

515

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



FROM: Economic Development Agency

SUBMITTAL DATE:
November 17, 2009

SUBJECT: Approval of the Agreement for Landscape Services with Adams Landscaping, Inc. for the Economic Development Agency

RECOMMENDED MOTION: That the Board of Supervisors:

1. Ratify and execute the service agreement with Adams Landscaping, Inc., in the annual aggregate amount of \$303,108 in accordance with Ordinance 459.4;
2. Direct the Clerk of the Board to return 2 original signed copies to Purchasing and Fleet Services, and;
3. Authorize the Purchasing Agent to sign amendments, exercise the option to renew annually for up to four 4 additional one-year periods, with increases that do not exceed the annual CPI rates.

BACKGROUND:

The County is responsible for maintaining a landscape maintenance contract for County Service Area (CSA) 143 where the funds are collected through the CSA assessments, which are included to the individual property owner's tax bill. This landscape maintenance contract includes: six park sites; right-of-way landscapes; walking trails; and perimeter slope landscaping in communities located in Southwest Riverside County, in Murrieta.

(Continued)

Robert Field
Robert Field, Assistant County Executive Officer
Economic Development Agency

**FINANCIAL
DATA**

| | | | |
|-------------------------------|------------|-------------------------|-------|
| Current F.Y. Total Cost: | \$ 214,702 | In Current Year Budget: | Yes |
| Current F.Y. Net County Cost: | \$ 0 | Budget Adjustment: | No |
| Annual Net County Cost: | \$ 0 | For Fiscal Year: | 09/10 |

SOURCE OF FUNDS:

Economic Development Agency/Community Services Division, CSA Assessments.

| | |
|----------------------------------|--------------------------|
| Positions To Be Deleted Per A-30 | <input type="checkbox"/> |
| Requires 4/5 Vote | <input type="checkbox"/> |

C.E.O. RECOMMENDATION:

APPROVE

County Executive Office Signature

Jennifer L. Gargen
BY: Jennifer L. Gargen

Dept't Recomm.: ☐ Consent ☐ Policy ☒ Policy

Per Exec. Ofc.: ☐ Consent ☒ Policy

Prev. Agn. Ref.:

District: 3rd

Agenda Number:

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

3.14

Board of Supervisors

Form 11: Approval of the Agreement for Landscape Services with Adams Landscaping, Inc. for
the Economic Development Agency

Page 2

BACKGROUND: (Continued)

PRICE REASONABLENESS: In October 1995, the Board of Supervisors approved a local vendor preference program. Economic Development Agency issued a formal Request for Quotation (RFQ). Solicitations were sent to twelve bidders and advertised on the Internet. Eight responses were received with a cost ranging from \$288,996 to \$476,784 per year. The low cost was Jim Prathers Landscape, Inc., Fontana, at a cost of \$288,996. After application of the Local Vendor Preference, the low responsive and responsible Riverside County firm, Adams Landscaping, Inc., Temecula, submitted a bid of \$303,108 for a difference of \$14,449.80. This differential is within the five percent approved by the Board.

REVIEW/APPROVAL: Purchasing and County Council concurs with this request.

RF:ja 9635

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SERVICE AGREEMENT

for

LANDSCAPE SERVICES / CSA 143

between

COUNTY OF RIVERSIDE

and

ADAMS LANDSCAPING, INC.



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This Agreement, made and entered into this 15 day of October, 2009, by and between Adams Landscaping, Inc., (herein referred to as "CONTRACTOR"), and the COUNTY OF RIVERSIDE, a political subdivision of the State of California, (herein referred to as "COUNTY"). The parties agree as follows:

1. Description of Services

1.1 CONTRACTOR shall provide all services as outlined and specified in Exhibit A, Scope of Services, consisting of eight (8) pages at the prices stated in Exhibit B, Payment Provisions, consisting of one (1) page.

1.2 CONTRACTOR represents that it has the skills, experience and knowledge necessary to fully and adequately perform under this Agreement, and the COUNTY relies upon this representation. CONTRACTOR shall perform to the satisfaction of the COUNTY and in conformance to and consistent with the highest standards of firms/professionals in the same discipline in the State of California.

1.3 CONTRACTOR affirms this it is fully apprised of all of the work to be performed under this Agreement; and the CONTRACTOR agrees it can properly perform this work at the prices stated in Exhibit B. CONTRACTOR is not to perform services or provide products outside of the Agreement.

1.4 Acceptance by the COUNTY of the CONTRACTOR's performance under this Agreement does not operate as a release of CONTRACTOR's responsibility for full compliance with the terms of this Agreement.

2. Period of Performance

2.1 This Agreement shall be effective upon signature of this Agreement by both parties and continue in effect through November, 2010, with the option to renew for four (4) years, renewable in one year increments by written amendment, unless terminated earlier. CONTRACTOR shall commence performance upon signature of this Agreement by both parties and shall diligently and continuously perform thereafter.

3. Compensation

3.1 The COUNTY shall pay the CONTRACTOR for services performed, products provided and expenses incurred in accordance with the terms of Exhibit B, Payment Provisions. Maximum payments by COUNTY to CONTRACTOR shall not exceed three hundred and three thousand, one hundred and eight dollars (\$303,108) annually including all expenses. The COUNTY is not responsible for any fees or costs incurred above or beyond the contracted amount and shall have no obligation to purchase any specified amount of services or products. Unless otherwise specifically stated in Exhibit B, COUNTY shall not be responsible for payment of any of CONTRACTOR's expenses related to this Agreement.

