

CONTRACT

This Contract entered into this 10th day of November 2020, by, and between, the County of Ventura, a political subdivision of the State of California, hereinafter called "County" and Newsem Ag, Inc. dba Greene Tree Care, hereinafter called "Contractor."

WITNESSETH

WHEREAS, the County issued the **TREE TRIMMING MAINTENANCE SERVICES FOR THE GENERAL SERVICES AGENCY** Request for Proposal #6000 (hereinafter referred also as 'RFP') to determine the most qualified Contractor for such services for County; and

WHEREAS the Contractor submitted a proposal dated June 29, 2020, in response to the RFP (hereinafter referred also as "Contractor's Proposal"), to provide services to County; and

WHEREAS, the County determined, through competitive solicitation and careful review of submitted proposals, that the Contractor's Proposal best meets the need of the County for **TREE TRIMMING MAINTENANCE SERVICES FOR THE GENERAL SERVICES AGENCY** and that it is necessary and desirable that Contractor be engaged by County for the purpose of providing **TREE TRIMMING MAINTENANCE SERVICES** and related services hereinafter described; and

WHEREAS the County and the Contractor are willing to enter into a **TREE TRIMMING MAINTENANCE SERVICES** Contract in accordance with the RFP, the Contractor's response thereto, which by this reference are incorporated, though not attached, and the terms and conditions contained herein; and

WHEREAS, it is necessary and desirable that Contractor be engaged by County for the purpose of performing **TREE TRIMMING MAINTENANCE SERVICES**;

NOW, THEREFORE, IT IS HEREBY AGREED by the parties as follows:

1. **SERVICES TO BE PERFORMED BY CONTRACTOR**

In consideration of the payments hereinafter set forth, Contractor will perform services for County in accordance with the terms, conditions and specifications set forth herein and Exhibits A-D, attached hereto.

2. **PAYMENTS**

In consideration of the services rendered in accordance with all terms, conditions and specifications set forth herein and in Exhibit A, County will make payment to Contractor as specified in Exhibit B. County's obligation hereunder is limited to the funds appropriated by the Board of Supervisors for this purpose for each fiscal year in which this contract is in effect.

3. **INDEPENDENT CONTRACTOR**

No relationship of employer and employee is created by this Contract, it being understood that Contractor is an independent contractor, and neither Contractor nor any of the persons performing services for Contractor pursuant to this Contract, whether said person be member, partner, employee, subcontractor, or otherwise, will have any claim under this Contract or otherwise against County for sick leave,

vacation pay, retirement benefits, social security, workers' compensation, unemployment insurance benefits, or employee benefits of any kind.

It is further understood and agreed by the parties hereto that, except as provided in this Contract, Contractor in the performance of its obligation hereunder is subject to the control or direction of County merely as to the result to be accomplished by the services hereunder agreed to be rendered and performed and not as to the means and methods for accomplishing the results.

If, in the performance of this Contract, any third persons are employed by Contractor, such persons will be entirely and exclusively under direction, supervision and control of Contractor. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging or any other terms of employment or requirements of law, will be determined by Contractor, and County will have no right or authority over such persons or the terms of such employment, except as provided in this Contract.

The Contractor will comply with all of the provisions of the Worker's Compensation Insurance and Safety Acts of the State of California, the applicable provisions of Division 4 and 5 of the California Labor Code and all amendments, thereto; and all similar State and Federal acts or laws applicable; and will indemnify and hold harmless the County from and against all claims, demands, payments, suits, actions, proceedings and judgments of every nature and description, including attorney's fees and costs, presented, brought or recovered against the County, for or on account of any liability under any of said Acts which may be incurred by reasons of any work to be performed under this Contract.

4. NON-ASSIGNABILITY

Contractor will not assign this Contract or any portion thereof, to a third party without the prior written consent of County, and any attempted assignment without such prior written consent will be null and void and will be cause, at County's sole and absolute discretion, for immediate termination of this Contract.

5. TERM

The initial term of the contract will be November 10, 2020 through November 9, 2022. The term of the Contract may be extended by mutual agreement for up to three (3) additional one (1) year periods.

