

**COOPERATIVE SERVICES
AGREEMENT BETWEEN OUR
CITY'S FOREST AND THE CITY OF
SUNNYVALE**

THIS AGREEMENT is made and entered into on _____, 2021 by and between the CITY OF SUNNYVALE (hereinafter referred to as CITY), a California municipal corporation and Our City Forest, 646 N. King Rd., San Jose, CA 95133, 408-998-7337 (hereinafter referred to as CONTRACTOR) and collectively referred to as "the Parties".

WHEREAS, the Parties would like to enter into a Cooperative Services Agreement ("Agreement") for a pilot project to allow CONTRACTOR to plant trees on private residential properties within the CITY; and

WHEREAS, the CITY shall subsidize the planting of the trees on private residential properties and CONTRACTOR shall enter into agreements with each private resident regarding the respective rights and obligations between CONTRACTOR and private residents; and

NOW THEREFORE in consideration of their mutual covenants, the parties hereto agree as follows:

1. SCOPE OF WORK. CONTRACTOR shall provide or furnish the following specified services and/or materials:

Plant trees in Sunnyvale on residential private property using volunteer and AmeriCorps labor. Services include the cost of the tree and labor to properly plant the tree based on International Society of Arboriculture (ISA) standards. CONTRACTOR will assist the property owner in tree species selection from the City provided approved list of trees (Exhibit A – Sunnyvale Tree Species List) . CITY must approve tree species selection prior to the tree being planted. Outreach and education will also be provided by CONTRACTOR to the resident in regard to proper tree care in either electronic or written form at the time of or prior to the tree being planted. CITY will also provide outreach by marketing the program to residents via normal City channels of communication. CONTRACTOR will provide CITY with a copy of the Tree Stewardship Application for approval prior to planting and a photo of the planted tree once installed.

2. TERM. The services and/or materials furnished under this Agreement shall commence upon the signing of this contract and will terminate when all City funding for the agreement is exhausted or at the end of two (2) years, whichever occurs first.

3. COMPENSATION. For the full performance of this Agreement, CITY shall pay CONTRACTOR on a time and materials basis in an amount not to exceed \$15,000 unless

authorized otherwise by CITY, at a cost of \$300 per tree planted after the homeowner has paid CONTRACTOR a \$50 application fee. The application must be approved by CITY prior to planting. Payments are to be made on a semi-annual basis. OCF will submit invoices to CITY (Tree Division) June 1st and December 1st of each year the program is in effect and CITY will pay within 60 days upon receipt of invoice. The invoices shall include the residential address where the trees were planted, the tree species, and a copy of the residential contract.

4. JURISDICTION, VENUE AND INTEGRATION CLAUSE. This Agreement shall be governed by the laws of the State of California and venue shall be in the superior courts of Santa Clara County. This Agreement constitutes the entire agreement between the parties regarding its subject matter. If any provision in this Agreement is held by any court or trier of fact to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.

5. INDEMNIFICATION AND HOLD HARMLESS. With respect to any services provided by CONTRACTOR under this Agreement, the CONTRACTOR agrees to indemnify, defend and hold harmless the CITY, its officers, agents and employees from any and all claims, actions, causes of action, losses, damages, costs and liabilities of every nature, including all costs of defending any claim, caused by, pertaining or relating to, or arising out of, or alleged to have been caused by or arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONTRACTOR, except for any claims, actions, causes of action, losses, damages or liabilities proximately caused by the sole negligence or willful misconduct of CITY. CITY shall not be liable for any acts of CONTRACTOR in performing services described herein.

With respect to all matters other than those covered by the foregoing paragraph, CONTRACTOR agrees to indemnify, defend and hold harmless the CITY, its officers, agents and employees from any and all claims, actions, causes of action, losses, damages, costs and liabilities of every nature, including all costs of defending any claim, caused by or arising out of, or alleged to have been caused by or arise out of the performance of this Agreement, except for any claims, actions, causes of action, losses, damages, costs or liabilities proximately caused by the sole negligence or willful misconduct of CITY. CITY shall not be liable for acts of CONTRACTOR in performing services described herein.

In the event that this contract is subject to California Civil Code section 2782(b), the foregoing indemnity provisions shall not apply to any liability for the active negligence of the City.