3.2 No price increases will be permitted during the first year of this Agreement. All price decreases (for example, if CONTRACTOR offers lower prices to another governmental entity) will automatically be extended to the COUNTY. The COUNTY requires written proof satisfactory to COUNTY of cost increases prior to any approved price adjustment. After the first year of the award, a minimum of 30-days advance notice in writing is required to be considered and approved by COUNTY. No retroactive price adjustments will be considered. Any price increases must be stated in a written amendment to this Agreement. The net dollar amount of profit will remain firm during the period of the Agreement. Annual increases shall not exceed the Consumer Price Index- All Consumers, All Items - Greater Los Angeles, Riverside and Orange County areas for landscape services and be subject to satisfactory performance review by the COUNTY and approved (if needed) for budget funding by the Board of Supervisors.

3.3 CONTRACTOR shall be paid only in accordance with an invoice submitted to COUNTY by CONTRACTOR within fifteen (15) days from the last day of each calendar month, and COUNTY shall pay the invoice within thirty (30) working days from the date of receipt of the invoice. Payment shall be made to CONTRACTOR only after services have been rendered or delivery of materials or products, and acceptance has been made by COUNTY. Prepare invoices in duplicate. For this Agreement, send the original and duplicate copies of invoices to:

INVOICE TO ACCOUNTS PAYABLE

Economic Development Agency

Community Services Division

PO Box 1180

Riverside, CA 92502

Attn: Accounts Payable

- a) Each invoice shall contain a minimum of the following information: invoice number and date; remittance address; bill-to and ship-to addresses of ordering department/division; Agreement number FMARC-98852-002-10/2010 quantities; item descriptions, unit prices, extensions, sales/use tax if applicable, and an invoice total.
- b) Invoices shall be rendered monthly in arrears.
- c) In accordance with California Government Code Section 926.10, COUNTY is not allowed to pay excess interest and late charges.

3.4 The COUNTY obligation for payment of this Agreement beyond the current fiscal year end is contingent upon and limited by the availability of COUNTY funding from which payment can be made. No legal liability on the part of the COUNTY shall arise for payment beyond June 30 of each calendar year unless funds are made available for such payment. In the event that such funds are not forthcoming for any reason, COUNTY shall immediately notify CONTRACTOR in writing; and this Agreement shall be deemed terminated and have no further force and effect.

4. Alteration or Changes to the Agreement

4.1 The Board of Supervisors and the COUNTY Purchasing Agent and/or his designee are the only authorized COUNTY representatives who may at any time, by written order, make alterations to this Agreement. If any such alteration causes an increase or decrease in the cost of, or the time required for the performance under this Agreement, an equitable adjustment shall be made in the Agreement price or delivery schedule, or both, and the Agreement shall be modified by written amendment accordingly.

4.2 Any claim by the CONTRACTOR for additional payment related to this Agreement shall be made in writing by the CONTRACTOR within 30 days of when the CONTRACTOR has or should have notice of any actual or claimed change in the work which results in additional and unanticipated cost to the CONTRACTOR. If the COUNTY Purchasing Agent decides that the facts provide sufficient justification, he may authorize additional payment to the CONTRACTOR pursuant to the claim. Nothing in this section shall excuse the CONTRACTOR from proceeding with performance of the Agreement even if there has been a change.

5. Termination

5.1. COUNTY may terminate this Agreement without cause upon 30 days written notice served upon the CONTRACTOR stating the extent and effective date of termination.

5.2 COUNTY may, upon five (5) days written notice, terminate this Agreement for CONTRACTOR's default, if CONTRACTOR refuses or fails to comply with the terms of this Agreement or fails to make progress so as to endanger performance and does not immediately cure such failure. In the event of such termination, the COUNTY may proceed with the work in any manner deemed proper by COUNTY.

5.3 After receipt of the notice of termination, CONTRACTOR shall:

- (a) Stop all work under this Agreement on the date specified in the notice of termination;
- and

- (b) Transfer to COUNTY and deliver in the manner as directed by COUNTY any materials, reports or other products which, if the Agreement had been completed or continued, would have been required to be furnished to COUNTY.

5.4 After termination, COUNTY shall make payment only for CONTRACTOR's performance up to the date of termination in accordance with this Agreement and at the rates set forth in Exhibit B.

5.5 CONTRACTOR's rights under this Agreement shall terminate (except for fees accrued prior to the date of termination) upon dishonesty or a willful or material breach of this Agreement by CONTRACTOR; or in the event of CONTRACTOR's unwillingness or inability for any reason whatsoever to perform the terms of this Agreement. In such event, CONTRACTOR shall not be entitled to any further compensation under this Agreement.

5.6 The rights and remedies of COUNTY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

6. Ownership/Use of Contract Materials and Products

The CONTRACTOR agrees that all materials, reports or products in any form, including electronic, created by CONTRACTOR for which CONTRACTOR has been compensated by COUNTY pursuant to this Agreement shall be the sole property of the COUNTY; and may be used by the COUNTY for any purpose COUNTY deems to be appropriate, including, but not limit to, duplication and/or distribution within the COUNTY or to third parties. CONTRACTOR agrees not to release or circulate in whole or part such materials, reports or products without prior written authorization of the COUNTY.

7. Conduct of Contractor

7.1 The CONTRACTOR covenants that it presently has no interest, including, but not limited to, other projects or contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with CONTRACTOR's performance under this Agreement. The CONTRACTOR further covenants that no person or subcontractor having any such interest shall be employed or retained by CONTRACTOR under this Agreement. The CONTRACTOR agrees to inform the COUNTY of all the CONTRACTOR's interests, if any, which are or may be perceived as incompatible with the COUNTY's interests.

