ITEM NO. 11

STAFF REPORT

CITY OF OCEANSIDE

DATE: August 19, 2009

TO: Honorable Mayor and City Councilmembers

FROM: Water Utilities Department

SUBJECT: **PROFESSIONAL SERVICES AGREEMENTS FOR THE ANNUAL LANDSCAPE MAINTENANCE SERVICES AT THE SAN LUIS REY WASTEWATER TREATMENT PLANT, SEWER LIFT STATIONS, PUMP STATIONS, EASEMENT SITES AND RESERVOIRS**

SYNOPSIS

Staff recommends that the City Council approve a one-year professional services agreement in the amount of $62,700 and a two-year professional services agreement in the amount of $79,700 to Rancho Del Oro Landscape and Maintenance, Inc., of Oceanside for the annual landscape maintenance at the San Luis Rey Wastewater Treatment Plant, sewer lift stations, pump stations, easement sites and reservoirs; and authorize the City Manager to execute the agreements.

BACKGROUND

Monthly landscape maintenance is required at the San Luis Rey Wastewater Treatment Plant, sewer lift stations, pump stations, easement sites and reservoirs. This includes labor, materials, equipment, disposal fees, trimming, weed abatement and routine irrigation system maintenance.

ANALYSIS

Two requests for proposals were sent out by the staff responsible for these facilities requesting proposals from at least three vendors for landscape maintenance at the San Luis Rey Wastewater Treatment Plant, sewer lift stations, pump stations, easement sites and reservoirs. Staff evaluated the 3 proposals received for the San Luis Rey Wastewater Treatment Plant and Rancho Del Oro Landscape and Maintenance, Inc. was selected as best qualified for the scope of work.

1-Year Agreement

Location	Vendor	Proposed Annual Cost
San Luis Rey Wastewater Treat-ment Plant and Sewer Lift Stations	Green Valley Landscape and Maintenance, Inc.	$79,080
	Bemus Landscape, Inc.	$60,420
	Rancho Del Oro Landscape and Maintenance, Inc.	**$62,700**

2-Year Agreement

Location	Vendor	Proposed Annual Cost
Pump Stations, easement sites and reservoirs	Rescom	Non-responsive
	Executive Landscape	Non-responsive
	Rancho Del Oro Landscape and Maintenance, Inc.	**$79,700**

FISCAL IMPACT

The San Luis Rey Wastewater Treatment Plant fund (800805721.5300) has a budget of $162,946 and the Sewer Transport and Collection fund (800803721.5300) has a budget of $19,000. The contract amount for the San Luis Rey Wastewater Treatment Plant ($54,000) and sewer lift stations ($8,700) landscape maintenance annual cost is $62,700; therefore adequate funds are available. The Water Source of Supply fund (750751711.5212) has a budget of $43,260. The first-year contract amount for the pump stations, easement sites and reservoirs is $39,850; therefore adequate funds are available. The second-year contract amount of $39,850 will be budgeted in the FY 10-11 budget cycle.

INSURANCE REQUIREMENTS

The City's standard insurance requirements will be met.

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 the City Council approve a one-year professional services agreement in the amount of $62,700 and a two-year professional services agreement in the amount of $79,700 to Rancho Del Oro Landscape and Maintenance, Inc., of Oceanside for the annual landscape maintenance at the San Luis Rey Wastewater Treatment Plant, sewer lift stations, pump stations, easement sites and reservoirs; and authorize the City Manager to execute the agreements.

PREPARED BY:

Greg Blakely
Administration Manager

SUBMITTED BY:

Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Lonnie Thibodeaux, Water Utilities Director

Teri Ferro, Financial Services Director

Exhibit A – Professional Services Agreements

CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

PROJECT: LANDSCAPE MAINTENANCE FOR THE SAN LUIS REY WATER RECLAMATION FACILITY AND (6) LIFT STATIONS

THIS AGREEMENT is made and entered into this _____ day of _____, 2009, by and between the City of Oceanside, a municipal corporation, hereinafter designated as "CITY," and RANCHO DEL ORO LANDSCAPE & MAINTENANCE, INC., hereinafter designated as "CONTRACTOR."

RECITALS

A. CITY desires to obtain professional services from an independent CONTRACTOR for the above named project.

B. CONTRACTOR has submitted a proposal to provide landscape maintenance for the above-referenced facilities 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 desires to provide landscape maintenance services and is more particularly described in the CONTRACTOR's proposal attached hereto and incorporated herein as Exhibit A. The CONTRACTOR shall furnish all labor, equipment, materials, tools, services and special skills required to perform the scope of work as set forth in the following specifications and by this reference made part of this Agreement.

These specifications establish the standard for the maintenance of landscape areas for the City of Oceanside.

The quality of maintenance of the landscaping in the project areas plays a most important part in the success and acceptance of this project. It is for this reason that the CONTRACTOR'S prime responsibility will be to integrate the elements of high landscape maintenance standards and the objective as set forth in the specifications.

Maintenance of the project areas shall include maintenance of plant materials, irrigation systems, drainage facilities and hardscape. Maintenance of plant material shall include but not be limited to trimming, pruning, fertilization, aeration, weed control, cultivation, pest control, tree surgery, dethatching and plant replacement. It is the intent to provide plant material maintenance methods to keep the project sites in a state of growth and repair. Irrigation maintenance shall include operation of systems, adjustments, and minor repairs. The landscape services are more particularly described below.

2. COMPLIANCE WITH URBAN RUNOFF REQUIREMENTS.

All work performed by the CONSULTANT for the CITY under this AGREEMENT shall comply with all provisions and requirements in the Oceanside City Code, Chapter 40, Urban Runoff and Discharge Control and the California Regional Water Control Board San Diego Region Order No. 2001-01 (National Pollutant Discharge Elimination System Permit No. CAS0108758).

3. MAINTENANCE SCHEDULE.

CONTRACTOR shall submit to the CITY onsite Supervisor a detailed maintenance schedule describing all maintenance functions and proposed dates of implementation for each contract year. These functions are to include but are not limited to: fertilization, weeding, pruning, pest control, major tree pruning, thatching, aeration, insecticide/herbicide applications and application of all fertilization to trees, shrubs and ground cover.

The CONTRACTOR shall submit a proposed schedule at the beginning of each month outlining the work to be performed that month, subject to the CITY'S approval.

