

EXHIBIT A

SERVICES AGREEMENT BETWEEN THE CITY OF REEDLEY AND CLEAN CUT LANDSCAPE

This Services Agreement (Agreement) is entered into this 18 day of March, 2013, by and between the City of Reedley, a municipal corporation, ("City"), and Clean Cut Landscape ("Contractor") for landscape maintenance services in the Downtown Parking and Business Improvement Area.

WITNESS

WHEREAS, the City has formed a Downtown Parking and Business Improvement Area for the benefit of downtown business owners; and,

WHEREAS, businesses within the Downtown Parking and Business Improvement Area contribute to fund the care, maintenance and replacement of street trees, shrubs and ground cover planting in planters in the sidewalk area and the maintenance of the automatic irrigation system and other facilities incidental thereto for these planters and ornamental structures and facilities and street furniture to include benches installed within the Reedley Downtown Parking and Business Improvement Area; and,

WHEREAS, the City and the Contractor now wish to enter into this Agreement to contract for landscape maintenance services.

NOW, THEREFORE, in consideration of the above recitals, the parties agree as follows:

1. PARTICIPATING AGENCIES AND DESIGNATED CONTACT PERSONS

City Representative: Nicole R. Zieba, City Manager
City of Reedley
1717 Ninth Street
Reedley, CA 93654
Tel: (559) 637-4200 x. 212

Contractor Representative: Karry Wendel
8406 N. Armstrong Ave.
Clovis, CA 93619
(559) 322-2041

2. ROLES, CONTRIBUTIONS AND RESPONSIBILITIES

A. The Contractor will performs the work as described under "Scope of Work" Exhibit A.

B. City will:

- (i) Provide any supporting services that are not included in the scope of work if deemed necessary by City staff.

3. PERFORMANCE STANDARDS

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The Contractor agrees that they will, at all time, faithfully, industriously, and to the best of their ability, perform the duties and functions that are required under this Agreement.

4. COMPENSATION

The Contractor shall be paid a flat fee of \$914 per month for the services described in Exhibit A. City may request enhanced or additional services during the term of this Agreement. No additional work is to be performed prior to written authorization from the City of Reedley. City and Contractor may negotiate payment amount for services on an annual basis, with any changes to monthly flat fee approved by the City Manager, documented in writing and signed by both parties.

5. EFFECTIVENESS, DURATION AND TERMINATION

This Agreement shall be effective as of the date first written above, and shall remain in effect for a term of 12 months. This agreement may automatically renew each year thereafter for a period not to exceed five years.

Either party may at any time terminate this Agreement (i) without cause at the party's convenience by giving not less than two months (60 days) prior written notice to the other party, or (ii) with cause upon written notice to the other party following the other party's failure to reasonably cure an event of non-performance hereunder following thirty (30) days written notice thereof. Termination shall be effective (the "Effective Date of Termination") as of the date specified in said notice of termination. Upon such termination, all rights and obligations of each party under this Agreement shall cease as of the Effective Date of Termination, except for those specific obligations that shall survive termination as set forth herein.

6. RECORDKEEPING AND PERFORMANCE DATA

Each party shall keep and maintain proper records and documentation sufficient to substantiate its contributions hereunder, and shall make such available for review and audit during normal operating hours upon the reasonable written request of the other party for a period of three (3) years following expiration or earlier termination of this Agreement.

7. CAPACITY OF CITY AND THE CONTRACTOR

Each party is acting in an independent capacity. Nothing in this Agreement and nothing in the course of dealings between the parties hereunder shall be deemed to create any fiduciary relationship, trust, partnership, joint venture, agency or employment relationship, jointly and severally.

In addition and without limitation, each party shall be solely responsible for all matters relating to payment of its employees, including, but not limited to, compliance with applicable social security withholding, workers' compensation insurance, benefits and all other regulations governing such matters. Personnel supplied by City will not for any purpose be considered employees or agents of the Contractor. The City assumes full responsibility for the actions of such personnel while they are performing services pursuant to this Agreement, and shall be solely responsible for their supervision, daily direction and control, payment of salary (including withholding of income taxes and social security), disability benefits and the like, as applicable. Conversely, personnel supplied by the Contractor will not for any purpose be considered employees or agents of the City. The Contractor assumes full responsibility for the actions of such personnel while they are performing

services pursuant to this Agreement, and shall be solely responsible for their supervision, daily direction and control, payment of salary (including withholding of income taxes and social security), disability benefits and the like, as applicable.

The City and the Contractor agree and acknowledge that their relationship is strictly and solely that of an independent contractor to each other. The City's employees and/or agents are not entitled to any employee benefits or insurance, including without limitation any health care, worker's compensation, unemployment or disability benefits, to be provided by the Contractor. The Contractor agrees and acknowledges that the Contractor employees and/or agents are not entitled to any employee benefits or insurance, including without limitation any health care, worker's compensation, unemployment or disability benefits, to be provided by the City.

Neither party shall engage any person or entity to serve in any capacity, or incur any expense or obligation on behalf of the other without the prior written consent of both parties.