7.2 The CONTRACTOR shall not, under circumstances which could be interpreted as an attempt to influence the recipient in the conduct of his/her duties, accept any gratuity or special favor from individuals or firms with whom the CONTRACTOR is doing business or proposing to do business, in accomplishing the work under this Agreement.

7.3 The CONTRACTOR or its employees shall not offer gifts, gratuity, favors, and entertainment directly or indirectly to COUNTY employees.

8. Inspection of Service; Quality Control/Assurance

8.1 All performance (which includes services, workmanship, materials, supplies and equipment furnished or utilized in the performance of this Agreement) shall be subject to inspection and test by the COUNTY or other regulatory agencies at all times. The CONTRACTOR shall provide adequate cooperation to any inspector or other COUNTY representative to permit him/her to determine the CONTRACTOR's conformity with the terms of this Agreement. If any services performed or products provided by CONTRACTOR are not in conformance with the terms of this Agreement, the COUNTY shall have the right to require the CONTRACTOR to perform the services or provide the products in conformance with the terms of the Agreement at no additional cost to the COUNTY. When the services to be performed or the products to be provided are of such nature that the difference cannot be corrected, the COUNTY shall have the right to: (1) require the CONTRACTOR immediately to take all necessary steps to ensure future performance in conformity with the terms of the Agreement; and/or (2) reduce the Agreement price to reflect the reduced value of the services performed or products provided. The COUNTY may also terminate this Agreement for default and charge to CONTRACTOR any costs incurred by the COUNTY because of the CONTRACTOR's failure to perform.

8.2 CONTRACTOR shall establish adequate procedures for self-monitoring and quality control and assurance to ensure proper performance under this Agreement; and shall permit a COUNTY representative or other regulatory official to monitor, assess or evaluate CONTRACTOR's performance under this Agreement at any time upon reasonable notice to CONTRACTOR.

9. Independent Contractor

The CONTRACTOR is, for purposes relating to this Agreement, an independent contractor and shall not be deemed an employee of the COUNTY. It is expressly understood and agreed that the CONTRACTOR (including its employees, agents and subcontractors) shall in no event be entitled to any benefits to which COUNTY employees are entitled, including but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or other leave benefits. There shall be no employer-employee relationship between the parties; and CONTRACTOR shall hold COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by a third party that an employer-employee relationship exists by reason of this Agreement. It is further understood and agreed by the parties that CONTRACTOR in the performance of this Agreement is subject to the control or

RFP# FMARC-111

direction of COUNTY merely as to the results to be accomplished and not as to the means and methods for accomplishing the results.

10. Subcontract for Work or Services

No contract shall be made by the CONTRACTOR with any other party for furnishing any of the work or services under this Agreement without the prior written approval of the COUNTY; but this provision shall not require the approval of contracts of employment between the CONTRACTOR and personnel assigned under this Agreement, or for parties named in the proposal and agreed to under this Agreement.

11. Disputes

11.1 The parties shall attempt to resolve any disputes amicably at the working level. If that is not successful, the dispute shall be referred to the senior management of the parties. Any dispute relating to this Agreement which is not resolved by the parties shall be decided by the COUNTY's Purchasing Department's Compliance Contract Officer who shall furnish the decision in writing. The decision of the COUNTY's Compliance Contract Officer shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith. The CONTRACTOR shall proceed diligently with the performance of this Agreement pending the resolution of a dispute.

11.2 Prior to the filing of any legal action related to this Agreement, the parties shall be obligated to attend a mediation session in Riverside County before a neutral third party mediator. A second mediation session shall be required if the first session is not successful. The parties shall share the cost of the mediations.

12. Licensing and Permits

CONTRACTOR shall comply with all State or other licensing requirements, including but not limited to the provisions of Chapter 9 of Division 3 of the Business and Professions Code. All licensing requirements shall be met at the time proposals are submitted to the COUNTY. CONTRACTOR warrants that it has all necessary permits, approvals, certificates, waivers and exemptions necessary for performance of this Agreement as required by the laws and regulations of the United States, the State of California, the County of Riverside and all other governmental agencies with jurisdiction, and shall maintain these throughout the term of this Agreement.

13. Use by Other Political Entities

The CONTRACTOR agrees to extend the same pricing, terms and conditions as stated in this Agreement to each and every political entity, special district, and related non-profit entity in Riverside County. It is understood that other entities shall make purchases in their own name, make direct payment, and be liable directly to the CONTRACTOR; and COUNTY shall in no way be responsible to CONTRACTOR for other entities' purchases.

14. Non-Discrimination

CONTRACTOR shall not be discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this Agreement; and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code 12900 et. seq), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. S1210 et seq.) and all other applicable laws or regulations.

15. Records and Documents

CONTRACTOR shall make available, upon written request by any duly authorized Federal, State or COUNTY agency, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the CONTRACTOR's costs related to this Agreement. All such books, documents and records shall be maintained by CONTRACTOR for at least five years following termination of this Agreement and be available for audit by the COUNTY. CONTRACTOR shall provide to the COUNTY reports and information related to this Agreement as requested by COUNTY.

16. Confidentiality

16.1 The CONTRACTOR shall not use for personal gain or make other improper use of privileged or confidential information which is acquired in connection with this Agreement. The term "privileged or confidential information" includes but is not limited to: unpublished or sensitive technological or scientific information; medical, personnel, or security records; anticipated material requirements or pricing/purchasing actions; COUNTY information or data which is not subject to public disclosure; COUNTY operational procedures; and knowledge of selection of contractors, subcontractors or suppliers in advance of official announcement.