4. TREES.

a. Trees shall be pruned as required to remove dead, broken, or diseased branches and for safety to pedestrians and vehicular traffic. It shall be the CONTRACTOR'S prime responsibility, related to pruning, to conduct a pruning program which will ultimately develop proper tree scaffolding, strength, or appearance consistent with the intended use. All major pruning operations shall be scheduled on a Maintenance Schedule Chart, subject to the CITY's approval.

b. Fertilizer shall be applied as often as required to keep trees in a healthy and desirable condition. Avoid applying fertilizer to root ball or base of main stem, rather spread evenly in area of drip zone. Use a well-balanced commercial fertilizer.

c. Tree stakes, ties, and guys shall be checked at least monthly and corrected as needed. Ties will be adjusted to prevent girdling. Remove unneeded stakes, ties, and guys as directed. Replace broken stakes as required.

d. Pruning shall be done by those experienced and skilled in pruning techniques. All cuts shall be done using proper horticultural practices.

e. Prune trees to allow eight (8) foot clearances for pedestrians and twelve (12) foot above curb gutter for clearance.

f. Apply all required insecticides and fungicides to prevent or control plant diseases and pests.

g. Perform minor tree surgery as required.

h. Ailing or stunted trees which fail to meet expected growth will receive additional treatments to correct any deficiencies.

i. Surface roots which become maintenance or appearance problems will be removed as required to prevent damage to adjacent paved areas.

j. CONTRACTOR shall include in his bid price all major pruning of trees on designated projects. This will be done either with a subcontractor (tree arborist) or his own people, with the proper equipment and methods utilized.

k. Under no circumstances will stripping of lower branches (raising up) of young trees be permitted. Lower branches shall be retained in a "tipped back" or pinched condition with as much foliage as possible to promote caliper retained growth (tapered trunk). Lower branches can be cut flush with trunk only after tree is able to stand erect without staking or other support.

5. <u>SHRUBS</u>.

a. Shrubs shall be pruned as required for safety, removal of dead, broken, or diseased branches, general containment or appearance. Prune shrubs along sidewalks and streets to eliminate view obstacles and pedestrian hazards at all time.

b. Prune shrubs to retain as much of the natural informal appearance as possible, consistent with intended use.

c. Shrubs used as formal hedges or screens shall be pruned as required to present a neat appearance without a sheared appearance.

d. Remove any spent blossoms or dead flower stocks as required to present a neat and clean appearance.

6. <u>SOIL TESTING</u>.

As part of this Agreement, the CONTRACTOR may be required to do soil testing. Such work will be paid for as extra work by the CITY. The soil testing must be pre-approved by the CITY onsite Supervisor.

7. PEST CONTROL.

Apply all insecticides or fungicides to control pests as needed.

8. FERTILIZATION.

Apply all fertilizers to maintain healthy and vigorous growth as needed and a minimum of at least four (4) times a year..

9. GROUND COVER.

a. Apply all chemical control (i.e., insecticides, fungicides, etc.) as required to control or prevent pest infestations to protect ornamental plantings.

b. All ground cover areas will be renovated annually in the month of September and are to be coordinated with the CITY onsite Supervisor.

c. Trim ground cover adjacent to walks, walls and/or fences as required for general containment to present a neat, clean appearance.

d. Cultivate and/or spray approved herbicide to remove broadleafed and grass weeds as required. Remove weeds by chemical or mechanical means.

e. Prevent soil compaction by cultivating regularly all ground covered areas.

f. Any paper, letter or other debris that accumulates in ground cover areas shall be picked up on a weekly basis (minimal).

g. Keep ground cover trimmed back from all controller units, valve boxes, quick couplers, or other appurtenances or fixtures. Do not allow ground covers to grow on structures or walls. Keep trimmed back approximately four (4) inches.

h. All ground cover areas will receive sufficient applications of snail bait at the rate necessary to control the spread of snails. Spray substitutions must be approved by the City onsite Supervisor.

i. Bare soil areas shall be cultivated a minimum of once per month.

j. Apply fertilizer to slopes and all ground cover areas with a commercial fertilizer as often as required to promote healthy appearance. Water thoroughly to prevent burning.

10. WEEDS.

CONTRACTOR shall keep all landscaped areas in a weed free condition at all times.

11. PEST CONTROL OF PLANT MATERIAL.

a. The CONTRACTOR shall provide complete and continuous control and/or eradication of all plant pests or diseases. The CONTRACTOR shall select and supply proper materials and licensed personnel and obtain any necessary permits to comply with city, county and state or federal regulations or laws.

b. CONTRACTOR will assume responsibility and liability for the use of all chemical controls. Pests and diseases to include, but not be limited to, all insects, mites, other invertebrates, pathogens, nematodes and vertebrates. Chemical controls to include necessary use of herbicides and plant growth regulators. Pests may be controlled by mechanical means as well as chemicals.

12. DRAINAGE FACILITIES.

The CONTRACTOR shall be responsible for cleaning of surface drains located within the landscaped areas. These drains shall be cleaned to assure proper functioning. Remove any silt debris or vegetation in the drainage system and at the inlet to insure proper flow of water. Prune ground cover and/or vegetation which encroaches into drainage facilities.

13. FERTILIZATION.

a. The application of all fertilizers shall be recorded on the maintenance schedule. CONTRACTOR shall indicate the type of fertilizer used, quantity applied, and frequency applied. Fertilizer shall be applied at quantities which will maintain a healthy and vigorous growth condition to all plant materials at all times. Fertilizers shall be applied a minimum of four (4) times per year.

b. In making application of fertilizer granules, precautions shall be taken to contain these materials in the planting areas. Caution shall be used when using a cyclone spreader which tends to throw material onto paved areas. The use of gravity flow spreaders will keep materials contained in planting areas and eliminate/reduce sidewalk stains.

14. PLANT ADDITIONS AND/OR REPLACEMENTS.

As part of this Agreement, the CONTRACTOR may be requested to replace damaged or destroyed trees, shrubs, vines, ground cover, or flowers. Upon CITY approval of a written work order submitted by CONTRACTOR, the CITY will pay for such work as extra work unless otherwise specified within these Specifications. Exceptions will be replacements due to CONTRACTOR'S neglect. This will be determined by CITY onsite Supervisor.

15. CLEAN-UP.

a. At no time will CONTRACTOR be allowed to blow grass cuttings/debris into public streets or gutters without being immediately swept or vacuumed cleaned.

b. CONTRACTOR shall remove all debris resulting from the maintenance operations and dispose of it off site. All grass clippings shall be picked up after each mowing or trimming operation.

c. All debris resulting from any of the CONTRACTOR'S operations shall be removed and disposed of. CONTRACTOR has the option to use the CITY on-site dumpsters. No debris shall be allowed to remain on landscape areas at the end of the work day.

d. All walkways will be kept clean/clear of debris. Care shall be taken not to create unnecessary hazards to foot traffic.

e. All shrub areas not under-planted with ground cover will be raked clean and cultivated so as not to damage susceptible plant roots.

f. The CONTRACTOR shall provide a general clean-up operation a minimum of once a week, each and every week, for the purpose of cleaning up papers, trash, silt or debris which may accumulate in the landscape areas and on hardscape and gutters.

