

STAFF REPORT*CITY OF OCEANSIDE*

DATE: December 5, 2007

TO: Honorable Mayor and City Councilmembers

FROM: Public Works Department

SUBJECT: **APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT FOR CIVIC CENTER PRESSURE WASHING**

SYNOPSIS

Staff recommends that the City Council approve a two-year professional services agreement with Aztec Landscaping, Inc., of Lemon Grove, in the amount of \$134,160 for pressure-washing services at the Civic Center, and authorize the City Manager to execute the agreement.

BACKGROUND

The Civic Center pressure-washing maintenance program consists of weekly cleanings of all the stairwells and landings and high-traffic areas around the Library and City Hall East, monthly cleanings of all the concrete walking areas in and around the Civic Center complex, semiannual cleaning of the exterior of all the buildings in the complex, and the annual cleaning of the parking garage ceilings, walls and floors. The City does not have the assets to do this type of maintenance work in-house. In July the City solicited proposals from qualified private companies to perform the Civic Center pressure-washing for the next two years.

ANALYSIS

Four proposals were received. A staff panel consisting of the field manager, contract manager and a staff-level manager reviewed each proposal. Proposals were compared on a competitive negotiation basis. Proposing firms overall qualifications, including the qualifications of key personal, prior service experience, availability of personnel and ability to provide the required services were considered critical. While cost was a very important consideration, it was not the deciding factor. Exhibit A lists the four proposals with their bid amounts.

The panel ranked Aztec Landscaping first in every category except cost; they were the second low bidder. The low bidder, Power Clean, was not selected because they proposed to rent equipment necessary to do portions of the work and that cost would be in addition to their bid price, and they also proposed to subcontract portions of the agreement that required personnel and time which exceeded its ability to provide. Power Clean currently has a pressure washing agreement with the City for selected bus stops and areas

downtown and does an acceptable job; however, the panel felt the combination of the unknown cost of rental equipment and Power Clean's requirement to subcontract would not make their selection the most cost-effective option for the City.

FISCAL IMPACT

The first year cost of this agreement was included in the approved Public Works Department FY 2007-08 budget.

INSURANCE REQUIREMENTS

The City's standard insurance requirements will be provided.

COMMISSION OR COMMITTEE REPORT

Does not apply.

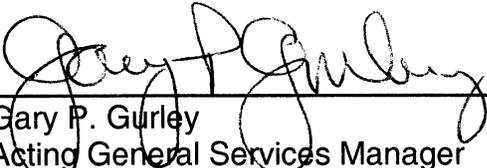
CITY ATTORNEY'S ANALYSIS

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

RECOMMENDATION

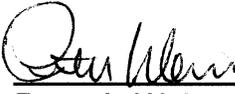
Staff recommends that City Council approve a two-year professional services agreement with Aztec Landscaping, Inc., of Lemon Grove, in the amount of \$134,160 for pressure-washing services at the Civic Center, and authorize the City Manager to execute the agreement.

PREPARED BY:



Gary P. Gurley
Acting General Services Manager

SUBMITTED BY:



Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Joseph Arranaga, Acting Deputy Public Works Director

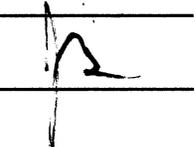


Exhibit A

CIVIC CENTER PRESSURE WASHING**BID TABULATION**

	<u>Bidder</u>	<u>Address</u>	<u>Bid Amount</u>
1.	Power Clean	Escondido, CA	\$92,663.92
2.	Aztec Landscaping Inc.	Lemon Grove, CA	\$134,160.00
3.	All Beach & Bay Pressure Washing	San Diego, CA	\$162,800.00
4.	Property Steam Cleaning Company	San Diego, CA	\$167,424.00

CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

PROJECT: CIVIC CENTER PRESSURE WASHING

THIS Agreement is made and entered into this 21 day of November, 2007, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and **Aztec Landscaping,, INC.**, hereinafter designated as "CONTRACTOR."

