

MAINTENANCE SERVICES CONTRACT BETWEEN
THE CITY OF HUNTINGTON BEACH AND
FOR LANDSCAPE MAINTENANCE AT VARIOUS LOCATIONS
WITHIN THE CITY

THIS AGREEMENT is made and entered into by and between the City of Huntington Beach, a municipal corporation of the State of California, hereinafter referred to as "CITY," and _____, a California corporation, hereinafter referred to as "CONTRACTOR."

WHEREAS, CITY has solicited bids for services, hereinafter referred to as "PROJECT," generally described as landscape maintenance for various parks and other locations within the City of Huntington Beach and more specifically described in the General Requirements and Specifications Park and Landscape Maintenance _____ and

CONTRACTOR has been selected to perform said services,

NOW, THEREFORE, in consideration of the promises and agreements hereinafter made and exchanged, the parties covenant and agree as follows:

1. ACCEPTANCE OF CONDITIONS OF WORK; SCOPE OF SERVICES;
PLANS AND SPECIFICATIONS

CONTRACTOR acknowledges that it is fully familiar with all the terms, conditions and obligations of this Agreement and the Contract Documents (as hereinafter defined), the location of the job site, and the conditions under which the work is to be performed, and that it enters into this Agreement based upon its investigation of all such matters and is relying in no way upon any opinions or representations of CITY.

It is agreed that the Contract Documents are incorporated into this Agreement by this reference, with the same force and effect as if the same were set forth at length herein, and

that CONTRACTOR and its subcontractors, if any, shall be bound by said Contract Documents insofar as they relate in part or in any way, directly or indirectly, to the work covered by this Agreement. The Scope of Services which CONTRACTOR agrees to perform is set forth in the contract documents attached hereto as **Exhibit "A"**.

"Contract Documents" as defined herein mean and include:

- A. This Agreement;
- B. Bond covering the work herein agreed upon;
- C. Bid documents including Request for Proposal and/or the Notice Inviting Bids, the Special Instructions to Bidders and the CONTRACTOR's proposal, the plans and specifications;
- D. Any insurance that may be required.

If extra work not previously included in the Scope of Work should be required by CITY, CONTRACTOR may perform such extra work at CITY's request on a time and material basis.

Should there be any conflict between the terms of this Agreement and the bid or proposal of CONTRACTOR, then this Agreement shall control and nothing herein shall be considered as an acceptance of the terms of said bid or proposal which is in conflict herewith.

2. CONTRACTOR'S OBLIGATIONS; ACCEPTANCE OF RISK

CONTRACTOR shall furnish, at its own expense, all labor, plans, tools, equipment, supplies, transportation, utilities and all other items, services, applicable permits, and facilities necessary to complete the PROJECT in a good and workmanlike manner.

CONTRACTOR agrees to assume the risk of all loss or damage arising out of the nature of the PROJECT, during its progress or prior to acceptance, from the action of the elements,

from any unforeseen difficulties which may arise or be encountered in the prosecution of work, and for all other risks of any description connection with the work, including, but not limited to, all expenses incurred by or in consequence of the suspension or discontinuance of work, except such as are herein expressly stipulated to be borne by CITY, and for well and faithfully completing the work within the stipulated time and in the manner shown and described in this Agreement, and in accordance with the requirements of CITY under them for the compensation set forth in the accepted bid proposal.

3. COMPENSATION

CITY agrees to pay, and CONTRACTOR agrees to accept as full compensation for the faithful performance of this Agreement, subject to any additions or deductions made under the provisions of this Agreement or the Contract Documents, a sum not to exceed

to be paid as

provided in this Agreement.

4. PAYMENT

CITY shall pay CONTRACTOR for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit A. The payments specified in Exhibit A shall be the only payments to be made to CONTRACTOR for services rendered pursuant to this Agreement unless CITY approves additional compensation for additional services.

CONTRACTOR shall submit all billings for said services to CITY in the manner specified in Exhibit A, or, if no manner be specified in Exhibit A, then according to the usual and customary procedures and practices which CONTRACTOR uses for billing clients similar to CITY.

5. COMMENCEMENT OF PROJECT

CONTRACTOR agrees to commence the PROJECT within twenty (20) working days after notice to proceed is issued and shall diligently prosecute PROJECT to completion, excluding delays provided for in this Agreement.