16. IRRIGATION SYSTEM.

a. General Requirements.

(1) Water Conservation. It is mandatory that the CONTRACTOR utilize every means available to insure efficient water usage. All drought restrictions shall be strictly adhered to.

(2) Irrigation Schedule Tracking Log. CONTRACTOR shall provide the CITY onsite Supervisor with irrigation schedules for each controller on a monthly basis. Information will include start times, water days, run times per valve and program changes to any and all valves including the reason for the change. Include repairs done for each valve and why (broken, vandalism, etc.). Invoices for irrigation extras will not be processed for payment unless accompanied by the irrigation/tracking logs.

(3) Control of Run-off. It is essential that the CONTRACTOR control and avoid irrigation water run-off by every means available. This shall be accomplished with proper head and valve adjustments and the use of multiple program cycling of the irrigation controllers. All shrubs contributing to irrigation run-off shall be trimmed on an 'as needed basis' and costs thereof shall be included in the workload and shall not constitute an extra cost to the CITY.

(4) Control Programming. All irrigation controllers shall be programmed to cycle between the hours of 5:00 p.m. and 8:00 a.m. CONTRACTOR shall insure that all controllers are shut off during rainy periods.

b. Maintenance.

(1) Extra Work. Repairs to the system caused by conditions under which the CONTRACTOR has no control shall be considered an extra and paid for based on the provided unit costs. The CONTRACTOR will submit a written work order that must be approved by the CITY prior to performance of the extra work. All such repairs shall be guaranteed for one year. The following are considered extras:

(a) Theft.
(b) Storm Damage.
(c) Vandalism.
(d) Malfunctions of equipment not due to CONTRACTOR abuse or negligence.

(2) Controller Enclosures. All controller enclosures shall be painted once per contract year. This shall include rust treatment and two final coats of paint. Submit procedure and material literature to the CITY onsite Supervisor for approval prior to work.

(3) Control of Irrigation Spray. Every irrigation system shall be physically observed a minimum of once every two weeks. Each and every irrigation head shall be observed. Adjust arc, diffusion and spray pattern. Every effort shall be made to avoid spray of streets, walks, fences and walls.

17. RODENT CONTROL.

CONTRACTOR shall be responsible for controlling all rodents as required.

18. WEED CONTROL OF PAVED SURFACES.

CONTRACTOR will be responsible for controlling weeds by manual or chemical means, including weeds growing in cracks, or expansion joints.

19. GUARANTEE AND/OR REPLACEMENT POLICY.

All new plant material and irrigation installations provided by CONTRACTOR shall be guaranteed for a period of one calendar year except due to "acts of God." "Acts of God" are defined as damage or death of plant material due to catastrophic winds or storms, vandalism, theft, or other willful acts over which the CONTRACTOR has no control. CONTRACTOR shall replace existing plants if they die due to CONTRACTOR'S negligence.

20. DRAINAGE CHANNEL (GRASS LINED).

In addition to standard maintenance specifications, the following apply:

a. Channel Clearing. CONTRACTOR shall be responsible for the control of vegetation growth and removal of debris within the drainage channel to facilitate proper unrestricted flow of water as often as needed.

b. Coordinate the irrigation schedule with the City for areas that need only minimal irrigation.

21. COMPENSATION.

a. For work performed by CONTRACTOR in accordance with this Agreement, CITY shall pay CONTRACTOR in accordance with the schedule of billing rates set forth in Exhibit A, attached hereto and incorporated herein by reference. No rate changes shall be made during the term of this Agreement without prior written approval of the Water Utilities Manager. Prior to performance of all extra work, a written work order must by submitted by the CONTRACTOR and approved by the CITY. CONSULTANT's compensation for all work performed in accordance with this Agreement shall not exceed the total annual contract price of $62,700 or a monthly contract price of $5,225 with the following exceptions:

(1) Extra work shall be paid at an hourly rate of $22.00 per hour for labor and $30.00 per hour for an irrigation engineer; and

(2) Extra work supplies, percentage markup over wholesale, shall be charged to the CITY at a 10% (ten percent) rate.

21.1 Invoicing.

a. Invoicing is to be on a monthly basis. Invoices shall be sent at the end of each month for services performed.

b. Invoice shall include the purchase order number, job site address, billing address, services rendered and the monthly base contract amount. Extra work shall be approved in advance and listed on the same invoice, but itemized separately from the monthly base contract amount.

22. TERMS OF CONTRACT.

22.1 The term of this contract is for one year after the City Manager has signed the contract.

22.2 The CITY reserves the right to terminate the CONTRACTOR without cause with thirty (30) day advance, written notice. The CITY may terminate the CONTRACTOR with cause with ten (10) days advance, written notice.

If any portion of the work is terminated or abandoned by the CITY, then the CITY shall pay CONSULTANT for any work completed up to and including the date of termination or abandonment of this Agreement, in accordance with Section 21. The CITY shall be required to compensate CONSULTANT only for work performed in accordance with the Agreement up to and including the date of termination.

23. **INDEPENDENT CONTRACTOR.** CONSULTANT's relationship to the CITY shall be that of an independent contractor. CONSULTANT shall have no authority, express 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 Water Utilities Director, or designee. The CONSULTANT shall not be authorized to communicate directly with, nor in any way direct the actions of, any bidder or the construction contractor for this project without the prior written authorization by the Water Utilities Director, or designee. CONSULTANT shall be sole responsible for the performance of any of its employees, agents or subcontractors under this agreement.

CONSULTANT shall report to the CITY any and all employees, agents and consultants performing work in connection with this project, and all shall be subject to the approval of the CITY.

24. **CITY BUSINESS LICENSE.** Prior to the commencement of any work under this agreement, the CONSULTANT shall obtain and present a copy of an Oceanside City Business License to the Water Utilities Director, or designee.

25. **WORKERS' COMPENSATION.** Pursuant to Labor Code section 1861, the CONSULTANT hereby certifies that the CONSULTANT 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 CONSULTANT 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 Subsections 26.4 through 26.9 of this Agreement.

26. **LIABILITY INSURANCE.**

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

26.2 CONSULTANT shall maintain liability insurance in the following minimum limits:

Comprehensive General Liability Insurance
(bodily injury and property damage)

Combined Single Limit Per Occurrence	$ 1,000,000
General Aggregate	$ 2,000,000*

or

Commercial General Liability Insurance
(bodily injury and property damage)

General limit per occurrence	$ 1,000,000
General limit project specific	$ 2,000,000

Automobile Liability Insurance	$ 1,000,000

*General aggregate per year, or part thereof, with respect to losses or other acts or omissions of CONSULTANT under this Agreement.

