

**AGREEMENT FOR CONTRACT GROWING SERVICES**

THIS AGREEMENT is made and entered into as of the date of execution by the City of Encinitas, California a municipal corporation, hereinafter referred to as "CITY" and Native Grow Nursery LP, hereinafter referred to as "NURSERY."

**RECITALS**

The CITY requires outside assistance to provide the following services:

**To grow, provide and deliver by a date certain those trees, shrubs and plant as specified in the Plant Schedule Scope of Work contained in this Agreement.**

NURSERY represents itself as possessing the necessary skills and qualifications to provide the services required by the CITY.

NOW THEREFORE, in consideration of these recitals and the mutual covenants contained herein, the CITY and NURSERY agree as follows:

**1.0 TERM OF AGREEMENT**

- 1.1 This AGREEMENT shall be effective on 8/24, 2012.
- 1.2 NURSERY shall commence the performance of the services on 8/24, 2012 and shall complete its services and obligations on a date certain as specified in this Agreement. Time is of the essence.
- 1.3 Upon mutual express written agreement between CITY and NURSERY, the term of this AGREEMENT may be modified or amended.

**2.0 NURSERY'S OBLIGATIONS (ATTACHMENT A)**

- 2.1 NURSERY shall provide the CITY with the following services at the total lump sum price of \$ 122,597.20, as follows:

The specific manner in which the services and price is described in the Plant Schedule Scope of Work Attachment A which is attached hereto, and incorporated herein as though fully set forth at length, collectively hereinafter referred to as "DESCRIBED SERVICES".

- 2.2 NURSERY shall perform all work required to accomplish the DESCRIBED SERVICES in conformity with applicable requirements of law and regulation: Federal, State and local.
- 2.3 NURSERY is hired to render the DESCRIBED SERVICES and any payments made to NURSERY are compensation fully for such services.

2.4 NURSERY shall maintain any necessary professional certifications and licenses as required in order to properly comply with all City, State, and Federal law.

**3.0 PAYMENT FOR SERVICES (ATTACHMENT B)**

Payment schedule to NURSERY to render the DESCRIBED SERVICES hereunder shall be as set forth in Attachment B which is attached hereto and incorporated herein as though fully set forth at length.

**4.0 SUBCONTRACTING**

Not Applicable. Nursery shall not subcontract or delegate the DESCRIBED SERVICES without the express written permission of City.

5.0 Not Applicable.

**6.0 EXTRA WORK**

NURSERY shall not perform work in excess of the DESCRIBED SERVICES without the prior, written approval of the CITY, executed by the City Manager or his designee. All requests for extra work shall be by written Change Order submitted to the CITY prior to the commencement of such work.

**7.0 VERBAL AGREEMENT OR CONVERSATION**

No verbal agreement or conversation with any officer, agent or employee of the CITY, either before, during or after the execution of this AGREEMENT, shall effect or modify any of the terms or obligations herein contained nor shall such verbal agreement or conversation entitle NURSERY to any additional payment whatsoever.

**8.0 TERMINATION OF AGREEMENT**

In the event of NURSERY'S failure to prosecute, deliver, perform or, after inspection, to materially meet quality and performance standards for the DESCRIBED SERVICES, the CITY may terminate this AGREEMENT by notifying NURSERY by certified mail of said termination. Thereupon, NURSERY shall: (1) assemble all documents owned by the CITY and in NURSERY'S possession related to the plants and deliver said documents to the CITY and (2) maintain all plant material in progress in a safe and protected condition and continue to maintain said plant material, including watering. Within 15 working days the CITY shall make a determination of the percentage of work which NURSERY has performed which is usable and of worth to the CITY and any back charges. Based upon that determination, the CITY shall determine any final payment due to NURSERY and nursery shall immediately release said plant materials to City without delay.

**9.0 COVENANTS AGAINST CONTINGENT FEES**

NURSERY warrants that it has not employed or retained any company or person, other than a bona fide employee working for NURSERY, to solicit or secure this AGREEMENT, and that NURSERY has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this AGREEMENT. For breach or violation of this warranty, the CITY shall have the right to terminate this AGREEMENT without liability or, at the CITY's discretion to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

**10.0 INSPECTION OF PLANT MATERIALS**

- 10.1 All plant materials within the scope of the DESCRIBED SERVICES shall be available for inspection by CITY or its representative at any time prior to delivery. Plant materials not meeting the Agreement requirements shall be considered defective and shall be rejected and replaced by NURSERY.
- 10.2 NURSERY shall insure that personnel responsible for the plant materials are trained and licensed as appropriate for the work performed. All work performed shall be in accordance with California State Health and Safety Codes and all other applicable laws. Fees associated with said licenses and permits are the sole responsibility of the NURSERY.