16.2 The CONTRACTOR shall protect from unauthorized disclosure names and other identifying information concerning persons receiving services pursuant to this Agreement, except for general statistical

information not identifying any person. The CONTRACTOR shall not use such information for any purpose other than carrying out the CONTRACTOR's obligations under this Agreement. The CONTRACTOR shall promptly transmit to the COUNTY all third party requests for disclosure of such information. The CONTRACTOR shall not disclose, except as otherwise specifically permitted by this Agreement or authorized in advance in writing by the COUNTY, any such information to anyone other than the COUNTY. For purposes of this paragraph, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.

17. Administration/Contract Liaison

The COUNTY Purchasing Agent, or designee, shall administer this Agreement on behalf of the COUNTY. The Purchasing Department is to serve as the liaison with CONTRACTOR in connection with this Agreement.

18. Notices

All correspondence and notices required or contemplated by this Agreement shall be delivered to the respective parties at the addresses set forth below and are deemed submitted two days after their deposit in the United States mail, postage prepaid:

COUNTY OF RIVERSIDE

EDA / Community Services Division
PO Box 1180
Riverside, CA 92502
Attn: Joseph Angelone
(951) 955-8461

CONTRACTOR

Adams Landscape, Inc.
PO Box 890094
Temecula, CA 92589
Attn: Marc Adams
(951) 694-9787

19. Force Majeure

If either party is unable to comply with any provision of this Agreement due to causes beyond its reasonable control, and which could not have been reasonably anticipated, such as acts of God, acts of war, civil disorders, or other similar acts, such party shall not be held liable for such failure to comply.

20. EDD Reporting Requirements

In order to comply with child support enforcement requirements of the State of California, the COUNTY may be required to submit a Report of Independent Contractor(s) form **DE 542** to the

Employment Development Department. The CONTRACTOR agrees to furnish the required data and certifications to the COUNTY within 10 days of notification of award of Agreement when required by the EDD. This data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders. Failure of the CONTRACTOR to timely submit the data and/or certificates required may result in the contract being awarded to another contractor. In the event a contract has been issued, failure of the CONTRACTOR to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignments Orders and Notices of Assignment shall constitute a material breach of Agreement. If CONTRACTOR has any questions concerning this reporting requirement, please call (916) 657-0529. CONTRACTOR should also contact its local Employment Tax Customer Service Office listed in the telephone directory in the State Government section under "Employment Development Department" or access their Internet site at www.edd.ca.gov.

21. Hold Harmless/Indemnification

21.1 CONTRACTOR shall indemnify and hold harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives from any liability, claim, damage or action whatsoever, based or asserted upon any act or omission of CONTRACTOR, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death. CONTRACTOR shall defend, at its sole cost and expense, including but not limited to attorney fees, cost of investigation, defense and settlements or awards, the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives in any such action or claim. With respect to any action or claim subject to indemnification herein by CONTRACTOR, CONTRACTOR shall, at its sole cost, have the right to use counsel of its own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of COUNTY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes CONTRACTOR's indemnification of COUNTY. CONTRACTOR's obligations hereunder shall be satisfied when CONTRACTOR has provided to COUNTY the appropriate form of dismissal (or similar document) relieving the COUNTY from any liability for the action or claim involved. The specified insurance limits required in this Agreement shall in no way limit or circumscribe CONTRACTOR's obligations to indemnify and hold harmless the COUNTY.

21.2 In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve the CONTRACTOR from indemnifying the COUNTY to the fullest extent allowed by law.

22. Insurance

Without limiting or diminishing the CONTRACTOR's obligation to indemnify or hold the COUNTY harmless, CONTRACTOR shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverages during the term of this Agreement:

22.1 Workers' Compensation

If the CONTRACTOR has employees as defined by the State of California, the CONTRACTOR shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than **\$1,000,000** per person per accident. The policy shall be endorsed to waive subrogation in favor of the County of Riverside, and, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.

22.2 Commercial General Liability

Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury covering claims which may arise from or out of CONTRACTOR'S performance of its obligations hereunder. Policy shall name all Agencies, Districts, Special Districts, and Departments of the COUNTY of Riverside, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds. Policy's limit of liability shall not be less than **\$1,000,000** per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

22.3 Vehicle Liability

If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then CONTRACTOR shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than **\$1,000,000** per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name all Agencies, Districts, Special Districts, and Departments of the COUNTY of Riverside, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds.

22.4 General Insurance Provisions - All lines

a) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the COUNTY Risk Manager. If the COUNTY's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

b) The CONTRACTOR must declare its insurance self-insured retentions. If such self-insured retentions exceed \$500,000 per occurrence such retentions shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of self insured retention unacceptable to the COUNTY, and at the election of the County's Risk Manager, CONTRACTOR'S carriers shall either; 1) reduce or eliminate such self-insured retention as respects this Agreement with the COUNTY, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

c) CONTRACTOR shall cause CONTRACTOR'S insurance carrier(s) to furnish the COUNTY of Riverside with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, or 2) if requested to do so orally or in writing by the COUNTY Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to the COUNTY of Riverside prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the COUNTY of Riverside receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. ***CONTRACTOR shall not commence operations until the COUNTY has been furnished original Certificate (s) of Insurance and certified original copies of endorsements or policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance.***

d) It is understood and agreed to by the parties hereto and the insurance company(s), that the Certificate(s) of Insurance and policies shall so covenant and shall be construed as primary insurance, and the COUNTY'S insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

e) The COUNTY'S Reserved Rights--Insurance. If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of work (such as the use of aircraft or watercraft) the COUNTY reserves the right to adjust the types of insurance required under this Agreement and the monetary limits of liability for the insurance coverage's currently required herein, if, in the COUNTY Risk Manager's reasonable judgment, the amount or type of insurance carried by the CONTRACTOR has become inadequate.

f) CONTRACTOR shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

g) The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to the COUNTY.

