



**SUBMITTAL TO THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

FROM: General Manager-Chief Engineer

721 B

SUBMITTAL DATE:
August 28, 2012

SUBJECT: Landscape Services Agreement between the District and ValleyCrest Landscape Development, Inc for other than Low Bid Landscaping Maintenance

RECOMMENDED MOTION:

1. Approve and execute the one year landscape services agreement with ValleyCrest Landscape Development, Inc. to provide landscape services for \$22,500 annually; which contains an option to renew the agreement for four additional one-year periods; and
2. Authorize the General Manager-Chief Engineer to exercise the renewal option, based on the availability of fiscal funding and to sign amendments that do not change the substantive terms of the agreement, including amendments to the compensation provision that do not exceed the annual CPI rates.

Continued on page 2

WARREN D. WILLIAMS
General Manager-Chief Engineer

JR:mc

FINANCIAL DATA	Current F.Y. District Cost:	\$25,000	In Current Year Budget:	Yes
	Current F.Y. County Cost:	\$0	Budget Adjustment:	No
	Annual Net District Cost:	\$25,000	For Fiscal Year:	FY 12/13 thru FY 16/17

SOURCE OF FUNDS:	15100 947200 522320 Administration – Maintenance Grounds	Positions To Be Deleted Per A-30	<input type="checkbox"/>
		Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE

BY:
Alex Gann

County Executive Office Signature

- Dep't Recomm.: Consent Policy
- Per Exec. Ofc.: Consent Policy

Prev. Agn. Ref.:

District: All Agenda Number:

ATTACHMENTS FILED WITH THE CLERK OF THE BOARD

11.4

FORM APPROVED COUNTY COUNSEL
 FISCAL PROCEDURES APPROVED
 JEANINE J. REY, FINANCE DIRECTOR
 BY:
 NEAL R. KIPNIS, DATE
 PURCHASING:
 Mark Seller, Assistant Director
 DEPARTMENTAL CONCURRENCE
 BY:
 JEANINE J. REY

**FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD SUBMITTAL
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

SUBJECT: Approval of the Landscape Services Agreement between the District and ValleyCrest Landscape Development, Inc for other than Low Bid Landscaping Maintenance

SUBMITTAL DATE: August 28, 2012

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BACKGROUND

The District, located at 1995 Market Street, Riverside, CA completed a new landscape project which includes lawn areas, trees, shrubs, retaining walls, mowing strips, barked areas, ground cover and flower beds, artificial turf areas, potted plants, retention basins, planters, pavers and plantings on the Market Street slopes fronting the District address.

PRICE REASONABLENESS: On March 28, 2012, County Purchasing and Fleet Services released a Request for Proposal (RFP) FCARC-062, mailing solicitations to ten companies, and advertising on the Riverside County Purchasing Internet site. The County received four responses to the RFP. The initial cost for services ranged from \$17,940 to \$40,620.

The proposals were reviewed by an evaluation team consisting of personnel from the District. The evaluation team reviewed and scored each proposal based on the bidder's overall responsiveness to the requirements of the RFP; bidders experience, ability and qualifications; cost and fees; and licenses. Based on the evaluation criteria as outlined in the RFP, ValleyCrest Landscape Development, Inc. at an annual cost of \$22,500 has been selected as the most responsive/responsible company for providing these services to the District. ValleyCrest Landscape Development, Inc. has managers who are degreed horticulturists, experts in maintaining drought tolerant plants and ISA certified Arborists. They have a pest control division with five licensed applicators (QAL), access to experts including agronomists and horticulture PhD's and the vendor will provide 24 hour, seven day a week emergency service at no extra cost to the District. The cost variance from the low bidder is \$5,000 annually which requires Board of Supervisors approval per Ordinance 459.4.

The evaluation committee respectfully requests that the award be given to ValleyCrest Landscape Development, Inc.

REVIEW/APPROVAL:

County Purchasing reviewed and approved this request.

PROFESSIONAL SERVICES AGREEMENT

LANDSCAPE SERVICES AGREEMENT

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2
3 RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION
4 DISTRICT, hereinafter called "DISTRICT", and VALLEYCREST LANDSCAPE
5 DEVELOPMENT, INC., a California corporation, hereinafter called "CONTRACTOR", hereby
6 agree as follows:
7

8 1. **PROJECT**

9 CONTRACTOR shall provide all landscape maintenance services for DISTRICT as
10 specified in CONTRACTOR'S Scope of Services, consisting of eight (8) pages attached
11 hereto as Exhibit A and made a part hereof, at the prices stated in CONTRACTOR'S
12 Payment Provisions, consisting of one (1) page attached hereto as Exhibit B and made a
13 part hereof, and in accordance with applicable Federal, State, and local laws and
14 regulations.
15

16 2. **SCOPE OF SERVICES**

17 DISTRICT hereby retains CONTRACTOR, as an independent contractor, to furnish tools,
18 equipment, facilities, materials, labor and incidentals necessary to perform in a complete,
19 skillful and professional manner those landscape maintenance services set forth in Exhibit
20 A, and CONTRACTOR agrees to perform said services in accordance with the schedule
21 specified herein. CONTRACTOR represents that it has the skills, experience and
22 knowledge necessary to fully and adequately perform under this Agreement and the
23 DISTRICT relies upon this representation. CONTRACTOR shall perform to the
24 satisfaction of the DISTRICT and in conformance to and consistent with the highest
25 standards of firms/professionals in the same discipline in the State of California.
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1 CONTRACTOR affirms that it is fully apprised of all of the work to be performed under
2 this Agreement; and the CONTRACTOR agrees it can properly perform this work at the
3 prices stated in Exhibit B. CONTRACTOR is not to perform any services or provide
4 products unrelated to this Agreement.