**11.0 STATUS OF NURSERY**

- 11.1 NURSERY shall perform the services provided for herein in a manner of NURSERY'S own choice, as an independent contractor and in pursuit of NURSERY'S independent calling, and not as an employee of the CITY. NURSERY shall be under control of the CITY only as to the result to be accomplished.
- 11.2 NURSERY'S services are being provided on a non-exclusive basis and NURSERY shall be entitled to perform or engage in any activity not inconsistent with or otherwise prohibited by this AGREEMENT. NURSERY has the right to perform services for other clients during the term of this AGREEMENT.

**12.0 HOLD HARMLESS**

- 12.1 NURSERY agrees to indemnify and hold the CITY and CITY's officers, officials, employees and agents harmless from, and against any and all liabilities, claims, demands, causes of action, losses, damages and costs, including all costs of defense thereof, arising out of, or in any manner connected directly or indirectly with, any acts or omissions of NURSERY or NURSERY'S agents, employees, subcontractors, officials, officers or representatives. Except as otherwise provided in this Section, upon demand, NURSERY shall, at its own expense, defend CITY and CITY's officers, officials, employees and agents, from and against any and all such

liabilities, claims, demands, causes of action, losses, damages and costs.

- 12.2 NURSERY'S obligation herein does not extend to liabilities, claims, demands, causes of action, losses, damages or costs that arise out of the CITY's intentional wrongful acts, CITY's violations of law, or the CITY's sole active negligence.

**13.0 ASSIGNMENT OF CONTRACT**

NURSERY is without right to and shall not assign this AGREEMENT or any part thereof or any monies due hereunder without the prior written consent of the CITY which shall not be unreasonably withheld.

**14.0 INSURANCE**

- 14.1 NURSERY shall obtain, and during the term of this AGREEMENT shall maintain a policy general liability and automobile liability from an insurance company authorized to be in business in the State of California.
- 14.2 The general liability and automobile insurance shall be in an amount of no less than one million dollars (\$1,000,000) for each occurrence. The insurance policy shall remain in full force during the life of this AGREEMENT and shall not be canceled, terminated, or allowed to expire without thirty (30) days prior written notice.
- 14.3 The CITY shall be named as additional insured by endorsement for general and automobile liability and NURSERY provided proof of insurance for automotive liability.
- 14.4 Before NURSERY shall employ any person or persons in the performance of the AGREEMENT, NURSERY shall procure a policy of Workers' Compensation Insurance as required by the Labor Code of the State of California.
- 14.5 NURSERY shall furnish certificates of said insurance to the CITY prior to commencement of work under this AGREEMENT.

**15.0 NOTICES**

- 15.1 Any notices to be given under this AGREEMENT, or otherwise, shall be served by certified mail.
- 15.2 For the purposes hereof, unless otherwise provided in writing by the parties hereto, the address of the CITY and the proper person to receive any notice on the CITY's behalf is:

John Frenken  
Park and Beach Superintendent  
City of Encinitas  
505 South Vulcan Avenue  
Encinitas, CA 92024

15.3 For the purposes hereof, unless otherwise provided in writing by the parties hereto, the address of NURSERY and the proper person to receive any notice on the NURSERY'S behalf is:

Native Grow Nursery LP  
Attn. Reiner Kruger, Gen Manager  
27201 Cool Water Ranch Rd.  
Valley Center, CA 92082

16.0 **NURSERY'S CERTIFICATION OF AWARENESS OF IMMIGRATION REFORM AND CONTROL ACT OF 1986**

NURSERY certifies that NURSERY is aware of the requirements of the Immigration Reform and Control Act of 1986 (8 USC §§ 1101-1525) and has complied and will comply with these requirements, including but not limited to verifying the eligibility for employment of all agents, employees, subcontractors and NURSERYs that are included in this AGREEMENT.

