

SERVICE CONTRACT

THIS SERVICE CONTRACT ("Contract") is entered into as of the date specified in Paragraph 1 (d) by and between the Owner identified in Paragraph 1 (a) and the Contractor identified in Paragraph 1 (b).

1. DEFINITIONS. As used in this Contract, the following terms shall have the following meanings:

a. **Owner:** County of San Mateo, as Owner, and Orchard Commercial, Inc., as Managing Agent, located at 2055 Laurelwood Road, Suite 130, Santa Clara, CA 95054. "Owner" includes Owner's Authorized Representative, if any, and if Owner is a joint venture or partnership, any partner or joint venturer in such partnership or joint venture, and any and all owners, shareholders, directors, officers, managers, agents, and employees of Owner. "Owner" shall further mean and include Orchard Management Services or any other management company acting as agent for Owner.

b. **Contractor:** Arborwell, Inc.

c. **Authorized Representative:** Neil Woolner

d. **Contract Date:** March 14, 2013

e. **Project:** # 7700 - Circle Star (One and Two Circle Star Way, San Carlos, CA 94070)

f. **Work:** The "Work" shall mean the products and services set forth in Exhibit A. Contractor will provide and furnish all of the materials, equipment, tools, supplies, services, drawings, machinery, hoists, molds, appliances, curtag, ladders, fixed and moveable scaffolding, runways, staging, implements, power, other facilities of every kind and description, and labor necessary or incident to performance of the Work

g. **Plans and Specifications:** The "Plans and Specifications" shall mean those plans, renderings, drawings, and lists of specifications which Owner supplies to Contractor to describe the Work, which are attached as Exhibit A.

h. **Contract Documents:** The "Contract Documents" means the Plans and Specifications, this Contract, all modifications or additions hereto, and all change orders executed in regard to the Work. All Exhibits attached hereto are incorporated in this Contract

i. **Contract Term:** March 15, 2013 through March 31, 2013, unless terminated earlier pursuant to Section 21 (Termination) described below.

j. **Contract Price:** Ten Thousand Six Hundred Fifty-Eight and 00/100 Dollars (\$10,658.00) general tree and plant health care at One and Two Circle Star Way, San Carlos, CA 94070 as referenced on Exhibit A attached hereto.

The Contract Price includes payment by Contractor of all sales and/or use taxes, as well as any other taxes imposed by any unit of government on the materials, services, and labor furnished by Contractor, as well as all permit fees and other governmental charges. In construction contracts, Owner shall withhold Ten Percent (10%) from each payment as a retention against defects and failures of performance hereunder, and shall make final payment of all sums due to Contractor, less any back charges and other liabilities of Contractor, sixty (60) days after recordation or waiver of the Notice of Completion as required by Section 21. Contractor shall perform the Work at the Contract Price during the Term, and the Contract Price shall not be subject to increase for any reason whatsoever without the express written consent of Owner.

k. **Payment Terms:** Net 30 days.

2. PERFORMANCE OF WORK

a. Contractor shall perform and provide everything required to complete the Work in a first-class, diligent, efficient, expeditious, professional, and workmanlike manner, including, without limitation, all supervision, labor, materials, tools and transportation, all in strict accordance with the Plans and Specifications and applicable federal, state and local statutes and regulations, including, but not limited to, all statutes and rules relating to safety, immigration, fire prevention, toxic or hazardous materials, and discrimination, and to the satisfaction of Owner. Government inspectors, and inspectors for lenders, if any. No additional compensation shall be allowed to Contractor in the event that governmental directions require extra work. Any Work which does not meet these standards in all particulars is defective. Until approved by Owner, no part of the Work shall be deemed to have been completed.

b. Contractor shall be responsible for initiating, maintaining, and supervising all reasonable and necessary safety precautions and programs (including but not limited to all such matters required by law or any public entity) in connection with the Work, and provide necessary protection to prevent damage, loss, or injury to persons, the Work and related materials and tools, and property (including trees, shrubs, lawns, walks, pavement, roadways, structures, utilities and underground facilities on the Property). All damage caused by Contractor, any subcontractor, supplier or other person directly or indirectly employed by them, shall be the responsibility of and remedied by Contractor. Owner shall have no responsibility for safety of person or property in regard to the Work.

c. Except for employees who are qualified and certificated to do so, Contractor will not direct, suffer, or permit any of its employees to handle, use, manufacture, store, or dispose of any flammables, explosives, radioactive materials, hazardous wastes or materials, toxic wastes or materials, petroleum products or derivatives, or other similar substances, or any substances subject to regulation by state, federal, or local laws, rules, or regulations relating to protection of the environment or regulation of such materials ("Environmental Laws"), whether presently in effect or hereafter adopted (such materials are collectively referred to herein as "Hazardous Materials") in or about the Work or on the Project. Contractor shall not suffer or permit any Hazardous Materials to be used in any manner not fully in compliance with all Environmental Laws, nor shall Contractor suffer or permit the Project to become contaminated with Hazardous Materials. Further, Contractor and its subcontractors, agents, servants, and employees shall not use any Hazardous Materials in connection with the Work without full disclosure to and the express written consent of Owner, and in full compliance with all Environmental Laws, and without contaminating the Project with Hazardous Materials. Contractor shall indemnify Owner for any loss, damage or claim resulting from a violation of this provision. If, in the course of completing the Work, Contractor encounters any such Hazardous Materials, including asbestos and PCB's, which were not expressly identified as part of the Work in the Contract Documents, Contractor shall stop work on that portion of the Work and immediately notify Owner by phone (followed by written notice within three (3) days). Contractor shall not proceed with the Work in regard to the area of such a discovery until given written notice to do so by Owner.

d. Contractor assumes sole and complete responsibility for job site conditions during the performance of this project, at all times when Contractor is engaged upon the work, and shall make sure that the jobsite is safe for Contractor's workmen and others. Contractor shall indemnify Owner against any claims, demands, or liabilities for physical injury or property damage resulting from breach of this provision.

e. Contractor assumes full responsibility for the accuracy of all lines, levels, and measurements and their relation to benchmarks, property lines, reference lines, and the work of Owner or other trades. Where dimensions are governed by conditions already established, Contractor is responsible for correct knowledge of such conditions. No variation from specified lines, grades, or dimensions shall be made except with written permission of Owner. All work shall be made to conform to actual, final conditions as they develop in the course of construction.

f. Within ten (10) days after substantial completion of the Work, subject only to minor punch list items, Contractor shall record and provide Owner a copy of a Notice of Completion or obtain Owner's written waiver thereof. The cost of recording the Notice shall be a part of the Contract Price.

