

## **CROP MAINTENANCE AGREEMENT**

(Gless Ranch, Inc.)

THIS CROP MAINTENANCE AGREEMENT ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2016 ("Effective Date") by and between the **CITY OF RIVERSIDE**, a charter city and municipal corporation, ("City"), and **GLESS RANCH, INC.**, a California corporation ("Gless"), with reference to the following facts:

A. City is the owner of those certain citrus groves ("Groves") located on Victoria Avenue between La Sierra and Myrtle Avenues, in the City of Riverside, California.

B. Gless is in the business of farming and maintenance of citrus groves, including other groves for the City.

C. City is desirous of employing Gless to farm, manage and maintain the Groves and Gless is agreeable to the same.

NOW, THEREFORE, incorporating the above referenced facts, City and Gless agree as follows:

### **1. GLESS' OBLIGATIONS**

**1.1 Care and Maintenance.** Gless shall use its best efforts to grow and maintain the Groves so as to allow for the eventual harvesting. Gless shall care for and maintain the Groves consistent with good citrus farming practices for similar farming operations, which includes, without limitation, the following:

- (a) fertilization;
- (b) regular irrigation and maintenance of irrigation systems in good operating condition;
- (c) pest, weed and disease control applied by licensed pest control applicators working in conjunction with a licensed pest control advisor, which pest, weed and disease control applications shall be done in accordance with generally accepted practices;
- (d) removal and disposal of dead or diseased trees;
- (e) planting of new replacement trees as required; and

(f) harvesting, if ultimately viable.

**1.2 Capital Improvements.** Gless shall not make any capital improvement to the Groves, without the prior written consent of City, acting by and through its Public Works Director, which consent City shall not unreasonably withhold. Any capital improvements to the Groves shall be made at Gless' sole cost and expense. At all times during the term and after the termination of the Agreement, City shall own all capital improvements to the Groves made by Gless.

## **2. PERMITTED USE**

The Groves are agricultural land and may only be used for agricultural purposes by Gless during the term of this Agreement. In connection with Section 402.1 of the Revenue and Taxation Code of the State of California, City confirms the following:

- (a) The above restriction to use for agricultural purposes is and shall constitute an enforceable restriction upon the use to which the Groves may be subjected;
- (b) The Groves are legally not available to Gless for any other use;
- (c) Such restriction upon use shall not be removed or substantially modified during the entire term of the Agreement; and
- (d) Such restriction on use shall be considered in the assessment of Gless' possessory interest subject to property taxation.

City reserves unto itself any and all other uses to which the Groves may be put after the termination of the Agreement, by expiration of its term or other cause.

## **3. TERM; RENEWAL; TERMINATION**

**3.1 Term.** The term of this Agreement shall commence on July 1, 2016 and shall terminate at midnight June 30, 2021 ("Termination Date") unless extended as provided herein.

**3.2 Renewal.** The term may be extended by mutual consent of the parties for two (2) additional two (2) year periods, not to exceed a total of four (4) additional years. All such extensions/amendments shall be made in writing and approved by the parties.

**3.3 Termination.** Notwithstanding the foregoing, City may terminate this Agreement without cause by giving written notice to Gless not later than sixty (60) days prior to the termination, and Gless may terminate this Agreement without cause by giving written notice to City not later than sixty (60) days prior to the end of the relevant year.

#### **4. COMPENSATION**

**4.1 Compensation.** Gless shall perform the services under this Agreement for the total sum not to exceed Forty-Nine Thousand Nine Hundred Ninety-Two Dollars (\$49,992) per year, which monthly service cost is set forth on Exhibit "A" attached hereto and incorporated herein by reference. Said payment shall be made in accordance with City's usual accounting procedures upon receipt and approval of an itemized invoice setting forth the services performed. The invoices shall be delivered to City at the address set forth in Section 16 hereof. Gless and the City agree to re-evaluate the monthly management fee and services ninety (90) days prior to the annual renewal date.

**4.2 Gless' Records.** Gless shall maintain and keep full and accurate books of account, records and other pertinent data including receipts and invoices evidencing and supporting the services performed and any capital improvements made. Such books, records and data shall be kept for not less than two years after the close of each year.

**4.3 City Audit.** Gless agrees to make all books, records and data required pursuant to subparagraph 4.2 available for inspection and audit by City and its authorized representatives during reasonable times.

#### **5. HAZARDOUS SUBSTANCES AND PESTICIDES**

**5.1** During the term of this Agreement, Gless shall use integrated pest management and shall apply to the Groves only such pesticides and herbicides and other such

regulated substances and materials as are approved at the time of application by all federal, state and local governmental agencies having regulatory responsibility for the use and application of the same. All applications of such materials and substances shall be done by properly licensed pest control applicators and advisors in accordance with good farming practices.

