



**AGREEMENT BETWEEN THE CITY OF PALO ALTO AND
CANOPY: TREES FOR PALO ALTO**

CONTRACT No. S11139460

**FOR MUTUAL COOPERATION AND SUPPORT TO FACILITATE
CANOPY'S FINANCIAL AND ADMINISTRATIVE SUPPORT FOR THE
TREES OF PALO ALTO**

Dated as of April 1, 2011

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AGREEMENT BETWEEN THE CITY OF PALO ALTO AND CANOPY
FOR MUTUAL COOPERATION AND SUPPORT

This MUTUAL COOPERATION AND SUPPORT AGREEMENT (the “Agreement”), dated April 1, 2011 (the “Effective Date”), is entered into by and between the CITY OF PALO ALTO, a California chartered municipal corporation (the "City"), and CANOPY: TREES FOR PALO ALTO (CANOPY), a nonprofit organization (“Contractor”) (individually, a “Party” and, collectively, the “Parties”), in reference to the following facts and circumstances:

RECITALS:

1. The City owns and maintains the vast majority of all trees located on City-owned property, City Right of Way (ROW) property and utility easements within Palo Alto’s city limits. The City’s urban forestry programs are managed by several different City departments. Public Works Operations (tree section) manages publicly owned street trees and trees in parks and City facilities; the Planning Arborist administers the City’s Heritage Tree program; and Community Services Department (“CSD”) manages trees in Foothill Park, City open space and the Baylands. Together we share a mutual goal to preserve, protect and enhance Palo Alto’s urban forest.

2. CANOPY is a § 501(c)(3) Palo Alto- based nonprofit organization, which was founded in 1996 and incorporated in 2002. It , advocates for the urban forest and works to educate, inspire and engage the community as stewards of young and mature trees, with the mission to support the Palo Alto's urban forestry programs and engage residents in learning about their importance and how to care for them.

2.1.1 CANOPY’s goals:

- 2.1.1.1. Serve as a comprehensive information source about Palo Alto trees
- 2.1.1.2. Educate and motivate Palo Alto residents to plant, care for, and celebrate trees
- 2.1.1.3. Maintain an organization with a credible, professional identity and high public visibility in support of the Palo Alto urban forest
- 2.1.1.4. Assist the City of Palo Alto in its planning and performance of urban forestry programs on an ongoing basis
- 2.1.1.5. Conduct an assessment of the health of recently planted street trees
- 2.1.1.6. Administer the Utilities Department’s Right Tree in the Right Place Program

3. The Parties wish to more closely collaborate and mutually cooperate and support each other in the future, to improve, enhance and sustain the health of the City’s trees to develop and provide educational opportunities and related services to the Palo Alto community.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing recitals and the following covenants, terms, conditions and provisions of this Agreement, the Parties agree:

SECTION 1. TERM; EXTENSION; TERMINATION; COMPENSATION

1.1 This Agreement will commence on the Effective Date, and the initial term is three (3) years (the "Term"), unless it is earlier terminated by a Party as herein provided.

1.2 No provision for the automatic extension of the Term is made; provided, however, nothing in this Agreement shall limit the Parties from negotiating one or more renewals of this Agreement in the future on the same, substantially similar or different terms and conditions as set forth in this Agreement.

1.3 Except as provided in Section 4.3, a Party may terminate for convenience this Agreement, in whole or in part, by giving the other Party no less than ninety (90) days' prior written notice. A Party may terminate for cause this Agreement, in whole or in part, by giving the other Party no less than thirty (30) days' prior written notice.

1.4 This Agreement is subject to the fiscal provisions of the Charter of the City of Palo Alto and the Palo Alto Municipal Code (the "PAMC"). This Agreement will terminate without penalty: (A) at the end of any fiscal year in the event that funds are not appropriated for CANOPY's programs for the following fiscal year; or (B) at any time within a fiscal year in the event that funds are appropriated for a portion of the fiscal year and funds for this Agreement are no longer available. This Section 1.4 will take precedence in the event of a conflict with any other covenant, term, condition or provision of this Agreement and the Exhibits. Nothing in this Section 1.4 is intended to affect Canopy's rights and remedies as may be available under applicable laws.