6. TERM OF AGREEMENT

The term of this Agreement shall be _____, unless CITY exercises its option to renew as set forth herein.

Unless prohibited by statute or ordinance, in its discretion CITY may renew this Agreement for an additional _____ upon its expiration. The terms and conditions of the renewed agreement will remain the same as this original Agreement unless both parties agree in writing to an amendment. CONTRACTOR will be bound by the renewed agreement should CITY exercise its option to renew. Should the CITY exercise its option to renew this Agreement, then CITY shall give notice of intent to renew to CONTRACTOR not less than thirty (30) days before the expiration of this Agreement in the manner provided in Paragraph 25 herein.

If negotiations are still in progress at the end of any one year term previously agreed upon, the CITY and the CONTRACTOR shall continue performance as required herein on a month-to-month basis until either a new agreement is entered into or the CITY terminates the relationship in accordance with the provisions contained in the above paragraph. During such period of month-to-month operation while negotiations are in progress, the CONTRACTOR shall be obligated to continue performance for at least thirty (30) days after written notice to the CITY of its decision to terminate the relationship and the CITY shall be

obligated to give consideration to the CONTRACTOR for such additional performance at the usual rate of payment as provided herein.

7. TIME OF THE ESSENCE

The parties hereto recognize and agree that time is of the essence in the performance of this Agreement and each and every provision of the Contract Documents.

8. DEFAULT AND TERMINATION

If CONTRACTOR fails or refuses to prosecute the work hereunder with diligence, or fails to complete the work within the time specified, or is adjudged bankrupt or makes an assignment for the benefit of creditors or becomes insolvent, or violates any provision of this Agreement or the Contract Documents, CITY may give CONTRACTOR notice in writing of its intention to terminate this Agreement. Unless the violation is cured within ten (10) days after such Notice of Intention has been served on CONTRACTOR, CITY may, without prejudice to any other remedy it may have, terminate this Agreement upon the expiration of that time. Upon such default by CONTRACTOR, CITY may elect not to terminate this Agreement; in such event CITY may make good the deficiency in which the default consists and deduct the resulting costs from the progress payments then or to become due to CONTRACTOR.

If it is subsequently determined by a court of competent jurisdiction that CITY's termination of this Agreement under this Section was wrongful, such termination shall be converted to a termination for convenience under Section 9 and any damages shall be assessed as set forth in Section 9.

9. TERMINATION FOR CONVENIENCE

CITY may terminate this Agreement for convenience at any time with or without cause, and whether or not PROJECT is fully complete upon seven (7) calendar days written

notice to CONTRACTOR. In the event of termination, under this Section CITY shall pay CONTRACTOR for value of work in place on the PROJECT through the termination period plus seven and one-half percent (7 ½ %) for overhead and profit less all such payments already made. Such payment by CITY shall be CONTRACTOR's sole and exclusive remedy for termination by CITY for its convenience and CITY shall have not further obligation to CONTRACTOR.

10. REMEDY ON BREACH

In the event that CONTRACTOR shall breach, or fail to execute in good faith, any of the terms or conditions of this Agreement, and should CONTRACTOR fail to cure such breach or failure within ten (10) calendar days after CITY gives written notice thereof, the CITY may terminate this Agreement and complete the work to be accomplished hereunder for the account and at the expense of CONTRACTOR. CONTRACTOR shall be liable for any excess cost to CITY over the original contract price. In the event CITY completes the work, or causes the work to be completed, no sum shall be paid to CONTRACTOR until the work is complete. All costs of completion shall be deducted before any payment to CONTRACTOR is made. If the unexpended portion of the contract price is less than CITY's cost to complete, CONTRACTOR shall pay CITY a sum equal to said difference on demand. The remedies contained in this section are cumulative and are in addition to all other rights of CITY pursuant to this Agreement and at law or in equity.

11. CHANGES

CONTRACTOR shall adhere strictly to the Scope of Services set forth in **Exhibit** A unless a change therefrom is authorized in writing by the Department of ^{PUBLIC WORKS} (the Department). CONTRACTOR agrees to make any and all changes, furnish materials and perform all work necessary within the scope of the PROJECT as the Department may require in

writing. Under no condition shall CONTRACTOR make any changes without the written order of the Department, and CITY shall not pay any extra charges made by CONTRACTOR that have not been agreed upon in writing by the Department.