26.3 If coverage is provided through a Commercial General Liability Insurance policy, a minimum of 50% of each of the aggregate limits shall remain available at all times. If over 50% of any aggregate limit has been paid or reserved, the CITY may require additional coverage to be purchases by the CONSULTANT to restore the required limits. The CONSULTANT shall also notify the CITY's Project Manager promptly of all losses or claims over $25,000 resulting from work performed under this contract, or any loss or claim against the CONSULTANT resulting from any of the CONSULTANT's work.

26.4 All insurance companies affording coverage to the CONSULTANT for the purposes of this Section shall add the City of Oceanside as "additional insured" under the designated insurance policy for all work performed under this Agreement. Insurance coverage provided to the CITY as additional insured shall be primary insurance and other insurance maintained by the CITY, its officers, agents and employees shall be excess only and not contributing with insurance provided pursuant to this Section.

26.5 All insurance companies affording coverage to the CONSULTANT pursuant to this Agreement shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact business of insurance in the state or be rated as A-X or higher by A.M. Best.

26.6 All insurance companies affording coverage shall provide thirty (30) day written notice to the CITY 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.

26.7 CONSULTANT shall provide evidence of compliance with the insurance requirements listed above by providing a Certificate of Insurance, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.

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

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

27. **CONSULTANT's INDEMNIFICATION OF CITY.** CONSULTANT 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, negligent acts, errors, omissions or other wrongful acts of the CONSULTANT or its employees, agents, subcontractors or others in connection with the execution of the work covered by this Agreement, except only for those claims arising from the sole negligence or sole willful conduct of the CITY, its officers, agents or employees. CONSULTANT'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, CONSULTANT, 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 resulting or arising from the tortuous acts or omissions of the CONSULTANT.

CONSULTANT's indemnification of CITY shall not be limited by any prior or subsequent declaration by the CONSULTANT.

28. **ERRORS AND OMISSIONS.** In the event that the Water Utilities Director, or designee determines that the CONSULTANT's negligence, errors or omissions in the performance of work under this Agreement has resulted in expense to CITY greater than would have resulted if there were no such negligence, errors or omissions, CONSULTANT shall reimburse CITY for the additional expenses incurred by the CITY, including installation, maintenance and/or restoration expense. Nothing herein is intended to limit CITY's rights under Sections 26 or 27.

29. **NO CONFLICT OF INTEREST.** The CONSULTANT shall not be financially interested in any other CITY contract for this project. For the limited purposes of interpreting this section, the CONSULTANT shall be deemed a "City officer or employee", and this Section shall be interpreted in accordance with Government Code section 1090. In the event that the CONSULTANT becomes financially interested in any other CITY contract for this project, that other contract shall be void. The CONSULTANT shall indemnify and hold harmless the CITY, under Section 9 above, for any claims for damages resulting from the CONSULTANT's violation of this Section.

30. **ASSIGNMENT AND DELEGATION.** This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the CONSULTANT's duties be delegated, without the express written consent of the CITY. Any attempt to assign or delegate this Agreement without the express written consent of the CITY shall be void and of no force or effect. A consent by the CITY to one assignment shall not be deemed to be a consent to any subsequent assignment.

    This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

31. **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between CITY and CONSULTANT concerning the work to be performed for this project and supersedes all prior negotiations, representations or agreements.

32. **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 CITY.

    The CONSULTANT shall be responsible for complying with all local, state and federal laws whether or not said laws are expressly stated or referred to herein.

    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.

33. **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.

34. 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 contract unless all statutory claims filing requirements have been met.

35. NOTICES. All notices, demands, requests, consents or other communications which this Agreement contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed to the respective party as follows:

TO CITY:	**TO CONSULTANT:**
City of Oceanside Water Utilities Director 300 North Coast Highway Oceanside, CA 92054	Rancho Del Oro Landscape & Maintenance, Inc. Richard Kirk, CFO 4167 Avenida de la Plata, #109 Oceanside, CA 92056

Either party may change its address by notice to the other party as provided herein.

Communications shall be deemed to have been given and received on the first to occur:

a. Actual receipt at the offices of the party to whom the communication is to be sent, as designated above, or

b. Three (3) working days following the deposit in the United States mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

36. 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 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 on this _____ day of _____, 2009.

PROJECT: LANDSCAPE MAINTENANCE FOR SAN LUIS REY WATER RECLAMATION FACILITY AND (6) LIFT STATIONS

RANCHO DEL ORO LANDSCAPE & MAINTENANCE, INC.

By: _____
Signature

Richard Kirk, CFO
Name/Title

By: Uriel Espinoza
Signature

URIEL ESPINOZA PRESIDENT
Name/Title

33-0595093
Employer ID No.

CITY OF OCEANSIDE

By: _____
Peter A. Weiss
City Manager

Approved as to Form:

Barbara Hamilton, ASST
City Attorney

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

CALIFORNIA ALL PURPOSE
Certificate of Acknowledgment

STATE OF CALIFORNIA
COUNTY OF San Diego

On June 30, 2009 before me, Janice K. Peck, Notary Public, personally appeared Richard Kirk & Uriel Espinosa.

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 Janice K. Peck

ESI1 JANICE K. PECK COMM. #1782273 Notary Public-California SAN DIEGO COUNTY My Comm. Exp. DEC 23, 2011 ESI1

OPTIONAL INFORMATION

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document Professional Services Agreement

Document Date _____ Number of Pages _____

Signer(s) Other Than Named Above _____

RANCHO DEL ORO
LANDSCAPE & MAINTENANCE, INC.
St. Lic# 797346

4167 Avenida De La Plata
Suite #109
Oceanside, CA 92056
(760) 726-0215
(760) 631-5580 FAX
www.rdolandscape.com

May 27, 2009

City of Oceanside
3950 North River Road
Oceanside, CA 92054
Attn: Adriana Ching

RE: San Luis Rey Water Reclamation Facility Landscape Maintenance Quote

Rancho Del Oro Landscape & Maintenance, Inc. will supply labor, materials, equipment, disposal fees, and all applicable insurances to complete monthly maintenance at the San Luis Rey Water Reclamation Facility. This quote is based on the attached scope of work.

- All normal landscape maintenance as described on attached.
- Abate (3) Existing holding ponds.
- Abate (1) Existing emergency holding pond additionally added in 2008-2009.
- Abate west of Pacific Breeze homes.
- Abate "all" access roads 8-10' wide.
- Abate 80-100' around Whelan Lake structures.
- Trim all trees annually.
- Total monthly quote for this property. $4,500.00
- Total annual maintenance quote $54,000.00

If you should have any questions concerning this quote, please feel free to contact our office at (760) 726-0215.