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 commencing on City Council approval and terminating December 31, 2009.

3.02 Renewal Options. The CONTRACTOR may request extensions of the term of this Agreement for an additional **two, one year terms** 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. No later than **60 days** from the receipt of CONTRACTOR 's written request to extend the term of this Agreement the City Manager shall, in writing provide CONTRACTOR with the CITY's determination to either accept or reject CONTRACTOR's request for extension. The acceptance of one Agreement extension does not obligate the CITY to accept a subsequent CONTRACTOR requested extension.

CITY OF OCEANSIDE

CIVIC CENTER PRESSURE WASHING

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 act 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.

3.03.1 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 total compensation for all work performed in accordance with this Agreement, shall be One Hundred Thirty-four Thousand, One Hundred Sixty Dollars (\$134,160). Agreement Unit Prices and Unit Cost Schedule are set forth in Exhibit "C" attached hereto and by this reference made part of this Agreement.

4.02 CONTRACTOR shall provide CITY monthly invoices based on the maintenance completed that month. CITY will make payments within fifteen (15) days of the receipt of monthly invoice.

4.03 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.

CITY OF OCEANSIDE

CIVIC CENTER PRESSURE WASHING

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 compensation shall be \$134,160.00/2 years = \$67,080.

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, 2008 through June 30, 2009 for the first renewal and July 1, 2009 through June 30, 2010 for the second renewal.

Rent Adjustment Formulas:

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

For example: $\$67,080 + (\$67,080 \times 2.5\%) = \$68,757$

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

For example: $\$68,757 + (\$68,757 \times 3\%) = \$70,819.71$

5. **AGREEMENT BONDS.** Does not apply.

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.

CITY OF OCEANSIDE

CIVIC CENTER PRESSURE WASHING

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 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.

CITY OF OCEANSIDE

CIVIC CENTER PRESSURE WASHING

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.

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. EMERGENCY RESPONSE. Upon verbal, telephonic or written notice from CITY of an emergency services request or safety issue related to service requirements of the Agreement, CONTRACTOR must institute corrective action within **one (1) hour** of notice from CITY. CONTRACTOR shall be entitled to compensation for extra work for which the CONTRACTOR is not already being compensated. In the event CONTRACTOR fails to institute corrective action within **one (1) hour**, 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.

8. 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

CITY OF OCEANSIDE

CIVIC CENTER PRESSURE WASHING

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.

8.01 Liquidated Damages. Failure of the CONTRACTOR to complete the services, including the timely submission of schedules, maps, charts and permits as proscribed within the Agreement will result in damages being sustained by the CITY, regardless of whether CITY funds are expended and later recouped from the CONTRACTOR, to complete the services. Such damages are, and will continue to be, impracticable and extremely difficult to determine. A **Substandard Performance** notification issued in accordance with Section 8 shall serve as the CITY's initial notification to CONTRACTOR of potential damage. In the event the CITY issues a second **Substandard Performance** notification in accordance with Section 8 for any reason, within a thirty (30) day period or a third **Substandard Performance** notification in accordance with Section 8 for any reason, within a ninety (90) day period the CONTRACTOR shall pay to the CITY, or have withheld from monies due it, the sum of **five percent (5%)** of the monthly Agreement compensation.

Execution of the Agreement shall constitute agreement by the CITY and CONTRACTOR that **five percent (5%)** of the monthly Agreement compensation is the reasonable estimate of the value of the costs and actual damage caused by failure of the CONTRACTOR to complete the services as required by the Agreement, that such sum is liquidated damages and shall not be construed as a penalty, and that such sum may be deducted from payments due the CONTRACTOR if such damage occurs.

9. DISPUTE RESOLUTION. (a) Any controversy or claim arising out of or relating to this Agreement, or concerning the breach or interpretation thereof, shall be first submitted to mediation, the cost of which shall be borne equally by the parties. (b) No suit shall be brought on this Agreement unless all statutory claims filing requirements have been met.