In the event of any such extension of this Contract beyond the initial Term, County will review, but reserves the right to either accept or reject, any price adjustments submitted by Contractor, in writing, at least ninety (90) days prior to the end of the then-current contract period, as part of County's consideration of any such extension of this Contract.

6. TERMINATION

- a. The County may terminate this contract for default by Contractor in the performance of any term or condition of this contract if Contractor fails to cure the default within ten days of being given written notice of the default.
- b. Notwithstanding the foregoing, the County may terminate the contract

immediately if the Board of Supervisors fails to so appropriate sum to pay the Contractor or pursuant to sections 7 or 10 of this contract.

- c. The County at its sole option may terminate this contract without cause upon thirty (30) days written notice.
- d. In the event of termination under this section, Contractor shall be paid for all work provided to the date of termination, as long as such work meets the terms and conditions of this contract. On completion or termination of this contract, County shall be entitled to immediate possession of and Contractor shall furnish all computations, correspondence and other pertinent data gathered or computed by Contractor specifically for the services required hereunder prior to such termination. In the event termination under subsection a or b of this section is later determined to be made without cause, such termination shall be deemed a termination under subsection c.

Contractor hereby expressly waives any and all claims for damages or compensation arising under this contract by reason of termination by County except as set forth in this section. This right of termination belonging to the County may be exercised without prejudice to any other remedy which County may be entitled to at law or under this contract. Upon termination or other termination of the contract and the transfer of all assets, tangible and intangible, as may facilitate the orderly, non-disrupted business continuation of each party.

7. DEFAULT

If Contractor defaults in the performance of any term or condition of this Contract, Contractor must cure that default by a satisfactory performance within 10 days after service upon Contractor of written notice of the default. If Contractor fails to cure the default within that time, then County may terminate this Contract without further notice.

The foregoing requirement for written notice and opportunity to cure does not apply with respect to paragraph 4 above.

8. INDEMNIFICATION, HOLD HARMLESS AND WAIVER OF SUBROGATION

All activities and/or work covered by this Contract will be at the risk of Contractor alone. Contractor agrees to defend, indemnify, and save harmless the County, including all of its boards, agencies, departments, officers, employees, agents and volunteers, against any and all claims, lawsuits, whether against Contractor, County or others, judgments, debts, demands and liability, including without limitation, those arising from injuries or death of persons and/or for damages to property, arising directly or indirectly out of the obligations herein described or undertaken or out of operations conducted or subsidized in whole or in part by Contractor, save and except claims or litigation arising through the sole negligence or wrongdoing and/or sole willful misconduct of County.

9. INSURANCE PROVISIONS

- A) Contractor, at its sole cost and expense, will obtain and maintain the following types of insurance during the term of this Contract:
- 1) General Liability "occurrence" coverage in the minimum amount of \$1,000,000 combined single limit (CSL) bodily injury & property damage each occurrence and \$2,000,000 aggregate, including personal injury, broad form property damage, products/completed operations, broad form blanket contractual and \$50,000 fire legal liability.
 - 2) Workers' Compensation coverage, in full compliance with California statutory requirements, for all employees of Contractor and Employer's Liability in the minimum amount of \$1,000,000.
 - 3) Professional Liability coverage in the minimum amount of \$1,000,000 each occurrence and \$2,000,000 aggregate.
- B) All insurance required will be primary coverage as respects County and any insurance or self-insurance maintained by County will be excess of Contractor's insurance coverage and will not contribute to it.
- C) County is to be notified immediately if any aggregate insurance limit is exceeded. Additional coverage must be purchased to meet requirements.
- D) The County, and any applicable Special Districts are to be named as Additional Insured as respects to work done by Contractor under the terms of this Contract for General Liability Insurance.
- E) Contractor agrees to waive all rights of subrogation against the County, its Boards, Agencies, Departments, any applicable Special Districts, Officers, Employees, Agents and Volunteers for losses arising from work performed by Contractor under the terms of this Contract.
- F) Policies will not be canceled, non-renewed or reduced in scope of coverage until after sixty (60) days written notice has been given to the County of Ventura, Risk Management Division.
- G) Contractor agrees to provide County with the following insurance documents on or before the effective date of this Contract:
1. Certificates of Insurance for all required coverage.
 2. Additional Insured endorsement for General Liability Insurance.
 3. Waiver of Subrogation endorsement (a.k.a.: Waiver of Transfer Rights of Recovery Against Others, Waiver of Our Right to Recover from Others) for Workers' Compensation.