Sincerely,

Richard Kirk
CFO
Rancho Del Oro Landscape & Maintenance, Inc

RANCHO DEL ORO
LANDSCAPE & MAINTENANCE, INC.
St. Lic# 797346

4167 Avenida De La Plata
Suite #109
Oceanside, CA 92056
(760) 726-0215
(760) 631-5580 FAX
www.rdolandscape.com

May 27, 2009

City of Oceanside
3950 North River Road
Oceanside, CA 92054
Attn: Adriana Ching

RE: Landscape Maintenance Quote

Rancho Del Oro Landscape & Maintenance, Inc. will supply labor, materials, equipment, disposal fees, and all applicable insurances to complete monthly maintenance at the following addresses listed below. All trimming up to 14'on these properties are included in this quote. This quote is based on the attached scope of work.

- North Valley Lift Station-3930 N. River Road
- Mission Lift Station-3476 Mission Avenue
- Lake Blvd. Lift Station @1407½ Lake Blvd.
- Leisure Village Lift Station # 1 @ 4706 Cannon
- Marlado Lift Station @ 401 N. Fousatt
- Corner of Fireside and Mission Avenue Lift Station
-
- Total monthly quote for (6) Lift Stations $725.00
- Total annual maintenance quote $8,700.00

If you should have any questions concerning this quote, please feel free to contact our office at (760) 726-0215.

Sincerely,

Richard Kirk
CFO
Rancho Del Oro Landscape & Maintenance, Inc

CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

PROJECT: LANDSCAPE MAINTENANCE FOR THE FOLLOWING FACILITIES:

(1) LAKE BOULEVARD PUMP STATION
(2) SLEEPING INDIAN PUMP STATION/HEADWORKS # 1
(3) BUDDY TODD ALTITUDE VALVE/MESA
(4) WILSHIRE PUMP STATION
(5) RIVERTREE PUMP STATION
(6) HEADWORKS # 6
(7) FIRE MOUNTAIN RESERVOIR
(8) HENIE HILLS RESERVOIR
(9) JOHN PAUL STEIGER RESERVOIR
(10) WIRE MOUNTAIN RESERVOIR
(11) TALONE RESERVOIR
(12) SAN FRANCISCO PEAK RESERVOIRS 1 & 2
(13) MORRO HILLS RESERVOIRS 1 & 2
(14) TALAMANTES RESERVOIR
(15) GUAJOME RESERVOIRS 1 & 2
(16) WELL # 8

THIS AGREEMENT is made and entered into this ____ day of _____, 2009, by and between the City of Oceanside, a municipal corporation, hereinafter designated as "CITY," and RANCHO DEL ORO LANDSCAPE & MAINTENANCE, INC., hereinafter designated as "CONTRACTOR."

RECITALS

A. CITY desires to obtain professional services from an independent CONTRACTOR for the above named project.

B. CONTRACTOR has submitted a proposal to provide landscape maintenance for the above-referenced facilities 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 desires to provide landscape maintenance services as more particularly described in the CONTRACTOR's proposal dated June 9, 2009, attached hereto and incorporated herein as Exhibit A. The CONTRACTOR shall furnish all labor, equipment, materials, tools, services and special skills required to perform the scope of work as set forth in the following specifications and by this reference made part of this Agreement.

These specifications establish the standard for the maintenance of landscape areas for the City of Oceanside.

The quality of maintenance of the landscaping in the project areas plays a most important part in the success and acceptance of this project. It is for this reason that the CONTRACTOR'S prime responsibility will be to integrate the elements of high landscape maintenance standards and the objective as set forth in the specifications.

Maintenance of the project areas shall include maintenance of plant materials, irrigation systems, drainage facilities and hardscape. Maintenance of plant material shall include but not be limited to trimming, pruning, fertilization, aeration, weed control, cultivation, pest control, tree surgery, dethatching and plant replacement. It is the intent to provide plant material maintenance methods to keep the project sites in a state of growth and repair. Irrigation maintenance shall include operation of systems, adjustments, and minor repairs. The landscape services are more particularly described below.

2. COMPLIANCE WITH URBAN RUNOFF REQUIREMENTS.

All work performed by the CONSULTANT for the CITY under this AGREEMENT shall comply with all provisions and requirements in the Oceanside City Code, Chapter 40, Urban Runoff and Discharge Control and the California Regional Water Control Board San Diego Region Order No. 2001-01 (National Pollutant Discharge Elimination System Permit No. CAS0108758).

3. MAINTENANCE SCHEDULE.

CONTRACTOR shall submit to the CITY onsite Supervisor a detailed maintenance schedule describing all maintenance functions and proposed dates of implementation for each contract year. These functions are to include but are not limited to: fertilization, weeding, pruning, pest control, major tree pruning, thatching, aeration, insecticide/herbicide applications and application of all fertilization to trees, shrubs and ground cover.

The CONTRACTOR shall submit a proposed schedule at the beginning of each month outlining the work to be performed that month, subject to the CITY'S approval.

4. TREES.

a. Trees shall be pruned as required to remove dead, broken, or diseased branches and for safety to pedestrians and vehicular traffic. It shall be the CONTRACTOR'S prime responsibility, related to pruning, to conduct a pruning program which will ultimately develop proper tree scaffolding, strength, or appearance consistent with the intended use. All major pruning operations shall be scheduled on a Maintenance Schedule Chart, subject to the CITY's approval.

b. Fertilizer shall be applied as often as required to keep trees in a healthy and desirable condition. Avoid applying fertilizer to root ball or base of main stem, rather spread evenly in area of drip zone. Use a well-balanced commercial fertilizer.

c. Tree stakes, ties, and guys shall be checked at least monthly and corrected as needed. Ties will be adjusted to prevent girdling. Remove unneeded stakes, ties, and guys as directed. Replace broken stakes as required.

d. Pruning shall be done by those experienced and skilled in pruning techniques. All cuts shall be done using proper horticultural practices.

e. Prune trees to allow eight (8) foot clearances for pedestrians and twelve (12) foot above curb gutter for clearance.

f. Apply all required insecticides and fungicides to prevent or control plant diseases and pests.

g. Perform minor tree surgery as required.

h. Ailing or stunted trees which fail to meet expected growth will receive additional treatments to correct any deficiencies.

i. Surface roots which become maintenance or appearance problems will be removed as required to prevent damage to adjacent paved areas.

j. CONTRACTOR shall include in his bid price all major pruning of trees on designated projects. This will be done either with a subcontractor (tree arborist) or his own people, with the proper equipment and methods utilized.

k. Under no circumstances will stripping of lower branches (raising up) of young trees be permitted. Lower branches shall be retained in a "tipped back" or pinched condition with as much foliage as possible to promote caliper retained growth (tapered trunk). Lower branches can be cut flush with trunk only after tree is able to stand erect without staking or other support.

