

STAFF REPORT



ITEM NO. 10
CITY OF OCEANSIDE

DATE: November 19, 2008

TO: Honorable Mayor and City Councilmembers

FROM: Economic and Community Development Department

SUBJECT: **APPROVAL OF AMENDMENT 2 TO THE MAINTENANCE SERVICES AGREEMENT WITH EXECUTIVE LANDSCAPE, INC., OF FALLBROOK FOR THE LANDSCAPE MAINTENANCE AND UPKEEP OF THE CITY'S THIRTEEN LANDSCAPE MAINTENANCE ASSESSMENT DISTRICTS**

SYNOPSIS

Staff recommends that the City Council approve Amendment 2 in the amount of \$761,648.94 to the Maintenance Services Agreement with Executive Landscape, Inc., of Fallbrook for the landscape maintenance and upkeep of the City's thirteen Landscape Maintenance Assessment Districts, extending the term of the agreement from December 31, 2008, to June 30, 2010; and authorize the City Manager to execute the amendment.

BACKGROUND

The City administers the maintenance of the thirteen Landscape Maintenance Assessment Districts ("LMADs") within the City under a maintenance services agreement ("Agreement") with Executive Landscape, Inc., of Fallbrook ("Executive"). The Agreement originally provided for two renewal options of one-year each under the same terms and conditions except for compensation, which would be increased for each one-year period by the change in the Consumer Price Index. Last year Executive requested the first of the two renewal options extending the term to expire on December 31, 2008. Executive has now requested the second of the one-year renewal options.

ANALYSIS

Staff has determined that over the past contract period Executive has provided a level of service acceptable under the Agreement. Executive has been responsive to the needs of the LMAD property owners and has a very good working relationship with the City's LMAD representative. The service to be provided by Executive during the second renewal period would be under the same terms and conditions of the Agreement including the adjustment in the compensation except that the term would be for an additional eighteen months in lieu of a twelve-month period.

Under the Agreement the original term and renewal periods were based on a calendar year period. Inasmuch as the City does its LMAD budgeting on a fiscal year period, there was the potential for the City LMAD budgets to not accurately reflect the costs of an agreement for the landscape maintenance services. For example, if the LMAD agreement ends on December 31, 2008, and a new agreement begins January 1, 2009, the City's LMAD budgets, which had to be approved July 1, 2008, for Fiscal Year 2008-09, could not know the actual cost of the second half of Fiscal Year 2008-09 (January 1 – June 30, 2009).

By extending the second renewal term to eighteen months rather than twelve months the term of the Agreement will expire on June 30, 2010, which coincides with the end of the Fiscal Year 2009-10. Accordingly, the City's LMAD budget for subsequent years could more accurately reflect the cost of the LMAD landscape maintenance services. Due to the service provided by Executive, this alternative was preferred in lieu of seeking an LMAD agreement for only a six-month period (January 1, 2010 – June 30, 2010) to tie the LMAD agreement to the City's future fiscal years.

FISCAL IMPACT

The current compensation for a one-year period under the Agreement as adjusted is \$479,782.82. Per the Agreement, compensation for the eighteen-month renewal period would be further adjusted to reflect the change in the semi-annual Consumer Price Index for All Urban Consumers for San Diego, which is 4.6 percent. The 4.6 percent increase would adjust the eighteen-month compensation under the Agreement to \$761,648.94. The increased cost under the Agreement will be charged prorata to the operating fund for each of the thirteen LMADs.

The eighteen-month renewal term covers part of two fiscal years for the LMADs. The renewal term covers the last six months of LMAD fiscal year 2008-2009 (January-June 2009) and the twelve months of fiscal year 2009-2010 (July 2009–June 2010). The thirteen LMADs have sufficient revenue to offset the proposed increase in compensation under the Agreement for both the balance of fiscal year 2008-2009 and for fiscal year 2009-2010.

<u>LMAD</u>	<u>Account Number</u>	<u>2ND half of FY 08-09/FY09-10 Budget</u>
Mar Lado	249.647296.5211	\$62,994.42
Guajome Ridge	250.647297.5211	\$27,139.14
Peacock Hills	251.647300.5211	\$ 6,463.08
Vista Del Rio	252.647305.5211	\$ 2,562.48
Sunset Hills	241.647310.5211	\$11,420.46
Mission Meadows A	242.647320.5211	\$ 3,454.38

Mission Meadows B	242.647321.5211	\$29,039.94
Sunburst Homes	243.647330.5211	\$ 4,549.86
Douglas Park	244.647340.5211	\$77,145.30
Vandegrift Annex	244.647341.5211	\$18,063.72
Rancho Hermosa	246.647360.5211	\$27,172.62
Santa Fe Mesa	247.647370.5211	\$97,740.00
Del Oro Hills	248.647380.5211	<u>\$393,903.54</u>
		\$761,648.94

INSURANCE REQUIREMENTS

The City's standard insurance requirements will be met. The contractor shall also provide a performance bond for 100 percent of the agreement price and a material and labor bond for 50 percent of the agreement price.

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

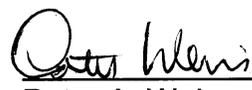
RECOMMENDATION

Staff recommends that the City Council approve Amendment 2 in the amount of \$761,648.94 to the Maintenance Services Agreement with Executive Landscape, Inc., of Fallbrook for the landscape maintenance and upkeep of the City's thirteen Landscape Maintenance Assessment Districts, extending the term of the agreement from December 31, 2008, to June 30, 2010; and authorize the City Manager to execute the amendment.

PREPARED BY:


 Janet K. Craig
 Program Specialist

SUBMITTED BY:


 Peter A. Weiss
 City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager



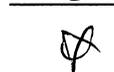
Jane McVey, Economic & Community Development Director



Douglas Eddow, Real Estate Manager



Teri Ferro, Financial Services Director



AMENDMENT NO. 2
TO
MAINTENANCE SERVICES AGREEMENT

This AMENDMENT NO. 2 TO MAINTENANCE SERVICES AGREEMENT dated December 30, 2008 for identification purposes ("Amendment"), is made by and between the CITY OF OCEANSIDE, a municipal corporation ("CITY") and EXECUTIVE LANDSCAPE, INC. OF FALLBROOK, a California corporation, ("CONTRACTOR").

RECITALS

WHEREAS, CITY and CONTRACTOR entered into a Maintenance Services Agreement ("Agreement") dated November 18, 2005, for landscape maintenance services for the Landscape Maintenance Assessment Districts in the City of Oceanside;

WHEREAS, the Agreement provides for the CONTRACTOR to request extensions of the term of the Agreement for an additional two (2) consecutive one (1) year renewals; and

WHEREAS, the first one year extension was requested by CONTRACTOR and approved by CITY thereby amending the Agreement to expire on December 31, 2008.

WHEREAS, CONTRACTOR has requested the second of the two (2) consecutive one (1) year renewals; and

WHEREAS CITY and CONTRACTOR are desirous of extending the second renewal period to eighteen (18) months in lieu of one (1) year renewal in order to have the Agreement terminate at the end of the City's Fiscal Year.