3. **MODIFICATIONS TO THE CONTRACT OR THE WORK.** Any changes or modifications regarding the Work or this Contract must be in writing and approved by Owner. The cost of approved changes or modifications shall be agreed upon between Owner and Contractor in writing before additional labor or materials are supplied. If the Contract is based on unit prices, the Contract Price shall be increased or decreased by the number of units affected. All work performed by Contractor shall be deemed to be part of the Work and provided pursuant to the Contract Price, unless a written change order is executed. A change order shall specify whether the change is an increase or decrease in the Work, specify any resulting increase or decrease in the Contract Price, and detail any related change in the schedule of performance. If no increase or decrease in price is specified in a change order, then the Work, as amended by the change order, shall be performed for the Contract Price specified herein. Unless the schedule of performance is changed in the change order, it shall remain as set forth herein. Owner may order extras at any time, and may omit from the Work any part thereof by so directing Contractor in writing, and in such event the Contract Price shall be proportionately adjusted.

4. **INSPECTION OF PLANS AND SPECIFICATIONS AND JOBSITE.** Contractor acknowledges that it has examined, and is familiar with, the Plans and Specifications for the Work, the job location, the jobsite, and any materials or construction adjacent to or underlying the Work, and that it has performed such investigation as it deemed reasonable in regard to such matters. Contractor has based its design, bid, and/or price solely on its own investigation and evaluation, and has not relied on any estimate, statement, representation, or other information provided by Owner, except for the Plans and Specifications. If in the course of performing the Work, Contractor becomes aware of any subsurface or previously covered condition of the jobsite which differs materially from that shown in the Contract Documents, then Contractor shall immediately notify Owner by phone and thereafter in writing. Contractor shall not proceed with the Work in this area until given written direction to do so by Owner. Contractor and Owner shall agree on a Change Order to accommodate any such conditions which could not reasonably have been discovered and/or anticipated by Contractor.

5. **CONDUCT OF WORK.** Contractor shall coordinate its Work with other contractors, vendors, and suppliers as directed by Owner and shall fully cooperate with Owner and all other persons to the end that the Work and the Project may be performed and completed in the most expeditious and efficient manner. In the event Owner notifies Contractor in writing that it is necessary for Contractor to delay its Work in order that other portions of the Project may proceed, Contractor shall be free of responsibility for such delay, and Owner shall have no liability to Contractor for any increased expense of Contractor's performance. Contractor must at all times exercise due care to protect all other portions of the Project from damage by its operations and delivery. In the event any portion of the Project is damaged by Contractor with or without fault, such damage shall be promptly repaired to the satisfaction of Owner at Contractor's expense.

6. **LICENSING.** If Contractor must be licensed to perform the Work, Contractor represents that it is, and will at all times during bidding and performance hereof, be licensed to perform the Work by the Contractor's State Licensing Board or other agency having jurisdiction over such licenses, and that all subcontractors will be licensed. Possession of a valid license shall be a condition of payment, and Owner shall not be required to pay for any

work performed by Contractor if it was unlicensed when the work was done or at the time payment is required or sought or if work was performed by an unlicensed subcontractor. Owner may declare this Agreement void and remove Contractor from the jobsite in the event that it is determined that Contractor or any subcontractor is unlicensed. Contractor shall supply to Owner a copy of its license at the start of performance, and at any time thereafter upon request, and shall advise Owner immediately, in writing, if its licensed status changes during the performance of this contract.

7. RESPONSIBILITY FOR DESIGN DEFECTS AND WORK PERFORMED BY OTHERS. If at any time, Contractor perceives that there are any design defects in regard to the Work (including the interplay of the Work with work performed by others), such that the final product produced by following the Plans and Specifications will not be of first quality, it is the responsibility of Contractor to notify Owner in writing, and if Contractor does not do so, then any defect in the Work resulting therefrom will be the responsibility of Contractor. Contractor shall examine the design, workmanship, and materials of all related, dependent, or adjacent work performed by any other persons, upon whose work Contractor must build or depend. Unless Contractor notifies Owner in writing of defects in such work, or that such work is not a suitable foundation for Contractor's Work, Contractor shall be deemed to have accepted all such work as a suitable foundation, free of defects, and shall be responsible for any defects in or additional expenses of Contractor's Work or the Project caused by any defects in or lack of suitability of such preceding work.

8. USE AND CLEAN-UP. Contractor shall not interfere with the business operation of Owner or its tenants. Contractor shall keep its Work and the jobsite cleaned up as it progresses and, upon completion, shall clean the same thoroughly and remove any and all rubbish and debris resulting from the Work from the Project.

9. SCHEDULE OF WORK. Time is of the essence of this Contract. Contractor has taken into consideration and made allowance for delays and hindrances incidental to the Work, whether arising out of delays in securing material or workmen, adverse weather conditions, strikes, minor omissions or alterations or otherwise. In the event Contractor shall fail to perform the Work as scheduled, or if in Owner's judgment insufficient men, tools, or materials are scheduled or on the job to insure timely completion and compliance with the schedule, Owner shall have the right to terminate this Contract and to contract said Work to other persons. In such event, or in the event Contractor abandons the Work or fails to begin the Work, Owner may finish the Work using its own forces or other subcontractors, at its discretion, and charge the cost thereof, in excess of what would have been paid to Contractor under the Agreement, as well as any resulting loss or damage, including damages because of delay or penalties paid by Owner, to Contractor, or against any available retention.