**5.2** Gless shall indemnify, defend and hold harmless City from and against all claims, demands, loss or liability of any kind or nature, including reasonable attorneys' fees and court costs, which may arise due to the release or spillage of any hazardous or toxic waste, substance or material which may have occurred during and after Gless' commencement of performance under this Agreement and prior to the termination of this Agreement. The parties acknowledge and agree that this indemnification does not extend to any things deposited, released, dumped or spilled on the Groves by a third party not associated with Gless, provided, however, that Gless notifies the City within twenty four (24) hours of discovery of the substances and/or materials.

**5.3** City warrants to Gless that it has no knowledge of the presence of any hazardous or toxic waste, substance or material on or underneath the Groves at the inception of this Agreement except pesticide residues, the existence and level of which pesticide residues does not violate any law, statute, or regulation governing the disposal, storage, transportation or release of any hazardous or toxic waste, substance or material.

**5.4** The obligations of the parties under this Paragraph 5 shall survive the termination of this Agreement.

## **6. RELATED PARTIES PROVISION OF SERVICES; NONDISCRIMINATION**

**6.1** Gless has informed City and City is aware that: (i) Gless' officers, directors and shareholders are and will continue to be involved individually and in various other capacities with the ownership and leasing of citrus groves and the planting, cultivation, farming, harvesting, packing, and sale of citrus; (ii) Gless intends to contract with various individuals, partnerships, corporations, and other entities to provide services to Gless in connection with Gless' performance of its obligations under this Agreement; and (iii) the officers, directors and

shareholders of Gless may be involved individually and in such other capacities with such partnerships, corporations, and other entities used by Gless to provide and perform such services (collectively, "Related Parties").

**6.2** City and Gless expressly agree that: (i) Gless may utilize such Related Parties as Gless may determine to provide and perform all such services so long as the cost of the services provided by such Related Parties is comparable to the cost of such services provided by unrelated parties; and (ii) all references in this Agreement to, or relating to, Gless' employees or any employment by Gless shall be strictly construed and limited solely to only (a) employees of Gless (and not the employees of any individual, partnership, corporation or other entity utilized by Gless in connection with the Groves) and (b) employment by Gless only on the Groves (and not at any other location owned or operated by Gless).

**6.3** Gless agrees that during the term of this Agreement, Gless shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition (including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto), marital status, sex or sexual orientation in the selection and retention of Gless' employees on the Groves or Gless' contractors for the Groves.

## **7. DAMAGE OR DESTRUCTION**

Gless shall be responsible for the farming and routine maintenance of the Groves, but shall not be responsible for compensating City for or have any obligation in connection with the restoration of the individual citrus trees which shall either or both be damaged or destroyed in whole or in part, unless such damage or destruction is due to Gless' wilful misconduct or negligence. In the event of such damage or destruction due to Gless' wilful misconduct or negligence, Gless shall replace or at Gless' option restore any and all property, including without limitation the citrus trees, which have been damaged or destroyed, as soon as reasonably possible after the occurrence of such damage or destruction, but no later than the earlier to occur of the

expiration or other termination of this Agreement or 180 days after the occurrence of such damage or destruction.

## **8. IRRIGATION WATER**

During the entire term of this Agreement, City shall pay for the irrigation of the Groves. The City agrees to make all reasonable efforts to provide water to ensure adequate irrigation to sustain the Groves.

## **9. INSURANCE**

Prior to City's execution of this Agreement, Gless shall obtain, and shall thereafter maintain during the term of this Agreement, such commercial general and automobile liability insurance as required to insure Gless against damages for personal injury, including accidental death, as well as from claims for property damage which may arise from or which may concern operations or by anyone directly or indirectly employed by, connected with, or acting for or on behalf of Gless, as well as worker's compensation insurance for its employees.

All liability insurance shall be issued by insurance companies authorized to transact liability insurance business in the State of California with a policy holder's rating of A or higher and a Financial Class VII or larger.

Gless' commercial general liability policy shall cover both bodily injury (including death) and property damage (including but not limited to premises-operations liability, independent contractors liability, personal injury liability, and contractual liability), in an amount not less than \$1,000,000 per-occurrence limit/\$2,000,000 aggregate.

Gless' automobile liability policy shall cover both bodily injury and property damage in an amount not less than \$1,000,000 per-occurrence limit, unless otherwise approved by the City's Risk Manager, or his designee.

These minimum amounts of coverage shall not constitute any limitation or cap on Gless indemnification obligations under Section 10 hereof.

Prior to City's execution of this Agreement, insurance policies or original certificates and additional insured endorsements evidencing the coverage required by this Agreement, for both

commercial general, automobile liability and workers compensation, shall be filed with City and shall include the City, its officers and employees as additional insureds. Said policies shall be in the usual form of commercial general liability insurance, but shall include the following provisions:

“It is agreed that the City and its officers and employees are added as additional insureds under this policy solely for work done by and on behalf of the named insured for the City of Riverside.”