NOW, THEREFORE, IN CONSIDERATION OF THE COVENANTS AND CONDITIONS CONTAINED HEREIN, THE PARTIES HERETO AGREE AS FOLLOWS:

AGREEMENT

1. **Section 3 TERM, Subsection 3.01 Commencement** shall be amended to extend the ending date of December 31, 2008 an additional one (1) year and six months to end on June 30, 2010.
2. **Section 4 COMPENSATION, Subsection 4.01** shall be deleted in its entirety and replaced with the following:

4.01 CONTRACTOR'S compensation for all work performed in accordance with this Agreement for the period of January 1, 2009 through June 31, 2010, shall be

Seven Hundred Sixty-One Thousand Six Hundred Forty-Eight and 94/100 Dollars (\$761,648.94). Cost per District and Unit Cost Schedule are set forth in Exhibit "C-2" attached hereto and by this reference made a part of this Agreement.

3. All other terms, conditions, covenants and provisions of this Agreement shall remain in full force and effect. In the event of any conflict between the terms of the Agreement and this Amendment, the terms of this Amendment shall control.

IN WITNESS WHEREOF, the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do herein agree to the full performance of this Amendment No. 2 to Maintenance Services Agreement.

CITY

THE CITY OF OCEANSIDE
a municipal corporation

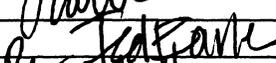
APPROVED AS TO FORM

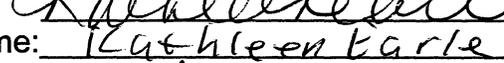
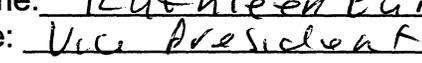
By: _____
Peter A. Weiss
City Manager

By:  _____
City Attorney

"CONTRACTOR"

EXECUTIVE LANDSCAPE, INC. OF FALLBROOK
a California corporation

By:  _____
Name:  _____
Title:  _____

By:  _____
Name:  _____
Title:  _____

**NOTARY ACKNOWLEDGMENTS OF CONTRACTOR'S SIGNATURE(S) MUST
BE ATTACHED**

DISTRICT COST SCHEDULE

EXECUTIVE LANDSCAPE - LMAD BILLING FOR CONTRACT PERIOD 1/1/06 - 12/31/07

LMAD	SQUARE FEET	1/1/09 - 6/30/10 MONTHLY	1/1/09 - 6/30/10 18 MONTHS
DEL ORO HILLS	3,770	\$ 21,883.53	\$ 393,903.54
DOUGLAS PARK	738,085	4,285.85	77,145.30
GUAJOME RIDGE	259,648	1,507.73	27,139.14
MAR LADO HIGHLANDS	602,740	3,499.69	62,994.42
MISSION MEADOWS - "A"	33,045	191.91	3,454.38
MISSION MEADOWS - "B"	277,853	1,613.33	29,039.94
PEACOCK HILLS	61,986	359.06	6,463.08
RANCHO HERMOSA	260,010	1,509.59	27,172.62
SANTA FE MESA	4,477,923	5,430.00	97,740.00
SUNBURST HOMES	43,560	252.77	4,549.86
SUNSET HILLS	108,900	634.47	11,420.46
VANDEGRIFT	125,279	1,003.54	18,063.72
VISTA DEL RIO	23,755	142.36	2,562.48
TOTAL	7,016,554	\$ 42,313.83	\$ 761,648.94

CITY OF OCEANSIDE
LANDSCAPE MAINTENANCE
ASSESSMENT DISTRICTS

UNIT COST SCHEDULE

UNIT PRICES

District irrigation and planting “extras” are paid for as either “Time and Material” or by established unit prices, whichever is less.

1. Landscape	<u>Unit Price</u>
Four inch pot	\$2.88
One-gallon shrub	\$10.11
Five-gallon shrub	\$23.17
Fifteen-gallon shrub	\$88.91
One-gallon tree	\$10.20
5-gallon tree w/2 8’x 2” lodge pole stakes	\$40.80
15-gallon tree w/2 10’x 2” lodge pole stakes	\$127.61
24” box tree w/2 10’x 2” lodge pole stakes	\$373.95
30” box tree w/2 10’x 2” lodge pole stakes	\$884.40
36” box tree w/2 10’x 2” lodge pole stakes	\$1019.85
Ground cover @ 64 rooted cuttings	\$32.64
Soil prep per 1000 sq. ft. with 4 cu yds. nitrolized compost, 150 lbs. agricultural gypsum and 15 lbs. 15-15-15 commercial fertilizer	\$366.10
Hourly rate for landscape foreman	\$43.94
Hourly rate for landscape labor	\$39.75
2. Irrigation	
Sprinkler heads – Rainbird or approved equal unless otherwise noted. Price includes all materials and labor for installation from tee to bottom inlet of head (not including tee). Include a Valcon ADV-XS on all head replacements.	
Shrub spray on 12” riser w/swing & stake	\$14.96
1804 plastic pop-up w/swing	\$20.39
1804 as above w/built-in ADV	\$24.48
1806 plastic pop-up w/swing	\$27.20
1806 as above w/built-in ADV	\$31.28
1812 plastic pop-up w/swing	\$34.00
1812 as above w/built-in ADV	\$40.80
Shrub rotor w/stake (Hunter-S)	\$31.28
Above w/built-in ADV	\$40.80
Pop-up rotor (Hunter-P)	\$48.96

CITY OF OCEANSIDE
 LANDSCAPE MAINTENANCE
 ASSESSMENT DISTRICTS

Above w/built-in ADV	\$57.11
12" pop-up rotor (Hunter-P)	\$70.71
Above w/built-in ADV	\$78.87

Valves – Rainbird or approved equal unless otherwise noted. Includes materials/labor.

Rainbird 100 PEB	\$169.98
Rainbird 125 PEB	\$203.97
Rainbird 150 PEB	\$224.37
Rainbird 200 PEB	\$258.37
Rainbird 100 GB	\$326.32
Rainbird 125 GB	\$360.35
Rainbird 150 GB	\$387.55
Rainbird 200 GB	\$414.74
PRS option on valve	\$74.79
Wilkins 2" Pressure Regulator	\$421.53
Solenoid	\$70.71
1" Diaphragm	\$57.11
1 ½" Diaphragm	\$63.91
2" Diaphragm	\$70.71

Irrigation Labor

Hourly rate for irrigation foreman	\$43.93
Hourly rate for irrigation labor	\$29.29

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ACKNOWLEDGMENT

State of California
County of San Diego

On November 12, 2008 before me, K. Celaya, Notary Public
(insert name and title of the officer)

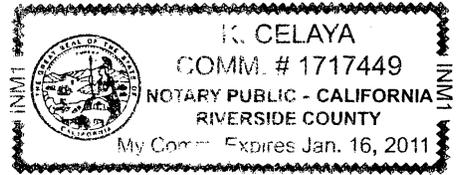
personally appeared Ted Earle
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s)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

Signature K. Celaya

(Seal)



ACKNOWLEDGMENT

State of California
County of San Diego

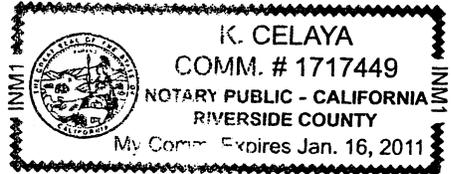
On November 24, 2008 before me, K. Celaya Notary Public
(insert name and title of the officer)

personally appeared Kathleen Earle
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 the 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.