23. General

23.1 CONTRACTOR shall not delegate or assign any interest in this Agreement, whether by operation of law or otherwise, without the prior written consent of COUNTY. Any attempt to delegate or assign any interest herein shall be deemed void and of no force or effect.

23.2 Any waiver by COUNTY of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term of this Agreement. Failure on the part of COUNTY to require exact, full and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms or preventing COUNTY from enforcement of the terms of this Agreement.

23.3 In the event the CONTRACTOR receives payment under this Agreement which is later disallowed by COUNTY for nonconformance with the terms of the Agreement, the CONTRACTOR shall promptly refund the disallowed amount to the COUNTY on request; or at its option the COUNTY may offset the amount disallowed from any payment due to the CONTRACTOR.

23.4 CONTRACTOR shall not provide partial delivery or shipment of services or products unless specifically stated in the Agreement.

23.5 CONTRACTOR shall not provide any services or products subject to any chattel mortgage or under a conditional sales contract or other agreement by which an interest is retained by a third party. The CONTRACTOR warrants that it has good title to all materials or products used by CONTRACTOR or provided to COUNTY pursuant to this Agreement, free from all liens, claims or encumbrances.

23.6 Nothing in this Agreement shall prohibit the COUNTY from acquiring the same type or equivalent equipment, products, materials or services from other sources, when deemed by the COUNTY to

be in its best interest. The COUNTY reserves the right to purchase more or less than the quantities specified in this Agreement.

23.7 The COUNTY agrees to cooperate with the CONTRACTOR in the CONTRACTOR's performance under this Agreement, including, if stated in the Agreement, providing the CONTRACTOR with reasonable facilities and timely access to COUNTY data, information and personnel.

23.8 CONTRACTOR shall comply with all applicable Federal, State and local laws and regulations. CONTRACTOR will comply with all applicable COUNTY policies and procedures. In the event that there is a conflict between the various laws or regulations that may apply, the CONTRACTOR shall comply with the more restrictive law or regulation.

23.9 CONTRACTOR shall comply with all air pollution control, water pollution, safety and health ordinances, statutes or regulations which apply to performance under this Agreement.

23.10 CONTRACTOR shall comply with all requirements of the Occupational Safety and Health Administration (OSHA) standards and codes as set forth by the U.S. Department of Labor and the State of California (Cal/OSHA).

23.11 This Agreement shall be governed by the laws of the State of California. Any legal action related to the performance or interpretation of this Agreement shall be filed only in the Superior Court of the State of California located in Riverside, California, and the parties waive any provision of law providing for a change of venue to another location. In the event any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

23.12 This Agreement, including any attachments or exhibits, constitutes the entire Agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. This Agreement may be changed or modified only by a written amendment signed by authorized representatives of both parties.

COUNTY:

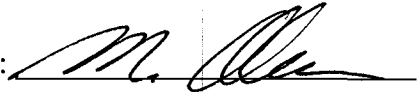
Signature: _____

Print Name: Jeff Stone

Title: Chair of the Board

Dated: _____

CONTRACTOR:

Signature: 

Print Name: Marc Adams

Title: President

Dated: 10-15-09

FORM APPROVED BY COUNTY COUNSEL
BY:  DATE: _____

EXHIBIT A SCOPE OF SERVICE

1.0 Intent

CONTRACTOR shall provide for landscape maintenance of parks and road right of way in CSA 143. CONTRACTOR shall furnish all labor, material, equipment and other services necessary for the complete maintenance of all the landscaped areas within CSA 143 at the intersections of Rancho California Rd and Meadows Pkwy Temecula, CA 92591. Landscape areas are defined as all Right of Way trees, shrubs, ground cover, and flower beds as presently exist. CSA 143 landscape maintenance will also include monitoring and repairing drip irrigation systems as well as weed control and abatement and trash removal. Installation of new landscaping in areas not currently meeting the above definition will be negotiated as separate items and as such are not included in this agreement.

2. Workmanship, Quality, and Appearance Level

- a) CONTRACTOR shall provide reasonable level of quality in landscape maintenance compatible with standard industry practices and shall insure that all work is continually supervised by the CONTRACTORS supervisory personnel who can converse in English, who are technically qualified, and must possess a level of management skills required to implement modern methods and newly developed horticulture procedures.
- b) CONTRACTORS' employees shall be outfitted in the CONTRACTORS Company uniforms appropriate to the type of assignment that one is working. The CONTRACTORS company shirt must have an identifying company logo or patch.
- c) CONTRACTOR shall replace in kind and at CONTRACTORS own expense, any ground cover, trees, shrubs, or irrigation system components requiring replacement through normal attrition, infestation, or negligence resulting from CONTRACTOR failing to provide maintenance in accordance with the provisions of this agreements scope of service. For damage not the result of the CONTRACTOR, the COUNTY shall approve all substitutions, and any replacement of plants shall be a cost past through with receipts submitted with monthly invoices. These requirements are not to be construed as requiring the CONTRACTOR to replace improvements due to conditions beyond the CONTRACTOR control, but it is to be considered strictly as a normal maintenance condition compatible with accepted practice.
- d) Safety: CONTRACTOR shall be solely and completely responsible for the condition of the premises on which the work is performed and for safety of all persons and property on the site during performance of the agreement. This requirement shall not be limited to normal working hours, but shall apply continuously. CONTRACTOR shall confirm with all governing safety regulations.