NURSERY

CITY

Native Grow Nursery LP

(Nursery name)

Reiner Kruger

(Name)

General Manager

(Title)

Date: 8/20/2012

  
Gus F. Vina  
City of Encinitas

Date: 8/28/12

ATTACHMENT "A"

GROWING SERVICES FOR ENCINITAS COMMUNITY PARK PROJECT

RFP: 12-05

(Scope of Work and Lump Sum Price)

NURSERY shall perform the services in the following manner:

**Location:**

As set forth in the Nursery's accepted proposal, the facilities where the plant materials will be grown and maintained is within a radius of seventy-five (75) miles from the City of Encinitas Community Park project, located at:

Encinitas Community Park  
425 Santa Fe Drive  
Encinitas CA 92024

Specifically, the physical address of the growing facility is: 27201 Cool Water Ranch Rd, Valley Center, CA

Number of miles from above City Park is: 20.81 Air Miles

In compliance with the Request To Submit Proposals To Provide And Deliver Contract Growing Services For The Encinitas Community Park Project, RFP: 12-05, the undersigned hereby agrees to provide the plants pursuant to the Plant Schedule set forth below and all manpower, supplies, materials, and equipment to perform the proposed contract; and to do so in strict accordance with the provisions of the proposed contract, including the contract time deadlines as follows:

CONTRACT GROWING SERVICE  
PLANT SCHEDULE SCOPE OF WORK

Nursery agrees to provide the contract growing services for the below listed plant material and deliver the plants to the Encinitas Community Park project site in accordance with the Contract Documents attached herein for the **TOTAL LUMP SUM** of: \$ 122,597.20

All plant material to be furnished shall be ONE GALLON size unless otherwise noted.

## **NURSERY QUALITY STANDARD FOR THE DELIVERED PLANT MATERIAL:**

### **Specifications:**

All plant material shall be naturally grown (grown without a nursery stake) at the nursery. There will be **ABSOLUTELY NO EXPCPTIONS** taken for naturally grown plant material.

1. All plant material shall be true to type or name as ordered or shown on the plans and shall be individually tagged or tagged in groups by species and variety.
2. All plant material shall be healthy, have a form typical for the species or variety, be well rooted, and properly trained.
3. All plant material shall comply with Federal and State laws requiring inspection for plant diseases and pest infestations. Inspection certificates required by law shall accompany each shipment of plants.
4. The root ball of all plant material shall be moist throughout and the crown shall show no signs of moisture stress.
5. The City shall undertake a final inspection of the plant materials prior to delivery and shall determine if they meet all contract and specification requirements. City has no duty to authorize delivery and make final payment until all plant material requirements are met.

### **DELIVERY DATE REQUIREMENT**

All mature plant materials listed above and meeting the inspection standards shall be available for delivery on **September 30, 2013**. Nursery failure to have said mature materials ready and available on or before said date will be a material breach of contract and could result in City Park Project delays, for which Nursery could be responsible. If the Park Project is not ready for the delivery of the plant materials on said date, Nursery agrees to continue to store and maintain all plant materials at City inspection standards at no additional cost to City for up to 90 days. If after 90 days the City is not ready to accept delivery of the plant materials, City will enter into an addendum to this agree and pay reasonable market plant storage and maintenance rates to Nursery.

**ATTACHMENT B**  
(Payment Schedule for Services)

The CITY shall pay NURSERY for the DESCRIBED SERVICES as follows:

The total lump sum price of: \$ 122,597.20

All prices shall include freight and delivery charges.

The price shall be payable as follows:

- a) 15% with signed Contract;
- b) 25% payment for work in progress, payable six (6) months from the date this Contract is signed, subject to all plants passing City inspection and meeting quality standards.  

The invoice by Nursery will be accompanied by a written report certifying status of the order on that date. City is to inspect progress of the plants at that time.
- c) The total of the final balance will be payable thirty (30) days after final delivery by Nursery of all City accepted plant materials to the Community Park Site.

ATTACHMENT C

**PROPOSAL TO PROVIDE GROWING SERVICES FOR ENCINITAS COMMUNITY PARK PROJECT**

**RFP: 12-05**

To the Honorable Mayor and City Council of the City of Encinitas:

In compliance with the Request To Submit Proposals To Provide And Deliver Contract Growing Services For The Encinitas Community Park Project, RFP: 12-05, the undersigned hereby agrees to provide the plants pursuant to the Plant Schedule set forth below and all manpower, supplies, materials, and equipment to perform the proposed contract; and to do so in strict accordance with the provisions of the proposed contract, including the contract time deadlines as follows:

**CONTRACT GROWING SERVICE  
PLANT SCHEDULE SCOPE OF WORK**

Proposer agrees to provide contract growing services for the below plant material and delivery to the Encinitas Community Park Project at the price indicated.