5 Acceptance by the DISTRICT of the CONTRACTOR'S performance under this
6 Agreement does not relieve the CONTRACTOR of responsibility for full compliance with
7 the terms of this Agreement.
8

9 3. **TIME FOR PERFORMANCE**

10 CONTRACTOR shall commence performance of services upon execution of this
11 Agreement and receipt of a written Notice to Proceed from DISTRICT authorizing
12 CONTRACTOR to initiate work pursuant to this Agreement. CONTRACTOR shall
13 diligently and continuously perform the services through June 30, 2013. Prior to the
14 termination of this Agreement, by mutual written consent of DISTRICT and
15 CONTRACTOR, this Agreement may be renewed for four (4) additional one-year terms
16 through June 30, 2017.
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18 4. **COMPENSATION AND PAYMENT**

19 DISTRICT shall pay CONTRACTOR for actual services satisfactorily performed,
20 products provided and expenses incurred in accordance with the terms of Exhibit B. The
21 total amount paid to CONTRACTOR under this Agreement shall not exceed the sum of
22 twenty five thousand dollars (\$25,000) including all expenses in any given fiscal year
23 which includes a two thousand five hundred dollar (\$2,500) estimated budget allowance
24 for plant replacement. DISTRICT is not responsible for any fee or costs incurred above or
25 beyond the contracted amount and shall have no obligation to purchase any specified
26 amount of services or products. Unless otherwise specifically stated in this Agreement,
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Exhibits A or B, DISTRICT shall not be responsible for payment of any of CONTRACTOR'S expenses related to this Agreement.

Price increases will not 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 DISTRICT. DISTRICT requires written proof satisfactory to DISTRICT of cost increases prior to any approved price adjustment. After the first year of the Agreement, the CONTRACTOR shall provide the DISTRICT with a minimum of 30-days advance notice in writing of any annual price increase proposal for consideration and approval. 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 of landscape maintenance services and will be subject to satisfactory performance review by DISTRICT and approved (if needed) for budget funding by the Board of Supervisors.

DISTRICT shall pay CONTRACTOR only for actual services satisfactorily performed and expenses incurred in accordance with Exhibits A and B. Upon satisfactory performance of CONTRACTOR'S services as set forth herein, DISTRICT shall pay CONTRACTOR within thirty (30) working days from the date of DISTRICT'S receipt of appropriate monthly invoice(s) from CONTRACTOR. CONTRACTOR shall keep employee and expense records according to customary accounting methods and such records, shall upon request, be made available for inspection by DISTRICT to verify CONTRACTOR'S invoice(s). All invoices shall itemize charges to conform to the portion(s) of services and costs as set forth on Exhibit B. Payment shall be made to

1 CONTRACTOR only after services have been rendered or delivery of materials or
2 products, and acceptance has been made by DISTRICT. CONTRACTOR shall prepare
3 all invoices submitted to DISTRICT for payment in accordance with the terms of this
4 Agreement in duplicate, and send the original and duplicate copies of invoice(s) to the
5 following address:

6
7 RIVERSIDE COUNTY FLOOD CONTROL
8 AND WATER CONSERVATION DISTRICT
9 Attention: Accounts Payable
10 1995 Market Street
11 Riverside, CA 92501

12 CONTRACTOR invoices under this Agreement shall:

- 13 A. Contain, at a minimum, the following information: Invoice number and date,
14 remittance address, bill to and ship to address of ordering department/division;
15 Agreement number (FCARC-98836-001-06/13); quantities, item descriptions, unit
16 prices, extensions, sales/use tax if applicable and an invoice total; and
- 17 B. Be rendered monthly in arrears.

18 5. **NON-APPROPRIATION OF FUNDS**

19 It is mutually agreed and understood that the obligations of DISTRICT are limited by and
20 contingent upon the availability of DISTRICT funds for the reimbursement of
21 CONTRACTOR'S fees. In the event that such funds are not forthcoming for any reason,
22 DISTRICT shall immediately notify CONTRACTOR in writing. This Agreement shall be
23 deemed terminated and have no further force and effect immediately on receipt of
24 DISTRICT'S notification by CONTRACTOR. In the event of such termination,
25 CONTRACTOR shall be entitled to payment for work already completed in accordance
26 with Section 4 (COMPENSATION AND PAYMENT).
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1 6. **ALTERATION OR CHANGES TO THE AGREEMENT**

2 This Agreement may be amended or modified only by mutual written agreement of the
3 parties. No alteration or variation of the terms of this Agreement will be valid unless
4 made in writing and signed by the parties hereto and no oral understanding or agreement
5 not incorporated herein will be binding on any of the parties hereto.

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7 7. **TERMINATION**

8 At any time during the term of this Agreement, DISTRICT may:

- 9 A. Terminate this Agreement without cause upon providing CONTRACTOR thirty
10 (30) days written notice stating the extent and effective date of termination; or
11 B. Upon five (5) days written notice, terminate this Agreement for CONTRACTOR
12 default, if CONTRACTOR refuses or fails to comply with the provisions of this
13 Agreement or fails to make progress so as to endanger performance and does not
14 immediately cure such failure within a reasonable period of time. In the event of
15 such termination, DISTRICT may proceed with the work in any manner deemed
16 proper to DISTRICT.
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18 In the event DISTRICT issues a Notice of Termination, CONTRACTOR shall (i) stop all
19 work under this Agreement on the date specified in the Notice of Termination; and (ii)
20 transfer to DISTRICT and deliver in the manner, and to the extent, if any, as directed by
21 DISTRICT, any materials, data, reports or other products, which, if the Agreement had
22 been completed or continued, would have been required to be furnished to DISTRICT.
23

24 In the event DISTRICT terminates this Agreement, DISTRICT shall make payment for all
25 services performed in accordance with this Agreement to the date of termination and at the
26 rates set forth in Exhibit B. Notwithstanding any of the other provisions of this
27 Agreement, CONTRACTOR'S rights under this Agreement shall terminate (except for
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1 fees accrued prior to the date of termination) upon dishonesty, or a willful or material
2 breach of this Agreement by CONTRACTOR, or in the event of CONTRACTOR'S
3 unwillingness or inability for any reason whatsoever to perform the duties hereunder, or if
4 the Agreement is terminated pursuant to Section 17, hereinafter titled NON-
5 DISCRIMINATION. In such event, CONTRACTOR shall not be entitled to any further
6 compensation under this Agreement. The rights and remedies of DISTRICT provided in
7 this section shall not be exclusive and are in addition to any other rights and remedies
8 provided by law or under this Agreement.