10. INTERRUPTION OF WORK. If, as a result of causes beyond the control of Owner, including labor problems, Owner considers it inadvisable to proceed with the Project, Contractor shall immediately cease work upon receipt of written notice to do so from Owner, until such time as Owner determines that work shall recommence, at which time Contractor shall promptly resume work upon notice from Owner. Contractor shall not be entitled to any damages or compensation on account of any such cessation or interruption of work.

11. CONTINUOUS PERFORMANCE. Upon notification from Owner, Contractor will begin work on the job within forty eight (48) hours, and will remain constantly and continuously on the job except as agreed in writing with Owner, supervising same by a competent foreman and performing same with competent and appropriately skilled workmen, until it is completed. Contractor shall at all times keep sufficient men on the job, and provide sufficient materials and tools, and schedule such additional shifts or overtime as necessary to insure timely completion.

12. PERMITS. The Contractor shall obtain and pay for (as part of the Contract Price) all permits required to complete the Work in accordance with all local, state and federal requirements. Contractor's performance hereunder constitutes a warranty that all of the Work has been performed pursuant to valid permits obtained after full disclosure to the permitting agency, that all inspections have been performed by inspecting agencies, that in the course of such inspections, Contractor showed all Work to the inspectors, and that all governmental approvals were honestly obtained after inspections in which the inspectors had the opportunity to view all matters being approved or inspected.

13. MATERIALS. Unless otherwise specified, all materials used by Contractor in the performance of the Work shall be as specified in the Plans and Specifications, shall be furnished, delivered, and installed at Contractor's expense, and shall be new and of first quality and subject to approval of Owner. Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials. Any deviations from specified materials must be approved in writing in advance by Owner.

14. EQUIPMENT. In the event that Contractor rents or leases equipment to complete and/or perform the Work, Contractor agrees that it shall be solely responsible for such equipment until it is returned to its source. Such responsibility shall include, but not be limited to, liability, fire, theft, vandalism and use by any unauthorized persons. Contractor shall indemnify Owner, and anyone directly or indirectly employed by Owner, from and against any and all claims relating to or arising from the possession, use or presence on the job site of equipment. Any use of Owner's tools or equipment shall be at the sole risk of Contractor, and Contractor takes same "AS IS" and after satisfying itself that the equipment is in safe and usable condition. Contractor will assume responsibility for, and indemnify Owner against, any claims resulting from such use. Contractor will return all such tools and equipment to Owner in the condition received, and will indemnify Owner for any loss or damage to such items while being used by Contractor. If Owner's personnel operate any tools or equipment for Contractor, Owner's personnel shall be considered employees of Contractor during such operation, whether payroll by Contractor or not, and Contractor will indemnify Owner against any claims resulting from such operations.

15. SERVICES PRIOR TO EXECUTION. To the extent any portion of the Work was performed prior to the date this Contract was executed, all such Work shall be governed by the terms and conditions of this Contract and shall be deemed to be a part of the Work. Contractor shall not be entitled to any compensation for such prior activities and services except as expressly provided herein. If this Contract has been sent or delivered to Contractor, and Contractor begins work without returning a signed copy of the Agreement to Owner, then Contractor shall be deemed to have accepted all of the terms and conditions of this Contract as sent or delivered to Contractor, as if this Contract had been signed and returned to Owner. By starting the Work hereunder, Contractor agrees that contrary or additional terms or conditions set forth on any acceptance or other form provided by Contractor shall be of no force or effect.

16. CONDITIONS TO PAYMENT. All funds paid Contractor shall first be used by Contractor to discharge obligations incurred by Contractor in performance of the Work herein contracted. All invoices shall be submitted to Owner no later than the 10th day of each month, and shall show the job Number, if any. If the Work is on a time and material basis, time sheets and invoices must be supplied and attached to Contractor's invoices. Final payment shall not relieve Contractor of responsibility for faulty materials or workmanship connected with the Work. Unless otherwise specified, Contractor shall correct, repair and remedy any defect in the Work or in the materials or equipment incorporated in the Work installed or supplied by Contractor, regardless of the cause of the defect. If any claims arising out of or in connection with Contractor's performance of the Work are outstanding at the time any payment becomes due, Owner may withhold the amount of such claims until they are settled.

17. DAMAGES FOR NON-PERFORMANCE. Contractor represents and warrants that Contractor is experienced and knowledgeable in estimating and bidding of jobs similar to the Work; that Contractor has thoroughly reviewed the Plans and Specifications and this Contract; that the Contract Price represents Contractor's actual and expected cost of labor and materials required to perform the Work, plus a reasonable amount for profit and overhead expense; and that the Contract Price does not result from an artificially low bid. Contractor will be liable to Owner for its costs and expenses (including delay damages) if Owner is required to re-bid the Work because of Contractor's inability or unwillingness to perform the Work at the agreed Contract Price.

18. INDEMNIFICATION.

a. Contractor shall indemnify, defend and hold Owner and Owner's management company harmless from and against any and all claims, demands, causes of action, settlements, judgments and expenses, including, but not limited to, attorney's fees and investigative costs, directly or indirectly resulting from personal injury or death, property damage or intangible pecuniary loss, sustained or alleged to have been sustained by any business organization or person, including employees of Contractor and any subcontractors, in connection with the Contractor's (including agents, servants, employees, or subcontractors) fault, negligence, breach of contract, willful misconduct, or violation of law. Contractor shall be proportionately responsible for damages only to the extent caused thereby. In no event shall either party be liable to the other for any punitive, or exemplary damages.

b. If Owner shall pay, or cause to be paid, or become liable to pay, any sums of money for which Contractor is liable or responsible under or by reason of this Contract, including attorney's fees, investigative expenses, and any and all charges and expenses of whatsoever kind and nature, Contractor shall reimburse Owner for such expenses on Owner's written demand, by payment made within ten (10) days of such demand.

c. As used throughout this Contract a requirement that Contractor "indemnify" Owner, means the scope of indemnity and defense described in this Paragraph 18.

d. Contractor releases Owner from any liability for death, injury, or property damage incurred during the performance of the Work.