Signature K. Celaya (Seal)





EXECUTIVE
LANDSCAPE
INC.

July 7, 2008

City of Oceanside
Tom Woodford
300 North Coast Highway
Oceanside, CA 92054

Dear Tom,

It is that time of year to execute our renewal option for the City of Oceanside Landscape Maintenance Assessment Districts. Executive Landscape Inc. would like to accept the final contract extension for the period of January 1, 2009 until June 30, 2010 with the appropriate San Diego Consumer Index increase.

We would like to continue our working relationship on these districts as well as working with the Inspector. If you should have any questions and or I can assist you further, please do not hesitate to contact me @ (760) 731-9036 ext. 225 or by e-mail; areynoso@executivelandscapeinc.com.

Sincerely,

Anthony J. Reynoso
Executive Landscape Inc.
North Regional Manager

**CITY OF OCEANSIDE
LANDSCAPE MAINTENANCE
ASSESSMENT DISTRICTS**

CITY OF OCEANSIDE

MAINTENANCE SERVICES AGREEMENT

PROJECT: LANDSCAPE MAINTENANCE ASSESSMENT DISTRICTS

THIS Agreement is made and entered into this 18 day of November, 2005, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and Executive Landscape, Inc., hereinafter designated as "CONTRACTOR."

RECITALS

- A. CITY desires to obtain MAINTENANCE services from an independent CONTRACTOR for the above named project.
- B. CONTRACTOR has submitted a proposal to provide landscape maintenance for the Landscape Maintenance Assessment Districts in accordance with the terms set forth in this Agreement.
- C. CITY desires to contract with CONTRACTOR as an independent CONTRACTOR and CONTRACTOR desires to provide services to CITY as an independent CONTRACTOR.
- D. CONTRACTOR has demonstrated its competence and professional qualifications necessary for the satisfactory performance of the services designated herein by virtue of its experience, training, education and expertise.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF WORK.** The CONTRACTOR shall furnish all labor, equipment, materials, tools, services and special skills required to perform the scope of work as set forth in Exhibit "A" attached hereto and by this reference made part of this Agreement.
2. **LOCATION OF WORK.** Various locations within the City of Oceanside, which are more particularly described in Exhibit "B", attached hereto and by this reference made part of this Agreement.
3. **TERM.**

3.01 Commencement. The term of this Agreement shall be for a period of **TWENTY-FOUR MONTHS (24) months commencing JANUARY 1, 2006 and ending DECEMBER 31, 2007.**

**CITY OF OCEANSIDE
LANDSCAPE MAINTENANCE
ASSESSMENT DISTRICTS**

3.02 Renewal Options. The CONTRACTOR may request extensions of the term of this Agreement for an additional **TWO (2)** consecutive **ONE (1)** year renewals under the terms and conditions of this Agreement, except compensation, which will be adjusted according to §4.3 and provided that the CONTRACTOR is not in default of this Agreement.

The CONTRACTOR may request extensions provided that written notice from the CONTRACTOR is received by the City Manager no sooner than **180 days and not later than 90 days** prior to the expiration of the term of this Agreement. Upon receipt of CONTRACTOR's written request for renewal, the City Manager shall respond to CONTRACTOR, in writing, within 60 days of receipt of said written request for renewal with his/her determination to either accept or reject CONTRACTOR's request for renewal. Acceptance of the renewal request requires City Council approval and that approval shall be based solely upon the discretion of the City Council. City Council approval of one Agreement renewal does not obligate the City Council to approve a subsequent CONTRACTOR requested renewal.

3.03 Termination Of Agreement. The CITY may terminate the Agreement as described elsewhere in the Agreement or upon written notice by the CITY when conditions encountered during the Work make it impossible or impracticable to proceed, or when the CITY is prevented from proceeding with the Agreement by acts of God, national emergency, proclamation of the President of the United States, order of any federal authority, by law, or by official action of a public authority.

In the event of such a termination, the CONTRACTOR shall be entitled to compensation only for the reasonable value of the work done.

3.04 Fiscal Year Budget. If the Fiscal Year Budget for the CITY during the initial term of the Agreement does not contain funds for the Agreement, then that portion of the Agreement shall be considered null and void effective July 1st, the beginning of the Fiscal Year in which the Agreement funds are not allocated. Nothing in this Agreement shall obligate the CITY to appropriate funds for the Agreement, provided however that the CITY agrees that it will not contract with another individual provider of like services in a year in which it does not appropriate funds for the Agreement.

4. COMPENSATION.

4.01 CONTRACTOR's compensation for all work performed in accordance with this Agreement, shall be One Million Ninety-five Thousand Seven Hundred Sixty-nine Dollars and Twenty Cents (\$1,095,769.20). Cost per District and Unit Cost Schedule are set forth in Exhibit "C" attached hereto and by this reference made part of this Agreement.

**CITY OF OCEANSIDE
LANDSCAPE MAINTENANCE
ASSESSMENT DISTRICTS**

4.02 CITY shall cause disposal fees to be waived at the green waste disposal site, 3300 ½ Oceanside Boulevard for disposal of 200 tons per year for the first two years and 100 tons for months 25 through 30 of the Agreement for green waste generated as a result of this Agreement.

4.03 CONTRACTOR shall provide CITY monthly invoices based on one thirtieth (1/30) of the annual cost. CITY will make payments within fifteen (15) days of the receipt of monthly invoice.

4.04 Compensation Adjustment Computation. Any term renewal compensation under the Agreement, including Exhibit "C", shall be computed in accordance with the following definitions and formulas:

Definitions:

Compensation Adjustment Index. The index used will be the semi-annual Consumer Price Index for "All Urban Consumers" for San Diego, California. If this index is no longer published, the index for adjustment will be the U.S. Department of Labor's "Comprehensive Official Index" most comparable to the aforesaid index.

If the Department of Labor indices are no longer published, another index generally recognized as authoritative will be substituted by agreement of CITY and CONTRACTOR. If the parties cannot agree within **60 days** after demand by either party, a substitute index will be selected by the Chief Officer of the Regional Office of the Bureau of Labor Statistics or its successor.

Initial Compensation: The initial monthly compensation at the commencement of the Agreement times 12.

Existing Compensation: The existing compensation shall be the compensation in effect on the date proceeding the term renewal date.

Percent change in the CPI: The percent change in the CPI shall be the percent change in the San Diego All Consumer Index over the preceding **12-month** period from July 1, 2004 through June 30, 2005 for the first year renewal and July 1, 2005 through June 30, 2006 for the second year renewal.

Rent Adjustment Formulas:

First Adjustment: Initial compensation + (Initial compensation x the percent change in the CPI) = New compensation.