9
10 8. **WORK PRODUCT**

11 All work products or deliverables furnished under this Agreement shall be and remain the
12 sole property of DISTRICT. CONTRACTOR shall not publish or transfer any material
13 produced or resulting from activities supported by this Agreement without the written
14 consent of the General Manager-Chief Engineer. If any such material is subject to
15 copyright or trademark, the parties agree that the right to any and all copyright and/or
16 trademark in and to the material is expressly reserved to DISTRICT. If any such material
17 is copyrighted, the parties hereto understand and agree that DISTRICT reserves a royalty-
18 fee, non-exclusive, and irrevocable license to reproduce, publish, and use such material, in
19 whole or in part, and to authorize others to do so, provided written credit is given the
20 author.
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23 9. **CONFLICT OF INTEREST**

24 CONTRACTOR covenants that it presently has no interest, including but not limited to,
25 other projects or independent contracts, and shall not acquire any such interest, direct or
26 indirect, which would conflict in any manner or degree with the performance of services
27 required to be performed under this Agreement. CONTRACTOR further covenants that
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1 in the performance of this Agreement, no person having any such interest shall be
2 employed or retained by it under this Agreement.

3 10. **CONDUCT OF CONTRACTOR**

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

8 CONTRACTOR or its employees shall not offer gifts, gratuity, favors, and entertainment
9 directly or indirectly to DISTRICT employees.

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11 11. **INSPECTION OF SERVICE; QUALITY CONTROL/ASSURANCE**

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

4 CONTRACTOR shall establish adequate procedures for self-monitoring and quality
5 control and assurance to ensure proper performance under this Agreement; and shall
6 permit a DISTRICT representative or other regulatory official to monitor, assess or
7 evaluate CONTRACTOR’S performance under this Agreement at any time upon
8 reasonable notice to CONTRACTOR.
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11 12. **PREVAILING WAGE**

12 CONTRACTOR is aware of the requirements of California Labor Code Sections 1720, et
13 seq., and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000, et
14 seq., (‘Prevailing Wage Laws’), which require the payment of prevailing wage rates and
15 the performance of other requirements on certain ‘public works’ and ‘maintenance’
16 projects. Since the landscape services are being performed as part of an applicable ‘public
17 works’ or ‘maintenance’ project, as defined by the Prevailing Wage Laws,
18 CONTRACTOR agrees to fully comply with and to require any contractors or
19 subcontractors to fully comply with such Prevailing Wage Laws. CONTRACTOR may
20 obtain the Prevailing Wage Laws by visiting the County of Riverside Clerk of the Boards
21 website at: <http://rivcocob.com>.
22

23 13. **INDEPENDENT CONTRACTOR**

24 CONTRACTOR and the agents and employees of CONTRACTOR, shall act at all times
25 in an independent capacity during the term of this Agreement and in the performance of
26 the services to be rendered hereunder and shall not act as or shall not be and shall not in
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1 any manner be considered to be employees of DISTRICT. It is expressly understood and
2 agreed that the CONTRACTOR (including its employees, agents and subcontractors) shall
3 in no event be entitled to any benefits to which DISTRICT employees are entitled,
4 including but not limited to overtime, any retirement benefits, worker's compensation
5 benefits, and injury leave or other leave benefits. There shall be no employer-employee
6 relationship between the parties; and CONTRACTOR shall hold DISTRICT harmless
7 from any and all claims that may be made against DISTRICT based upon any contention
8 by a third party that an employer-employee relationship exists by reason of this
9 Agreement. It is further understood and agreed by the parties that CONTRACTOR in the
10 performance of this Agreement is subject to the control or direction of DISTRICT merely
11 as to the results to be accomplished and not as to the means and methods for
12 accomplishing the results.
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15 14. **SUBCONTRACT FOR WORK OR SERVICE**

16 No contract shall be made by the CONTRACTOR with any other party for furnishing any
17 of the work or services under this Agreement without the prior written approval of the
18 DISTRICT; but this provision shall not require the approval of contracts of employment
19 between the CONTRACTOR and personnel assigned under this Agreement, or for parties
20 named in the proposal and agreed to under this Agreement.
21

22 15. **LICENSING AND PERMITS**

23 CONTRACTOR shall comply with all State or other licensing requirements, including but
24 not limited to the provisions of Chapter 9 of Division 3 of the Business and Professions
25 Code. CONTRACTOR warrants that it has all necessary permits, approvals, certificates,
26 waivers and exemptions necessary for performance of this Agreement as required by the
27 laws and regulations of the United States, the State of California, the County of Riverside
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1 and all other governmental agencies with jurisdiction, and shall maintain these throughout
2 the term of this Agreement.