1.5 The compensation to be paid to CONTRACTOR for performance of the Services described in Section 2 below, including both payment for professional services and reimbursable expenses, shall not exceed **Eighty-three Thousand Two Hundred Ten Dollars (\$83,210.00) for the entire Term.**

In order to request payment, CONTRACTOR shall submit invoices to the CITY describing the services performed in accordance with Section 2.2 and the applicable charges (including an identification of personnel who performed the services, hours worked, hourly rates as set forth in Exhibit "A", and reimbursable expenses). The information in CONTRACTOR's payment requests shall be subject to verification by CITY. The City will generally process and pay invoices within thirty (30) days of receipt. CONTRACTOR shall send all invoices to the City's project manager at:

Public Works Operations, Managing Arborist
City of Palo Alto
3201 East Bayshore Road
Palo Alto, CA 94303

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SECTION 2. RESPONSIBILITIES OF THE PARTIES

2.1 The responsibilities of the City will include the following:

City Arborists, tree staff and CSD staff will coordinate and cooperate with Canopy to facilitate special events, such as the annual Mayor's tree planting, Arbor Day Planting events, other public right of way plantings, Young Tree Care Survey Right Tree Right Place program and city wide educational events. City staff will be responsible for locating and planning planting sites for these events.

2.2 Canopy's responsibilities will include the following:

Canopy Mission Statement

Canopy, a Palo Alto-based non profit, advocates for the urban forest and works to educate, inspire and engage the community as stewards of young and mature trees.

Canopy Goals

- A.** Serve as a comprehensive information source about Palo Alto trees
- B.** Educate and motivate Palo Alto residents to plant, care for, and celebrate trees
- C.** Maintain an organization with a credible, professional identity and high public visibility in support of the Palo Alto urban forest
- D.** Assist the City of Palo Alto in its planning and performance of urban forestry programs on an ongoing basis.
- E.** Conduct an assessment of the health of recently planted street trees.
- F.** Administer the Utilities Department's Right Tree in the Right Place Program (RTRP)

Action Plans

Goal A: Serve as a comprehensive information source about Palo Alto trees.

1. Perform timely updates of the new Canopy website.

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2. Continue adding to the website photo library showing the consequences of good and bad maintenance practices on young trees and problems associated with mature trees.
3. Operate and publicize Canopy's information and referral "Treeline" where people can phone in or email to ask specific questions about trees.
4. Maintain the list of ISA Certified Arborists for distribution to the community. Publish the list online and in hard copy.
5. Complete work on the Canopy online Tree Library.

Goal B: Educate and motivate Palo Alto residents to plant, care for, and celebrate trees.

1. Prepare, plan and schedule at least four tree walks in various neighborhoods led by knowledgeable arborists. – Continue tree walks redesign.
2. Prepare, plan and schedule at least one public education program about trees and/or tree care. Consideration should be given to an Arbor Day event that helps Palo Alto maintain its Tree City USA designation.
3. Provide educational materials at area community fairs and events.
4. Work with the Public Works Operations Tree Section to design a strategy to increase the number of street tree plantings in particular in South Palo Alto.
5. Publish and distribute at least two printed newsletters detailing Canopy activities and providing residents with applicable tree care information. Publish and distribute an annual report to the community. Publish monthly TreEnews electronic newsletters.
6. Use community events in the field as opportunities to educate participants in proper tree planting and maintenance techniques. Provide volunteer field services for up to 100 public trees. These services can include planting of new trees and tree care for young trees.
7. Maintain a liaison with the school district (PAUSD) to increase awareness of the value of the trees on school district land, which could include educational events for students.

Goal C: Maintain an organization with a credible, professional identity and high public visibility in support of the Palo Alto urban forest. Leverage CPA funding to Canopy with funding from other sources.

1. Conduct donor/membership recruitment to ensure a broad base of support for Canopy and its activities.
2. Seek participation and support from the commercial and industrial community.
3. Maintain and implement communications strategy.

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4. Continue to seek other financial support (e.g., grants) outside of City government to provide increased services to the community and to increase public involvement.

Goal D: Assist the City of Palo Alto in its planning and performance of urban forestry programs.

