

# AGREEMENT

City Manager's Office  
701 Laurel St., Menlo Park, CA 94025  
tel 650-330-6620



2200

This Agreement is entered into by and between the City of Menlo Park ("City") and Ovadia Mizrahi, ("Owner") with respect to that certain real property located at 1050 Louise Street, Menlo Park, CA (the "Property").

### RECITALS:

- A. Owner applied to the City for a building permit to construct a new single family home at the Property.
- B. City approved the building permit, subject to a number of conditions, including but not limited to, conditions relating to the preservation and protection of one (1) coast redwood, two (2) cedar and one (1) valley oak Heritage Trees in accordance with an arborist report prepared by Joe Bathhurst dated July 23, 2012.
- C. Construction activity has occurred at the Property in violation of the terms and conditions of the arborist report, compromising the structural stability of the redwood Heritage Tree and jeopardizing the long term health and value of the valley oak and cedar Heritage Trees required to be preserved and protected.
- D. At the request of the City, Owner has engaged the services of Anderson's Tree Care to inspect the damaged trees, assess their suitability for retention, and to make maintenance recommendations for the long-term preservation or removal as needed. Anderson's Tree Care has recommended the removal of the redwood Heritage Tree due to structural instability and has determined the remaining Heritage Trees are suitable for retention.
- E. City has prepared an appraisal of the value of the damaged trees, which appraisal has determined that, prior to damage, 1 redwood has a value of \$7,250; 1 valley oak has a value of \$22,700; 1 deodar cedar has a value of \$9,200; 1 Atlas cedar has a value of \$16,650, totaling \$55,800.
- F. City and Owner desire to enter into this Agreement to set forth the terms and conditions under which Owner will be allowed to proceed with construction of the single family residence on the Property.



**NOW, THEREFOR THE PARTIES AGREE AS FOLLOWS:**

1. The owner shall (a) submit a Heritage Tree removal permit application to the City for the removal of one (1) redwood Heritage Tree, (b) pay to the City a civil penalty of \$7,250 equal to the value of the tree for violation of the Heritage Tree Ordinance, (c) remove the tree and stump upon issuance of permit, and (d) mitigate the removal with replacement tree planting of one (1), seventy-two inch (72") box coast redwood (*Sequoia sempervirens*). Such replacement tree shall be placed on the Property no less than six feet (6') to the northwest of the southeast property line in a location and manner that will provide comparable shade, and shielding of the house from properties on Louise Street, with the actual location of the tree to be approved before being placed by the City Arborist.
2. Owner shall implement and maintain all of the recommendations and mitigation measures set forth in the reports prepared by Joe Bathurst and Anderson's Tree Care to ensure the health, vitality and stability of the affected Heritage Trees. Such work shall be monitored by an independent arborist (Joe Bathurst, Anderson's Tree Care or such other arborist as may be approved by the City) and a report filed with the City confirming such work has been completed and is being maintained.
3. Owner shall deposit the sum of \$48,550 with the City to be held by the City to secure performance of the terms of this Agreement for a period of seventy two (72) months from the completion of the single family home ("Security Account"). Such funds shall not be released until the expiration of such 72-month period and then only upon issuance of a tree report by the City Arborist confirming that all of the damaged trees and the replacement redwood tree are in a healthy, vital and stable condition.
4. If at any point during the time the funds are held in the Security Account, any of the subject tree(s) die, is required to be removed or is determined by the City to be in poor condition, Owner shall be required to replace the damaged tree(s) with one or more mature trees having a value as determined by the City of not less than \$7,250 for the redwood, \$22,700 for the valley oak, \$9,200 for the deodar cedar and \$16,650 for the Atlas cedar. Such replacement tree(s) shall be placed in a location and manner that will provide comparable shade, and shielding in their respective locations. All costs and expense of the replacement tree(s) and planting, together with all costs incurred by the City in processing and approving Owner's request to replace tree(s) shall be borne by the Owner. The funds in the Security Account may not be used to pay for labor and equipment costs associated with planting.
5. In the event Owner does not comply with the requirements of Paragraph four (4) of this Agreement within ninety (90) days of written demand by City, Owner shall forfeit all funds in the Security Account to the City. The City may, but shall not be required to replace the damaged tree(s) with such funds or may retain such funds and utilize them in its street tree replacement program. Notwithstanding the forfeiture of such funds, Owner shall remain liable to replace any damaged, deceased or trees in poor health.
6. Within ten (10) days of the date City provides Owner with an invoice therefor, Owner shall reimburse all of the City's costs and expenses of obtaining an appraisal of the damaged tree(s), preparing this Agreement, additional inspections and staff time expended in addressing the violation of the terms of the Joe Bathurst Report, and/or any other costs and expenses incurred by the City in resolving the violation of the terms and conditions of the building permit. Failure of Owner to pay such invoice in a timely manner shall be considered a violation of the terms and provisions of the building permit.
7. Prior to the final building permit inspection sign off and occupancy of the completed home, Owner shall prepare and record a Declaration of Covenants, Conditions and Restrictions to ensure that Owner and any future owner of the Property maintains the trees on the Property as required by the building permit approved by the City. The form and content of the Declaration shall be subject to review and approval of the City Attorney.



- 8. This Agreement constitutes the entire Agreement between the parties with respect to the violation of the building permit for damage to the Heritage Trees on the subject property. It is intended that this Agreement is in lieu of the City taking steps to revoke the building permit. Except as modified herein, all of the remaining terms and provisions of the building permit are and shall still be applicable to the project.
- 9. In the event of any violation of the terms and conditions herein and either party initiates litigation or arbitration, the prevailing party in such litigation or arbitration shall be entitled to recover its attorney's fees and costs of such proceeding.

**OWNER:**

Signature

Date

Ovadia Mizrahi

Owner

Name

Title

1800 White Oak Dr. M-P 94025.

Type or print Property Owner address, city, state and zip code

**APPROVED AS TO FORM:**

William L. McClure, City Attorney

Date

**CITY OF MENLO PARK:**

Signature

Date

Alex D McIntyre

City Manager

Name

Title

**ATTEST:**

Helen Barada, DEPUTY CLK  
City Clerk, City of Menlo Park

Date