3 **16. USE BY OTHER POLITICAL ENTITIES**

4 The CONTRACTOR agrees to extend the same pricing, terms and conditions as stated in
5 this Agreement to each and every political entity, special District, and related non-profit
6 entity in Riverside County. It is understood that other entities shall make purchases in
7 their own name, make direct payment, and be liable directly to the CONTRACTOR; and
8 DISTRICT shall in no way be responsible to CONTRACTOR for other entities'
9 purchases.
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12 **17. RECORDS AND DOCUMENTS**

13 CONTRACTOR shall make available, upon written request by any duly authorized
14 Federal, State or local government agency, a copy of this Agreement and such books,
15 documents and records as are necessary to certify the nature and extent of the
16 CONTRACTOR'S costs related to this Agreement. All such books, documents and
17 records shall be maintained by CONTRACTOR for at least five (5) years following
18 termination of this Agreement and be available for audit by DISTRICT. CONTRACTOR
19 shall provide to the DISTRICT reports and information related to this Agreement as
20 requested by DISTRICT.
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23 **18. NON-DISCRIMINATION**

24 In the performance of the terms of this Agreement, CONTRACTOR shall not engage in
25 nor permit others he may employ to engage in discrimination in the employment of
26 persons because of the race, color, national origin or ancestry, religion, physical handicap,
27 disability, as defined by the Americans with Disabilities Act (ADA), medical condition,
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marital status, age or sex of such persons, in accordance with the provision of California Labor Code Section 1735.

19. **CONFIDENTIALITY OF DATA**

All financial, statistical, personal, technical or other data and information made available to CONTRACTOR shall not be disclosed (in whole or in part) by CONTRACTOR to any third parties and shall be protected by CONTRACTOR from unauthorized use and disclosure. The only exception to this shall be if disclosure is approved in advance in writing by DISTRICT or if the disclosure is made to CONTRACTOR'S subcontractors as anticipated by this Agreement.

CONTRACTOR shall not issue any news release or public relations item regarding designated confidential information or CONTRACTOR'S work under this Agreement, without prior review of the contents and written approval by DISTRICT.

These same requirements shall be applicable to any of CONTRACTOR'S subcontractors. CONTRACTOR shall include the requirements stated in this section in the Agreement with any of its subcontractors.

20. **ADMINISTRATION/CONTRACT LIAISON**

The DISTRICT shall administer this Agreement and serve as the liaison with CONTRACTOR in connection with this Agreement.

21. **NOTICES**

Any notices sent or required to be sent to either party shall be mailed to the following addresses:

RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT
1995 Market Street
Riverside, CA 92501
Attn: Jeanine J. Rey

VALLEYCREST LANDSCAPE
DEVELOPMENT, INC.
8726 Calabash Avenue
Fontana, CA 92335
Attn: George Magana

1 22. **EDD REPORTING REQUIREMENTS**

2 In order to comply with child support enforcement requirements of the State of California,
3 DISTRICT may be required to submit a Report of Independent Contractor(s) form DE 542
4 to the Employment Development Department (EDD). The CONTRACTOR agrees to
5 furnish the required data and certifications to DISTRICT within 10 days of notification of
6 award of Agreement when required by the EDD. This data will be transmitted to
7 governmental agencies charged with the establishment and enforcement of child support
8 orders. Failure of the CONTRACTOR to timely submit the data and/or certificates
9 required may result in the contract being awarded to another contractor. In the event a
10 contract has been issued, failure of the CONTRACTOR to comply with all federal and
11 state reporting requirements for child support enforcement or to comply with all lawfully
12 served Wage and Earnings Assignments Orders and Notices of Assignment shall
13 constitute a material breach of Agreement. If CONTRACTOR has any questions
14 concerning this reporting requirement, please call (916) 657-0529. CONTRACTOR
15 should also contact its local Employment Tax Customer Service Office listed in the
16 telephone directory in the State Government section under "Employment Development
17 Department" or access their Internet site at www.edd.ca.gov.
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21 23. **INDEMNIFICATION**

22 CONTRACTOR shall indemnify and hold harmless DISTRICT and County of Riverside
23 (including its officers, Board of Supervisors, elected and appointed officials, employees,
24 agents and representatives) from any and all liability, claim, damage, proceeding or action,
25 present or future, based upon, arising out of or in any way relating to CONTRACTOR'S
26 (including its officers, employees, subcontractors and agents) actual or alleged negligent,
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1 reckless or willful misconduct, acts or omissions related to this Agreement, performance
2 under this Agreement, or failure to comply with the requirements of this Agreement,
3 including but not limited to: (a) property damage; (b) bodily injury or death; or (c) any
4 other element of any kind or nature whatsoever.

5 CONTRACTOR shall defend, at its sole expense, including all costs and fees (including
6 but not limited to attorney fees, cost of investigation, defense and settlements or awards),
7 DISTRICT and County of Riverside (its officers, Board of Supervisors, elected and
8 appointed officials, employees, agents and representatives) in any claim, proceeding or
9 action for which indemnification is required.
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11 With respect to any of CONTRACTOR'S indemnification requirements, CONTRACTOR
12 shall, at its sole cost, have the right to use counsel of their own choice and shall have the
13 right to adjust, settle, or compromise any such claim, proceeding or action without the
14 prior consent of DISTRICT; provided, however, that such adjustment, settlement or
15 compromise in no manner whatsoever limits or circumscribes CONTRACTOR'S
16 indemnification obligations to DISTRICT.
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18 CONTRACTOR'S indemnification obligations shall be satisfied when CONTRACTOR
19 has provided to DISTRICT the appropriate form of dismissal (or similar document)
20 relieving DISTRICT from any liability for the claim, proceeding or action involved.

21 The specified insurance limits required in this Agreement shall in no way limit or
22 circumscribe CONTRACTOR'S obligations to indemnify and hold harmless DISTRICT
23 or the County of Riverside from third party claims.
24

25 In the event there is conflict between this section and California Civil Code Section 2782,
26 this section shall be interpreted to comply with California Civil Code Section 2782. Such
27 interpretation shall not relieve CONTRACTOR from indemnifying DISTRICT or the
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County of Riverside to the fullest extent allowed by law. The obligations reflected in this Section shall survive the discharge or other termination of this Agreement.

