



DATE: August 20, 2014

TO: Honorable Mayor and City Councilmembers

FROM: Public Works Department

SUBJECT: **PROFESSIONAL SERVICES AGREEMENT FOR PHASE I AND II
RE-MOWING OF THE SAN LUIS REY RIVER**

SYNOPSIS

Staff recommends that the City Council approve a Professional Services Agreement with Washburn Grove Management of Hemet in an amount not to exceed \$249,550 for Phase I and II re-mowing of the San Luis Rey River; and authorize the City Manager to execute the agreement upon receipt of all supporting documents.

BACKGROUND

Maintenance and clearing of the San Luis Rey River has been the responsibility of the Army Corps of Engineers (ACOE) since completion of the levees in 2000. ACOE completed Phase I clearance in December 2008, which involved the mowing and mulching of a swath in the river 170 feet wide from College Boulevard to just west of the Benet Road Bridge (Jack Cassen Bridge) in an area encompassing approximately 107 acres. ACOE completed Phase II clearance in December 2012, which increased the Phase I mowing swath width by approximately 80 feet in an area encompassing approximately 54 acres. By mowing and mulching vegetation in the river channel, the potential for flooding and damages to infrastructure such as bridges and storm drain outlets is reduced as well as lowering the risk of flood water overtopping the levee and causing levee failure during significant storm events. Phase I was last mowed by the City in 2011. The City was unable to mow in 2013 due to the Least Bells Vireo bird count.

The City and ACOE agreed that the City will take over the long-term maintenance of the San Luis Rey River in phases after the initial clearing and cleanup of each phase by ACOE. The ACOE has formally turned over Phase I and II; consequently, the City is now responsible for the maintenance of both phases which includes mowing, mulching and thinning of any re-grown vegetation. Additional phases will clear wider swaths in the river and provide greater flood protection.

ANALYSIS

Washburn Grove Management was contracted by ACOE to do the original Phase I mowing in 2008 and Phase II mowing in 2012 and they are the only company in the area with the specialized equipment needed to perform the work. The price of these services provided is fair and reasonable and in line with industry fair market values.

FISCAL IMPACT

The total cost of the agreement is \$249,550 and will be funded from the San Luis Rey River Maintenance Project (Fund 600633581.5320)

INSURANCE REQUIREMENTS

The City's standard insurance requirements will be met.

COMMISSION OR COMMITTEE REPORT

Does not apply.

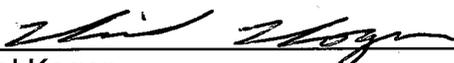
CITY ATTORNEY'S ANALYSIS

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

RECOMMENDATION

Staff recommends that the City Council approve a Professional Services Agreement with Washburn Grove Management of Hemet in an amount not to exceed \$249,550 for Phase I and II re-mowing of the San Luis Rey River; and authorize the City Manager to execute the agreement upon receipt of all supporting documents.

PREPARED BY:



Kiel Koger
Maintenance and Operations Manager

SUBMITTED BY:



Steven R. Jepsen
City Manager

REVIEWED BY:

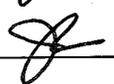
Michelle Skaggs Lawrence, Deputy City Manager



Marisa Lundstedt, City Planner



James R. Riley, Financial Services Director



CITY OF OCEANSIDE

PROFESSIONAL CONTRACTOR SERVICES AGREEMENT

**PROJECT: San Luis Rey River Mowing Project
Phase I and II Re-mowing
Project Number 905831100510**

THIS AGREEMENT, dated _____, 2014 for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and WASHBURN GROVE MANAGEMENT, Inc., hereinafter designated as "CONTRACTOR."

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF WORK.** The project is more particularly described as follows: Mowing of re-grown vegetation within a 170 foot wide swath (Phase I – 107 acres) and additional 80 foot wide swath (Phase II – 54 acres) in the San Luis Rey River from the College Boulevard Bridge to just west of the Benet Road Bridge (Jack Cassen Bridge) encompassing approximately 161 acres total. All mowing, chipping, shredding and mulching shall occur between September 15th, 2014 and November 30th, 2014 and be in strict accordance with the Vegetation Treatment Manual for the San Luis Rey River Flood Risk Management Project dated November 20, 2009 and prepared by the United States Army Corps of Engineers – Los Angeles District and Recon Environmental, Inc. All work shall comply with the Corps San Luis Rey River Flood Control Phase I permit as executed on September 30, 2010.
2. **INDEPENDENT CONTRACTOR.** CONTRACTOR'S relationship to the CITY shall be that of an independent contractor. CONTRACTOR 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 CITY. CONTRACTOR shall be solely responsible for the performance of any of its employees, agents, or subcontractors under this Agreement. CONTRACTOR 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.
3. **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

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with such provisions, and provide certification of such compliance as a part of this Agreement.

4. LIABILITY INSURANCE.

4.1. 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.

4.2. CONTRACTOR 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 aggregate	\$ 2,000,000

<u>Automobile Liability Insurance</u>	\$ 1,000,000
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*General aggregate per year, or part thereof, with respect to losses or other acts or omissions of CONTRACTOR under this Agreement.

4.3. 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 purchased by the CONTRACTOR to restore the required limits. The CONTRACTOR shall also notify the CITY promptly of all losses or claims over \$25,000 resulting from work performed under this contract, or any loss or claim against the CONTRACTOR resulting from any of the CONTRACTOR'S work.

4.4. All insurance companies affording coverage to the CONTRACTOR for the purposes of this Section shall add the City of Oceanside as "additional insured" under the

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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 of Oceanside, its officers, agents, and employees shall be excess only and not contributing with insurance provided pursuant to this Section.