For example: \$122,000 + (\$122,000 x 2.5%) = \$125,050

**CITY OF OCEANSIDE
LANDSCAPE MAINTENANCE
ASSESSMENT DISTRICTS**

Subsequent Adjustments: Existing compensation + (Initial compensation x the percent change in the CPI) = New compensation.

For example: \$125,050 + (\$122,000 x 3%) = \$128,710

5. AGREEMENT BONDS. CONTRACTOR shall provide and cause to maintain throughout the term of this Agreement, two good and sufficient bonds in the amounts listed below:

- (a) "Performance Bond" for 100 percent of the agreement award to guarantee faithful and timely performance of all work, in a manner satisfactory to the CITY, and further guarantee that all materials and workmanship will be free from original or developed defects.
- (b) "Payment Bond" (material and labor bond) for 50 percent of the agreement award to satisfy claims of material suppliers, mechanics, and laborers employed by CONTRACTOR on the work that is the subject of the agreement."

6. INSURANCE.

6.01 Liability Insurance. CONTRACTOR shall, throughout the duration of this Agreement, maintain comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of CONTRACTOR, its agents and employees, performed in connection with this Agreement including but not limited to premises and automobile.

6.01.1 CONTRACTOR shall maintain liability insurance in the following minimum limits:

<u>General Liability</u>	
Combined Single Limit Per Occurrence	\$1,000,000
General Aggregate	\$2,000,000
<u>Automobile Liability Insurance</u>	
Combined Single Limit Per Occurrence	\$1,000,000

6.01.2 All insurance companies affording coverage to the CONTRACTOR shall be required to add the City of Oceanside as "ADDITIONAL INSURED" under the insurance policy for all work performed in accordance with the Agreement.

6.01.3 All insurance companies affording coverage to the CONTRACTOR for the Agreement shall be insurance organizations authorized by

**CITY OF OCEANSIDE
LANDSCAPE MAINTENANCE
ASSESSMENT DISTRICTS**

the Insurance Commissioner of the State of California Department of Insurance to transact business of insurance in the State of California.

6.01.4 All insurance companies affording coverage shall provide thirty (30) day written notice to the City of Oceanside should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.

6.01.5 CONTRACTOR shall provide evidence of compliance with the insurance requirements listed above by providing a Certificate of Insurance, concurrently with the submittal of the Agreement.

6.01.6 CONTRACTOR shall provide a substitute Certificate of Insurance no later than thirty (30) days prior to the policy expiration date. Failure by the CONTRACTOR to provide such a substitution and extend the policy expiration date shall be considered a default by CONTRACTOR and may subject the CONTRACTOR to a suspension or termination of work under the Agreement.

6.01.7 Maintenance of insurance by the CONTRACTOR as specified in the Agreement shall in no way be interpreted as relieving the CONTRACTOR of any responsibility whatsoever and the CONTRACTOR may carry, at its own expense, such additional insurance as it deems necessary.

6.02 Contractor's Indemnification Of City. CONTRACTOR shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims for damages to persons or property arising out of the conduct of the CONTRACTOR or its employees, agents, subcontractors, or others in connection with the execution of the work covered by the Agreement, except only for those claims arising from the sole negligence or sole willful conduct of the CITY, its officers, agents, or employees. CONTRACTOR'S indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the CITY, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not. Further, CONTRACTOR at its own expense shall, upon written request by the CITY, defend any such suit or action brought against the CITY, its officers, agents, or employees.

6.02.1 CONTRACTOR'S indemnification of CITY shall not be limited by any prior or subsequent declaration by the CONTRACTOR.

6.02.2 CONTRACTOR'S duty to indemnify and hold harmless shall not include any claims or liability solely arising from the established active negligence or willful misconduct of City, its agents, officers or employees.

**CITY OF OCEANSIDE
LANDSCAPE MAINTENANCE
ASSESSMENT DISTRICTS**

6.03 Workers' Compensation. Pursuant to Labor Code Section 1861, the CONTRACTOR hereby certifies that the CONTRACTOR is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and the CONTRACTOR will comply with such provisions, and provide certification of such compliance as a part of these Award Documents. The certification shall be in accordance with **sections 6.01.2** through **6.01.7** of this Agreement.

7. CHANGES IN WORK.

7.01 Contents of Change Proposals, Change Orders, and Claims. Any Change Proposal or Claim submitted by the CONTRACTOR shall be signed by the CONTRACTOR and shall include the information set forth in § 7.01 below. A Change Order issued by the CITY shall be signed by the Landscape Inspector and contain the information set forth in §7.01 below:

- (a) The project name and number;
- (b) Detailed description of the change or claim;
- (c) The reason for the change or claim; and,
- (d) The increase or decrease in dollar value of the Agreement price resulting from the change or claim, or the method of determining compensation for the change or claim.

7.02 Contractor Initiated Changes. The CONTRACTOR may request changes in specific methods of services provided, or changes in the Scope of Work by submitting written Agreement Change Proposals to the Landscape Inspector.

The Change Proposal shall be reviewed by the Landscape Inspector, and may be approved by the Landscape Inspector if the change does not materially affect the work, the change is not detrimental to the work or the interests of the CITY, and the request is received by the Landscape Inspector within ten (10) working days of the start of the condition which caused the change. Nothing herein shall be construed as granting a right to the CONTRACTOR to demand approval of Change Proposals.

7.03 CITY Initiated Changes. The CITY may order a change to the work, if the change is within the scope of work, by written Change Order signed by the Landscape Inspector. The Change Order shall include the information set forth in Subsection 7.01 above.

**CITY OF OCEANSIDE
LANDSCAPE MAINTENANCE
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The CONTRACTOR shall promptly and diligently perform in accordance with the Agreement as amended by the Landscape Inspector.

The CONTRACTOR shall, within ten (10) working days of a written request by the Landscape Inspector, submit a proposed change (in accordance with Subsection 7.01 above) in Agreement Price which the CONTRACTOR certifies and justifies are resulting from the Change Order. This proposed change may be negotiated by the CITY and CONTRACTOR in order to reach an agreement as to the impact of the Change Order upon the Agreement Price. The process of submitting the proposed change and negotiating an agreement, or any failure to reach an agreement as to any resulting change of Agreement Price shall not relieve the CONTRACTOR of its obligation to perform in accordance with the Agreement.

7.04 Change of Agreement Price.

- (a) If a change to the work is covered by Exhibit "C" then the applicable Agreement Unit Prices or Unit Cost Schedule shall govern the increase or decrease to the Agreement Price.
- (b) If a change to the work is not covered by Exhibit "C" then the increase or decrease to the Agreement Price shall be the cost of the work to the CONTRACTOR calculated in accordance with Subsection 7.05 below, unless otherwise agreed to in writing between the CITY and the CONTRACTOR.