3. Work Not Included

The CONTRACTOR shall not be responsible for structural maintenance, repair, or replacement of the following:

- a) Parking areas, driveways, roads, buildings, walks, and related structures except in instances of damage to these structures by negligent actions on the part of the CONTRACTOR in which case the CONTRACTOR shall be responsible for the complete repair/replacement of the damaged area(s) to "as new" condition as determined by the COUNTY.

- b) Losses/damages beyond CONTRACTORS control except that appropriate maintenance, repair, or replacement of such losses or damage made by the bidder after receipt of approval and authorization from the appropriate COUNTY representative.
- c) The COUNTY will provide all utility services related to or required for the performance of this agreement.

4. Materials

The CONTRACTOR shall submit a list to the COUNTY of all materials that the CONTRACTOR proposes to use in the performance of this work. The list shall include an MSDS for each material. Said list shall be submitted before the use of any product pursuant to the provisions of this agreement. Similar listing of changes in materials proposed for use by the CONTRACTOR shall be submitted prior to use of the products. The following shall apply to the material indicated:

- a) Fertilizers shall be complete, furnishing the required percentage of nitrogen, phosphoric acid, and potash to keep lawns, trees, shrubs, and other plants in a healthy and vigorous growing condition. **NOTE:** Areas that are irrigated with reclaimed water may require less fertilizer.
- b) Insecticides, fungicides, herbicides, and rodenticides shall be of the best quality obtainable, properly labeled with guarantee analysis, and brought to each job site in the manufacturer's original container, or appropriate and properly labeled secondary container.
- c) Tree stakes, tree ties, and guy wires shall be of materials matching the existing on each a work site, or as specified by the COUNTY.
- d) Replacement of Plants and Trees: The CONTRACTOR shall remove dead and damaged trees and plants, and if directed, replace the same with plants of equivalent size and variety, and trees of equivalent variety and size up to 15 gallons, after obtaining the approval of the COUNTY for such replacement. The COUNTY shall provide replacement trees for those that have died or been damaged through no fault of the CONTRACTOR. The CONTRACTOR is responsible for providing labor and equipment to plant all replacement plants and trees under this procurement.

5. Lawn Care

The CONTRACTOR shall maintain all lawn areas on the sites covered by this agreement in a healthy, growing condition by performing the following operations and other work incidental thereto:

a) Mowing

Lawn areas shall be mowed once every week or more often if necessary, unless otherwise specified, to maintain a neat, trim appearance. The CONTRACTOR shall remove all paper, rubbish, twigs, limbs, branches or debris from each lawn area prior to mowing. Mowing shall be done only by **clean** and properly adjusted mowing equipment with sharp cutting edges. Bruising or rough cutting of grass will not be permitted. Grass must be mowed to a uniform height, which will be determined for each site. Mowing directions shall be periodically alternated. "Scalping" will not be permitted.

b) Trimming

All lawn area edges along curbs and walks shall be trimmed after each mowing. Edging shall include cutting all grass along walls, fences, foundations, curbs, sidewalks, paths, shrubs, tree trunks, poles, guy wires, or any other object or structure within or bordering the lawn areas. Edges shall be neatly trimmed at each mowing, trim around trees, shrubs, valve boxes, valves and other obstacles located on the lawn. Trimming shall be done by powered edging equipment. Trimming shall be done around irrigation system sprinkler heads as necessary to permit maximum water coverage by the system. Turf around trees shall be mechanically or chemically edged at twelve inches (12") around tree trunk. The CONTRACTOR shall avoid damaging tree trunks, shrubs, sprinkler heads, buildings, and other objects and structures during trimming operations. Any such damage shall be reported immediately to the Supervisor.

c) General Maintenance and Cleanup

1. The CONTRACTOR shall collect all paper, mowed grass, clippings, trimmings, cuttings, rubbish, and debris at each site covered by this agreement and shall remove the same promptly from each site and dispose of same in a lawful manner at the CONTRACTORS expense. No clippings, trimmings, removed trees, cuttings, rubbish, or debris resulting from CONTRACTORS performance under this agreement shall be deposited in the refuse cans or dumpsters placed by the COUNTY at various locations in the areas covered by this agreement.
2. The CONTRACTOR shall keep all ground cover areas, all areas around shrubs and trees, next to building, fences, tanks, sidewalks, paths, curbs, and gutters free from leaves, weeds, grasses, rocks, glass, litter and other debris.
3. The CONTRACTOR shall keep all cracks and seams in sidewalks, curbs, street gutters, and other paved areas free of weeds.
4. The CONTRACTOR shall keep sidewalks and paved areas swept and cleaned of any dirt or soil that might be washed from adjacent slopes or planted areas.
5. The CONTRACTOR shall repair any eroded places on the landscaped area covered by this agreement by replacement of topsoil to bring such eroded places back to original grade. The cause of erosion shall be reported promptly to the COUNTY.
6. Work sites shall be left orderly & neat upon completion of work for that particular day.
7. The CONTRACTOR is responsible for all traffic control required as a result of this agreement. A traffic plan shall be submitted to and approved by the COUNTY prior to performing any work requiring traffic control.
8. Notification of all "specialty type" maintenance operations shall be given to the COUNTY forty-eight hours (48) hours prior to each of these operations by the CONTRACTOR. "Specialty type" maintenance operations are defined as: Fertilization, pre-emergent weed control, turf de-thatching, and preventative application of turf fungicide.

6. Weeds, Disease, and Pest Control

- a) The CONTRACTOR shall have all required permits and licenses for the possession and use of pesticides. The CONTRACTORS employees shall have the required training before applying

pesticides. Whenever herbicides are used, CONTRACTOR shall apply when air currents are still, to prevent any toxic exposure to persons whether or not person(s) are in or on the grounds.