- 4.5 All insurance companies affording coverage to the CONTRACTOR pursuant to this agreement shall be insurance organizations admitted 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.
- 4.6 CONTRACTOR shall provide thirty (30) days written notice to the CITY should any policy required by this Agreement 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.
- 4.7 CONTRACTOR shall provide evidence of compliance with the insurance requirements listed above by providing, at minimum, a Certificate of Insurance and applicable endorsements, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.
- 4.8 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.
- 4.9 Maintenance of insurance by the CONTRACTOR as specified in this 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.
5. **CONTRACT BONDS.** The CONTRACTOR shall provide two good and sufficient bonds in the amounts listed below:
 - **Performance Bond** in a sum not less than one hundred percent (100%) of the total contract price, to guarantee faithful and timely performance of all work, in a manner satisfactory to the CITY, and further to guarantee that all materials and workmanship will be free from original or developed defects

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- Payment Bond that meets the requirements of California Civil Code section 9554, in a sum not less than one hundred percent (100%) of the total contract price, to satisfy claims of material suppliers, mechanics and laborers employed by CONTRACTOR on the work that is the subject of this Agreement

6. **CONTRACTOR'S INDEMNIFICATION OF CITY.** To the greatest extent allowed by law, 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 negligent acts, errors or omissions or wrongful acts or conduct of the CONTRACTOR, or its employees, agents, subcontractors, or others in connection with the execution of the work covered by this Agreement, except for those claims arising from the willful misconduct, sole negligence or active negligence of the CITY, its officers, agents, or employees. CONTRACTOR'S indemnification shall include any and all costs, expenses, attorneys' fees, expert fees and liability assessed against or incurred by the CITY, its officers, agents, or employees in defending against such claims or lawsuits, 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 resulting or arising from the conduct, tortious acts or omissions of the CONTRACTOR.

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

7. **OWNERSHIP OF DOCUMENTS.** All plans and specifications, including details, computations and other documents, prepared or provided by the CONTRACTOR under this Agreement shall be the property of the CITY. The CITY agrees to hold the CONTRACTOR free and harmless from any claim arising from any use, other than the purpose intended, of the plans and specifications and all preliminary sketches, schematics, preliminary plans, architectural perspective renderings, working drawings, including details, computation and other documents, prepared or provided by the CONTRACTOR. CONTRACTOR may retain a copy of all material produced under this Agreement for the purpose of documenting CONTRACTORs participation in this project.
8. **COMPENSATION.** CONTRACTOR'S compensation for all work performed in accordance with this Agreement, shall not exceed the total contract price of two hundred forty-nine thousand five hundred and fifty dollars (\$249,550.00). All work shall be invoiced monthly (showing balance of contract). Payment for these services shall be per acre (\$1,550.00 per acre) and shall include full compensation for all labor, materials, layout, tools, equipment, and any other incidentals required

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for completion of this work in its entirety. There shall be no further compensation for this work with the exception if diesel fuel prices go above \$4.00 per gallon, a fuel surcharge will be applied. Additional compensation for each one cent (\$.01) per gallon above \$4.00 per gallon will be made to the contractor for the number of gallons used for mowing. Payment to the contractor will be made only for the actual acreage mowed. No work shall be performed by CONTRACTOR in excess of the total contract price without prior written approval of the Public Works Division Manager. CONTRACTOR shall obtain approval by the Public Works Division Manager prior to performing any work that results in incidental expenses to CITY.

9. **TIMING REQUIREMENTS.** Time is of the essence in the performance of work under this Agreement and the timing requirements shall be strictly adhered to unless otherwise modified in writing. All work shall be completed in every detail to the satisfaction of the Public Works Division Manager within twenty-five (25) working days after the date of the Notice to Proceed and at least one (1) working mower shall be on site and used at all times.
10. **ENTIRE AGREEMENT.** This Agreement 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.
11. **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 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.

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.

12. **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.
13. **TERMINATION OF AGREEMENT.** Upon five (5) days' written notice to the CONTRACTOR, the CITY may, without cause and without prejudice to any other of the CITY's rights or remedies, terminate this Agreement. Upon the service of a notice of termination, the CONTRACTOR shall discontinue the work in the manner,

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sequence, and at such times as directed by the CITY's project manager. The CONTRACTOR shall remain responsible for the quality and fitness of the work performed by the CONTRACTOR before termination of the Agreement. All requirements of the Agreement pertaining to work completed or to be completed as of the time of termination shall survive the termination, including without limitation all indemnities, warranties, requirements for preparation of record drawings and completion of any "punch list" items directed by the CITY's project manager.

If any portion of the work is terminated or abandoned by the CITY, then the CITY shall pay CONTRACTOR for any work completed up to and including the date of termination or abandonment of this Agreement. The CITY shall be required to compensate CONTRACTOR only for work performed in accordance with the Agreement up to and including the date of termination. Notwithstanding the foregoing, the CONTRACTOR shall not be entitled to recover any loss of anticipated profit or revenue or other economic loss arising out of or resulting from the termination, including without limitation any claim for anticipated profits on the work not performed or lost business opportunity.

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14. **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 Contractor Services Agreement to be executed by setting hereunto their signatures on the dates set forth below.

WASHBURN GROVE MGMT, INC.

CITY OF OCEANSIDE

By: _____
Dennis Washburn
President/Secretary

By: _____
Steven R. Jepsen
City Manager

By: _____
Dave Washburn
Vice President/Treasurer

APPROVED AS TO FORM:

20-5196039
Employer ID No.

City Attorney

NOTARY ACKNOWLEDGMENTS OF CONTRACTOR MUST BE ATTACHED.