1. Continue participating in the development of the Palo Alto Urban Forest Master Plan.
2. Assist the CPA in the performance of the two CalFire Management plan and Inventory grants, as applicable.
3. Work with the Public Works Operations Tree Section to design a strategy to increase the number of street tree plantings in particular in South Palo Alto.

Goal E: Conduct an assessment of the health of recently planted street trees.

1. Conduct a City-wide survey of newly planted street trees during July and August of 2011 and report tree condition information to the Public Works Department.
2. Organize and train a cadre of volunteers to monitor the condition of young trees, and perform simple maintenance tasks on site.
3. Complete the redesign of the Palo Alto Young Tree Program communications material, with a planting pamphlet.
4. Mail the "Is Your Tree Thirsty?" reminder postcard at least once during the summer of 2011, and distribute tree care information to each resident with a street tree planted in the last five years.

Goal F: Administer the Utilities Department's Right Tree in the Right Place Program (RTRP).

1. Continue to advertise, respond to, and screen inquiries about the RTRP before forwarding requests to Public Works for inspection.
2. Administer the process for successful applicants of the RTRP program, including acceptance notification, information mailing, removal confirmation, stump grinding and replanting at each location. Promote replanting where suitable.
3. Review bids and forward paperwork to Utilities for reimbursement procedure and provide summary spreadsheet reports of activities.
4. With CPA Public Utilities and PW Tree Division, assist in design and implementation of the extension of the RTRP program to businesses.
5. With CPA Public Utilities, assist in design and implementation of the Shade Tree Program for residential and commercial properties.

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6. Work with CPA Public Utilities to explore growth opportunities for the RTRP program such as including greenhouse gas, energy efficiency, heat island effect, local tree ordinances, and solar access requirements in RTRP and incorporating APPA Tree Power Program education and outreach materials.

SECTION 3. GENERAL PERMISSION TO CANOPY

3.1 City hereby grants the Canopy, its directors, officers, employees, contractors, subcontractors, volunteers and consultants a nonexclusive permission to enter upon City parks and facility grounds for the execution of its individual and/or joint responsibilities established by the City Public Works Arborist , in connection with the exercise of its rights and responsibilities under this Agreement. The City will not revoke this permit to enter while this Agreement remains in effect. Any use of the parks and facilities by Canopy will be approved by the Manager in regards to program scheduling, space availability, and the functionality of shared parks and facility spaces for staff use.

SECTION 4. INSURANCE

4.1 As of the Effective Date, CANOPY, at its sole cost and expense, will obtain and maintain the following insurance coverage, acceptable to the City’s insurance risk manager (the “Risk Manager”) in full force and effect during the Term, insuring not only CANOPY but, with the exception of worker’s compensation and employer’s liability insurance, naming the City as an additional insured, concerning CANOPY’s participation under this Agreement.

<u>POLICY</u>	<u>MINIMUM LIMITS OF LIABILITY</u>
A. WORKER’S COMPENSATION	Statutory
B. COMMERCIAL AUTOMOBILE LIABILITY	Bodily Injury \$1,000,000 ea. person Property Damage \$1,000,000 each person, including owned, hired, and non-owned automobiles
C. COMPREHENSIVE GENERAL LIABILITY	Bodily Injury \$1,000,000 each person, \$1,000,000 each occurrence, \$1,000,000 aggregate including products, Property Damage \$1,000,000 each occurrence & completed operations, Personal Injury \$1,000,000 each occurrence,

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broad form contractual, and personal injury.

4.2 Any deductibles must be declared to and accepted by the Risk Manager. The CANOPY's insurance will be carried in full force and effect on or before the Effective Date. The insurance provided by CANOPY shall satisfy the following requirements:

- A. CANOPY shall deliver a certificate of insurance in which the party issuing the certificate shall endeavor to provide thirty (30) days' prior written notice of any proposed cancellation of the policy to: City of Palo Alto, Purchasing and Contract Administration, Mezzanine Floor, P.O. Box 10250, Palo Alto, CA 94303.
- B. The City of Palo Alto shall be added by endorsement or otherwise as an additional insured as respects operations of the named insured within the City property.
- C. Any insurance maintained by the City of Palo Alto will apply in excess of, and not contribute to, insurance provided by each policy provided by CANOPY.