10. SITE SAFETY AND PROTECTION OF IMPROVEMENTS.

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

CITY OF OCEANSIDE

CIVIC CENTER PRESSURE WASHING

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

10.02 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.

10.03 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 Project Manager. Repairs and replacements shall be at least equal in quality to existing improvements, and shall match them in finish and dimension.

10.04 The CONTRACTOR shall give reasonable notice to occupants or owners of adjacent property with improvements (including trees, plants, fences, irrigation, and other improvements) that 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 Project Manager.

10.05 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.

CITY OF OCEANSIDE

CIVIC CENTER PRESSURE WASHING

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

11. 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 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 Project Manager. The CONTRACTOR shall provide at least 96 hours written notice to the Project Manager 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.

12. 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.

13. 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 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 Project Manager'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 Project Manager.

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 Project Manager's written notice, the Project Manager 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

CITY OF OCEANSIDE

CIVIC CENTER PRESSURE WASHING

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.

14. CHANGES IN WORK.

14.01 Contents of Change Proposals, Change Orders, and Claims. Any Change Proposal or Claim submitted by the CONTRACTOR shall be signed by the authorized representative of the CONTRACTOR and shall include the information set forth in this Subsection below. A Change Order issued by the CITY shall be signed by the Project Manager and contain the information set forth in this Subsection 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.

14.02 Contractor Initiated Changes. The CONTRACTOR may request changes in specific methods of services provided, or changes in the Plans and Special Provisions, by submitting written AGREEMENT Change Proposals to the Project Manager.

The Change Proposal shall be reviewed by the Project Manager, and may be approved by the Project Manager 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 Project Manager 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.

CITY OF OCEANSIDE

CIVIC CENTER PRESSURE WASHING

14.03 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 Project Manager. The Change Order shall include the information set forth in Subsection 14.01 above.

The CONTRACTOR shall promptly and diligently perform in accordance with the AGREEMENT as amended by the Project Manager.

The CONTRACTOR shall, within ten (10) working days of a written request by the Project Manager, submit a proposed change (in accordance with Subsection 14.02 above) in AGREEMENT Price which the CONTRACTOR certifies and justifies are resulting from the Change Order. The CITY and CONTRACTOR may negotiate the proposed change 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.

14.04 Change of AGREEMENT Price.

- (a) If a change to the Work is covered by Agreement Unit Prices or any other "unit cost" set forth in the AGREEMENT then the applicable Agreement Unit Prices or unit cost shall govern the increase or decrease to the AGREEMENT Price.
- (b) If a change to the Work is not covered by Agreement Unit Prices or any other "unit cost" set forth in the AGREEMENT, then the increase or decrease to the AGREEMENT Price shall be the cost of the work to the CONTRACTOR calculated in accordance with Subsection 14.05 below, unless otherwise agreed in writing between the CITY and the CONTRACTOR.

14.05 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 Project Manager in a form subject to the review and approval of the Project Manager. 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 Project Manager by 4:00 p.m. of the next workday. The CONTRACTOR and the Project Manager shall both make a reasonable effort to come to an agreement as to the description of the extra work

CITY OF OCEANSIDE

CIVIC CENTER PRESSURE WASHING

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:

- 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 14.05.
- (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 14.05. 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 3.16.5(a) through 3.16.5(f) above for the subcontractor's work. The CONTRACTOR shall be entitled to a markup on

CITY OF OCEANSIDE

CIVIC CENTER PRESSURE WASHING

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.

15. 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.

16. 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.

17. CONTRACTOR'S LICENSE. Does not apply.

18. 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.

19. 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.

20. 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.

20.01 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.

20.02 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.

21. 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.

CITY OF OCEANSIDE

CIVIC CENTER PRESSURE WASHING

21. **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 Professional Services Agreement to be executed by setting hereunto their signatures this 21 day of November, 2007.