24. INSURANCE

CONTRACTOR shall not commence operations until DISTRICT has been furnished with original certificate(s) of insurance and original certified copies of endorsements or policies of insurance including all endorsements and any and all other attachments as required in this Section.

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

A. WORKERS' COMPENSATION

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

B. 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, and cross liability coverage, covering claims which may arise from or out of CONTRACTOR'S performance of its obligations

1 hereunder. Policy shall name the Riverside County Flood Control and Water
 2 Conservation District, the County of Riverside, its agencies, districts, special
 3 districts, and departments, their respective directors, officers, Board of Supervisors,
 4 elected or appointed officials, employees, agents or representatives as additional
 5 insured's. Policy's limit of liability shall not be less than \$1,000,000 per occurrence
 6 combined single limit. If such insurance contains a general aggregate limit, it shall
 7 apply separately to this Agreement or be no less than two (2) times the occurrence
 8 limit.
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10 C. VEHICLE LIABILITY

11 If vehicles or mobile equipment are used in the performance of the obligations under
 12 this Agreement, then CONTRACTOR shall maintain liability insurance for all
 13 owned, non-owned or hired vehicles in an amount not less than \$1,000,000 per
 14 occurrence combined single limit. If such insurance contains a general aggregate
 15 limit, it shall apply separately to this Agreement or be no less than two (2) times the
 16 occurrence limit. If CONTRACTOR does not own vehicles, CONTRACTOR shall
 17 maintain coverage for not-owned or hired vehicles in an amount not less than
 18 \$1,000,000 per occurrence combined single limit. Such non-owned or hired
 19 coverage may be included on the Commercial General Liability policy. Policy shall
 20 name the Riverside County Flood Control and Water Conservation District, the
 21 County of Riverside, its agencies, districts, special districts, and departments, their
 22 respective directors, officers, Board of Supervisors, elected or appointed officials,
 23 employees, agents or representatives as additional insured's.
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 26 D. GENERAL INSURANCE PROVISIONS – ALL LINES
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- 1 a. Any insurance carrier providing insurance coverage hereunder shall be admitted
2 to the State of California and have an A.M. BEST rating of not less than an A:
3 VIII (A:8) unless such requirements are waived, in writing, by the County Risk
4 Manager. If the County's Risk Manager waives a requirement for a particular
5 insurer such waiver is only valid for the specific insurer and only for one policy
6 term.
- 7 b. CONTRACTOR must declare its insurance self-insured retentions. If any such
8 self-insured retention exceeds \$500,000 per occurrence each such retention shall
9 have the prior written consent of the County Risk Manager before the
10 commencement of operations under this Agreement. Upon notification of self-
11 insured retention deemed unacceptable to DISTRICT, and at the election of the
12 County's Risk Manager, CONTRACTOR'S carriers shall either; 1) reduce or
13 eliminate such self-insured retention with respect to this Agreement with
14 DISTRICT, or 2) procure a bond which guarantees payment of losses and related
15 investigations, claims administration, and defense costs and expenses.
- 16 c. CONTRACTOR shall cause their insurance carrier(s) to furnish DISTRICT with
17 1) a properly executed original certificate(s) of insurance and original certified
18 copies of endorsements effecting coverage as required herein; and 2) if requested
19 to do so orally or in writing by the County Risk Manager, provide original
20 certified copies of policies including all endorsements and all attachments
21 thereto, showing such insurance is in full force and effect. Further, said
22 certificate(s) and policies of insurance shall contain the covenant of the insurance
23 carrier(s) that thirty (30) days written notice shall be given to DISTRICT prior to
24 any cancellation, expiration or reduction in coverage of such insurance.
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1 CONTRACTOR agrees that it will not materially alter any of the insurance
2 policies currently in force and relied on in executing and delivering this
3 Agreement. Further, CONTRACTOR will not reduce any coverage amount
4 below the limits specified in this Agreement. In the event of a material
5 modification, cancellation, expiration or reduction in coverage, this Agreement
6 shall terminate forthwith, unless DISTRICT receives, prior to such effective date,
7 another properly executed original certificate of insurance and original copies of
8 endorsements or original certified policies, including all endorsements and
9 attachments thereto, evidencing coverage's set forth herein and the insurance
10 required herein is in full force and effect. Individual(s) authorized by the
11 insurance carrier to do so, on its behalf shall sign the original endorsements for
12 each policy and the certificate of insurance.
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- 14 d. It is understood and agreed by the parties hereto that CONTRACTOR'S
15 insurance shall be construed as primary insurance, and DISTRICT'S insurance
16 and/or deductibles and/or self-insured retentions or self-insured programs shall
17 not be construed as contributory.
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- 19 e. If, during the term of this Agreement or any extension thereof, there is a material
20 change in the scope of services; or there is a material change in the equipment to
21 be used in the performance of the scope of work which will add additional
22 exposures (such as the use of aircraft, watercraft, cranes, etc.); or the term of this
23 Agreement, including any extensions thereof, exceeds five (5) years, DISTRICT
24 reserves the right to adjust the types of insurance required under this Agreement
25 and the monetary limits of liability for insurance coverage's currently required
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herein, if, in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by 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 DISTRICT.

h. CONTRACTOR agrees to notify DISTRICT of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

25. **ASSIGNMENT**

Neither this Agreement nor any part thereof shall be assigned by CONTRACTOR without the prior written consent of DISTRICT. Any attempt to delegate or assign any interest herein shall be deemed void and of no force or effect.

26. **WAIVER**

Any waiver by DISTRICT 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 thereof. Failure on the part of DISTRICT to require exact, full and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms hereof, or estopping DISTRICT from enforcement hereof.