4.3 Evidence of Insurance Coverage and/or Changes will be, as follows:

- A. Certificate of Insurance. CANOPY agrees to deposit with the Purchasing Manager before the Effective Date, certificates of insurance (Exhibit "B") necessary to satisfy the City that the insurance provisions of this Agreement have been complied with, and to ensure that such insurance is kept in effect, with the certificates on deposit with the City, during the Term.
- B. Review of Coverage. The City will retain the right, at any time, to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of the Risk Manager, the insurance provisions in this Agreement do not provide adequate protection for the City and for members of the public in connection with City-CANOPY events and CANOPY-only events, the City Manager, or designee, may require, and the City will endeavor to give CANOPY at least sixty (60) days' prior written notice, an amount to provide adequate protection as determined by the Risk Manager. The City's requirements shall be reasonable and shall be designed to assure protection from and against the kind and extent of risk which exists at the time a change in insurance is required. CANOPY may terminate this Agreement upon thirty (30) days' prior written notice if CANOPY will not agree to pay for additional insurance coverage as required by the Risk Manager.
- C. Reserved.
- D. Limit of Liability. As long as CANOPY obtains and maintains the policy or policies of insurance required by this Section 4, CANOPY's obligation under Section 5.1

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- will be limited to the coverage(s) afforded by such policy or policies of insurance.
- E. Acceptability of Insurers. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than A-VII.

SECTION 5. INDEMNITY AND LIMITATION OF LIABILITY

5.1 Except as provided under Section 5.2 and except to the extent caused by the negligence, willful misconduct or breach of this Agreement by the City or its agents, employees or contractors, CANOPY hereby waives all claims, liability and recourse against the City, including the right of contribution for loss or damage of or to persons or property arising from, growing out of, or in any way connected with or related to this Agreement. Subject to Section 4.3.D, CANOPY will protect, indemnify, hold harmless and defend the City, its officials, officers, employees, representatives and agents, from and against any and all claims, losses, liability, demands, damages, costs, expenses or attorneys' fees, caused by or arising out of CANOPY's negligent acts or omissions, or willful misconduct, in the performance or nonperformance of its obligations under the covenants, terms, conditions and provisions of this Agreement. The preceding sentence or any other provision of this Agreement notwithstanding, no personal liability will attach to any Board member or officer, employee or volunteer of CANOPY under the provisions of this Section 5 or any other provision of this Agreement. In the event the City is named as a co-defendant in a suit which also names the CANOPY, CANOPY will following its receipt of the complaint relating to such suit promptly notify, in writing, the City, to the attention of the City's City Attorney (the "City Attorney"), of such fact.

5.2 The City will protect, indemnify, hold harmless and defend CANOPY, its directors, officers, employees and agents, against any and all claims, losses, liability, demands, damages, costs, expenses or attorneys' fees arising out of the City's negligent performance or nonperformance of its obligations under the terms of this Agreement.

SECTION 6. WAIVER

6.1 The waiver by either Party of any breach or violation of any covenant, term, or condition of this Agreement or of the provisions of the PAMC or other City ordinance, resolution, policy, rule or regulation, will not be deemed to be a waiver of any such covenant, term, condition, or provision or of any subsequent breach or violation of the same or any other covenant, term, condition, or provision. The subsequent acceptance by either Party of any consideration which may become due or payable hereunder will not be deemed to be a waiver of any preceding breach or violation by the other Party.

SECTION 7. NO PROPERTY RIGHTS

7.1 The Parties agree that this Agreement will not confer any property right upon

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CANOPY, its directors, officers, employees, volunteers, contractors, subcontractors or consultants. Any work performed for the benefit of the City and any improvements placed or constructed at the City will conform to the City's standards and approved by the City Manager, or designee, and will, upon acceptance, become the property of the City.

SECTION 8. ASSIGNMENT

8.1 Neither Party may assign, transfer, or convey this Agreement or any interest that it may have in this Agreement without the other Party's express consent or approval. Any attempted assignment without the required consent or approval will be void and will confer no right, title, or interest in or to this Agreement, or part thereof. In the event of an unauthorized assignment, at the option of the Party not making the assignment, this Agreement may be terminated upon reasonable notice to the Party making the assignment.