CONTRACTOR



Aztec Landscape, INC.
Genaro Garcia / President



Aztec Landscape, INC.
Rafael C. Aguilar / Treasurer

CITY

Peter Weiss
City Manager

Approved as to form:



Assistant City Attorney
City Attorney

NOTARY ACKNOWLEDGMENTS OF CONTRACTOR MUST BE ATTACHED.

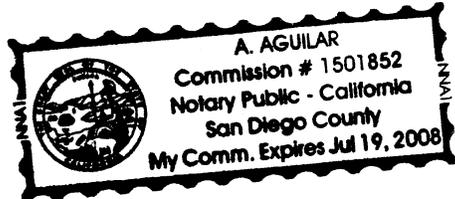
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of San Diego } ss.

On Nov. 21, 2007, before me, A. Aguilar, Notary Public,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared Genaro Garcia and Rafael Aguilar,
Name(s) of Signer(s)

personally known to me
 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.



Place Notary Seal Above

WITNESS my hand and official seal.
[Signature]
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____



CITY OF OCEANSIDE

CIVIC CENTER PRESSURE WASHING

EXHIBIT A SCOPE OF WORK

1. SCOPE OF WORK. The CONTRACTOR's prime responsibility shall be to integrate the highest elements of janitorial maintenance standards and expertise necessary to keep all project sites in a clean, neat and presentable condition at all times. The specifics that follow shall serve to define but in no way limit this prime directive.

The CONTRACTOR shall furnish all labor, equipment, materials, tools, services and special skills required to perform the landscape maintenance as set forth in this specification and in keeping with the highest standards of quality and performance.

1.1 MAINTENANCE SCHEDULES

1.1.1 ANNUAL SCHEDULES CONTRACTOR shall submit detailed Annual Maintenance Schedules in calendar format. The first Annual Schedule is due one week prior to AGREEMENT work commencing. Schedules shall be followed. If the CONTRACTOR fails to perform any scheduled functions on the annual schedules by the scheduled dates (barring acts of God), a 5-day notice to perform will be issued. If, at the end of 30 calendar days, the CONTRACTOR has failed to complete the delinquent work, an outside contractor shall be hired to complete the work. This cost, plus additional inspection and administrative fees shall be deducted from the CONTRACTOR'S monthly billing.

1.1.2 MONTHLY SCHEDULES The CONTRACTOR shall submit detailed Monthly Maintenance Schedules, in calendar format, updating the Annual Schedule two weeks before the start of work for that month. The first Monthly Schedule is due one week prior to AGREEMENT work commencing.

City events and/or emergencies may preclude scheduled maintenance from being performed. Upon verbal, telephonic or written notice from CITY of an event requiring scheduled maintenance modification, CONTRACTOR shall adapt all schedules, as required, to account for these events at no cost to the CITY.

There are no pre-existing conditions.

1.2 DETAILED SCOPE OF WORK

1.2.1 Hardscape.

a. Removal and disposal of trash and debris as necessary to wash surfaces. At no time will the CONTRACTOR be allowed to blow, sweep or wash debris or trash into public streets, gutters or storm drains. The CONTRACTOR shall be held liable for any such activity under the Clean Water Act.

CIVIC CENTER PRESSURE WASHING

EXHIBIT A SCOPE OF WORK

- b. Complete high pressure wash (2,000 p.s.i.) of the entire work surface.
- c. Spot treat gum and clean all stains.
- d. Treat malodorous stains with fragrant disinfectant.
- e. Report any maintenance issues requiring City response daily.

1.2.2 Stairwells. Treat the concrete surfaces in and around stairwells the same as hardscape areas. Additionally, the stairwell walls from floor to ceiling and light fixture covers shall be pressure washed to remove insect webs, dust and grime.

1.2.3 Building Exterior. Pressure washing to remove insect webs, dust and grime from the walls and ledges from ground level to roof top of all buildings.