8. INDEMNIFICATION

The Contractor shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by the Contractor, City or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly from the negligent or intentional acts or omissions, or willful misconduct of the Contractor or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement.

City shall indemnify, hold harmless and defend the Contractor and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, the Contractor or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly from the negligent or intentional acts or omissions, or willful misconduct of City or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement; provided nothing herein shall constitute a waiver by City of governmental immunities including California Government Code section 810 et seq.

The Contractor agrees that this Agreement shall in no way act to abrogate or waive any immunities available to City under the Tort Claims Act of the State of California.

In the event of concurrent negligence on the part of the Contractor or any of its officers, officials, employees, agents or volunteers, and City or any of its officers, officials, employees, agents or volunteers, the liability for any and all such claims, demands and actions in law or equity for such losses, fines, penalties, forfeitures, costs and damages shall be apportioned under the State of California's theory of comparative negligence as presently established or as may be modified hereafter.

This section shall survive termination or expiration of this Agreement.

9. INSURANCE

Throughout the life of this Agreement, the Contractor shall pay for and maintain in full force and effect all policy(ies) of insurance required hereunder with (an) insurance company(ies) either (1) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide, or (2) authorized by the City Manager. The following policies of insurance are required:

- A. COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as Insurance Services Office (ISO) form CG 00 01 and shall include insurance for "bodily injury", "property damage" and "personal and advertising injury", including premises and operation, products and completed operations and contractual liability with limits of liability of not less than \$1,000,000 per occurrence for bodily injury and property damage, \$1,000,000 per occurrence for personal and advertising injury, \$2,000,000 aggregate for products and completed operations, and \$2,000,000 general aggregate.
- B. COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) form CA 00 01 and shall include coverage for "any auto" with limits of liability of not less than \$1,000,000 per accident for bodily and property damage. Only required if automobiles are to be operated on City property.
- C. WORKERS' COMPENSATION insurance as required under the California Labor Code.
- D. EMPLOYERS' LIABILITY insurance with minimum limits of \$1,000,000 each accident, \$1,000,000 disease each employee and \$1,000,000 disease policy limit.

In the event the Contractor purchases an Umbrella or Excess insurance policy(ies) to meet the minimum limits of insurance set forth above, this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

The Contractor shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and the Contractor shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the City Manager or his/her designee. At the option of the City Manager or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees, agents and volunteers; or (ii) the Contractor shall provide a financial guarantee, satisfactory to City Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.

The above described policies of insurance shall be endorsed to provide an unrestricted thirty (30) day written notice in favor of the City, of policy cancellation, change or reduction of coverage, except for the Workers' Compensation policy which shall provide a ten (10) day written notice of such cancellation, change or reduction of coverage. In the event any policies are due to expire during the term of this Agreement, a new certificate evidencing renewal of such policy shall be provided not less than fifteen (15) days prior to the expiration date of the expiring policy(ies). Upon issuance by the insurer, broker, or agent of a notice of cancellation, change or reduction in coverage, the Contractor shall file with the City a certified copy of the new or renewal policy and certificates for such policy.

The General Liability and Automobile Liability insurance policies shall be written on an occurrence from and shall name the City, its officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so the Contractor's insurance shall be primary and no contribution shall be required of the City. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to the City and each of its officers, officials, employees, agents and volunteers. The Contractor shall furnish the City with the certificate(s) and applicable endorsements for ALL required insurance prior to the City's execution of this Agreement.

If at any time during the life of this Agreement or any extension, the Contractor fails to maintain any required insurance in full force and effect, all of the Contractor's activities under this Agreement shall be discontinued immediately, until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City pursuant to this section shall in any way relieve the Contractor Corporation of its responsibilities under this Agreement.

Upon request of City, the Contractor shall immediately furnish City with a complete copy of any insurance policy required under Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

The fact that insurance is obtained by the Contractor shall not be deemed to release or diminish the liability of the Contractor, including, without limitation, liability under the indemnification provisions of this Agreement. The duty to indemnify City and its officials, officers, employees, agents and volunteers shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the Agreement of indemnification to be provided by the Contractor. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of the Contractor or any of its officers, board members, employees, agents, volunteers, invitees, caterers, concessionaires, suppliers, vendors, consultants, contractors or subcontractors.

If the Contractor should subcontract all or any portion of the services to be performed under this Agreement, the Contractor shall require each subcontractor to provide insurance protection in favor of City and each of its officers, officials, employees, agents and authorized volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with the Contractor and City prior to the commencement of any services by the subcontractor.

10. PERMITS AND LICENSES

- a) Contractor's License - Contractor shall have a current Landscape Contractor License issued by the California Contractors State License Board. The State license shall remain in force for the duration of the contract. Failure to maintain the State license shall be sufficient cause for the City to terminate this agreement.
- b) Qualified Applicator Certificate or Qualified Applicator License - Contractor shall maintain one of the licenses or certification by the Fresno County Department of Agriculture. Failure to maintain certification/license or follow the appropriate procedures for applying pesticides as determined by the Fresno County Department of Agriculture shall be sufficient cause for the City to terminate this agreement.

