and their location.

- b) **Notification of Public.** Contractor shall notify all residents or associations fronting street right-of-way one (1) week prior to any scheduled tree care if tree pruning activities will interfere with normal activities or be an inconvenience to the resident. Residents will be given a realistic time frame when the work will occur. Contractor shall provide and post "No Parking" signs twenty-four (24) hours in advance of any work.
- c) **Objection After Notification.** If objection to pruning occurs while work is in progress by the property owner or resident, Contractor shall immediately stop work on tree or trees in question and immediately notify the Managing Arborist/City Arborist. Work shall not resume on that particular location until the Managing Arborist/City Arborist settles the complaint. Because citizens occasionally complain, Contractor shall assume and plan for this and report it to the Managing Arborist/City Arborist and be prepared to move on to the next scheduled tree work.
- d) **Public Relations.** Contractor shall endeavor to maintain good public relations at all times. The work shall be conducted in a manner which will cause the least possible interference and annoyance to the public. Work shall be performed by competent employees and supervised by an experienced, English speaking supervisor in tree maintenance operations. The Contractor shall be responsible for advance notification to the residents at each work location of the intended tree operations. The Contractor shall be responsible to see that private property and vehicles at work locations are not endangered or damaged during the course of work.

Detailed Work Specifications

The Contractor shall furnish all labor, equipment, materials, traffic controls, tools and supervision to perform tree maintenance as described herein including, but not limited to, the following:

- (a) Visually inspect each tree prior to climbing or pruning
- (b) Notify City staff of any imminent hazards or extreme risk tree situations.**
- (c) Site clean-up and removal of all debris produced during pruning/removal operations.

(d) Remove approximately 20 Eucalyptus trees and one dead Pine along Crystal Springs Road in San Mateo between Tulane Ct and 791 Crystal Springs Road.

- Remove and leave stumps as close to grade as possible.**

Tool Sanitation - On all trees, including palms, known or suspected to be diseased, pruning tools shall be disinfected with a ten (10) percent chlorine bleach solution after each cut and between trees where there is danger of transmitting the disease on tools. Fresh solution shall be mixed daily.

Weekly Work Summary. At the end of each work week, the Contractor shall email the Tree Maintenance Specialist, a detailed list of all work completed that week, including:

1. number and locations of trees worked
2. any issues encountered or unresolved
3. major tree defects observed
4. hazardous conditions observed
5. work plan for the next week

Safety Specifications – The most recent version of the American National Standard Safety Publications ANSI Z133.1, incorporated herein by reference, shall be made part of and included in specifications as the safety requirements. In addition to meeting qualified tree worker's qualifications, all employees and equipment working within the ten-foot proximity of energized conductors in excess of 70 volts shall be qualified line-clearance tree trimmers or qualified line-clearance tree trimmer trainees using approved tools and equipment.

Contractor employees and equipment shall be trained and certified for working in proximity of energized conductors. The City may require the contractor to provide the City proof that its employees have participated in an appropriate training program, and certification that its equipment and tools have passed Dielectric Tests, prior to commencing work.

All incidental power and hand tools shall have Dielectric Tests where required.

All equipment and tools shall meet and be kept maintained as required in the most recent version of the American National Standard Safety Publications ANSI Z133.1.

CERTIFICATE OF NONDISCRIMINATION

(To be submitted with Bid Form)

CRYSTAL SPRING EUCALYPTUS REMOVALS 2022

On behalf of the bidder making this bid, the undersigned certifies that there will be no discrimination in employment with regard to race, color, religion, sex, disability, or national origin; that all federal, state, local directives, and executive orders regarding non-discrimination in employment will be complied with; and that the principle of equal opportunity in employment will be demonstrated positively and aggressively.

BIDDER

By: _____

(Name of person making certificate)

(Title of person making certificate)

Date

- End of EXHIBIT A--

EXHIBIT B

BID FORM

CRYSTAL SPRING EUCALYPTUS REMOVALS 2022
CITY OF SAN MATEO, CALIFORNIA

FOR THE TOTAL SUM OF \$ 178,500.00 (use figures only) as computed from the per tree price rate of \$ 8,500 per street tree, the undersigned hereby proposes and agrees that if this bid is accepted he/she will contract with the City of San Mateo, California, to furnish all labor, materials, tools, equipment, transportation, licensure, and all incidental work and services required to complete all items of tree maintenance work as indicated in the **EXHIBIT A: "**

CRYSTAL SPRING EUCALYPTUS REMOVALS 2022

All work shall conform to all specifications, requirements, provisions, and other details in accordance with **EXHIBIT A**, and all addenda thereto.

This bid is submitted in conformance with the requirements of the **EXHIBIT A: " CRYSTAL SPRING EUCALYPTUS REMOVALS 2022:** and all addenda thereto as prepared by the City of San Mateo. All submittals required per **EXHIBIT A** are hereby attached to this Bid Form and is a binding part thereof. The work shall be paid for monthly. Contractor shall submit a monthly bill for the work performed with required supporting data.



Contractor's Signature

The Professional Tree Care Co.

Name of Company

510-549-3954

Phone Number

charles@professionaltreecare.com

Email

1/3/22

Date

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 affect 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.

-- End of EXHIBIT C: INSURANCE REQUIREMENTS --