7.05 Cost of the Work.

- (a) **Daily Reports.** In order to be entitled to an adjustment to Agreement Price due to extra work for which the CONTRACTOR is not already being compensated in accordance with this "Cost of the Work" section, the CONTRACTOR shall submit a daily report to the Landscape Inspector in a form subject to the review and approval of the Landscape Inspector. The daily report shall include copies of supporting documents to substantiate all costs listed therein. Supporting documents shall include payroll sheets, delivery tickets, purchase orders, and invoices. The CONTRACTOR shall submit the daily report to the Landscape Inspector by 4:00 p.m. of the next workday. The CONTRACTOR and the Landscape Inspector shall both make a reasonable effort to come to an agreement as to the description of the extra work performed, and shall make written notations appended to the daily report to note any points of disagreement. The daily report shall describe only that extra work performed by the CONTRACTOR for which the CONTRACTOR wishes to be compensated in accordance with this section. The daily report shall include, at a minimum, the following:

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- 1) The names, classifications, and hours of all laborers;
 - 2) The quantities and types of materials used;
 - 3) The type of equipment, size, identification number, and hours of operation, including loading and transportation if applicable;
 - 4) Any other costs for services and expenditures allowable under this Subsection 3.16.5.
- (b) **Labor.** Labor costs shall include only the actual direct costs of workers and foremen (including payroll taxes, workers compensation insurance, liability insurance, pension, and other assessments or benefits required by law) to the extent they performed extra work. Labor costs shall not include the cost of supervisors or office staff, or any other indirect costs which are covered by the markup.
- (c) **Materials.** Material costs shall include only the actual direct costs of materials delivered and installed in the extra work.
- (d) **Equipment Rental.** Equipment Rental shall include the actual direct rental costs of equipment used on the extra work.
- (e) **Other Items.** The CITY may, in its discretion, authorize the direct costs of other items required for the extra work, to the extent those other items are not covered under markup or Subcontractor Work.
- (f) **Markup.** The CONTRACTOR shall be entitled to a markup of fifteen percent (15%) of the actual net increase in the above direct costs which are substantiated in accordance with this Subsection 7.05. The markup shall cover all indirect costs including but not limited to bond and insurance premiums, office overhead, and the purchasing or renting of small tools and equipment.
- (g) **Subcontractor's Work.** In order for the CONTRACTOR to be entitled to an adjustment in the Agreement Price based upon the work of a subcontractor, the CONTRACTOR shall submit documentation in accordance with Subsections 7.05(a) through 7.05(f) above for the subcontractor's work. The CONTRACTOR shall be entitled to a markup on the subcontractor's costs (direct and markup) equal to ten percent (10%) on the first two-thousand (\$2,000) dollars of the subcontractor's costs, and five percent (5%) on work in excess of two-thousand (\$2,000) dollars of the subcontractor's costs.

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8. SUSPENSION OF WORK.

8.01 General. The work may be suspended in whole or in part when determined by the Landscape Inspector that the suspension is necessary and in the interest of the CITY. The CONTRACTOR shall comply immediately with any written order of the Landscape Inspector suspending work.

8.02 Archaeological and Paleontological Discoveries. If discovery is made of items of archaeological or paleontological interest, which may include, but not be limited to, dwelling sites, stone implements or other artifacts, animal bones, human bones and fossils, The CONTRACTOR shall immediately cease excavation in the area of discovery and shall not continue until ordered by the Project Manager. When resumed, excavation operations within the area of discovery shall be as directed by the Landscape Inspector.

The CONTRACTOR may be entitled to an extension of time and compensation for suspension of work in accordance with the provisions of Subsection 12.02.

9. DEFAULT BY CONTRACTOR. If, in the opinion of the Landscape Inspector, there is a reasonable doubt as to the CONTRACTOR's ability to complete performance under the Agreement or the CONTRACTOR is not complying in good faith with the terms of the Agreement, or in the event of a breach of a material requirement of the Agreement, the CONTRACTOR shall be in default of the Agreement.

Upon default, the CITY shall give written notice to the CONTRACTOR and the Surety of the Faithful Performance Bond to cure the default within five (5) working days of the notice or, if more than five (5) working days are reasonably required to cure the default, the notice shall require adequate assurance of due performance within five (5) working days. At a minimum, adequate assurance shall consist of CONTRACTOR's actual performance in accordance with the Agreement, and written documentation of CONTRACTOR's demands for performance to subcontractors and suppliers, and the subcontractor's and supplier's written acknowledgement thereof. If the CONTRACTOR complies with the notice, the Agreement shall remain in full force and effect.

If the Surety gives the CITY written notice that the Surety will assume control and perform the work as successor to the CONTRACTOR, the Surety shall be responsible for completion of all CONTRACTOR obligations under the Agreement and the Surety shall be entitled to all compensation owed to the CONTRACTOR under the Agreement.

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If the CONTRACTOR or its Surety does not comply with the notice within five (5) working days, or after starting to comply, fails to continue to diligently perform, the CITY may exclude both the CONTRACTOR and its Surety from the premises and take possession of all materials and equipment, and complete the work by any means allowable under the law.

CITY may also terminate the Agreement upon written notice to CONTRACTOR in the event that:

- (a) CONTRACTOR shall voluntarily file or have involuntarily filed against it any protection under any bankruptcy or insolvency act or law; or,
- (b) CONTRACTOR shall be adjudicated a bankruptcy; or,
- (c) CONTRACTOR shall make a general assignment for the benefit of creditors.

In the event of an exclusion of the CONTRACTOR and the Surety from the premises, the CONTRACTOR shall not be entitled to receive any further payment until the work is completed. The CONTRACTOR shall be paid the actual amount due in accordance with the Agreement for the amount of work performed at the time of exclusion, less damages caused to the CITY by the CONTRACTOR's default.

The cost to the CITY of completing the work, including any administrative costs and attorney's fees, shall be called "Completion Costs." Completion Costs shall be deducted from any money due or becoming due to the CONTRACTOR under the Agreement. If the sums under the Agreement are insufficient for the CITY to pay Completion Costs, the CONTRACTOR shall pay the CITY the amount of such unpaid Completion Costs within ten (10) working days of receipt of written certification by the CITY of the amount owed.

The provisions of this section shall be in addition to all other rights and remedies available to the CITY under law.

10. EMERGENCY RESPONSE. Upon verbal, telephonic or written notice from CITY of an emergency services request, safety issue or irrigation malfunction related to service requirements of the Agreement, CONTRACTOR must institute corrective action within **one (1) hour** of notice from CITY during normal CITY business hours and within **four (4) hours** during non business hours. CONTRACTOR shall be entitled to compensation for extra work for which the CONTRACTOR is not already being compensated in accordance with Subsection 3.16.5. In the event CONTRACTOR fails to institute corrective action within **one (1) hour** during normal CITY business hours and within **four (4) hours** during non

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business hours, CITY shall have the right to have any necessary work done by any means necessary to correct the problem. CONTRACTOR shall pay to the CITY, or have withheld from monies due it any and all costs incurred by CITY in having such necessary work done for which the CONTRACTOR is being compensated in accordance with the Agreement.

11. SUBSTANDARD PERFORMANCE. If CITY finds that all or a portion of the services performed by the CONTRACTOR are substandard to the requirements of the Agreement then CONTRACTOR must correct the noted deficiencies within **five (5) workdays** of a verbal, telephonic or written notice from CITY. In the event CONTRACTOR fails to correct the noted discrepancies within the **five (5) workday** period, CITY shall have the right to have any necessary work done at the expense of CONTRACTOR. CONTRACTOR shall pay to the CITY, or have withheld from monies due it any and all costs incurred by CITY in having such necessary work done.