19. MECHANIC'S LIENS.

a. Contractor shall have no right or interest in the Project and hereby waives and releases all liens, stop notice rights or rights of lien now existing or that may hereafter arise, under any present or future law, for work, labor or services performed or materials or documents furnished under this Contract.

b. Contractor agrees to pay promptly for all materials furnished or labor performed in connection with its work performed pursuant to this Contract. Contractor agrees to indemnify, from and against, and to keep the Project free and clear of, any and all claims, liens and liabilities (including costs and expenses of defending such claims) arising or alleged to have arisen from any claim by any laborer, materialman or subcontractor for materials furnished or labor performed in connection with the Work. In that regard, Contractor agrees to execute such affidavits, lien waivers and similar documents as may be required by Owner incident to the making of payments to Contractor under this Contract.

c. Contractor shall at all times pay all federal and state taxes, withholdings, and subventions having to do with the performance of the Work or the workers performing same, and shall further pay all amounts contractually due to any union or union health or pension fund relating to labor performed on this job.

d. In the event that any lien is placed upon the Property as a result of Contractor's activities, Contractor shall indemnify Owner from all liability thereunder, shall forthwith take all necessary action to cause the removal of the said lien, and on request of Owner, shall provide a bond for the removal of the said lien. In the event that Contractor fails to do so within ten (10) days after notice from Owner, then Owner may take any action necessary to remove the lien, including the posting of a bond or the payment of a settlement to the claimant, all of which shall be at the expense of Contractor.

e. Owner has the right to withhold payment for any part of the Work if Contractor fails to provide satisfactory evidence that all current bills for labor, materials, and other job-related liabilities of Contractor have been paid, and Owner has the right to require lien releases from laborers, unions, materialmen, and subcontractors as a condition of any payment.

20. DISPUTES. Should a dispute arise during the performance of the Work between Contractor and Owner concerning the Work, Contractor shall continue the Work in accordance with this Contract; provided, however, that Owner shall continue to make payment for services in accordance with this Contract for that portion of the Work not in dispute.

21. TERMINATION OF CONTRACT.

a. Owner shall have the right to cancel and terminate this Contract with or without cause at any time upon ten (10) days written notice to Contractor.

b. If the property is sold, the contract terminates on the date of sale unless the contract is assumed by the new Purchaser of the property.

c. In the event Owner cancels or terminates this Contract without cause, Contractor shall be paid for all Work performed through the effective date of the cancellation or termination, with such payment to be prorated as of the effective date of the cancellation or termination. Such payment shall be Contractor's sole remedy for such termination or cancellation, and Contractor waives any and all claims Contractor may have that such termination or cancellation was wrongful in any respect.

d. In the event Owner cancels or terminates this Contract for cause, which shall be deemed to exist if, in the sole opinion of Owner:

- 1) Contractor fails to provide competent and adequate labor to do the Work called for in this Contract on a timely basis, or
- 2) Contractor fails to furnish sufficient quantities of material to keep up with the progress of the Work, or
- 3) Contractor fails to perform the Work as scheduled, or
- 4) Contractor fails to pay any subcontractors, materialman or other individual or entity to whom Contractor is obligated on the Work, whether or not such failure results in the filing of a mechanic's or materialman's lien against the Project, or
- 5) Contractor fails to meet the requirements or specifications of the Work on this Contract, then

Contractor shall not be entitled to receive any further payment until the Work has been completed, and Owner shall deduct from any such further payment all damages suffered by Owner, whether direct, indirect, consequential or otherwise. If the cost of completing Contractor's Work, plus the amounts previously paid by Owner to Contractor under this Contract exceeds the Contract price for the Work, Contractor shall pay such excess to Owner on demand.

e. If the Contractor is adjudged bankrupt or becomes a debtor under any chapter of the Bankruptcy Code, or files a petition for relief under any chapter of the Bankruptcy Code, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a material breach of any provision of this Contract, Owner may terminate this Contract immediately on giving written notice of such termination to Contractor, and Owner shall have the remedies specified in Subparagraph c above.

22. DEFAULT BY OWNER. Owner shall not be in breach or default of this Contract unless and until Owner has been given sixty (60) days notice of the act or omission alleged to constitute the breach or default, and has within that time failed to cure the breach or default.

23. WAIVER. No waiver of any provision hereof shall be enforced against Owner unless Owner shall have agreed in writing to waive said provision, and no waiver of any term or condition hereof, or any breach or violation of or default under such terms and conditions shall prevent Owner from enforcing the same or other terms or conditions upon any subsequent breach thereof.

24. WARRANTY. Contractor fully warrants that all products supplied in connection with the Work and this Contract are new and of good workmanship and quality, free of faults and defects and in conformity with the Plans and Specifications and the Contract Documents. Contractor guarantees all workmanship, labor, and materials against defects. Upon written notice from Owner that products or workmanship are not satisfactory, Contractor agrees within ten (10) days after notice to begin and proceed with reasonable diligence to repair said products or workmanship in a satisfactory manner at its own cost and expense. Contractor further agrees that if Owner notifies Contractor that such defects are a danger to life or property, or interfering with Owner's contractual and/or business relations with others, including tenants, Contractor will treat such repairs as an emergency and begin correction of the defects as soon as possible, and in any event within forty eight (48) hours of notice. If Contractor fails to proceed as above stated, Owner may, without further notice to Contractor, proceed to arrange for such work to be done at the expense of the Contractor, which shall pay for same within five (5) days of receipt of bill from Owner, or Owner may deduct payment from monies not yet paid to Contractor. If in repairing its own work Contractor damages the work of any others, repairing and paying for repairs of such other work is included in Contractor's responsibility.