1.2.4 Parking Garage. Pressure washing to remove insect webs, dust and grime from the floors, walls, pipes, ceilings, driveways and stairwells on each level.

1.2.5 Required cleaning times:

a. Every Sunday Evening:

Stairwells North Building, South Building and East Building
Council Lobby balcony
Front of Library
Hallway on the west side of the Library

b. One Time per Month:

Concrete from Nevada Street between Housing/CCC and FS1west through the North and South Buildings to Coast Highway around the pool area from the Library to Pierview Way.

c. Every Six Months:

Exterior of all buildings contained in the main Civic Center Complex.

d. Once a Year:

Parking garage.

1.2.6 The Contractor shall pick-up all wash water, leaving minimal residual surface moisture, and shall provide containment devices to prevent runoff from entering gutters and drains. No pollutants or cleaning agents may enter adjacent vegetation, storm drain systems or waterways. CONTRACTOR is responsible for the full recovery and proper disposal of collected wash water required by the Clean Water Act.

CIVIC CENTER PRESSURE WASHING

EXHIBIT A SCOPE OF WORK

1.3 GENERAL

1.3.1 INSPECTIONS

- a. The CONTRACTOR'S project superintendent and other necessary personnel shall be available for regularly scheduled and non-scheduled inspections with the Project Manager.
- b. Each area shall be inspected following scheduled work. If any delinquent items are found, the CONTRACTOR shall have 5 workdays to complete any punch list items. (Weekly cleaning events shall have two days.) If the contractor fails to complete any punch list items, another contractor will be hired to complete the work. This cost, plus additional inspection and administrative fees shall be deducted from the CONTRACTOR'S monthly billing.

1.3.2 EXTRA WORK

- a. There may be projects over and above the scope of this contract. There is no implied guarantee that the prime contractor will do any of this extra work. Much is contingent upon the overall quality and cooperation of the prime contractor in regards to regular contract work. Depending on the extent of the project, the City may solicit proposals from several contractors. When performed by the prime contractor, extra work shall not interfere with the completion of contract work. An "Extra" crew supervised by the CONTRACTOR shall be used in order to allow the regular maintenance crew to perform their scheduled work. **This provision will be strictly enforced.**
- b. As part of this Agreement, the CONTRACTOR may be requested to perform extra work. The CITY will pay for such work as extra work per the Unit Cost Schedule.

1.3.3 CONTRACT SUPERVISION The CONTRACTOR shall provide a full-time project superintendent for this Agreement who shall possess the necessary skills, knowledge and experience to implement the prime directive and specifications of this contract. The superintendent shall have full jurisdiction over the scheduling of crews and equipment, the acquisition of materials and have authority to provide cost estimates and execute remedial work. The superintendent shall be on-site for the majority of each workday and shall have a mobile phone, fax machine, e-mail and Internet access.

1.3.4 CONTRACTOR RESPONSE TIME The CONTRACTOR shall be required to respond to CITY services requests and safety issues within 1 hour during business hours (7:00am – 4:00 pm) and within 4 hours during non-business

CIVIC CENTER PRESSURE WASHING

EXHIBIT A SCOPE OF WORK

hours. The CONTRACTOR shall provide one primary and one alternate emergency phone number. It is imperative that the CONTRACTOR can be reached at these numbers in case of any emergencies that may come up, especially after work hours.