The foregoing indemnity provisions are intended to fully allocate all risk of liability to CONTRACTOR with respect to third-parties. No other rights of indemnity or contribution shall exist between the parties in law or in equity. The provisions set forth in this section shall

survive the termination of this Agreement.

6. INSURANCE. CONTRACTOR shall provide the following before commencing any services under this agreement.

A. GENERAL LIABILITY INSURANCE: CONTRACTOR shall provide commercial general liability, broad form general liability and business automobile liability insurance in connection with the CONTRACTOR'S performance, in the amount of not less than \$1,000,000 per occurrence. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location, or the general aggregate limit shall be twice the required occurrence limit. Liability policies shall be endorsed to name CITY, its officers, volunteers, and employees as "insureds" under said insurance coverage and to state that such insurance shall be deemed "primary" such that any other insurance that may be carried by CITY shall be excess thereto. Such insurance shall be on an "occurrence," not a "claims made," basis and shall not be cancelable or subject to reduction except upon thirty (30) days prior written notice to CITY (10 day notice for non-payment of premium). Endorsements shall be provided by or acceptable to the CITY.

B. WORKERS' COMPENSATION AND EMPLOYERS LIABILITY INSURANCE: During its performance or service, CONTRACTOR shall maintain Workers' Compensation and Employers Liability insurance for all of its employees who are in any way connected with performance of these services. The Workers' Compensation Insurance shall comply with all applicable State laws. Employers Liability coverage shall be for a minimum of \$1,000,000. The CONTRACTOR shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by the Contractor for the City.

It is a requirement of this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits set forth in this Agreement shall be available to the City when the City is named as an additional insured pursuant to this Agreement. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever affords greater coverage.

C. CERTIFICATES OF INSURANCE: CONTRACTOR shall furnish CITY a certificate of insurance, duly authenticated, evidencing maintenance of the insurance required under this Agreement and such other evidence of insurance of copies of policies as may be reasonably required by CITY from time to time. Satisfactory evidence of said coverage shall be required within ten (10) days of award of contract.

7. NON-DISCRIMINATION. No discrimination shall be made in the employment of persons under this agreement because of the race, color, national origin, ancestry, religion or sex of such person.

8. INDEPENDENT CONTRACTOR. It is understood and agreed that this Agreement is not a contract of employment in the sense that the relation of master and servant exists between CITY and CONTRACTOR. At all times, CONTRACTOR shall be deemed to be an independent contractor and CONTRACTOR is not authorized to bind the CITY to any contracts or other obligations in executing this agreement. CONTRACTOR certifies that no one who has or will have any financial interest under this agreement is an officer or employee of CITY.

9. ASSIGNMENT AND AMENDMENTS. This agreement shall not be assigned or transferred without the written consent of the CITY. No changes or variations of any kind are authorized without the written consent of the CITY.

10. PUBLIC WORKS PROJECT. In the event this Agreement requires the CONTRACTOR to provide services within the definition of public projects pursuant to California Public Contracts Code Section 20161, the additional terms and conditions stated below shall be in full force and effect:

ARTICLE I. The general prevailing wage rates heretofore specified and any minimum wage rates indicated in the Special Provisions are hereby specifically referred to and by this reference are made a part of this contract.

ARTICLE II. In accordance with the provisions of Section 3700 of the Labor Code, every CONTRACTOR will be required to secure the payment of compensation to his or her employees.

ARTICLE III. By my signature below, as CONTRACTOR, I certify that I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with such provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this Agreement.

ARTICLE IV. The improvement contemplated in the performance of this Agreement is an improvement over which the CITY shall exercise general supervision. The CITY shall have the right to assume full and direct control over this Agreement whenever the CITY, at its sole discretion, shall determine that its responsibility to the United States or the State of California so requires.

ARTICLE V. The CONTRACTOR agrees to receive and accept the prices indicated in the CONTRACTOR's signed Proposal as full compensation for furnishing all materials and for doing all the work completed and embraced in this Agreement; also for all loss or damage, arising out of the nature of the work aforesaid, or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until its acceptance by the CITY, and for all risks of every description connected with the work; also for all expenses incurred by or in consequence of the suspension or discontinuance of work, and the whole thereof, in the manner and according to the Plans and Specifications, and requirements of the Engineer under them.