5. SHRUBS.

a. Shrubs shall be pruned as required for safety, removal of dead, broken, or diseased branches, general containment or appearance. Prune shrubs along sidewalks and streets to eliminate view obstacles and pedestrian hazards at all time.

b. Prune shrubs to retain as much of the natural informal appearance as possible, consistent with intended use.

c. Shrubs used as formal hedges or screens shall be pruned as required to present a neat appearance without a sheared appearance.

d. Remove any spent blossoms or dead flower stocks as required to present a neat and clean appearance.

6. SOIL TESTING.

As part of this Agreement, the CONTRACTOR may be required to do soil testing. Such work will be paid for as extra work by the CITY. The soil testing must be pre-approved by the CITY onsite Supervisor.

7. PEST CONTROL.

Apply all insecticides or fungicides to control pests as needed.

8. FERTILIZATION.

Apply all fertilizers to maintain healthy and vigorous growth as needed and a minimum of at least four (4) times a year..

9. GROUND COVER.

a. Apply all chemical control (i.e., insecticides, fungicides, etc.) as required to control or prevent pest infestations to protect ornamental plantings.

b. All ground cover areas will be renovated annually in the month of September and are to be coordinated with the CITY onsite Supervisor.

c. Trim ground cover adjacent to walks, walls and/or fences as required for general containment to present a neat, clean appearance.

d. Cultivate and/or spray approved herbicide to remove broadleafed and grass weeds as required. Remove weeds by chemical or mechanical means.

e. Prevent soil compaction by cultivating regularly all ground covered areas.

f. Any paper, letter or other debris that accumulates in ground cover areas shall be picked up on a weekly basis (minimal).

g. Keep ground cover trimmed back from all controller units, valve boxes, quick

couplers, or other appurtenances or fixtures. Do not allow ground covers to grow on structures or walls. Keep trimmed back approximately four (4) inches.

h. All ground cover areas will receive sufficient applications of snail bait at the rate necessary to control the spread of snails. Spray substitutions must be approved by the City onsite Supervisor.

i. Bare soil areas shall be cultivated a minimum of once per month.

j. Apply fertilizer to slopes and all ground cover areas with a commercial fertilizer as often as required to promote healthy appearance. Water thoroughly to prevent burning.

10. WEEDS.

CONTRACTOR shall keep all landscaped areas in a weed free condition at all times.

11. PEST CONTROL OF PLANT MATERIAL.

a. The CONTRACTOR shall provide complete and continuous control and/or eradication of all plant pests or diseases. The CONTRACTOR shall select and supply proper materials and licensed personnel and obtain any necessary permits to comply with city, county and state or federal regulations or laws.

b. CONTRACTOR will assume responsibility and liability for the use of all chemical controls. Pests and diseases to include, but not be limited to, all insects, mites, other invertebrates, pathogens, nematodes and vertebrates. Chemical controls to include necessary use of herbicides and plant growth regulators. Pests may be controlled by mechanical means as well as chemicals.

12. DRAINAGE FACILITIES.

The CONTRACTOR shall be responsible for cleaning of surface drains located within the landscaped areas. These drains shall be cleaned to assure proper functioning. Remove any silt debris or vegetation in the drainage system and at the inlet to insure proper flow of water. Prune ground cover and/or vegetation which encroach into drainage facilities.

13. FERTILIZATION.

a. The application of all fertilizers shall be recorded on the maintenance schedule. CONTRACTOR shall indicate the type of fertilizer used, quantity applied, and frequency applied. Fertilizer shall be applied at quantities which will maintain a healthy and vigorous growth condition to all plant materials at all times. Fertilizers shall be applied a minimum of four (4) times per year.

b. In making application of fertilizer granules, precautions shall be taken to contain these materials in the planting areas. Caution shall be used when using a

cyclone spreader which tends to throw material onto paved areas. The use of gravity flow spreaders will keep materials contained in planting areas and eliminate/reduce sidewalk stains.

14. PLANT ADDITIONS AND/OR REPLACEMENTS.

As part of this Agreement, the CONTRACTOR may be requested to replace damaged or destroyed trees, shrubs, vines, ground cover, or flowers. Upon CITY approval of a written work order submitted by CONTRACTOR, the CITY will pay for such work as extra work unless otherwise specified within these Specifications. Exceptions will be replacements due to CONTRACTOR'S neglect. This will be determined by CITY onsite Supervisor.

15. CLEAN-UP.

a. At no time will CONTRACTOR be allowed to blow grass cuttings/debris into public streets or gutters without being immediately swept or vacuumed cleaned.

b. CONTRACTOR shall remove all debris resulting from the maintenance operations and dispose of it off site. All grass clippings shall be picked up after each mowing or trimming operation.

c. All debris resulting from any of the CONTRACTOR'S operations shall be removed and disposed of. CONTRACTOR has the option to use the CITY on-site dumpsters. No debris shall be allowed to remain on landscape areas at the end of the work day.

d. All walkways will be kept clean/clear of debris. Care shall be taken not to create unnecessary hazards to foot traffic.

e. All shrub areas not under-planted with ground cover will be raked clean and cultivated so as not to damage susceptible plant roots.

f. The CONTRACTOR shall provide a general clean-up operation a minimum of once a week, each and every week, for the purpose of cleaning up papers, trash, silt or debris which may accumulate in the landscape areas and on hardscape and gutters.

16. IRRIGATION SYSTEM.

a. General Requirements.

(1) Water Conservation. It is mandatory that the CONTRACTOR utilize every means available to insure efficient water usage. All drought restrictions shall be strictly adhered to.

(2) Irrigation Schedule Tracking Log. CONTRACTOR shall provide the CITY onsite Supervisor with irrigation schedules for each controller on a monthly basis. Information will include start times, water days, run times per valve and program changes to any and all valves including the reason for the change. Include repairs done for each valve and why (broken, vandalism, etc.). Invoices for irrigation extras will not be processed for payment unless accompanied by the irrigation/tracking logs.

(3) Control of Run-off. It is essential that the CONTRACTOR control and avoid irrigation water run-off by every means available. This shall be accomplished with proper head and valve adjustments and the use of multiple program cycling of the irrigation controllers. All shrubs contributing to irrigation run-off shall be trimmed on an 'as needed basis' and costs thereof shall be included in the workload and shall not constitute an extra cost to the CITY.