- b) The CONTRACTOR shall utilize Integrated Pest Management practices, and be responsible for the selection and proper use of insecticides, fungicides, herbicides, and rodenticides, and for the specific applications for which the same may be used. Any property damage resulting from the use of such pesticides shall be the responsibility of the CONTRACTOR.
- c) Weeding: Tree, shrub, and ground cover areas shall be kept free of weeds and may be done manually or by the use of selective weed killers or pre-emergent sprays. The CONTRACTOR shall exercise extreme care in the use of selective weed killers so as not to damage any other plants. Extreme caution shall be taken not to damage other plants. Spraying shall be done only at times when there is no wind, and in compliance with all Federal, State, and local laws and regulations.
- d) If poison baits are used for control of moles, ground squirrels, and gophers, such baits shall be placed so as not to create a hazard to persons, farm, or domestic animals.
- e) The CONTRACTOR shall control poison oak where necessary (not limited to sites identified).
- f) The CONTRACTOR shall use Integrated Pest Management practices, and be responsible for pest control on all trees, shrubs, and ground cover.
- g) Snails and slugs shall be controlled by the use of approved bait.

NOTE: Extremely toxic materials, such as category I pesticides, shall not be used at any time.

7. Aerating and Renovating

- a) Lawn areas shall be aerated at least once each year and shall be renovated as necessary to retain current quality. Renovating shall consist of verti-cutting and raking to remove thatch, followed by reseeding, and top dressing. Such aeration shall be done more frequently if required to maintain good water penetration.
- b) As required by COUNTY, CONTRACTOR shall reseed bare places or depressions in lawn areas after first bringing such depressions to grade level with top soil.

8. Watering

- a) Lawn areas shall be deeply watered as required by weather conditions to provide adequate moisture for optimum growth. At no time shall lawn areas be permitted to show lack of fresh green color or a loss of resilience due to lack of water.
- b) Wherever or at any time that a regularly installed sprinkler irrigation system does not adequately cover the lawn area in which it is installed, the bidder shall furnish and set out hoses and sprinklers as required to uniformly water the lawn areas.
- c) Watering shall be done at night or in the early morning and shall be controlled to prevent any runoff, ponding, and over watering.

- d) Irrigation controllers shall use repeat cycling where possible to allow water to soak in and prevent runoff or ponding.

9. Fertilizing

- a) Lawn areas shall be fertilized not more than 3 times each year. Applications of actual nitrogen shall be at a rate of 3 pounds per 1,000 square feet of lawn each year. Fertilizer applications shall be March, June, and October, using 16.6.8 formulation, with equal 1-pound applications of nitrogen.
- b) Lawn areas shall be watered immediately after fertilization to prevent burning of grass. Burning of grass due to improper fertilization work on lawn areas shall be considered as "property damage" and shall be corrected by the CONTRACTOR.
- c) The CONTRACTOR shall include fertilizing schedule information in the monthly work schedule required by the provisions.

10. Trees, Shrubs, and Ground Cover Care

The CONTRACTOR shall maintain all trees, shrubs, and ground cover on the sites covered by this agreement, in a healthy, growing condition by performing the following operations and other work, including:

a) Watering:

Trees, shrubs, and ground cover shall be watered deeply and slowly to establish moisture to the full depth of the root zones. Watering shall be done in a manner to avoid erosion of soil, any runoff or ponding of water, or creating a waterlogged soil condition. The CONTRACTOR shall furnish and set out hoses and sprinklers when and where necessary to insure watering coverage. Areas designated, as non-irrigated landscaping shall not need to be irrigated. The CONTRACTOR shall take note that in areas where no irrigation systems exist, the watering will have to be done by hand.

- b) The CONTRACTOR shall make a moisture check of representative plants in the landscaping at each site to establish a need for watering. A probe or other tool shall be used to check the moisture in the root ball as well as in the soil surrounding the root ball. The need for watering shall dictate the frequency of operation of installed automatic or manual irrigation systems.
- c) The CONTRACTOR shall maintain a water basin of such size around young trees, as is necessary to insure that enough water can be applied to establish moisture through the major root zone. A water wand shall be used to break the water force when hand watering. Water basins shall be opened during the rainy season to allow surface drainage away from the root crown where excess water may accumulate.
- d) Pruning & Minor Tree Care (up to 15' above ground)
Note: All work in the Scope of Service shall be included in the amounts bid for Exhibit A, Payment Provisions.
- e) The CONTRACTOR shall insure that only professionally qualified personnel using approved methods and techniques do pruning, excessive pruning or stubbing back shall not be permitted. All pruning cuts shall maintain the branch bark ridge and shall be clearly cut with no tearing of the

bark. No flush cuts shall be permitted. Shearing of shrubs and ground cover will be permitted only if specifically approved by the COUNTY management