ARTICLE VI. CONTRACTOR shall be responsible for complying with the provisions of Section 1776 of the California Labor Code concerning payroll records.

ARTICLE VII. CONTRACTOR shall be responsible for complying with the provisions of California Labor Code Sections 1777.5 through 1777.7, inclusive, concerning apprentices.

ARTICLE VII. CONTRACTOR shall be responsible for complying with the provisions of California Labor Code Sections 1810 through 1815, inclusive, concerning working hours.

ARTICLE IX. CONTRACTOR shall be responsible for complying with the provisions of California Public Contracts Code Section 7104 regarding trenching and excavation that extend deeper than four (4) feet below the surface.

ARTICLE X. Time is of the essence in the performance of this contract. It is agreed by the parties to the contract that in case all the work called for under the contract in all parts and requirements is not finished or completed within the number of working days as set forth in the special provisions, damage will be sustained by the CITY, and that it is and will be impracticable and extremely difficult to ascertain and determine the actual damage which the CITY will sustain in the event of and by reason of such delay; and it is therefore agreed that the CONTRACTOR will pay to the CITY liquidated damages for each and every calendar day's delay in finishing the work in excess of the number of working day's prescribed, in the amount of \$ *N/A* per day. The CITY further agrees that the CONTRACTOR shall not be assessed liquidated damages for delay in completion of the project, when such a delay was caused by the failure of the CITY or the owner of the utility to provide for removal or relocation of such utility facilities as set forth in California Government Code Section 4215.

11. PREVAILING WAGES. This contract may be for a public work as defined in Chapter 1 of Part 7 of Division 2 of the California Labor Code. CONTRACTOR and any subcontractors under the CONTRACTOR shall comply with Section 1782 of the California Labor Code and Sunnyvale Municipal Code Section 2.09.220 and any and all regulations concerning prevailing

wages.

12. TERMINATION. Notwithstanding any other provision of this Agreement, CITY may terminate this Agreement at any time, with or without cause, in its sole discretion, by giving notice in writing to CONTRACTOR of such termination. In the event of such termination, CONTRACTOR shall have the right and obligation to immediately assemble the work then in progress for the purpose of completing the work and turning over all materials and documents to CITY. In the event of such termination, CONTRACTOR shall be compensated for all work and services performed to the point of termination in accordance with the payment provisions set forth in Section 2.1, unless the termination is for cause, in which event CONTRACTOR need be compensated only to the extent required by law.

13. COUNTERPARTS. The Parties may execute this Agreement in counterpart.

14. PARTY COORDINATORS. The Parties shall specify a coordinator for notices and coordination named below and modified only upon written notice provided to the other Party:

CONTRACTOR: Rhonda Berry
Our City Forest
646 N. King Rd.
San Jose, CA 95133
(408)-998-7337
rberry@ourcityforest.org

CITY: Jim Stark
City of Sunnyvale
456 W. Olive Ave
Sunnyvale, CA 94086
(408) 730-7506
jstark@sunnyvale.ca.gov

This Agreement shall become effective upon execution by the Parties, and on the day and year first written above.

CONTRACTOR:

CITY OF SUNNYVALE:

By: _____

By: _____

Title: _____

Title: _____

APPROVED AS TO FORM:

Sr. Assistant City Attorney

Size Range	Scientific name	Common name	Notes	Size
LARGE	<i>Acer macrophyllum</i>	Bigleaf maple	Maples require routine summer water	L
Large Canopy	<i>Acer negundo</i>	Box elder	Maples require routine summer water	L
40 - 100 feet	<i>Aesculus californica</i>	California buckeye	Summer deciduous in unirrigated sites	L
at maturity	<i>Afrocarpus gracilior</i> (<i>Afrocarpus falcatus</i>)	African fern pine	Fun fact: neither a fern nor a pine	L
	<i>Brachychiton acerifolia</i>	Flame Bottle tree		L
	<i>Brachychiton populneus</i>	Bottle tree		L
	<i>Catalpa speciosa</i>	Northern catalpa		L
	<i>Cedrus deodara</i>	Deodar cedar		L
	<i>Celtis australis</i>	European Hackberry		L
	<i>Cinamomum camphora</i>	Camphor Tree		L
	<i>Fagus sylvatica</i> 'Atropunicea'	Purple Leaf Beech	Requires summer water	L
	<i>Fraxinus americana</i> 'Autumn Purple'	Autumn Purple Ash		L
	<i>Fraxinus velutina</i> 'Rio Grande'	Rio Grande Ash		L
	<i>Ginkgo biloba</i>	Ginkgo	Female trees have odiferous fruit	L
	<i>Ginkgo biloba</i> 'Autumn Gold'	Ginkgo	Male cultivar - no fruit	L
	<i>Lophostemon confertus</i>	Brisbane box		L
	<i>Magnolia grandiflora</i>	Southern magnolia	Requires summer water	L
	<i>Melia azedarach</i>	Chinaberry		L
	<i>Pinus camariensis</i>	Canary Is. Pine	Large pine - very drought tolerant - columnar	L
	<i>Pinus pinea</i>	Italian stone pine	Large pine - very drought tolerant - very broad canopy	L
	<i>Platanus acerifolia</i> 'Yarwood'	Yarwood Sycamore		L
	<i>Platanus racemosa</i>	California sycamore		L

	<i>Platanus racemosa</i> 'Roberts'	Robert's' CA sycamore	Strong central leader, straight trunk	L
	<i>Platanus x acerfolia</i> (<i>Platanus</i> × <i>hispanica</i>)	London plane tree		L
	<i>Podocarpus macrophyllus</i>	Yew pine	Fun fact: neither a yew nor a pine	L
	<i>Quercus agrifolia</i>	Coast live oak	Native to Sunnyvale	L
	<i>Quercus buckleyi</i>	Texas Red oak		L
	<i>Quercus douglasii</i>	Black oak	Very drought tolerant - slow to moderate growth	L
	<i>Quercus engelmannii</i>	Engelman oak		L
	<i>Quercus frainetto</i> 'Forest Green'	Forest Green oak	Similarly-sized cultivars ok	L
	<i>Quercus ilex</i>	Holly Oak		L
	<i>Quercus lobata</i>	Valley oak		L
	<i>Quercus macrocarpa</i>	Bur oak		L
	<i>Quercus macrocarpa</i> 'Urban Pinnacle'	Urban Pinnacle oak	Very narrow	L
	<i>Quercus shumardii</i>	Shumard oak		L
	<i>Quercus suber</i>	cork oak		L
	<i>Quercus virginiana</i>	Sothorn Live Oak		L

Size Range	Scientific name	Common name	Notes	Size
	<i>Sequoia sempervirens</i>	Coast Redwood	Summer water required; a very large tree, needs space	L
	<i>Styphnolobium japonicum</i> (<i>Sophora japonica</i>)	Japanese pagoda tree		L
	<i>Taxodium distichum</i>	Bald cypress	Can tolerate wet conditions, ok in lawns	L
	<i>Tilia tomentosa</i> 'Sterling'	Silver linden	Similarly-sized cultivars ok (Green Mountain)	L
	<i>Ulmus davidiana</i> var. <i>japonica</i> 'Morton'	Accolade elm	Similarly-sized cultivars ok (<i>Ulmus japonica</i> x <i>wilsonian</i>)	L
	<i>Ulmus parvifolia</i>	Chinese elm	Similarly-sized cultivars ok	L
	<i>Umbellularia californica</i>	California bay laurel	Cohost for Sudden Oak Death disease in Q. agrifolia	L
	<i>x Cupressocyparis leylandii</i>	Leyland cypress	Columnar, wider at the base	L
	<i>Zelkova serrata</i>	Zelkova	Similarly-sized cultivars ok	L
Size Range	Scientific name	Common name	Notes	Size
MEDIUM	<i>Acer buergerianum</i>	Trident Maple	Maples require routine summer water	M
Medium Canopy	<i>Acer campestre</i>	Hedge Maple	Maples require routine summer water	M
25-40 feet	<i>Acer campestre</i> 'Evelyn'	Queen Elizabeth Maple	Maples require routine summer water	M
at maturity	<i>Acer rubrum</i> 'October Glory'	October Glory maple	Maples require routine summer water	M
	<i>Acer x freemanii</i> 'Jeffersred'	Freeman Maple	Maples require routine summer water	M
	<i>Aesculus x carnea</i> 'Briotii'	Red horsechestnut		M
	<i>Arbutus</i> 'Marina'	Marina madrone		M
	<i>Betula nigra</i> 'BNMTF'	River Birch		M
	<i>Betula nigra</i> 'Heritage'	River Birch - Heritage		M
	<i>Carpinus betulus</i>	European hornbeam	Similarly-sized cultivars ok	M
	<i>Cupaniopsis anacardioides</i>	carrotwood		M