**All plant material to be furnished shall be ONE GALLON size unless otherwise noted.**

<u>PLANT</u>	<u>QUANTITY</u>	<u>UNIT COST</u>	<u>TOTAL COST</u>
ACHILLEA 'ISLAND PINK'	1340	\$1.80	\$2,412.00
ALOE ARBORESCENS	658	\$2.10	\$1,381.80
ALYOGYNE HUEGELII	216	\$2.05	\$442.80
ARCTOSTAPHYLOS HOOKERI 'MONTEREY CARPET'	478	\$2.25	\$1,075.75
ARTEMISIA 'POWIS CASTLE'	131	\$1.90	\$248.90
BACCHARIS PILULARIS 'PIGEON POINT'	1439	\$1.80	\$2,590.20
BUDDLEJA DAVIDII NANHOENSIS	268	\$2.40	\$643.20
CAREX DIVULSA	6774	\$2.10	\$14,225.40
CAREX SPISSA	1097	\$2.10	\$2,303.70
CARISSA MACROCARPA 'TUTTLE'	1207	\$2.10	\$2,534.70
CEANOTHUS GLORIOSUS 'POINT REYES'	701	\$2.60	\$1,822.60
CEANOTHUS 'YANKEE POINT'	372	\$2.20	\$818.40
CISTUS PURPUREUS	2532	\$2.25	\$5,697.00
DASYLIRION WHEELERI	1644	\$2.60	\$4,274.40
DENROMECON HARDFORDII	639	\$3.10	\$1,980.90
HEMEROCALLIS HYBRID	404	\$2.25	\$909.00
			Sub: "Emily Brown"

<u>PLANT</u>	<u>QUANTITY</u>	<u>UNIT COST</u>	<u>TOTAL COST</u>
HESPERALOE PARVIFLORA	3409	<u>\$2.25</u>	<u>\$7,670.25</u>
HETEROMELES ARBUTIFOLIA	396	<u>\$3.60</u>	<u>\$1,425.60</u>
LOROPETALUM CHINESE	119	<u>\$2.40</u>	<u>\$285.60</u>
MAHONIA REPENS	1560	<u>\$3.80</u>	<u>\$5,928.00</u>
MUHLENBERGIA CAPILLARIS 'REGAL MIST'	823	<u>\$2.25</u>	<u>\$1,851.75</u>
MUHLENBERGIA RIGENS	2148	<u>\$2.10</u>	<u>\$4,510.80</u>
MYOPORUM PARVIFOLIUM 'PUTAH CREEK'	678	<u>\$2.40</u>	<u>\$1,627.20</u>
PARTHENOCISSUS TRICUSPIDATA (15 gal)	45	<u>\$28.50</u>	<u>\$1,285.50</u>
PENSTEMON BARBATUS 'NAVIGATOR'	3459	<u>\$1.80</u>	<u>\$6,226.20</u>
PENNISETUM SETACEUM 'RUBRUM'	684	<u>\$2.60</u>	<u>\$1,778.40</u>
PHOTINIA FRASERI	205	<u>\$2.25</u>	<u>\$461.25</u>
PHORMIUM 'WINGS OF GOLD'	436	<u>\$3.10</u>	<u>\$1,351.60</u>
PITTOSPORUM TOBIRA 'VARIEGATUM' MOCK ORANGE	313	<u>\$2.20</u>	<u>\$688.60</u>
PRUNUS ILICIFOLIA	365	<u>\$2.60</u>	<u>\$949.00</u>
RHAMUS CALIFORNICA	554	<u>\$3.10</u>	<u>\$1,717.40</u>
RIBES VIBURNIFOLIUM	327	<u>\$3.10</u>	<u>\$1,013.70</u>
ROSA FLORIBUNDA 'BRIGHT PINK ICEBERG'	151	<u>\$2.80</u>	<u>\$422.80</u>
ROSMARINUS OFFICINALIS 'LOCKWOOD-DE FOREST'	16368	<u>\$2.10</u>	<u>\$34,372.80</u>
SALVIA CLEVELANDII 'WINNIFIELD GILMAN'	657	<u>\$2.10</u>	<u>\$1,379.70</u>
SALVIA LEUCANTHA	1803	<u>\$2.10</u>	<u>\$3,786.30</u>
WESTRINGIA FRUTICOSA	135	<u>\$2.10</u>	<u>\$283.50</u>
XYLOSMA CONGESTUM	98	<u>\$2.25</u>	<u>\$220.50</u>
			Sub: "Huntington Carpet"