(4) Control Programming. All irrigation controllers shall be programmed to cycle between the hours of 6:00 p.m. and 8:00 a.m. CONTRACTOR shall insure that all controllers are shut off during rainy periods.

b. Maintenance.

(1) Extra Work. Repairs to the system caused by conditions under which the CONTRACTOR has no control shall be considered an extra and paid for based on the provided unit costs. The CONTRACTOR will submit a written work order that must be approved by the CITY prior to performance of the extra work. All such repairs shall be guaranteed for one year. The following are considered extras:

(a) Theft.
(b) Storm Damage.
(c) Vandalism.
(d) Malfunctions of equipment not due to CONTRACTOR abuse or negligence.

(2) Controller Enclosures. All controller enclosures shall be painted once per contract year. This shall include rust treatment and two final coats of paint. Submit procedure and material literature to the CITY onsite Supervisor for approval prior to work.

(3) Control of Irrigation Spray. Every irrigation system shall be physically observed a minimum of once every two weeks. Each and every irrigation head shall be observed. Adjust arc, diffusion and spray pattern. Every effort shall be made to avoid spray of streets, walks, fences and walls.

17. <u>RODENT CONTROL</u>.

CONTRACTOR shall be responsible for controlling all rodents as required.

18. <u>WEED CONTROL OF PAVED SURFACES</u>.

CONTRACTOR will be responsible for controlling weeds by manual or chemical means, including weeds growing in cracks, or expansion joints.

19. GUARANTEE AND/OR REPLACEMENT POLICY.

All new plant material and irrigation installations provided by CONTRACTOR shall be guaranteed for a period of one calendar year except due to "acts of God." "Acts of God" are defined as damage or death of plant material due to catastrophic winds or storms, vandalism, theft, or other willful acts over which the CONTRACTOR has no control. CONTRACTOR shall replace existing plants if they die due to CONTRACTOR'S negligence.

20. DRAINAGE CHANNEL (GRASS LINED).

In addition to standard maintenance specifications, the following apply:

a. Channel Clearing. CONTRACTOR shall be responsible for the control of vegetation growth and removal of debris within the drainage channel to facilitate proper unrestricted flow of water as often as needed.

b. Coordinate the irrigation schedule with the City for areas that need only minimal irrigation.

21. COMPENSATION.

a. For work performed by CONTRACTOR in accordance with this Agreement, CITY shall pay CONTRACTOR in accordance with the schedule of billing rates set forth in Exhibit A, attached hereto and incorporated herein by reference. No rate changes shall be made during the term of this Agreement without prior written approval of the Water Utilities Manager. Prior to performance of all extra work, a written work order must by submitted by the CONTRACTOR and approved by the CITY. CONSULTANT's compensation for all work performed in accordance with this two-year Agreement shall not exceed the total contract price of $39,850 per year or a monthly contract price of $3,320.83.

21.1 Invoicing.

a. Invoicing is to be on a monthly basis. Invoices shall be sent at the end of each month for services performed.

b. Invoice shall include the purchase order number, job site address, billing address, services rendered and the monthly base contract amount. Extra work shall be approved in advance and listed on the same invoice, but itemized separately from the monthly base contract amount.

22. TERMS OF CONTRACT.

22.1 The term of this contract expires June 30, 2011.

22.2 The CITY reserves the right to terminate the CONTRACTOR without cause with thirty (30) day advance, written notice. The CITY may terminate the CONTRACTOR with cause with ten (10) days advance, written notice.

If any portion of the work is terminated or abandoned by the CITY, then the CITY shall pay CONSULTANT for any work completed up to and including the date of termination or abandonment of this Agreement, in accordance with Section 21. The CITY shall be required to compensate CONSULTANT only for work performed in accordance with the Agreement up to and including the date of termination.

23. INDEPENDENT CONTRACTOR. CONSULTANT's relationship to the CITY shall be that of an independent contractor. CONSULTANT shall have no authority, express 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 Water Utilities Director, or designee. The CONSULTANT shall not be authorized to communicate directly with, nor in any way direct the actions of, any bidder or the construction contractor for this project without the prior written authorization by the Water Utilities Director, or designee. CONSULTANT shall be sole responsible for the performance of any of its employees, agents or subcontractors under this agreement.

CONSULTANT shall report to the CITY any and all employees, agents and consultants performing work in connection with this project, and all shall be subject to the approval of the CITY.

24. CITY BUSINESS LICENSE. Prior to the commencement of any work under this agreement, the CONSULTANT shall obtain and present a copy of an Oceanside City Business License to the Water Utilities Director, or designee.

25. WORKERS' COMPENSATION. Pursuant to Labor Code section 1861, the CONSULTANT hereby certifies that the CONSULTANT 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 CONSULTANT 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 Subsections 26.4 through 26.9 of this Agreement.

26. LIABILITY INSURANCE.

26.1 CONSULTANT shall, throughout the duration of this Agreement, maintain comprehensive general liability and property damage insurance, or commercial

general liability insurance, covering all operations of CONSULTANT, its agents and employees, performed in connection with this Agreement including, but not limited to, premises and automobile.

26.2 CONSULTANT shall maintain liability insurance in the following minimum limits:

Comprehensive General Liability Insurance (bodily injury and property damage)	
Combined Single Limit Per Occurrence	$ 1,000,000
General Aggregate	$ 2,000,000*
Commercial General Liability Insurance (bodily injury and property damage)	
General limit per occurrence	$ 1,000,000
General limit project specific	$ 2,000,000
Automobile Liability Insurance	$ 1,000,000

*General aggregate per year, or part thereof, with respect to losses or other acts or omissions of CONSULTANT under this Agreement.

26.3 If coverage is provided through a Commercial General Liability Insurance policy, a minimum of 50% of each of the aggregate limits shall remain available at all times. If over 50% of any aggregate limit has been paid or reserved, the CITY may require additional coverage to be purchases by the CONSULTANT to restore the required limits. The CONSULTANT shall also notify the CITY's Project Manager promptly of all losses or claims over $25,000 resulting from work performed under this contract, or any loss or claim against the CONSULTANT resulting from any of the CONSULTANT's work.

26.4 All insurance companies affording coverage to the CONSULTANT for the purposes of this Section shall add the City of Oceanside as "additional insured" under the designated insurance policy for all work performed under this Agreement. Insurance coverage provided to the CITY as additional insured shall be primary insurance and other insurance maintained by the CITY, its officers, agents and employees shall be excess only and not contributing with insurance provided pursuant to this Section.

26.5 All insurance companies affording coverage to the CONSULTANT pursuant to this Agreement shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact business of insurance in the state or be rated as A-X or higher by A.M. Best.