25. INSURANCE. At its expense, Contractor shall maintain in full force and effect, the following policies of insurance:

a. Workers Compensation insurance in compliance with the laws of the State of California;

b. Comprehensive General Liability, Bodily Injury and Property Damage, including Broad Form Property Damage coverage (including Completed Operations), Completed Operation/Products coverage, Blanket Contractual coverage, Independent Contractors coverage, Personal Injury coverage, Errors and Omissions coverage, contractual liability coverage, and where any type of underground work is applicable, XCU, in an amount not less than \$2,000,000 Combined Single Limit bodily injury and property damage liability. Contractor's indemnity obligations to Owner shall be insured under such Comprehensive General Liability insurance.

c. Automobile Liability insurance on all owned, non-owned, hired or leased automotive equipment used in the performance of the Work in an amount not less than a combined single limit of \$1,000,000 for bodily injury and \$100,000 for property damage.

d. Contractor may also carry such other insurance as it may desire for its own protection.

e. All insurance which Contractor is required to carry hereunder shall be carried with an insurer or insurers who are satisfactory to and approved by Owner, under policies satisfactory to and approved by Owner, and shall name Owner as an additional insured, and shall be primary, with Owner's insurance policies non-contributing.

f. Contractor shall submit to Owner Certificates of Insurance as evidence of the coverages required in this Paragraph. If the insurance certificates are not submitted within fifteen (15) days from the date of this Contract, this Contract may be canceled immediately at Owner's option. Each Certificate will bear an endorsement or statement waiving right of cancellation or reduction in coverage without at least thirty (30) days prior written notice, except for non-payment which shall be ten (10) days prior written notice, to be delivered by certified or registered mail to Owner. Should any policy be canceled before final payment to Contractor and Contractor fails to immediately procure other insurance as specified, Owner may, but is not required to, procure such insurance and deduct the cost from any sum due Contractor under this Contract (or bill Contractor for such sum).

26. ROYALTIES AND PATENTS. If any design, device, material or process covered by patent or copyright is used by Contractor, Contractor shall obtain all necessary licenses and authorizations to use the same, and shall indemnify Owner from and against any and all loss or expense arising out of or in connection with the use of such device, design, material or process.

27. STATUS OF CONTRACTOR. Contractor acknowledges and agrees that it is acting under this Contract solely as an independent contractor, and not as a partner, joint venturer or employee of Owner. Contractor shall have no authority to act for, bind, or obligate Owner in any manner whatsoever, except as specifically authorized in writing by Owner. No contractual relationship shall be entered into between Contractor and any other person in connection with the Project covered by this Contract except as agreed to by Owner in writing.

28. RELEASE OF INFORMATION. Contractor shall not, without the prior written approval of Owner, make any news releases, public announcements, denials or confirmations relating to the subject matter of this Contract, or disclose any privileged or confidential information obtained in connection with this Contract to any third party without the prior written consent of Owner.

29. GENERAL PROVISIONS.

a. **Binding Contract.** Owner and Contractor agree that this Contract is to be binding upon all successors, permitted assigns, heirs, executors and administrators (but this section does not authorize any assignments otherwise prohibited by this Contract). The liability of Owner hereunder, and any redress against Owner, is limited to the Owner's equity interest in the Project and in no event shall any other property or assets of Owner, its parents, its subsidiaries, or its shareholders, directors, officers, agents, employees, partners, joint venturers or others associated with Owner, be subject to any claim hereunder. The obligations of Owner under this Agreement are not intended to and shall not be personally binding on, nor shall any resort be had to the private properties of, and of Owner's parent companies, subsidiaries, partners, shareholders, or joint venturers, nor Owner's investment, asset, and/or property managers, including but not limited to Orchard Management Services, and the respective trustees, directors, officers, partners, beneficiaries, stockholders, employees, or agents of any of the foregoing or of Owner.

b. **Inspection And Submission Of Samples.** Contractor shall furnish Owner with access to the Work, and with every opportunity and facility for inspection of the Work. Contractor shall deliver to Owner on request, without charge, properly identified test specimens of materials required by the Plans and Specifications or to be used in the Work. If any inspection is required by Owner or the Plans and Specifications, and such part of the Work is covered by Contractor prior to inspection, it must be uncovered at Contractor's expense.

c. **Reports And Audits.** Contractor will supply Owner with such daily reports, orally or in writing, as are from time to time requested by Owner. At Owner's request, Contractor will allow Owner or its representatives the right to review and audit any of Contractor's books and records relating to performance of the Work or to this Contract.

d. **Observance Of Owner's Rules, Regulations, And Directions.** Contractor shall at all times obey and comply with all of Owner's rules, regulations, and directions relating to the job, and to jobsite safety (but nothing set forth herein shall diminish Contractor's responsibility for maintenance of a safe jobsite and safety during the performance of the Work). Contractor shall forbid the use or consumption of alcoholic beverages or drugs on the jobsite at any time, and shall not utilize any workers who are under the influence of drugs or alcohol at any time in regard to the work or on the jobsite. If Owner gives notice to Contractor of a violation of the above rules, Contractor shall forthwith remove the offending worker from further participation in the performance of the Work.

e. **Responsibility For Contractor's Tools And Materials.** Contractor shall be responsible to protect its own tools and materials, until attached to a structure on the Property, and accordingly, Owner shall not be liable to Contractor for any theft, loss, or damage to tools, materials, or other property of Contractor used on the job or present on the job site.

f. **Care For Property.** Contractor shall take proper care for all buildings, construction, sidewalks, curbs, gutters, plants, materials, tools and other property of Owner or other subcontractors, and other property located on the Property, and shall be responsible to pay for any waste or damage occurring to such property which is caused by Contractor or its activities, regardless of whether Contractor is negligent.