1.4.5 NOISE ORDINANCE The CONTRACTOR is responsible for observing ordinances regarding noise levels.

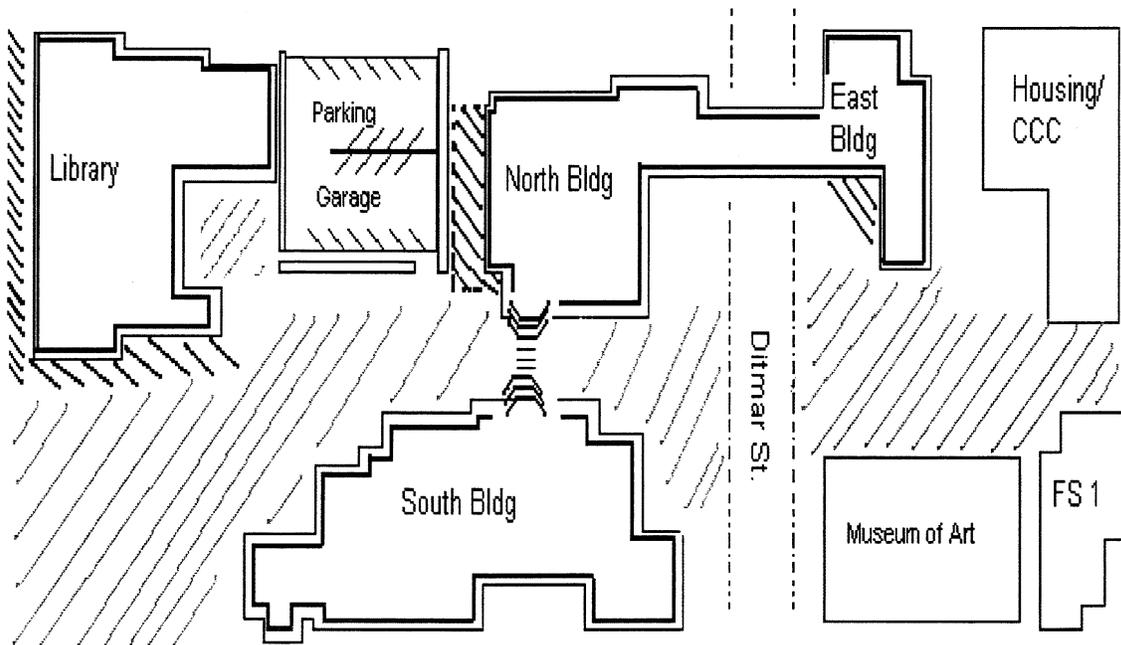
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CITY OF OCEANSIDE

CIVIC CENTER PRESSURE WASHING

EXHIBIT B LOCATION OF WORK

The work is broken down into three distinct areas for contract administration, billing and work. Area 1 is primarily the three stairways, Council lobby balcony, front of the Library and the hallway on the west side of the Library and is approximately 4,538sqft. Area 2 consists of all the hardscape areas of the Civic Center and is approximately 97,000 sqft. Area 3 is the exterior of all the buildings in the Civic Center main complex and is approximately 110,564 sqft. Area 4 is the parking garage and is approximately 99,000 sqft.



- \\ Area 1 - Weekly cleaning 4,538 sq. ft.
- /// Area 2 - Monthly cleaning (concrete only) 97,000 sq. ft.
- ▣ Area 3 - Semi-Annual cleaning (exterior of outlined buildings only) 104,362 sq. ft.
- Area 4 - Parking garage; include ceiling and stairs 99,000 sq. ft.

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CITY OF OCEANSIDE

CIVIC CENTER PRESSURE WASHING

EXHIBIT C COST

Agreement Unit Prices

LOCATION	CLEANING FREQUANCY	COST PER CLEANING		TOTAL COST
Area 1	Weekly	\$590	X 104	\$61,360
Area 2	Monthly	\$900	X24	\$21,600
Area 3	Semi-Annual	\$9,350	X4	\$37,400
Area 4	Annually	\$6,900	X2	\$13,800
Total				\$134,160

UNIT COST FOR EXTRA CLEANING SCHEDULE

The following square foot unit cost is for extra work the contractor may be asked to perform for part or all of the area indicated. Include all labor, materials and applicable costs.

Area 1 cost per square foot.	<u>.09¢</u>
Area 2 cost per square foot.	<u>.03¢</u>
Area 3 cost per square foot.	<u>.11¢</u>
Area 4 cost per square foot.	<u>.07¢</u>