27. **GENERAL**

In the event the CONTRACTOR receives payment under this Agreement, which is later disallowed by DISTRICT for nonconformance with the terms of the Agreement, the CONTRACTOR shall promptly refund the disallowed amount to the DISTRICT on

1 request; or at its option the DISTRICT may offset the amount disallowed from any
2 payment due to the CONTRACTOR.

3 CONTRACTOR shall not provide partial delivery or shipment of services or products
4 unless specifically stated in this Agreement, Exhibits A or B.

5 CONTRACTOR shall not provide any services or products subject to any chattel mortgage
6 or under a conditional sales contract or other agreement by which an interest is retained by
7 a third party. The CONTRACTOR warrants that it has good title to all materials or
8 products used by CONTRACTOR or provided to DISTRICT pursuant to this Agreement,
9 free from all liens, claims or encumbrances.
10

11 Nothing in this Agreement shall prohibit the DISTRICT from acquiring the same type or
12 equivalent equipment, products, materials or services from other sources, when deemed by
13 the DISTRICT to be in its best interest. The DISTRICT reserves the right to purchase
14 more or less than the quantities specified in this Agreement.

15 The DISTRICT agrees to cooperate with the CONTRACTOR in the CONTRACTOR'S
16 performance under this Agreement, including, if stated in the Agreement, providing the
17 CONTRACTOR with reasonable facilities and timely access to DISTRICT data,
18 information, and personnel.
19

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

24 CONTRACTOR shall comply with all air pollution control, water pollution, safety and
25 health ordinances, statutes, or regulations, which apply to performance under this
26 Agreement.
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28

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

4 28. **FORCE MAJEURE**

5 If either party is unable to comply with any provision of this Agreement due to causes
6 beyond its reasonable control, and which could not have been reasonably anticipated, such
7 as acts of God, acts of war, civil disorders, or other similar acts, such party shall not be
8 held liable for such failure to comply.
9

10 29. **JURISDICTION/LAW/SEVERABILITY**

11 This Agreement is to be construed in accordance with the laws of the State of California.
12 If any provision of this Agreement is held by a court of competent jurisdiction to be
13 invalid, void or unenforceable, the remaining provisions shall be declared severable and
14 shall be given full force and effect to the extent possible.

15 Any legal action, in law or in equity related to the performance or interpretation of this
16 Agreement shall be filed only in the Superior Court of the State of California located in
17 Riverside, California, and the parties waive any provision of law providing for a change of
18 venue to another location. Prior to the filing of any legal action, the parties shall be
19 obligated to attend a mediation session with a neutral mediator or try to resolve the
20 dispute.
21

22 30. **DISCREPANCIES**

23 In the event of any conflict between the terms of this Agreement and Exhibits A or B, the
24 terms of this Agreement shall govern. In the event of any conflict between Exhibit A and
25 Exhibit B, Exhibit A shall govern.
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on

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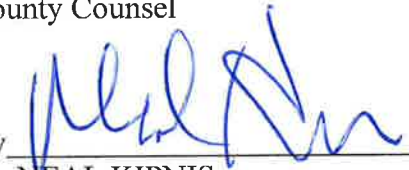
(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL: **RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT**

By  By _____
WARREN D. WILLIAMS MARION ASHLEY, Chairman
General Manager-Chief Engineer Riverside County Flood Control and Water
Conservation District Board of Supervisors

APPROVED AS TO FORM:
PAMELA J. WALLS
County Counsel

ATTEST:
KECIA HARPER-IHEM
Clerk of the Board

By  _____
NEAL KIPNIS
Deputy County Counsel

By _____
Deputy

(SEAL)

Professional Services Agreement
Landscape Maintenance Services
JR:mc
8/7/2012

**VALLEYCREST LANDSCAPE
DEVELOPMENT INC.**
a California Corporation

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By 
GEORGE MAGANA
Branch Manager

(Notary)

Professional Services Agreement
Landscape Maintenance Services
JR:mc
8/7/2012

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of San Bernardino

On August 14, 2012 before me, Lindsey Buyer a Notary Public,

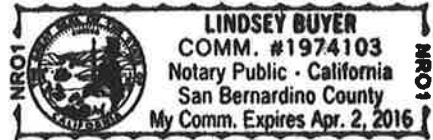
Personally appeared George Magana

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~ are subscribed to the within instrument and acknowledged to me that ~~he~~ she, they executed the same in ~~his~~ her/their authorized capacity(~~ies~~), and that by ~~his~~ her/their signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Lindsey Buyer (Notary Seal)
Signature of Notary Public



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT	
<u>Landscape Services Agreement</u>	
<small>(Title or description of attached document)</small>	
_____ <small>(Title or description of attached document continued)</small>	
Number of Pages _____	Document Date _____
_____ <small>(Additional information)</small>	

CAPACITY CLAIMED BY THE SIGNER	
<input type="checkbox"/> Individual (s)	
<input type="checkbox"/> Corporate Officer	
	_____ <small>(Title)</small>
<input type="checkbox"/> Partner(s)	
<input type="checkbox"/> Attorney-in-Fact	
<input type="checkbox"/> Trustee(s)	
<input type="checkbox"/> Other _____	

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they - is/are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

EXHIBIT A**SCOPE OF SERVICE
CONTRACTOR Requirements listed below for this Agreement****1.1 WORKMANSHIP, QUALITY AND APPEARANCE LEVEL**

- a) CONTRACTOR shall provide a reasonable level of quality in professional landscape maintenance compatible with standard industry practices and shall ensure that all work is continually supervised by the CONTRACTOR'S 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) CONTRACTOR'S employees must be outfitted in the CONTRACTOR'S company uniforms appropriate to the type of assignment that they are working. The CONTRACTOR'S company shirt shall have an identifying company logo or patch.
- c) With prior DISTRICT approval, the CONTRACTOR shall be responsible to replace in kind and at DISTRICT expense, any lawn, ground cover, trees, shrubs, header board, artificial turf, potted plants, flower beds or irrigation system components requiring replacement through normal attrition and/or infestation. Replacements required due to negligence resulting from CONTRACTOR failing to provide maintenance in accordance with the provisions of this Scope of Services will be at the expense of the CONTRACTOR. The DISTRICT must approve all substitutions.
- d) CONTRACTOR shall be solely and completely responsible for the condition of the premises on which the work is performed and for the safety of all persons and property on the site during performance of the contract. This requirement shall not be limited to normal working hours, but shall apply continuously. CONTRACTOR shall comply with all governing safety regulations.