	<i>Cupressus arizonica</i> (<i>Hesperocyparis arizonica</i>)	Arizona cypress		M
	<i>Geijera parviflora</i>	Australian willow		M
	<i>Gymnocladus dioicus</i> 'Espresso'	Kentucky coffee tree		M
	<i>Jacaranda mimosifolia</i>	jacaranda		M
	<i>Koelreuteria bipinnata</i>	Chinese flame tree		M
	<i>Koelreuteria paniculata</i>	Goldenrain tree		M
	<i>Laurus nobilis</i>	Grecian Laurel - Sweet Bay		M
	<i>Laurus nobilis</i> 'Saratoga'	Saratoga Sweet Bay		M
	<i>Maackia amurensis</i> 'JFS-Schichtell'	Maacnificent maackia		M
	<i>Morus alba</i> 'Fruitless'	Fruitless mulberry		M
	<i>Nyssa sylvatica</i> 'Haymanred'	Red rage tupelo	Requires summer water	M
	<i>Olea europaea</i> 'Wilson'	Fruitless olive	Similarly-sized cultivars ok; must be fruitless	M
	<i>Parrotia persica</i> 'Vanessa'	Persian ironwood		M
	<i>Pistacia chinensis</i>	Chinese pistache		M
	<i>Podocarpus henkelii</i>	Long Leafed Yellowwood		M
	<i>Quercus robur x alba</i> 'Streetspire'	Streetspire oak	Very narrow	M

Size Range	Scientific name	Common name	Notes	Size
	<i>Rhus lancea</i>	African sumac		M
	<i>Robinia x ambigua</i> 'Purple Robe'	Purple robe locust		M
	<i>Schinus molle</i>	Peruvian Pepper		M
	<i>Tristanopsis laurina</i> +1:112 'Elegant'	Elegant Water Gum		M
	<i>Ulmus propinqua</i> 'Emerald Sunshine'	Emerald Sunshine elm	Similarly-sized cultivars ok	M
	<i>Ulmus x</i> 'Frontier'	Frontier elm	Similarly-sized cultivars ok	M
	<i>Zelkova serrata</i> 'Musashino'	Musashino zelkova	Similarly-sized cultivars ok	M
Size Range	Scientific name	Common name	Notes	Size
SMALL	<i>Acer grandidentatum</i>	Bigtooth maple		S
Small Canopy	<i>Acer grandidentatum</i> 'JFS-NuMex 3'	Mesa glow maple		S
less than	<i>Arbutus unedo</i>	Strawberry tree		S
25 feet	<i>Cercis canadensis</i>	Eastern redbud		S
	<i>Cercis occidentalis</i>	Western redbud		S
	<i>Chilopsis linearis</i>	Desert Willow		S
	<i>Chionanthus retusus</i>	Chinese Fringe		S
	<i>Chitalpa tashkentensis</i>	Chitalpa	Similarly-sized cultivars ok	S
	<i>Lagerstroemia x Muskegee</i>	Crape Myrtle		S
	<i>Lagerstroemia x Natchez</i>	Crape Myrtle		S
	<i>Lagerstroemia x 'Tuscarora'</i>	Crape Myrtle		S
	<i>Prunus caroliniana</i>	Carolina laurel cherry		S
	<i>Prunus ilicifolia</i> ssp. <i>ilicifolia</i>	Holly-Leafed Cherry		S
	<i>Zelkova</i> 'City Sprite'	City Sprite zelkova	Similarly-sized cultivars ok	S

	<i>Zelkova 'Schmidtlow'</i>	Wireless zelkova	Similarly-sized cultivars ok	S
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