Failure to maintain the insurance, endorsements and provide the documents required by this paragraph 11 is grounds for immediate termination or suspension of this contract.

A) General.

No person will on the grounds of race, color, national origin, religious affiliation or non-affiliation, sex, age, handicap, disability, or political affiliation, be excluded from participation in, be denied the benefits, or be subjected to discrimination under this Contract.

B) Employment.

Contractor will insure equal employment opportunity based on objective standards of recruitment, selection, promotion, classification, compensation, performance evaluations, and management relations, for all employees under this Contract. Contractor's personnel policies will be made available to County upon request.

11. **SUBSTITUTION**

If particular people are identified in Exhibit A as working under this Contract, the Contractor will not assign others to work in their place without written permission from the County Purchasing Agent. Any substitution will be with a person of commensurate experience and knowledge.

12. **INVESTIGATION AND RESEARCH**

Contractor by investigation and research has acquired reasonable knowledge of all conditions affecting the work to be done and labor and material needed, and the execution of this Contract is to be based upon such investigation and research, and not upon any representation made by the County or any of its officers, agents or employees, except as provided herein.

13. **CONTRACT MONITORING**

The County will have the right to review the work being performed by the Contractor under this Contract at any time during Contractor's usual working hours. Review, checking, approval or other action by the County will not relieve Contractor of Contractor's responsibility for the thoroughness of the services to be provided hereunder. This Contract will be administered by Patrick Squires or his/her authorized representative.

14. **ADDENDA**

County may from time to time require changes in the scope of the services required hereunder. Such changes, including any increase or decrease in the amount of Contractor's compensation which are mutually agreed upon by and between County and Contractor will be effective when incorporated in written amendments to this Contract.

15. **CONFLICT OF INTEREST**

Contractor covenants that Contractor presently has no interest, including, but not limited to, other projects or independent contracts, and will not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the

performance of services required to be performed under this Contract. Contractor further covenants that in the performance of this Contract no person having such interest will be employed or retained by Contractor under this Contract.

16. **CONFIDENTIALITY**

Any reports, information, data, statistics, forms, procedures, systems, studies and any other communication or form of knowledge given to or prepared or assembled by Contractor under this Contract which County requests in writing to be kept confidential, will not be made available to any individual or organization by Contractor without the prior written approval of the County except as authorized by law.

17. **NOTICES**

All notices required under this Contract will be made in writing and addressed or delivered as follows:

TO COUNTY: County of Ventura
General Services Agency
Procurement Services
800 South Victoria Avenue, L#1080
Ventura, CA 93009

TO CONTRACTOR: MR. JOHN FLEMING, MANAGING DIRECTOR
NEWSEM AG, INC. DBA GREENE TREE CARE
83 S. DAWSON DR.
CAMARILLO, CA 93012

Either party may, by giving written notice in accordance with this paragraph, change the names or addresses of the persons of departments designated for receipt of future notices. When addressed in accordance with this paragraph and deposited in the United States mail, postage prepaid, notices will be deemed given on the third day following such deposit in the United States mail. In all other instances, notices will be deemed given at the time of actual delivery.

18. **MERGER CLAUSE**

This Contract supersedes any and all other contracts, either oral or written, between Contractor and the County, with respect to the subject of this Contract. This Contract contains all of the covenants and contracts between the parties with respect to the services required hereunder. Contractor acknowledges that no representations, inducements, promises or contracts have been made by or on behalf of County except those covenants and contracts embodied in this Contract. No contract, statement, or promise not contained in this Contract will be valid or binding.

19. **ORDER OF PRECEDENCE**

This Contract supersedes all previous agreements, understandings and representations of any nature whatsoever, whether oral or written, and constitutes the entire understanding between the parties hereto.

This Contract may not be altered, amended, or modified except by written instrument signed by the duly authorized representative of both parties. In the event of an inconsistency in this Contract, the inconsistency shall be resolved in the following order:

1. This Contract;
2. County of Ventura RFP #6000
3. Contractor's Best and Final proposal dated September 16, 2020.
4. Contactor's proposal dated June 29, 2020.