The policies shall not be canceled unless thirty (30) days prior written notification of intended cancellation has been given to City by certified or registered mail.

#### **10. INDEMNIFICATION**

Except as to the sole negligence or willful misconduct of the City, Gless shall indemnify and hold the City, and its employees, officers, managers, agents and council members, harmless from any and all loss, damage, claim for damage, liability, expense or cost, including attorneys' fees, which arises out of, or is related to, or is in any manner connected with, the performance of work, activities, operations or duties of Gless, or anyone employed by or working under Gless, and from all claims by anyone employed by or working under Gless for services rendered to Gless in the performance of this Agreement, notwithstanding that the City may have benefited from their services. This indemnification provision shall apply to any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of Gless or of anyone employed by or working under Gless.

The parties expressly agree that any payment, attorneys' fees, costs or expense that the City incurs or makes to or on behalf of an injured employee under the City's self-administered workers' compensation is included as a loss, expense or cost for the purposes of this Section, and that this Section shall survive the expiration or early termination of the Agreement.

#### **11. ENTRY BY CITY**

Provided City gives Gless verbal or written notice prior to such entry and does not interfere with Gless' farming and maintenance of the Groves, City may enter upon the Groves at

such reasonable times as City may desire (i) to inspect the Groves to determine Gless' compliance with the provisions of this Agreement and (ii) in connection with City's obligations under this Agreement.

## **12. GLESS' DEFAULTS; REMEDIES**

**12.1 Events of Default.** Each of the following shall constitute an Event of Default under this Agreement:

(a) If Gless is in default in the prompt and full performance of any other of its obligations under this Agreement and such default continues more than thirty (30) days after written notice specifying the particulars of such default, unless the nature of the default requires more than thirty (30) days to cure, Gless' failure to commence cure of such default within thirty (30) days after such notice and to diligently prosecute such cure to completion;

(b) (i) If Gless makes a general assignment or general arrangement for the benefit of creditors; (ii) if a petition for adjudication of bankruptcy or for reorganization or rearrangement is filed by or against Gless and is not dismissed within thirty (30) days; (iii) if a trustee or receiver is appointed to take possession of substantially all of Gless' assets located at the Groves or of Gless' interest in this Agreement and possession is not restored to Gless within thirty (30) days; or (iv) if substantially all of Gless' interest in this Agreement is subject to attachment, execution or other judicial seizure which is not discharged within thirty (30) days; or

(c) Gless is in breach of any other Agreement with the City.

**12.2 Remedies.** On the occurrence of any Event of Default under this Agreement by Gless, City may, at any time, thereafter, with or without notice or demand and without limiting City in the exercise of any right or remedy which City may have:

(a) Declare Gless in material breach of this Agreement, terminating this Agreement, terminating Gless' right to enter the Groves and possess or take possession of the Groves; and



(b) Pursue any other remedy now or hereafter available to City at law or in equity. City's exercise of any right or remedy shall not prevent City from exercising any other right or remedy.

In the event City terminates this Agreement pursuant to subparagraph 12.2, City shall have the right, but not the obligation, to remove from the Groves, any personal property located thereon and to place it in storage at the expense and risk of Gless. On such termination, City's damages for material breach shall include all costs and fees, including reasonable attorneys' fees incurred by City in connection with the filing, commencement, pursuing or defending of any action in any court with respect to this Agreement, including obtaining of relief from any stay in bankruptcy proceeding, or pursuing any action with respect to City's right to possession of the Groves.

### **13. AUTHORITY OF PARTIES**

Each of the parties to this Agreement warrants and represents to the other party as a material inducement to such other party for its execution and delivery of this Agreement that: (i) such party has the legal power, right and authority to enter into this Agreement, to consummate the transactions contemplated by this Agreement, to perform its obligations under this Agreement and to bind itself to such entry, consummation and performance; (ii) such party is not aware of any law, regulation, judgment, decree, decision, order, contract, agreement or obligation which might materially adversely affect the ability of such party to enter into this Agreement, to consummate such transactions, to assume and perform such obligations, or to bind itself to do so; (iii) such party shall not prevent, limit or restrict its ability to enter into this Agreement, to consummate such transactions, to assume and perform such obligations, or to bind itself to do so, including the exercise of any right such party may otherwise have in connection with the Groves which would have any such effect; (iv) each individual executing this Agreement on behalf of such party is duly authorized to execute and deliver this Agreement on behalf of such party; and (v) this Agreement and all documents required to be executed by such

party in connection with this Agreement are and shall be valid and enforceable against such party.