g. **Removal From Jobsite.** In the event that, under any provision of this Contract, Owner removes Contractor from the jobsite, Owner may and shall take possession of all materials, appliances, tools, and equipment on the site, or materials in preparation wherever located, and Contractor shall take all necessary action to allow Owner to do so. Under such circumstances, Owner may complete the work with its own forces, or through others, and Contractor will pay to Owner any excess of expense of doing so over what would have been paid hereunder to Contractor for the said performance.

h. **Bonding.** If bonding is required in the Plans and Specifications, then Contractor shall provide the bond required by Owner for faithful performance and/or labor and material. In the event that Owner requests a bond after the execution of this Contract, and which was not a part of the price hereof, then Contractor shall obtain same and Owner shall pay for the said bond as an extra, but if Contractor is unable to bond as requested, Owner may terminate this Contract without further liability. Bond(s) shall be executed by a corporate surety licensed as such and acceptable to Owner, and shall be in a form acceptable to Owner. It is agreed that no change, alteration, or modification in or deviation from this Contract or the Plans and Specifications shall release or exonerate, in whole or in part, any surety of any bond given in connection with this Contract or the Work.

i. **Picketing And Union Activities.** In the event that there is picketing at the jobsite and Owner establishes a separate gate for the use of Contractor, then Contractor shall be required to complete the Work and man the job without regard to any pickets at the said second gate. Contractor shall in no event be excused from performance of any obligations hereunder by any matters related to labor unions.

j. **Governing Law.** This Contract shall be governed by the laws of the State of California.

k. **Assignment.**
 1) Contractor shall not assign or transfer any interest in this Contract or in any monies due or to become due hereunder either voluntarily or involuntarily or by operation of law without the written consent of Owner. A change of more than twenty percent (20%) on a cumulative basis of any ownership interest in Contractor shall constitute an assignment of this Contract.
 2) Owner may assign and/or transfer its interest in this Contract at any time without the consent of Contractor, including, without limitation, to a lender as collateral security for a loan. On such assignment, Owner shall be relieved of any and all further obligations to Contractor under this Contract, and Contractor agrees to look solely to the assignee or transferee of this Contract in the event of any default under this Contract.

l. **Place Of Making; Place Of Performance.** This contract is made in Santa Clara County. It is not to be considered made until a signed copy of the Agreement attached hereto is received at Owner's offices in Santa Clara County. This contract is to be performed in Santa Clara County, by the payment of fees set forth herein at Owner's Santa Clara County offices, and by Contractor's performance of planning and consideration in said County, in addition to any physical work performed in the County. Contractor agrees that if Contractor shall bring any suit against Owner relating hereto, it will bring said suit only in Santa Clara County, and in the event suit is brought by any party, Contractor waives the right to transfer the action out of Santa Clara County, and agrees that if brought elsewhere it shall immediately be transferred to Santa Clara County.

m. **Notices.** All notices given pursuant to this Contract shall be in writing and shall be deemed given when personally delivered or, in the alternative, mailed by registered or certified mail, postage prepaid, or sent by recognized overnight delivery service such as Federal Express, to the Owner or Contractor at the addresses indicated in Paragraph 1 above or to such other address as may be specified from time to time by notice given by Owner or Contractor. Notice is deemed given on delivery to the office of the recipient to a competent person apparently in charge thereof (including a receptionist); three (3) days after deposit in the U.S. Mail; and on the date of delivery as shown by the receipt of the overnight delivery service.

n. **Severability.** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Contract shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

o. **Entire Agreement; Amendments; No Oral Agreements.** This Contract represents the entire and integrated agreement between Owner and Contractor and supersedes all prior negotiations, representations or agreements, written or oral. It covers in full and contains all of the terms of each and every agreement of every kind or nature whatsoever between Owner and Contractor concerning the Work and this Contract, and all preliminary negotiations, proposals, agreements, and bids of any kind or nature are merged in this Contract. No oral agreements have been made other than as set forth in this Contract, and Contractor acknowledges that no representations or warranties of any kind or nature not specifically set forth herein have been made. Neither this Contract nor the Work can be modified or changed except by a writing signed by Contractor and Owner, and any attempted oral modifications of this Contract or the Work shall be void and of no force or effect.

p. **Attorney's Fees.** If there is any litigation or arbitration between the parties arising from the Agreement or the relationship between the parties to which the Agreement relates, the prevailing party shall be entitled to recover reasonable attorney's fees from the other party and all of the prevailing party's costs of bringing and maintaining the proceeding, whether the said costs are normally considered to be taxable costs or not, including all expert fees reasonably incurred by the prevailing party. Such fees and costs may be ordered as part of the judgment in the proceeding, or may be collected in a separate proceeding.

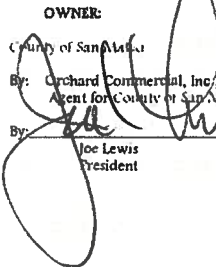
q. **Survival.** All representations, warranties and indemnifications made or given by Contractor herein, together with any and all causes of action and other rights and remedies which Owner may have as a result of breach of any term or condition, representation or warranty of this Contract, shall survive any expiration or termination of this Contract.

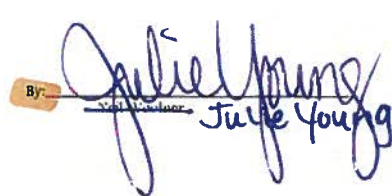
r. **Warranty of Authority.** Each person signing this Agreement on behalf of a corporation, partnership, or other legal entity warrants that he/she is authorized to do so pursuant to authority properly granted by the said entity, according to its rules, regulations, and procedures.

s. **Delays; Acts Of God; Acts Of Government.** Owner shall not under any circumstances be responsible for any delays or damages caused by acts of the Contractor, or third parties, strikes, lockouts, force majeure, government action or inaction, wars, natural catastrophes, earthquakes, floods, acts of God, weather, or other forces beyond Owner's control.

t. **Non-Discrimination Policy.** Contractor shall not deny the benefits of this Contract to any person nor discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, or any other applicable protected classification. Contractor will take affirmative action to insure that the evaluation and treatment of employees are free from such discrimination. Contractor, unless exempt, further agrees to abide by the terms of all applicable federal, state, and local non-discrimination provisions, including but not limited to 41 CFR Sec. 60-1.4, such non-discrimination provisions being incorporated herein by reference. Contractor shall include this Non-Discrimination Clause in all subcontracts to perform work under this Contract, and will notify all labor organizations with which it has a collective bargaining agreement of the obligations under this paragraph.