1.2 WORK NOT INCLUDED

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

- a) Parking areas, driveways, roads, building, concrete walkways, 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 DISTRICT.
- b) Losses/damages beyond CONTRACTOR'S control except for that appropriate maintenance, repair, or replacement of such losses or damage made by the CONTRACTOR after receipt of approval and authorization from appropriate DISTRICT representative.
- c) All utility services related to or required for the performance of this Agreement.

1.3 MATERIALS

The CONTRACTOR shall submit a list to the DISTRICT of all materials/chemicals that the CONTRACTOR proposes to use in the performance of this work. The list shall include an MSDS for each material/chemical. Said list shall be submitted before the use of any product pursuant to the provisions of this agreement. Similar listing of changes in materials/chemical as 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: In the event that the DISTRICT is connected to the City of Riverside's reclaimed water lines, areas that are irrigated with such 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 the job site in the manufacturer's original container, or appropriate and properly labeled secondary container.
- c) Tree stakes, tree ties, guy wires and header boards shall be of materials matching the existing on the work site, or as specified by the DISTRICT.
- d) Lawn seed for reseeding and over-seeding shall be a certified mixture to match existing grasses.

1.4 LAWN CARE

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

- a) Mowing

Lawn areas shall be mowed once every seven (7) days 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 in a clean manner using sharp cutting edges. Bruising or rough cutting of grass shall not be permitted. Grass must be mowed to a uniform height, which shall be determined by CONTRACTOR and approved by DISTRICT for each area of the site. Mowing directions shall be periodically alternated. "Scalping" shall not be permitted.

- b) Trimming

All lawn area edges along curbs and walkways 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 after each mowing and shall include trimming 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 eighteen inches (18") 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 DISTRICT.

c) General Maintenance and Cleanup

- 1) In January of each year, the CONTRACTOR shall trim/prune all rose bushes, all trees and bushes along the pathway adjacent to the freeway, the palm trees and parking lot trees, and trees and bushes on slopes along Market Street. The CONTRACTOR shall dispose of all trimmings in a lawful manner and leave area/entire site free from debris.
- 2) The CONTRACTOR shall collect all paper, mowed grass, clippings, trimmings, cuttings, rubbish, and debris, remove the same promptly from the site, and dispose of same in a lawful manner at the CONTRACTOR'S expense. No clippings, trimmings, removed trees, cuttings, rubbish, or debris resulting from CONTRACTOR'S performance under this agreement shall be deposited in the refuse cans or dumpsters placed by the DISTRICT at various locations on the site. All waste containers outside the buildings shall be emptied and all plastic bag inserts shall be removed and/or replaced as needed. CONTRACTOR shall provide plastic bags for replacement of outside trash containers.
- 3) The CONTRACTOR shall keep all ground cover areas, all shrubs and trees, all fences, sidewalks, paths, curbs, pots, benches, tables and gutters free from leaves, weeds, grasses, rocks, glass, litter and other debris.
- 4) The CONTRACTOR shall keep all cracks and seams in sidewalks, curbs, street gutters, and other paved areas free of grass and weeds.
- 5) 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.
- 6) The CONTRACTOR shall repair any eroded places on the landscaped area by replacement of topsoil and ground cover to bring such eroded places back to original grade. The cause of erosion shall be reported promptly to the DISTRICT.
- 7) The CONTRACTOR shall clean all trash and debris from the Emergency Generator and Refuse Container enclosures or any other enclosure retaining such trash and debris throughout the DISTRICT site and next to the main buildings.
- 8) Work site shall be left orderly and neat upon completion of work for that particular day.
- 9) 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 DISTRICT prior to performing any work requiring traffic control.

- 10) Notification of all "specialty type" maintenance operations shall be given to the DISTRICT forty-eight (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.
- 11) CONTRACTOR shall protect in place all synthetic turf grass and keep those clean from any trash, leaves, debris as needed.
- 12) CONTRACTOR shall clean the fountain area located in the DISTRICT's exterior court yard (adjacent to main entrance/lobby) and add water to the fountain as needed during the scheduled cleaning of the site. CONTRACTOR shall also clean drains, inlets, outlets and keep those clean from any trash, leaves and debris. Any leaves, trash, and debris accumulated inside or next to such areas shall be removed.

1.5 WEEDS, DISEASE and PEST CONTROL

- a) The CONTRACTOR shall have all required permits and licenses for the possession and use of pesticides. The CONTRACTOR'S 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 any persons.
- 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) Lawn areas shall be kept free of weeds. 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. Spraying shall be done only at times when there is no wind, and in compliance with all Federal, State, and local laws and regulations.

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

1.6 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 the DISTRICT, CONTRACTOR shall reseed bare places or depressions in lawn areas after first bringing such depressions to grade level with top soil. Over-seeding of turf areas as necessary shall also be included in this scope of work.