12. CLAIMS AND DISPUTES.

12.01 Claims for Additional Compensation. If the CONTRACTOR wishes to make a claim for additional compensation, the CONTRACTOR shall submit a written claim to the Landscape Inspector within ten (10) working days of the start of the condition that caused the purported increase in Agreement price. The Claim shall include all the information required by Subsection 7.01. In order to substantiate the Claim, the CONTRACTOR shall, at a minimum, submit daily reports in accordance with Subsection 7.05.

The Landscape Inspector shall review the CONTRACTOR's claim and may authorize additional compensation in accordance with the criteria set forth in Subsections 7.04 and 7.05.

12.02 Disputed Work. In the event that a dispute arises between the CITY and the CONTRACTOR as to the interpretation of Agreement, including change orders, or the compensation for work, the CONTRACTOR shall not be excused from any work provided for by the Agreement and shall diligently proceed with all work to be performed under the Agreement. No work shall be delayed or postponed by the CONTRACTOR pending resolution of any disputes or disagreements with the CITY unless otherwise agreed to in writing. The CITY shall compensate the CONTRACTOR based on the City Attorney's interpretation of the CITY's obligation to pay, or on a subsequent written agreement of the parties, or as determined by arbitration, or as fixed in a court of law.

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**12.03 RESOLUTION OF DISPUTED CLAIMS: ADMINISTRATIVE
REVIEW AND CIVIL ACTION PROCEDURES**

1. Definition.

(a) For the purpose of this Section, "claim" means a separate demand by the CONTRACTOR for (A) payment of money or damages arising from work done by, or on behalf of, the contractor pursuant to the Agreement and payment of which is not otherwise expressly provided for or the CONTRACTOR is not otherwise entitled to, or (B) an amount the payment of which is disputed by the CITY.

2. Administrative Review By CITY.

(a) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this Section is intended to extend the time limit or supersede notice requirements otherwise provided by Agreement for the filing of claims.

(b) (1) For claims of less than fifty thousand dollars (\$50,000), the CITY shall respond in writing to any written claim within forty-five (45) days of receipt of the claim, or may request, in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the CITY may have against the CONTRACTOR.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the CITY and the CONTRACTOR.

(3) The CITY's written response to the claim, as further documented, shall be submitted to the CONTRACTOR within fifteen (15) days after receipt of the further documentation or within a period of time no greater than that taken by the CONTRACTOR in producing the additional information, whichever is greater.

(c) (1) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the CITY shall respond in writing to all written claims within sixty (60) days of receipt of the claim, or may request, in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the CITY may have against the CONTRACTOR.

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(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the CITY and the CONTRACTOR.

(3) The CITY's written response to the claim, as further documented, shall be submitted to the CONTRACTOR within thirty (30) days after receipt of the further documentation, or within a period of time no greater than that taken by the CONTRACTOR in producing the additional information or requested documentation, whichever is greater.

(d) If the CONTRACTOR disputes the CITY's written response, or the CITY fails to respond within the time prescribed, the CONTRACTOR may so notify the CITY, in writing, either within fifteen (15) days of receipt of the CITY's response or within fifteen (15) days of the CITY's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the CITY shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.

(e) Following the meet and confer conference, if the claim or any portion remains in dispute, the CONTRACTOR may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the CONTRACTOR submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

3. CIVIL ACTION PROCEDURES.

(a) Within sixty (60) days, but no earlier than thirty (30) days, following the filing of responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within fifteen (15) days by both parties of a disinterested third person as mediator, shall be commenced within thirty (30) days of the submittal, and shall be conclude within fifteen (15) days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the fifteen-day (15) period, any party may petition the court to appoint the mediator.

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(b) (1) If the matter remains in disputes, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986 (Article 3, (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(2) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equal by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

(3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.

(c) The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.

13. SITE SAFETY AND PROTECTION OF IMPROVEMENTS.

13.01 The CONTRACTOR shall initiate, maintain, and supervise all safety precautions and programs in connection with the work that are necessary to prevent damage, or injury to, or loss of the following:

- (a) Any employees, laborers, suppliers, other persons on the work, and other persons and organizations who may be affected thereby;
- (b) Any work and materials and equipment incorporated in the project, or to be incorporated therein, whether in storage on or off the site;
- (c) Any personal property of the CONTRACTOR or the CONTRACTOR's agents;

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(d) Other property at the site or adjacent thereto (both public and private) which is not designated for removal, relocation or replacement in the Agreement, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and underground facilities.

13.02 The CONTRACTOR shall be responsible for any of the above described damage, injury, or loss arising out of the nature of the work, or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until its acceptance by the CITY, except as is otherwise provided in California Government Code Section 4150.

13.03 In the event of an occurrence of one of the above described damage, injury, or loss to public property or other property to be incorporated into the project, the CONTRACTOR shall repair or replace the damage, injury, or loss at the CONTRACTOR's cost, and to the satisfaction of the Landscape Inspector. Repairs and replacements shall be at least equal in quality to existing improvements, and shall match them in finish and dimension.

13.04 The CONTRACTOR shall give reasonable notice to occupants or owners of adjacent property with improvements (including trees, plants, fences, irrigation, and other improvements) which may be adversely impacted by the CONTRACTOR's work. The CONTRACTOR shall repair or replace any damage, injury, or loss to private improvements on adjacent property at the CONTRACTOR's expense and to the satisfaction of the property owner and occupant as well as the Landscape Inspector.

13.05 Special Hazardous Substances and Processes. Materials that contain hazardous substances or mixtures may be required on the work. A Material Safety Data Sheet as described in Section 5194 of the California Administrative Code shall be requested by the CONTRACTOR from the manufacturer of any hazardous product used.

Material usage shall be accomplished with strict adherence to California Division of Industrial Safety requirements and all manufacturers' warnings and application instructions listed on the Material Safety Data Sheet and on the product container label.

The CONTRACTOR shall notify the Landscape Inspector if a specified product cannot be used under safe conditions.

14. TRAFFIC CONTROL. The CONTRACTOR's operations shall cause no unnecessary inconvenience to the public, including trash, mail, and other services provided to the public over CITY rights-of-way. The access rights of the public shall

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be considered at all times, and vehicular and pedestrian traffic shall be permitted to pass on public rights of way through the work at all times, unless the CONTRACTOR receives prior written approval of a detour plan from the Landscape Inspector. The CONTRACTOR shall provide at least 96 hours written notice to the Landscape Inspector requesting approval of a detour plan, prior to the performance of any work or the establishment of any detour or closure in the public right-of-way. The CONTRACTOR shall notify the occupants or owners of all affected properties at least forty-eight (48) hours prior to any temporary obstruction of access.

Safe and adequate pedestrian and vehicular access shall be provided and maintained to fire hydrants, commercial and industrial establishments, churches, schools, parking lots, service stations, motels, fire and police stations, hospitals, and establishments of similar nature. Access to these facilities shall be continuous and unobstructed unless prior approval of a detour plan is received from the Landscape Inspector.