26.6 All insurance companies affording coverage shall provide thirty (30) day written notice to the CITY 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.

26.7 CONSULTANT shall provide evidence of compliance with the insurance requirements listed above by providing a Certificate of Insurance, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.

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

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

27. **CONSULTANT's INDEMNIFICATION OF CITY.** CONSULTANT 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, negligent acts, errors, omissions or other wrongful acts of the CONSULTANT or its employees, agents, subcontractors or others in connection with the execution of the work covered by this Agreement, except only for those claims arising from the sole negligence or sole willful misconduct of the CITY, its officers, agents or employees. CONSULTANT'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, CONSULTANT, 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 resulting or arising from the tortious acts or omissions of the CONSULTANT.

CONSULTANT's indemnification of CITY shall not be limited by any prior or subsequent declaration by the CONSULTANT.

28. **ERRORS AND OMISSIONS.** In the event that the Water Utilities Director, or designee determines that the CONSULTANT's negligence, errors or omissions in the performance of work under this Agreement has resulted in expense to CITY greater than would have resulted if there were no such negligence, errors or omissions, CONSULTANT shall reimburse CITY for the additional expenses incurred by the CITY, including installation, maintenance and/or restoration expense. Nothing herein is intended to limit CITY's rights under Sections 26 or 27.

29. **NO CONFLICT OF INTEREST.** The CONSULTANT shall not be financially interested in any other CITY contract for this project. For the limited purposes of interpreting this section, the CONSULTANT shall be deemed a "City officer or employee", and this Section shall be interpreted in accordance with Government Code section 1090. In the event that the CONSULTANT becomes financially interested in any other CITY contract for this project, that other contract shall be

void. The CONSULTANT shall indemnify and hold harmless the CITY, under Section 9 above, for any claims for damages resulting from the CONSULTANT's violation of this Section.

30. **ASSIGNMENT AND DELEGATION.** This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the CONSULTANT's duties be delegated, without the express written consent of the CITY. Any attempt to assign or delegate this Agreement without the express written consent of the CITY shall be void and of no force or effect. A consent by the CITY to one assignment shall not be deemed to be a consent to any subsequent assignment.

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

31. **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between CITY and CONSULTANT concerning the work to be performed for this project and supersedes all prior negotiations, representations or agreements.

32. **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 CITY.

The CONSULTANT shall be responsible for complying with all local, state and federal laws whether or not said laws are expressly stated or referred to herein.

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.

33. **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.

34. **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 contract unless all statutory claims filing requirements have been met.

35. **NOTICES.** All notices, demands, requests, consents or other communications which this Agreement contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed to the respective party as follows:

TO CITY:	**TO CONSULTANT:**
City of Oceanside Water Utilities Director 300 North Coast Highway Oceanside, CA 92054	Mr. Richard Kirk Rancho Del Oro Landscape & Maintenance 4167 Avenida De La Plata, Suite 109 Oceanside, CA 92057

Either party may change its address by notice to the other party as provided herein.

Communications shall be deemed to have been given and received on the first to occur:

a. Actual receipt at the offices of the party to whom the communication is to be sent, as designated above, or

b. Three (3) working days following the deposit in the United States mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

36. 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 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 on this _____ day of _____, 2009.

PROJECT: LANDSCAPE MAINTENANCE FOR THE FOLLOWING FACILITIES:

(1) LAKE BOULEVARD PUMP STATION
(2) SLEEPING INDIAN PUMP STATION/HEADWORKS # 1
(3) BUDDY TODD ALTITUDE VALVE/MESA
(4) WILSHIRE PUMP STATION
(5) RIVERTREE PUMP STATION
(6) HEADWORKS # 6
(7) FIRE MOUNTAIN RESERVOIR
(8) HENIE HILLS RESERVOIR
(9) JOHN PAUL STEIGER RESERVOIR
(10) WIRE MOUNTAIN RESERVOIR
(11) TALONE RESERVOIR
(12) SAN FRANCISCO PEAK RESERVOIRS 1 & 2
(13) MORRO HILLS RESERVOIRS 1 & 2
(14) TALAMANTES RESERVOIR
(15) GUAJOME RESERVOIRS 1 & 2
(16) WELL # 8

RANCHO DEL ORO LANDSCAPE & MAINTENANCE, INC.

By: _____
Signature

RICHARD KIRK CFO
Name/Title

By: Uriel Espinoza
Signature

URIEL ESPINOZA PRESIDENT
Name/Title

33-0595093
Employer ID No.

CITY OF OCEANSIDE

By: _____
Peter A. Weiss, City Manager

Approved as to Form:

Barbara Hamilton, ASST.
City Attorney

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

CALIFORNIA ALL PURPOSE
Certificate of Acknowledgment

STATE OF CALIFORNIA
COUNTY OF San Diego

On June 30, 2009 before me, Janice K. Peck, Notary Public, personally appeared Richard Kirk & Uriel Espinoza.

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 h~~is/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 Janice K. Peck

ESI1 JANICE K. PECK
COMM. #1782273
Notary Public-California
SAN DIEGO COUNTY
My Comm. Exp. DEC 23, 2011 ESI1

OPTIONAL INFORMATION

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document Professional Services Agreement

Document Date _____ Number of Pages _____

Signer(s) Other Than Named Above _____

Exhibit A

RANCHO DEL ORO
LANDSCAPE & MAINTENANCE, INC.
St. Lic# 797346

4167 Avenida De La Plata
Suite #109
Oceanside, CA 92056
(760) 726-0215
(760) 631-5580 FAX
www.rdolandscape.com

June 9, 2009

City of Oceanside
Department of Water Utilities
4927 Oceanside Blvd
Oceanside, CA 92054
Attn: Kelvin Harris

Re: Landscape Maintenance for Reservoirs, Pump Stations, & Easement Sites

Rancho Del Oro Landscape & Maintenance, Inc. will supply labor, materials, equipment, green waste disposal and all applicable insurances to complete the Landscape Maintenance per the attached City of Oceanside Professional Services Agreement.

1. City of Oceanside Reservoir Locations
   - (9) Locations provided per attached documents.

2. Pump Station, Well Sites & Vault Locations
   - (7) Locations provided per attached documents.

Total of our 24-month quote	$79,700.00
This amount would be billed monthly for 24-months	$3,320.83

Note:
Tree trimming is included up to 15' in height only.

Thank you for the opportunity to quote your project. If you have any questions regarding this quote, feel free to contact me @ (760) 726-0215.

Sincerely,

Richard Kirk
Chief financial Officer
Rancho Del Oro Landscape & Maintenance Inc.