1.7 WATERING

- a) CONTRACTOR shall ensure that the lawn areas are deeply watered as required by weather conditions to provide adequate moisture for optimum growth. Automatic smart controllers have been installed to implement this task. At no time shall the lawn areas be permitted to show lack of fresh green color or a loss of resilience due to lack of water. It is the CONTRACTOR'S responsibility to notify the DISTRICT and remedy the situation in a timely manner if such condition exists by adjusting the smart controllers under the supervision of the DISTRICT.
- b) If at any time a sprinkler within the irrigation system is found not to cover the lawn area in which it was installed, the CONTRACTOR shall notify the DISTRICT and if approved, shall install additional sprinklers as required to uniformly water the lawn areas.
- c) Irrigation controllers and watering are set to use repeat cycling where possible to allow water to soak in and prevent runoff, ponding, and over watering. It is the CONTRACTOR'S responsibility to notify the DISTRICT and remedy the situation in a timely manner if such conditions exist by adjusting the smart controllers under the supervision of the DISTRICT.
- d) CONTRACTOR shall inspect valves and controllers on a regular basis to ensure they are functioning properly and if needed make any necessary corrections under the supervision of the DISTRICT.

1.8 FERTILIZING

- a) Lawn areas shall be fertilized not more than three (3) times each year. Applications of actual nitrogen shall be at a rate of three (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 a monthly work schedule.

1.9 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:

1.9.1 Watering:

- a) CONTRACTOR shall ensure that the trees, shrubs, and ground cover are shall be deeply and slowly watered deeply and slowly to establish moisture to the full depth of the root zones.

- b) The CONTRACTOR shall make a moisture check of representative plants in the landscaping 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. If and when a lack of water situation occurs, it is the CONTRACTOR'S responsibility to notify the DISTRICT and remedy the situation in a timely manner by adjusting the smart controllers under the supervision of the DISTRICT. The need for watering shall dictate the frequency of operation of installed automatic irrigation systems.
- c) The CONTRACTOR shall maintain a water basin of such size around young trees, as is necessary to ensure 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.

1.9.2 Pruning & Minor Tree Care (up to 15' above ground):

- a) The CONTRACTOR shall ensure 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 shall be permitted only if specifically approved by the DISTRICT.
- b) 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.
- c) 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") with radial orientation so as not to overlay one another.
- d) 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 DISTRICT.
- e) Evergreen trees shall be thinned out and shaped when necessary to prevent wind and storm damage.
- f) 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.
- d) Minor pruning may be done at any time.
- e) Pruning to remove a hazard shall be done immediately.

1.9.3 Planter Areas:

- a) The CONTRACTOR shall maintain all planters in a weed-free condition.
- b) The CONTRACTOR shall control all pests and diseases.
- c) The CONTRACTOR shall trim any dead material from all low shrubs and bushes to maintain a pleasing appearance at all times.

1.10 IRRIGATION SYSTEMS

- a) Prior to the start of the contract, the CONTRACTOR shall inspect all installed irrigation systems on the site and shall report damage or malfunction of any system to the DISTRICT.
- b) Throughout the term of the contract, the CONTRACTOR shall be responsible for the effectiveness of the irrigation systems on the site. The CONTRACTOR shall:
 - 1) Adjust and trim around all sprinkler heads to obtain and maintain proper water coverage.
 - 2) Ensure that water lines feeding sprinklers and drip lines are flush regularly as necessary.
 - 3) Repair or replace, at the CONTRACTOR'S expense, any irrigation system equipment damaged as a result of the CONTRACTOR'S performance. CONTRACTOR must replace all broken items with item of same brand and model. The DISTRICT must approve all substitutions.
 - 4) Report promptly to the DISTRICT any damage to the irrigation systems.
 - 5) Provide labor and equipment for the repair or replacement of all leaking or malfunctioning lateral lines, sprinkler heads, valves, and/or controllers.
 - 6) Shall report any mainline, valve, moisture sensors, decoder, or controller problems to the DISTRICT within 24-hours of observation. The CONTRACTOR shall be familiar with the operation and maintenance of the existing irrigation system.
 - 7) Watering shall be done at night or in the early morning and shall be controlled to prevent any runoff, ponding and over-watering.
 - 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) CONTRACTORS shall ensure that all irrigation sprinkler control time settings shall not create dry, brown spots in the turf areas and that all shrubbery or decorative planting shall be maintained in a healthy, vigorous state at all times. Further, the CONTRACTOR shall ensure that no water time settings shall cause over watering to create soggy sections in the turf or over wet areas in planting.
- 10) Replacement of Parts: The CONTRACTOR shall obtain the approval of the DISTRICT before replacing any parts. The DISTRICT shall have the option of providing replacement parts or having the CONTRACTOR provide the parts.

1.11 EQUIPMENT

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

1.12 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 DISTRICT.

1.13 UNDOCUMENTED WORKERS

This Agreement involves the employment of unskilled labor. Such employment may be attractive to persons coming from foreign countries, sometimes illegally. CONTRACTORS are 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, they 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 shall be deemed sufficient cause for default and the initiation of debarment or suspension proceedings to prevent the CONTRACTOR from receiving future DISTRICT contracts.

1.14 LICENSING

CONTRACTOR is required to maintain a current and valid C-27 License.

EXHIBIT B**PAYMENT PROVISIONS**

1. Cost for services: \$1,875 per month.
2. Plant replacement allowance: \$2,500 per year.

CONTRACTOR shall provide labor and equipment for the replacement of plants approved by DISTRICT. Parts/materials will be paid for separately by DISTRICT to CONTRACTOR if DISTRICT agrees with CONTRACTOR'S prices at the time a part or material is needed. If DISTRICT did not reach an agreement with CONTRACTOR regarding the parts/materials then DISTRICT will purchase the parts/materials independent of CONTRACTOR and provide the parts/materials to CONTRACTOR for installation.

3. Annual Cost: Not-to-Exceed \$25,000 per year.
4. 24/7 Emergency Service: NO Cost to DISTRICT.
5. Four Ash Trees: Trimmed once a year at NO COST to the DISTRICT.