#### **14. ASSIGNMENT**

This Agreement is personal to Gless and is entered into by City based upon the experience and expertise of Gless. Whether voluntarily or by operation of law, Gless shall not assign or transfer all or any part of this Agreement or Gless' rights or obligations under this Agreement without City's prior written consent. Any attempted assignment without City's prior written consent shall be void.

#### **15. SUCCESSORS AND ASSIGNS**

The covenants and agreements herein contained shall bind and inure to the benefit of the parties hereto and their respective successors, heirs and assigns. Within ten (10) days after the consummation of the same by City, City shall notify Gless in writing of any assignment, sale, encumbrance, or transfer by City permitted by the terms of this Agreement of all or any part of its interest in the Groves and the name and address of such assignee, purchaser, lender, or transferee.

#### **16. NOTICES**

All notices or other communications required or permitted under this Agreement shall be in writing and shall be deemed properly delivered, given or served (i) when personally delivered or (ii) on the third day after the date of mailing by only certified mail, postage prepaid, return receipt requested and addressed to the other party at the address set out below:

**CITY**

Public Works Director  
City of Riverside  
3900 Main Street  
Riverside, CA 92522

**GLESS:**

Gless Ranch, Inc.  
18541 Van Buren Blvd.  
Riverside, CA 92508

Any party may, upon written notice to the other, change its address for notice.

## **17. VENUE**

Any action at law or in equity brought by either party hereto for the purpose of enforcing any of the provisions of this Agreement or any right provided for by this Agreement shall be tried in a court of competent jurisdiction in the County of Riverside, California, and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county.

## **18. NON-DISCRIMINATION**

During Gless's performance of this Agreement, Gless shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition, including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex, genetic information, gender, gender identity, gender expression, or sexual orientation, in the selection and retention of employees and subcontractors and the procurement of materials and equipment, except as provided in Section 12940 of the California Government Code. Further, Gless agrees to conform to the requirements of the Americans with Disabilities Act in the performance of this Agreement.

## **19. PARAGRAPH TITLES**

The paragraph titles of this Agreement (i) are inserted only for the convenience of the parties, (ii) are not intended to describe, define, limit, or otherwise affect the provisions in the portions of the Agreement to which they pertain, and (iii) in no way describe, define, limit, or otherwise affect the scope or intent of this Agreement or in any way affect the agreement of the parties set out in this Agreement.

## **20. NO AGENCY OR PARTNERSHIP**

Nothing in this Agreement or in any document executed or delivered in connection with this Agreement is intended to be or to create, nor shall it be or create or be construed to be or to create, any agency, partnership, limited partnership, joint venture, corporation, trust, tenancy in common, co-ownership, or other relations between City and Gless other than Owner and Contractor in connection only with the Groves.

## **21. INTEGRATION**

This Agreement (including all exhibits attached hereto) contains the entire and only agreement and understanding between the parties with respect to the Groves, and all prior or contemporaneous agreements, understandings, representations, warranties, and other statements, oral or written, by or between the parties to this Agreement are merged herein and superseded by the terms of this Agreement. This Agreement may not be changed orally, but only by agreement in writing and signed by the party against whom enforcement of any amendment, change, modification, waiver, or discharge is sought.

## **22. CONTRACT IN COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement.

## **23. LIST OF EXHIBITS**

The following is the list of exhibits attached to this Agreement, and incorporated herein by this reference:

Exhibit A – Scope of Service and Compensation

[signatures on the following page]

EXECUTED by the undersigned to be effective as of the date first written above.

CITY OF RIVERSIDE

GLESS RANCH, INC.

By \_\_\_\_\_  
City Manager

By John Gless  
Name: John Gless  
Its: President

Attest \_\_\_\_\_  
City Clerk

By Sue Crawford  
Name: Sue Crawford  
Its: Secretary

Approved as to Form:

[Signature]  
Chief Assistant City Attorney

## EXHIBIT "A"

## **Victoria Avenue Citrus Grove Management**

### **Scope of Service and Compensation**

**Monthly Service Cost ..... \$4,166**

Monthly Service Cost Includes:

- Monthly Management Fee
- Weed Control and Pre-Emergent Labor and Material (Zero Tolerance for Weeds)
- Trash, Debris, Fallen Limbs, and Waste Removal within the Groves (Twice Weekly or as Needed)
- Rodent Control Including Labor and Material (Zero Tolerance for Rodents)
- Large Equipment (Tractors, Sprayers, Brush Cutters, Tree Toppers, etc)
- Small Equipment (Hand Tools, Chain Saws, Pole Pruners, etc)
- Foreman
- All Physical Labor Required to Complete the Work Outlined Herein
- All Irrigation Labor Required to Complete the Work Outlined Herein
- Entomology Reports Upon Request by the City
- Pest and Disease Control (Including all Pests and Diseases)
- Fertilization
- Annual Grove Harvesting (Management and Scheduling)