11. WORK FORCE

Contractor and employees are to be personally presentable at all times, wearing appropriate attire for the job. Employees must either be U.S. citizens or legal residents.

12. ATTORNEY'S FEES

If a party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its/their reasonable attorney's fees and legal expenses.

13. ASSIGNMENT

There shall be no assignment by any party of its rights or obligations under this Agreement without the prior written approval of the other party. Any attempted assignment by a party, its successors or assigns, shall be null and void unless approved in writing by the other party.

14. WAIVER

The waiver by any party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement.

No provisions of this Agreement may be waived unless in writing and approved by and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

No action or omission by either party shall constitute a breach of this Agreement unless the injured party first notifies the other party of the purported breach in writing setting forth the alleged breach or default and said party does not cure the same within a reasonable period of time. The payment of any fee or compensation or performance of any obligation hereunder by either party shall not constitute a waiver of any breach by the other party or of any of the rights and remedies which either party may have as a result of such breach. No waiver by either party of breach of the Agreement shall be implied from any failure by the other party to take action on account of such breach if such breach persists or is repeated. Waivers by either party of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

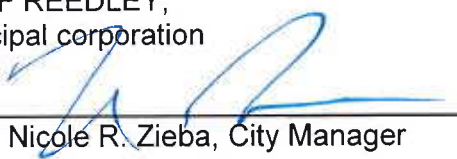

15. REPRESENTATIONS AND WARRANTIES

The Contractor represents and warrants that it is a duly authorized and existing licensed contractor with the State of California in good standing, and shall remain in good standing during the term of this Agreement. Each party hereby represents and warrants to the other party, and agrees that it has the full power and authority to enter into this Agreement and perform each of its obligations hereunder, and it is legally authorized and has obtained all necessary regulatory approvals for the execution, delivery, and performance of this Agreement.

16. ENTIRE AGREEMENT

It is mutually understood and agreed that the foregoing constitutes the entire Agreement between the parties. Any modifications or amendments to this Agreement must be in writing signed by an authorized agent of each party.

IN WITNESS THEREOF, the parties have caused their authorized agents to execute this Agreement as of the date first set forth above:

CITY OF REEDLEY, a municipal corporation By:  Nicole R. Zieba, City Manager	CLEAN CUT LANDSCAPE, an independent business By:  Karry Wendel
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Approved as to Form:

Scott G. Cross, City Attorney



Date 3/18/13

Attested:

Sylvia Plata, City Clerk



Date 3-18-13

Exhibit A

Scope of Work

Maintenance of street trees, street tree wells, corner pots and sidewalks in the Downtown Streetscape District, see attached map.

Number of Street Trees and Wells – 179

Number of planters – 14

Primary Duties:

1. Blow off all sidewalks in the District twice a week. Preferably Tuesday and Friday. Other days may be negotiated and approved by the City of Reedley. Care must be taken not to blow dust on cars, people or under building front doors. All blowing is to be completed by 8:00 a.m.
2. Clean all benches and trash receptacles weekly. Wipe off dirt and debris
3. Weed control of tree wells, sidewalks, alleys (only alleys within the district as shown on the attached map are included) shall be completed once a week.
 - a. All insecticides and herbicides required shall be furnished by the Contractor in accordance with listings and specifications provided by the Contractor to the City of Reedley Public Works Director. Any change must be approved prior to use by the Public Works Director.
4. Check irrigation system to make sure trees and plants are receiving adequate water and to prevent water from gathering in the streets. Broken or non-functioning irrigation shall be reported to the Public Works director as soon as possible. (Monthly)
5. Set sprinkler clocks based on optimum watering times. Timing shall consider when there is the least activity downtown such as the early morning hours.
6. Fertilize planters and tree wells two times a year.
 - a. Timing to be arranged to keep plants in optimum condition and avoid stressing plants and trees.
 - b. All fertilizer shall be furnished by the Contractor in accordance with listings and specifications provided by the Contractor to the City of Reedley Public Works Director. Any change must be approved prior to use by the Public Works Director.
7. Pruning of trees will be done in a conical shape with a 14-foot high crown as agreed upon by the Streetscape Committee. Lower branches will be removed so as not to interfere with the walking public and street sweeping equipment. Potted plants will be pruned in a manner not to impede traffic or driver visibility.
8. Replacement of Trees and plants – all dead trees and plants and those in a state of decline shall be brought to the attention of the City of Reedley Public Works Director immediately. The cost for replacement of trees and plants is considered an extra service as defined in Section 9.

9. Extra Services – Costs for extra services, not covered by the scope of work above, must be approved by the Public Works Director prior to the start of any work. Extra Services include, but is not limited to, the following:
- a. Repairs to irrigation system or sprinklers . (Does not include damage caused by contractor)
 - b. Tree/plant removal and replacement
 - c. Other extra services – must be approved by City prior to starting any work based on a estimated cost.