SECTION 9. INDEPENDENT CONTRACTOR

9.1 In the exercise of its rights and responsibilities under this Agreement, CANOPY acts at all times as an independent contractor and not as an employee of the City. Nothing in this Agreement will be construed to establish a partnership, joint venture, group, pool, syndicate or agency between the Parties. No provision contained herein will be construed as authorizing or empowering either Party to assume or create any obligation or responsibility whatsoever, express or implied, on behalf, or in the name of, the other Party in any manner, or to make any representation, warranty or commitment on behalf of the other Party. In no event will either Party be liable for (a) any loss incurred by the other Party in the course of its performance hereunder, or (b) any debts, obligations or liabilities of the other Party, whether due or to become due.

SECTION 10. NONDISCRIMINATION

10.1 The PAMC prohibits discrimination in the employment of any individual under this Agreement because of race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of that person. CANOPY acknowledges that it has read and understands the provisions of PAMC Chapter 2.30 relating to nondiscrimination in employment and the penalties for violations thereof, and it agrees to comply with all requirements of PAMC Chapter 2.30 pertaining to nondiscrimination in employment

SECTION 11. NOTICES

11.1 Any notice, request, consent or approval by a Party that is required to be furnished by this Agreement, will be given, in writing, and delivered by personal service, the United States Postal

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Service, mailed, first class, postage prepaid, or by facsimile transmission, to the following:

To CITY:

City Clerk
City of Palo Alto
P.O. Box 10250
Palo Alto, CA 94303-4303

To CANOPY: TREES FOR PALO ALTO:

Catherine Martineau, Executive Director
3921 East Bayshore Road
Palo Alto, CA 94303

with a copy to:
Public Works Operations
Eric Krebs, Managing Arborist
City of Palo Alto
3201 East Bayshore Road
Palo Alto, CA 94303

SECTION 12. MISCELLANEOUS

12.1 This Agreement will be governed by and construed in accordance with the laws of the State of California and the Charter of the City of Palo Alto and the PAMC. The Parties will comply with all applicable federal, state and local laws in the exercise of their rights and the performance of their obligations under this Agreement.

12.2 All covenants, terms, conditions, and provisions of this Agreement, whether covenants or conditions, will be deemed to be both covenants and conditions.

12.3 This Agreement represents the entire agreement between the Parties and supersedes all prior negotiations, representations and contracts, written or oral. This Agreement may be amended by an instrument, in writing, signed by the Parties. This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one and the same instrument.

12.4 All exhibits referred to in this Agreement are by such references incorporated in this Agreement and made a part hereof. The following exhibit is made a part of this Agreement:

Exhibit "A" – Hourly Rate/Fee Schedule
Exhibit "B" – Certificate of Insurance.

12.5 At the request of the City, CANOPY will furnish to the City Attorney for the City's review and approval copies of its articles of organization, operating agreement, and other information relating to its organization status.

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12.6 The Parties agree that the normal rule of construction to the effect that any ambiguity is to be resolved against the drafting party will not be employed in the interpretation of this Agreement, the Exhibits, or any amendment thereto.

12.7 In the event that an action is brought, the Parties agree that trial of such action will be vested exclusively in the state courts of California or in the United States District Court for the Northern District of California in the County of Santa Clara, State of California.

12.8 No director, officer, employee or volunteer of CANOPY will be held personally liable under this Agreement or as the result of any failure to act or any action or decision taken or made by such person in good faith relating to the subject matter of this Agreement.

12.9 If a court of competent jurisdiction finds or rules that any provision of this Agreement, the Exhibits, or any amendment thereto, is void or unenforceable, the unaffected provisions of this Agreement, the Exhibits, or any amendment thereto, will remain in full force and effect.

12.10 The term “day” means a calendar day, unless a “business day” is specified; for the purposes of this Agreement, “business day” excludes any “Regular Holiday” or “Other Special Day” referred to in PAMC Section 2.08.100 or any Friday that is considered a ‘9/80’ day, when the City does not require employees, electing to work nine (9) business days in a ten-business days biweekly period, to work on such days.

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IN WITNESS WHEREOF, the Parties by their duly authorized representatives have executed this Agreement on the Effective Date.

CITY OF PALO ALTO

CANOPY: TREES FOR PALO ALTO

City Manager

Executive Director

APPROVED AS TO FORM:

Senior Asst. City Attorney