WHEREFORE, Owner and Contractor have executed this Contract as of the Contract Date.

OWNER:
 County of Santa Clara
 By: Orchard Commercial, Inc., a California corporation
 Agent for County of Santa Clara
 By: 
 Joe Lewis
 President

CONTRACTOR:
 Arkswell, Inc.
 By: 
 Julie Young

EXHIBITS

- Exhibit A Synopsis of Pricing and Scope of Work
- Exhibit B Owner and Additional Insured Information and Invoice Information

EXHIBIT A



Quote No: Q46151
Date: 5/19/2012
Prepared for: Debbie Kaser
Phone1:
Phone2:
Email:
Terms: NET 30
Department: Peninsula

Billing Address: AcctNo: 14628-03
 Orchard Commercial, Inc
 REP LKS Realty, LLC
 2056 Laurewood Rd Suite 130
 Santa Clara, CA 95054

Service Address:
 Circle Star
 1 And 2 Circle Star
 San Carlos, CA

Dear Debbie

We thank you for having Arborwell provide for your Tree Care needs. The following are our services and recommendations for your review. Prices quoted are valid for 90 days from the date of this quote. If you have any questions, please don't hesitate to call us at 888-969-8733.

Sincerely,
 Neil Woolner

2013 Budget

Location	Species	Description	Qty	Price Each	Applications	Cost
Site Wide						
	Palm, Canary Island	Palm Pruning	16 00	166 00	1 00	2,656 00
	Palm, Canary Island	Fertilize W/ Palm Blend	16 00	48 00	1 00	768 00
	Palm, Canary Island	Drench for Pink Rot Disease	16 00	51 00	1 00	816 00
	Ficus	Crown Clean	77 00	16 60	1 00	1,278 20
	Redwood	Binding Clearance	2 00	24 90	1 00	49 80
	Palm, Queen	Palm Pruning	10 00	83 00	1 00	830 00
	Palm, Queen	Fertilize W/ Palm Blend	10 00	32 00	1 00	320 00
	Palm, Queen	Drench for Pink Rot Disease	10 00	51 00	1 00	510 00
	Cape Myrtle	Crown Clean & Thin	16 00	16 60	1 00	265 60
	Pittosporum	Fertilize W/ Spring and Summer	30 00	16 00	1 00	480 00
	Ficus	Fertilize W/ Spring and Summer	77 00	16 00	1 00	1,232 00
	Ficus	Merial Injection For Insects	77 00	18 00	1 00	1,386 00
	Saploria	Crown Clean & Raise	4 00	16 60	1 00	66 40
	Sub-Total					10,658.00

An authorized signature on the last page of this document will convert this proposal to an agreement and serve as our contract.
 We look forward to being your Tree Care Service Provider.

	Total Cost
General Tree Care	5,146 00
Plant Health Care	5,512 00
Total	10,658 00

Please Initial

2337 American Avenue Hayward, CA 94545
 Phone 888-969-8733 Fax 510-881-5206
 License # 739392

Serving all of California



Billing Address: AcctNo: 14628-03
 Orchard Commercial, Inc
 REP LKS Realty, LLC
 2055 Laurewood Rd Suite 130
 Santa Clara CA 95054

Quote No: Q46151
Date: 6/19/2012
Prepared for: Debbie Kasper
Phone1:
Phone2:
Email:
Terms: NET 30
Department: Peninsula

Service Address:
 Circle Star
 1 And 2 Circle Star
 San Carlos, CA

Arborwell Specifications, Terms and Conditions

Specifications

1. All work shall be performed in accordance with the ANSI A300 Standards for Tree Care Operations and the ANSI Z133.1 safety standards
2. For pruning work, the maximum amount of live tissue that can be removed is 25%
3. The following specific items are included on this order, a detailed description follows

Building Clearance	The removal of any branches or limbs touching or interfering with buildings or structures
Crown Clean	The removal of dead, dying, or diseased branches, weak branches, or water sprouts
Crown Clean & Raise	The removal of dead, dying, or diseased branches, weak branches, or water sprouts, and remove lower branches to provide clearance. Remove branches (live and dead) under six inches in diameter up to eight (8) feet from the ground
Crown Clean & Thin	The removal of dead, dying, or diseased branches, weak branches, or water sprouts, and clear branches to increase light penetration, air movement, and reduce weight
Drench for Pink Rot Disease	Drench for Pink Rot Disease
Fertilize W/ Palm Blend	A special blend W/ a concentration of Phosphorus, Potassium, and Manganese
Fertilize W/ Spring and Summer	Deep root injection of 50% organic 27-9-9 fertilizer
Ment Injection For Insects	Ment Injection For Insects
Palm Pruning	Removal of the lower dead fronds to and angle no greater than 9 and 3 o'clock. It also includes the removal of all flowers and fruit

Terms and Conditions

1. **Hidden Conditions:** Client agrees to pay Arborwell on a time and materials basis for all additional time necessary to complete the work as a result of any hidden foreign matter such as cement or metal. Arborwell shall have no liability for damage to irrigation lines or valves. Arborwell shall have no liability for underground utilities such as electric, gas, phone or cable lines that are not installed at the proper specification depth.
2. **Tree Ownership:** Client warrants that it is the legal owner of all trees upon which work is to be performed, or that Client has obtained permission for Arborwell to work on the trees from the legal owner.
3. **Payment Terms:** All amounts due under this Agreement shall be paid within thirty (30) days from the mailing of Arborwell's invoice. Thereafter, interest shall be charged and accrue at one and one-half percent (1.5%) per month, or at the highest legal rate, whichever is lower. Payments shall first be applied to all outstanding interest charges, and thereafter to the oldest outstanding invoice.
4. **Warranty:** Arborwell warrants that all working procedures are conducted in a safe and orderly manner as established by OSHA and ANSI Z133.