- f) Re-stake and support trees when necessary, stakes and ties to be placed so no chafing of bark occurs. All guys and ties shall be checked frequently to prevent girding.
- g) Trees shall be pruned to select and develop permanent scaffold branches that are smaller in diameter than the trunk or branch to which they are attached and which have vertical spacing of from eighteen inches (18") to forty-eight inches (48") inches with radial orientation so as not to overlay one another.
- h) Under no circumstances shall stripping of lower branches ("raising up") of young trees be permitted. Lower branches shall be retained in a "tipped back" or pinched condition with as much foliage as possible to promote caliper trunk growth (tapered trunk). Lower branches may be cut only after obtaining permission from the Supervisor.
- i) Evergreen trees shall be thinned out and shaped when necessary to prevent wind and storm damage.
- j) Pruning of trees and shrubs shall be done as needed to achieve the following:
 - 1) To shape, particularly to correct misshaping caused by the wind.
 - 2) To raise the lower branches of trees above head height wherever they overhang walks or paths.
 - 3) To cut back shrubs and ground cover where they encroach on the walks, paths, paved areas and fence lines.
 - 4) To remove suckers, water-sprouts, and other undesirable growth on trees.
 - 5) To remove all dead or damaged branches.
- k) Minor pruning may be done at any time.
- l) Pruning to remove a hazard shall be done immediately.
- m) **Planter Areas:**
 - 1) The CONTRACTOR shall maintain all planters in a weed-free condition.
 - 2) The CONTRACTOR shall control all pests and diseases.
 - 3) The CONTRACTOR shall trim any dead material from all low shrubs and bushes to maintain a pleasing appearance at all times.

11. Irrigation Systems

- a) CONTRACTOR shall apprise COUNTY prior to beginning of contract, inspect all installed irrigation systems on the site(s) covered by this agreement and shall report damage or malfunction of any system to the COUNTY.
- b) Throughout the term of the agreement, the CONTRACTOR shall be responsible for the effectiveness of the irrigation systems on the site(s) covered by this agreement. The CONTRACTOR shall:
 - 1) Adjust and trim around all sprinkler heads to obtain and maintain proper water coverage.
 - 2) Remove the last sprinkler head from each system and flush lines if and as required.

- 3) Repair or replace, at the CONTRACTORS expense, any irrigation system equipment damaged as a result of the CONTRACTORS performance. CONTRACTOR shall replace all broken items with item of same brand and model. The COUNTY shall approve all substitutions.
- 4) CONTRACTOR shall report promptly to the COUNTY any damage to the irrigation systems.
- 5) Provide labor and equipment for the repair or replacement of all leaking or malfunctioning lateral lines, drip emitters, valves, and/or controllers.
- 6) The CONTRACTOR shall report any mainline, valve, or controller problems to the COUNTY within 24 hours of observation.
- 7) Watering shall be done at night or in the early morning and shall be controlled to prevent any runoff, ponding, and over-watering. The CONTRACTOR shall adjust water application to compensate for changes in weather.
- 8) All systems shall be operationally checked by the CONTRACTOR immediately following each mowing to ensure that no damage was caused by the mowing.
- 9) CONTRACTOR shall ensure that all irrigation sprinkler control time settings will not create dry, brown spots and that all shrubbery or decorative planting will be maintained in a healthy, vigorous state at all times. Further, the CONTRACTOR shall ensure that no water time settings will cause over watering to create soggy sections or over wet areas in planting.
- 10) Replacement of Parts: The CONTRACTOR shall obtain the approval of the COUNTY before replacing any parts. The COUNTY shall have the option of providing replacement parts or having the CONTRACTOR provide the parts.

12. Equipment

The CONTRACTOR shall furnish, maintain, and use sufficient modern and efficient equipment and tools to perform the work required under the provisions of this agreement. All equipment and tools shall be kept in safe, usable condition with cutting edges properly sharpened. The COUNTY may direct that the CONTRACTOR discontinue the use of any equipment or tools that in the opinion of said representative are not in an acceptably safe and usable condition.

13. Landscape work will be performed along the following Parks located in Temecula

a) Park Sites:

Morgan Hill Park (6 acres) Central Park (5 acres) Discovery Park (2 acres)
Willows Park (8.5 acres) Joseph Park (1 acre)
Amphitheater Park (2 acres)
Temecula, California

b) Road Right of Way Streetscapes:

Approximately 3,885,552 square feet

Thirty (30) days prior to the termination of the maintenance contract an inspection of all foliage will be conducted by the CONTRACTOR and the COUNTY, and any foliage deemed by the COUNTY to be in poor condition will be replaced at the CONTRACTOR expense.

14. Warranty

A one-year (365) day unconditional warranty shall be in effect. The warranty shall cover all materials added or provided by the CONTRACTOR and workmanship. All warranty work shall be completed within two (2) weeks from written notice by COUNTY.

15. Undocumented Workers

This contract involves the employment of unskilled labor. Such employment may be attractive to persons coming from foreign countries, sometimes illegally. CONTRACTOR is reminded that it is a crime to bring into the United States, transport within the United States, and to harbor aliens who do not have a proper visa to enter and work in this country (8 U.S.C. ' 1323-1325). If violations are suspected or discovered during payroll or other audits during the performance of work on this project, the violations shall be reported to the U.S. Immigration and Naturalization Service for investigation and appropriate action. Conviction of the CONTRACTOR for commission of a criminal offense referred to herein will be deemed sufficient cause for default and the initiation of debarment or suspension proceedings to prevent the CONTRACTOR from receiving future COUNTY agreements.

16. Licensing

CONTRACTOR shall have a current and valid C-27 License.

**EXHIBIT B
PAYMENT PROVISIONS**

| Temecula | Monthly Cost | Annual Cost |
|---|---------------------------|------------------------|
| Park Maintenance (Costs shall be all inclusive for parks listed below "Service Areas") | \$25,259.00 | \$303,108.00 |
| | Annual Grand Total | \$303,108.00 |

SERVICE AREAS

a) **Park Sites:**

Morgan Hill Park (6 acres) Central Park (5 acres)
 Willows Park (8.5 acres) Joseph Park (1 acre)
 Amphitheater Park (2 acres) Discovery Park (2 acres)
 Temecula, California

b) **Road Right of Way Streetscapes:**

Approximately 3,885,552 square feet