Safe and adequate pedestrian zones and public transportation stops, as well as pedestrian crossings of the work at intervals not exceeding 300 feet (90m), also shall be maintained unless prior approval of a detour plan is received from the Landscape Inspector.

Vehicular access to residential driveways shall be maintained to the property line unless prior approval of a detour plan is received from the Landscape Inspector.

The CONTRACTOR shall cooperate with owners and occupants of affected properties as well as other parties involved in providing services to the public (trash collection, mail delivery, etc.), in order to maintain existing schedules for these services.

15. PREFERENCES FOR MATERIALS. Whenever any particular material, process, or equipment is indicated in the Agreement by patent, proprietary or brand name, or by name of manufacturer, such wording is used for the purpose of facilitating its description and shall be deemed to be followed by the words "or equal." A listing of materials is not intended to be comprehensive, or in order of preference. The CONTRACTOR may supply any of the materials specified, or offer any material, process, or equipment considered to be equivalent to that indicated.

If a substitute offered by the CONTRACTOR is not found to be equal to the specified material, the CONTRACTOR shall furnish and install the specified material at the price set forth in Exhibit "C".

16. CONTROL OF MATERIALS. The CONTRACTOR shall ensure that all materials, parts and equipment furnished for the project shall be new, high grade, and free from defects. Used or secondhand materials, parts, and equipment may

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be used only if specifically permitted in the Special Provisions. Quality of work shall be in accord with the generally accepted standards unless otherwise specifically set forth in the Agreement. Materials and work quality shall be subject to the Landscape Inspector's approval.

Before ordering any materials or performing any work, the CONTRACTOR shall verify all measurements, dimension, elevations, and quantities.

Materials and work quality not conforming to the requirements of the Agreement shall be considered defective and will be subject to rejection. Defective work or material, whether in place or not, shall be removed immediately from the site by the CONTRACTOR, at its expense, when so directed by the Landscape Inspector.

If the CONTRACTOR fails to replace, repair, or restore any defective or damaged work or material within ten (10) work days after the date of the Landscape Inspector's written notice, the Landscape Inspector may, but shall not be obligated to, cause such work or materials to be replaced at the CONTRACTOR's expense. The replacement expense shall be deducted from the amount to be paid to the CONTRACTOR. If payments then or thereafter due the CONTRACTOR are not sufficient to cover such expenses, the CONTRACTOR shall pay the difference to the CITY.

Materials and equipment shall be stored so as to ensure the preservation of their quality and fitness for the project. Stored materials and equipment to be incorporated in the project shall be located so as to facilitate prompt inspection.

The CONTRACTOR shall be responsible for taking any and all actions necessary to protect supplies, materials, equipment, and personal property of CONTRACTOR and CONTRACTOR's agents from loss, damage, or theft.

17. CITY BUSINESS LICENSE. CONTRACTOR shall obtain and maintain throughout the term of this Agreement a City of Oceanside Business License or a written verification from the City Business License Division that a City Business License is not required for this Agreement.

18. PERMITS. CONTRACTOR shall, obtain and maintain throughout the term of this Agreement any and all permits, licenses, and other authorizations necessary to perform the work. The permits, licenses, and other authorizations which the CONTRACTOR shall obtain include, but are not necessarily limited to **all applicable State & County pest control permits.**

19. CONTRACTOR'S LICENSE. The CONTRACTOR shall be required to possess a Class "A" General Engineering Contractor's License pursuant to Business and Professions Code Section 7056, or "B" General Building Contractor's License pursuant to Business and Professions Code Section 7057, or "C-27"

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Specialty Contractor's License pursuant to Business and Professions Code Section 7058 at **ALL** times during the term of this Agreement.

20. INDEPENDENT CONTRACTOR. CONTRACTOR'S relationship to the CITY shall be that of an independent contractor. CONTRACTOR shall have no authority, expressed or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever, unless specifically authorized in writing by the City Manager. CONTRACTOR shall be solely responsible for the performance of any of its employees, agents, or subcontractors under the Agreement.

21. ENTIRE AGREEMENT. This Agreement, exhibits and its attachments comprises the entire integrated understanding between CITY and CONTRACTOR concerning the work to be performed for this project and supersedes all prior negotiations, representations, or agreements.

22. INTERPRETATION OF THE AGREEMENT. The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to the CITY.

22.01 The CONTRACTOR shall be responsible for complying with all Local, State, and Federal laws whether or not said laws are expressly stated or referred to herein.

22.02 Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

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AGREEMENT MODIFICATION. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.

24. SIGNATURES. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the CONTRACTOR and the CITY.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this MAINTENANCE Services Agreement to be executed by setting hereunto their signatures this 12 day of December, 2005.

CONTRACTOR



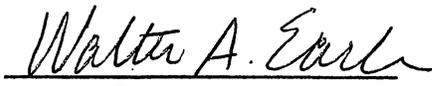
Edwin Earle
President

CITY

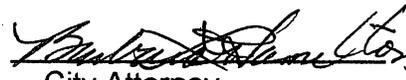


Steven R. Jepsen
City Manager

Approved as to form:



Walter Earle
Secretary



City Attorney

NOTARY ACKNOWLEDGMENTS OF CONTRACTOR MUST BE ATTACHED.

AMENDMENT NO. 1
TO
MAINTENANCE SERVICES AGREEMENT

This AMENDMENT NO. 1 TO MAINTENANCE SERVICES AGREEMENT is made this 5th day of December 2007 ("Amendment"), by and between the CITY OF OCEANSIDE, a municipal corporation ("CITY") and EXECUTIVE LANDSCAPE, INC. OF FALLBROOK, a California corporation, ("CONTRACTOR").

RECITALS

WHEREAS, CITY and CONTRACTOR entered into a Maintenance Services Agreement ("Agreement") dated November 18, 2005, for landscape maintenance services for the Landscape Maintenance Assessment Districts in the City of Oceanside;

WHEREAS, the Agreement provides for the CONTRACTOR to request extensions of the term of the Agreement for an additional two (2) consecutive one (1) year renewals; and

WHEREAS, CONTRACTOR is desirous of requesting the first of the two (2) consecutive one (1) year renewals and CITY is desirous of approving CONTRACTOR'S renewal request.

NOW, THEREFORE, IN CONSIDERATION OF THE COVENANTS AND CONDITIONS CONTAINED HEREIN, THE PARTIES HERETO AGREE AS FOLLOWS:

AGREEMENT

1. **Section 3 TERM, Subsection 3.01 Commencement** shall be amended to extend the original ending date of December 31, 2007 an additional one (1) year to end on December 31, 2008.

2. **Section 3 TERM, Subsection 3.02 Renewal Options** shall be amended to reflect that CONTRACTOR may request extension of the term of the Agreement for only one (1) more additional one (1) year renewal period.

3. **Section 4 COMPENSATION, Subsections 4.01, 4.02 and 4.03** shall be deleted in their entirety and replaced with the following:

4.01 CONTRACTOR'S compensation for all work performed in accordance with this Agreement for the period of January 1, 2008 through December 31, 2008, shall be Four Hundred Seventy-Nine Thousand Seven Hundred Eighty-Two and 82/100 Dollars (\$479,782.82). Cost per District and Unit Cost Schedule are set forth in Exhibit

"C-1" attached hereto and by this reference made a part of this Agreement.