2337 Amencan Avenue Hayward, CA 94545
 Phone 888-969-8733 Fax 510-881-5208
 License # 739392

Serving all of California



Quote No:

Q46151

Date: 8/19/2012
Prepared for: Debbie Kramer
Phone1:
Phone2:
Email:
Terms: NET 30
Department: Peninsula

Billing Address: AcctNo: 14628-03

Orchard Commercial, Inc
REP LKS Realty, LLC
2055 Laurewood Rd. Suite 130
Santa Clara, CA 95054

Service Address:

Circle Star
1 And 2 Circle Star
San Carlos, CA

safety standards. Unless otherwise represented, Arborwell extends no warranties, express or implied or merchantability, fitness for a particular purpose, design materials or otherwise, with respect to the services provided hereunder.

- 5. Insurance Arborwell shall maintain workers compensation, general liability, property and automotive liability insurance during its performance of the work under this Agreement.
- 6. Limitation of Liability In no event shall Arborwell, its insurers, directors, officers or employees be liable for any incidental, indirect or consequential damages, or in the cumulative aggregate, for any damages whatsoever in excess of the compensation to be paid by Client under this Agreement.
- 7. Termination and Cancellation This Agreement may be terminated or cancelled by Client prior to Arborwell's dispatch of its work crew. Thereafter, any cancellation prior to performance of the services hereunder will be subject to the hourly rates for the work crew following dispatch.
- 8. Indemnity Client shall hold harmless, defend and indemnify Arborwell, its insurers, directors, officers or employees in connection with any claims arising out of the Agreement, including, but not limited to, any claims for property damage, bodily injury, emotional injury, sickness or disease, or death to persons, including but not limited to any employees of Arborwell, regardless of any active and/or passive act or omission on the part of Arborwell, its agents or employees, except claims arising from the sole negligence or willful misconduct of Arborwell or their agents or employees.
- 9. Severability If any provision of the Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of the Agreement is invalid or unenforceable, but that by limiting such provisions it would become valid and enforceable, that such provision shall be deemed to be written, construed, and enforced as so limited.
- 10. Waiver of Contractual Rights The failure of either party to enforce any provision of the Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.
- 11. Force Majeure Arborwell shall not be liable for loss, damage, or delay from causes beyond its control or from shortages of fuel or energy, acts or omissions of any governmental authority, acts of God, war, civil disobedience, strikes, labor difficulties, accidents, failure to reasonably obtain materials, or delays or shortages in transportation.
- 12. Governing Law This Agreement and each of its terms shall be construed under and bound by the laws of California.
- 13. Attorneys Fees and Costs In the event of any dispute between the parties arising out of this Agreement, including any claim to recover payments due hereunder, the prevailing party shall be entitled to the recovery from the other of its reasonable attorneys fees and costs.
- 14. Entire Agreement This Agreement constitutes the entire agreement between the parties and represents the exclusive understanding of the parties, either oral or written. This Agreement supersedes any prior written or oral agreements between the parties.
- 15. Amendment This Agreement may be modified or amended, in whole or in part, only by mutual written agreement of the parties, and any such amendment or modification shall not affect the enforceability of any other provision hereof.

We have read and approve the above Specifications, Terms and Conditions.

2337 American Avenue, Hayward, CA 94545
Phone: 888-969-8733 Fax: 510-881-5208
License # 738392

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Billing Address: AcctNo: 14628-03
Orchard Commercial, Inc.
REP LKS Realty, LLC
2055 Laurewood Rd. Suite 130
Santa Clara, CA 95054

Quote No: Q46151
Date: 8/19/2012
Prepared for: Debbie Koser
Phone1:
Phone2:
Email:
Terms: NET 30
Department: Peninsula

Service Address:
Circle Star
1 And 2 Circle Star
San Carlos, CA

Signed _____

Arborwell, Inc.

Title: _____

Neil Woolner
Regional Manager

Date _____

Certified Arborist, WC-2329A

2337 American Avenue Hayward, CA 94545
Phone 868-969-8733 Fax 510-881-5208
License # 731082

Serving all of California

EXHIBIT B

OWNER:

County of San Mateo

ADDITIONAL INSURED:

County of San Mateo, as Owner and Orchard Commercial, Inc., as Managing Agent

ALL INVOICES SHOULD BE ADDRESSED AS FOLLOWS:

ORCHARD MANAGED ACCOUNT #7700
C/O ORCHARD COMMERCIAL, INC
ATTN ACCOUNTING
2055 LAURELWOOD ROAD, SUITE 130
SANTA CLARA, CA 95054

CONTRACTOR SHALL PRESENT TWO (2) COPIES OF THE MONTHLY INVOICES FOR THE BASE CONTRACT. ALL INVOICES SHALL BE ITEMIZED TO SHOW MATERIAL AND LABOR COSTS. ANY WORK PERFORMED AS "EXTRA WORK" SHALL BE BILLED ON A SEPARATE INVOICE (TWO COPIES) WITH DETAILING OF THE LOCATION, TIME AND MATERIALS INVOLVED IN EXTRA WORK. ANY INVOICE RECEIVED LATER THAN SIXTY (60) DAYS AFTER COMPLETION OF WORK WILL NOT BE PAID. ALL INVOICES FOR THE FISCAL YEAR MUST BE SUBMITTED BY DECEMBER 2 OF THAT YEAR. ANY INVOICES SUBMITTED AFTER DECEMBER 2 WILL NOT BE PAID. ALL INVOICES SHALL REFERENCE THE PROJECT NUMBER, PROPERTY MANAGER AND ORCHARD PROPERTIES.