20. **GOVERNING LAW**

The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties under this Contract, will be construed pursuant to and in accordance with the laws of the State of California.

21. **SEVERABILITY OF CONTRACT**

If any term of this Contract is held by a court of competent jurisdiction to be void or unenforceable, the remainder of the Contract terms will remain in full force and effect and will not be affected.

22. **CUMULATIVE REMEDIES**

The exercise or failure to exercise of legal rights and remedies by the County in the event of any default or breach hereunder will not constitute a waiver or forfeiture of any other rights and remedies, and will be without prejudice to the enforcement of any other right or remedy available by law or authorized by this Contract.

23. **COMPLIANCE WITH LAWS**

Each party to this Contract will comply with all applicable laws.

24. **CONSTRUCTION OF COVENANTS AND CONDITIONS**

Each term and each provision of this Contract will be construed to be both a covenant and a condition.

25. **ACCESS TO AND USE OF COUNTY TECHNOLOGY**

As part of this Contract Contractor shall agree with and abide by the provisions set forth in the Ventura County Non-Employee Information Technology Usage Policy, which by this reference is made a part hereof. Any employee, sub-contractor, or agent of the Contractor who will access (which shall include, but is not limited to, the use, maintenance, repair or installation of) County information technology in the course of his, or her, work for the County is required to sign the Ventura County Non-Employee Information Technology Usage Policy before accessing, using, maintaining, repairing or installing any County information technology system or component. Information technology shall include, but is not limited to, the network, Internet access,

electronic mail, voice mail, voice message systems, facsimile devices, or electronic or telecommunication systems used by the County.

26. **PREVAILING WAGE**

In accordance with Section 1770 et seq. of the California Labor Code and provisions in the Code of Federal Regulations applicable to the Davis Bacon Act, determinations of the generally prevailing wages for various classes of workers in Ventura County have been made by the California Director of Industrial Relations, as required by the California Labor Code, and by the U.S. Secretary of Labor.

As required by California Labor Code Section 1777.5, properly registered apprentices will be employed on the work. Travel and subsistence will be paid in accordance with California Labor Code Section 1773.8.

The provisions of Articles 2 and 3, Division 2, Part 7, Chapter 1 of the California Labor Code are by this reference made a part of this Contract. A copy of the prevailing rates of wages in Ventura County are available at the following website:
<http://www.dir.ca.gov/DLSR/PWD/index.htm>.

27. **STORMWATER PERMIT TRAINING**

Contractor shall comply with all regulations and requirements provided in the Ventura County National Pollutant Discharge Elimination System (NPDES) Storm Water permit (#R4-2010-0108).

Contractor shall train their employees, whose operations affect storm water systems, on an annual basis. Contractor will provide a list of its employees, and the dates their training was conducted, to County on an annual basis.

Employees are to be trained in all aspects of the Ventura County NPDES storm water permit #R4-2010-0108 annually by June 30.

IN WITNESS WHEREOF the parties hereto have executed this Contract.

COUNTY OF VENTURA

[Signature]
Authorized Signature

J. Ellen Howard
Printed Name

Principal Buyer
Title

12/22/2020
Date

NEWSEM AG, INC. DBA GREENE TREE CARE

[Signature]
Authorized Signature

JOHN FLEMING
Printed Name

MANAGING DIRECTOR
Title

01/11/21
Date

27-2531237
Tax Identification Number

C3410520

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ENTITY NUMBER

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FOR Y

Please f
COUNT
General
Procure
Attn: Jo
800 S. V
Ventura

Secretary of State Entry Number

NEWSEM AG, INC. DBA GREENE TREE CARE *


Authorized Signature

LEIGH FLEMING

Printed Name

SECRETARY

Title

01/11/21

Date

* If a corporation, this Contract must be signed by two specific corporate officers.

The first signature must be from either (1) the Chief Executive Officer, (2) the Chairman of the Board, (3) the President, or (4) a Vice President.

The second signature must be from either (a) the Secretary, (b) an Assistant Secretary, (c) the Chief Financial Officer (or Treasurer), or (d) an Assistant Treasurer.

In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signatory to bind the company for this Contract.