4.02 City shall cause disposal fees to be waived at the green waste disposal site, 3300 1/2 Oceanside Boulevard for disposal of 100 tons per year.

4.03 CONTRACTOR shall provide CITY monthly invoices for payment during the term of the Agreement. CITY will make payments within fifteen (15) days of the receipt of monthly invoices.

4. **Section 10 EMERGENCY RESPONSE**, shall be amended by replacing the reference to Subsection 3.16.5 with Subsection 4.01.

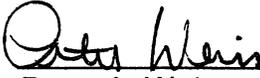
5. All other terms, conditions, covenants and provisions of this Agreement shall remain in full force and effect. In the event of any conflict between the terms of the Agreement and this Amendment, the terms of this Amendment shall control.

IN WITNESS THEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do herein agree to the full performance of this Amendment No. 1 to Maintenance Services Agreement.

CITY

THE CITY OF OCEANSIDE
a municipal corporation

APPROVED AS TO FORM

By: 
Peter A. Weiss
City Manager

By: 
City Attorney

"CONTRACTOR"

EXECUTIVE LANDSCAPE, INC. OF FALLBROOK
a California corporation

By: 
Name: Paul Federale
Title: Pres.

By: _____
Name: _____
Title: _____

NOTARY ACKNOWLEDGMENTS OF CONTRACTOR'S SIGNATURE(S) MUST BE ATTACHED

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California)

County of San Diego)

On November 19, 2007 before me, K. Celaya, Notary Public
(here insert name and title of the officer)

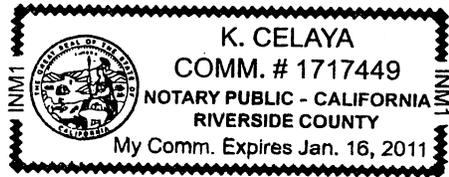
personally appeared Edwin B. Earle

~~personally known to me (or 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 the entity upon behalf of which the person(s) acted, executed the instrument.~~

WITNESS my hand and official seal.

K. Celaya

Signature of Notary Public



(Seal)

ADDITIONAL OPTIONAL INFORMATION

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

DESCRIPTION OF THE ATTACHED DOCUMENT

City of Oceanside

(Title or description of attached document)

Amendment No. 1 Maintenance

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- Individual (s)
 Corporate Officer

pres.
(Title)

- Partner(s)
 Attorney-in-Fact
 Trustee(s)
 Other _____

**CITY OF OCEANSIDE
LANDSCAPE MAINTENANCE
ASSESSMENT DISTRICTS**

EXHIBIT "C-1"

DISTRICT COST SCHEDULE

LMAD DESCRIPTION	SQUARE FEET	2008 MONTHLY	2008 ANNUAL
DEL ORO HILLS	3,769,805	\$ 20,921.15	\$ 251,053.85
DOUGLAS PARK	738,085	4,097.37	49,168.45
GUAJOME RIDGE	259,648	1,441.42	17,297.08
MAR LADO HIGHLANDS	602,740	3,345.78	40,149.36
MISSION MEADOWS - "A"	33,045	183.47	2,201.69
MISSION MEADOWS - "B"	277,853	1,542.38	18,508.61
PEACOCK HILLS	61,986	343.27	4,119.22
RANCHO HERMOSA	260,010	1,443.21	17,318.46
SANTA FE MESA	4,477,923	5,191.20	62,294.40
SUNBURST HOMES	43,560	241.66	2,899.90
SUNSET HILLS	108,900	606.57	7,278.80
VANDEGRIFT	125,279	488.31	5,859.75
VISTA DEL RIO	23,755	136.10	1,633.25
TOTAL		\$ 39,981.90	\$ 479,782.82

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UNIT COST SCHEDULE

UNIT PRICES

District irrigation and planting "extras" are paid for as either "Time and Material" or by established unit prices, whichever is less. Fill in the Unit Prices below.

1. Landscape	<u>Unit Price</u>
Four inch pot	<u>2.75</u>
One-gallon shrub	<u>9.75</u>
Five-gallon shrub	<u>22.10</u>
Fifteen-gallon shrub	<u>85.00</u>
One-gallon tree	<u>9.75</u>
5-gallon tree w/2 - 8'x2" lodge pole stakes	<u>39.00</u>
15-gallon tree w/2 - 10'x2" lodge pole stakes	<u>122.00</u>
24" box tree w/2 10'x2" lodge pole stakes	<u>357.50</u>
30" box tree w/2 10'x2" lodge pole stakes	<u>845.50</u>
36" box tree w/2 10'x2" lodge pole stakes	<u>975.00</u>
Ground cover @ 64 rooted cuttings	<u>31.20</u>
Soil prep per 1000 sq. ft. with 4 cu yds. nitrolized compost, 150 lbs. agricultural gypsum and 15 lbs. 15-15-15 commercial fertilizer	<u>350.00</u>
Hourly rate for landscape foreman	<u>42.00</u>
Hourly rate for landscape labor	<u>38.00</u>

2. Irrigation

Sprinkler heads - Rainbird or approved equal unless otherwise noted. Price includes all materials and labor for installation from tee to bottom inlet of head (not including tee). Include a Valcon ADV-XS on all head replacements.

Shrub spray on 12" riser w/swing & stake	<u>14.30</u>
1804 plastic pop-up w/swing	<u>19.50</u>
1804 as above w/built-in ADV	<u>23.40</u>
1806 plastic pop-up w/swing	<u>26.00</u>
1806 as above w/built-in ADV	<u>29.90</u>
1812 plastic pop-up w/swing	<u>32.50</u>
1812 as above w/built-in ADV	<u>39.00</u>
Shrub rotor w/stake (Hunter-S)	<u>29.90</u>
Above w/built-in ADV	<u>39.00</u>
Pop-up rotor (Hunter-P)	<u>46.80</u>

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Above w/built-in ADV	<u>54.60</u>
12" pop-up rotor (Hunter-P)	<u>67.60</u>
Above w/built-in ADV	<u>75.40</u>

Valves - Rainbird or approved equal unless otherwise noted)
Includes materials/labor.

Rainbird 100 PEB	<u>162.50</u>
Rainbird 125 PEB	<u>195.00</u>
Rainbird 150 PEB	<u>214.50</u>
Rainbird 200 PEB	<u>247.00</u>
Rainbird 100 GB	<u>312.00</u>
Rainbird 125 GB	<u>344.50</u>
Rainbird 150 GB	<u>370.50</u>
Rainbird 200 GB	<u>396.50</u>
PRS option on valve	<u>71.50</u>
Wilkins 2" Pressure Regulator	<u>403.00</u>
Solenoid	<u>67.60</u>
1" Diaphragm	<u>54.60</u>
1 1/2" Diaphragm	<u>61.10</u>
2" Diaphragm	<u>67.60</u>

Irrigation Labor

Hourly rate for irrigation foreman	<u>42.00</u>
Hourly rate for irrigation labor	<u>28.00</u>

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