CITY reserves the right to make such increases or decreases in the quantity of any item of work to be performed or furnished under this Agreement; and in the event that any such increase or decrease in the quantity of work to be performed or furnished is so ordered, the amount to be paid CONTRACTOR under this Agreement shall be correspondingly increased or decreased, as the case may be, in proportion to the increased or decreased quantities of work.

12. DIFFERING SITE CONDITIONS

A. Notice: The CONTRACTOR shall promptly, and before any conditions are disturbed, notify the Department in writing of:

- (1) Subsurface or latent physical conditions at the job site differing materially from those indicated in this Agreement or the Contract Documents; or
- (2) Unknown physical conditions at the job site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent to work of the character to be performed under this Agreement. The Department shall promptly investigate the conditions and if it finds that such conditions do materially so differ and cause an increase or decrease in the time required for performance of any part of the work under this Agreement, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the Agreement modified in writing accordingly;

B. Time Extension: No claim of the CONTRACTOR under this Section shall be allowed unless the CONTRACTOR has given the notice required hereunder, provided, however, the time prescribed therefor may be extended by CITY.

13. SAFETY PRACTICES

CONTRACTOR shall comply fully with all laws, orders, citations, rules, regulations, standards and statutes, with respect to occupational health and safety, the handling and storage of hazardous materials, accident prevention, safety equipment and construction practices. CONTRACTOR shall conduct inspections to determine that safe working conditions and equipment exist and accepts sole responsibility for providing a safe place to work for its employees and for employees of its subcontractors and suppliers of material and equipment, if any, for adequacy of and required use of all safety equipment and for full compliance with the aforesaid laws, orders, citations, rules, regulations, standards and statutes.

14. WARRANTIES

The CONTRACTOR unconditionally guarantees all work done under this Agreement including, but not limited to, any workmanship, installation, fabrication, material or structural facilities maintained. CONTRACTOR, within ten (10) days after notice by CITY of any defect in the work, shall have the option to make appropriate repairs or replace the defective work. Upon expiration of such ten- (10) day period, CITY may then make appropriate repair, replacement or rework at CONTRACTOR's risk and expense.

15. INDEPENDENT CONTRACTOR

It is understood and agreed that the CONTRACTOR is, and shall be, acting at all times hereunder as an independent contractor and not an employee of CITY. CONTRACTOR shall secure at its expense, and be responsible for any and all payment of all taxes, social security, state disability insurance compensation, unemployment compensation and other payroll deductions for CONTRACTOR and its officers, agents and employees and all business licenses, if any, in connection with the PROJECT.

16. INDEMNIFICATION, DEFENSE, HOLD HARMLESS

CONTRACTOR hereby agrees to protect, defend, indemnify and hold harmless CITY, its officers, elected or appointed officials, employees, agents, and volunteers from and against any and all, claims, damages, losses, expenses, judgments, demands defense costs, and consequential damage or liability of any kind or nature, however caused, including those resulting from death or injury to CONTRACTOR's employees and damage to CONTRACTOR's property, arising directly or indirectly out of the obligations or operations herein undertaken by CONTRACTOR, caused in whole or in part by any negligent act or omission of the CONTRACTOR, any subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, including but not limited to concurrent active or passive negligence, except where caused by the active negligence, sole negligence, or willful misconduct of the CITY. CONTRACTOR will conduct all defense at its sole cost and expense and CITY shall approve selection of CONTRACTOR's counsel. CITY shall be reimbursed for all costs and attorney's fees incurred by CITY in enforcing this obligation. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONTRACTOR.

17. WORKERS' COMPENSATION INSURANCE

Pursuant to *California Labor Code* section 1861, CONTRACTOR acknowledges awareness of section 3700 *et seq.* of said Code, which requires every employer to be insured against liability for workers' compensation; CONTRACTOR covenants that it will comply with such provisions prior to commencing performance of the work hereunder.

CONTRACTOR shall maintain workers' compensation insurance in an amount of not less than One Hundred Thousand Dollars (\$100,000) bodily injury by accident, each occurrence, One Hundred Thousand Dollars (\$100,000) bodily injury by disease, each employee, Two Hundred Fifty Thousand Dollars (\$250,000) bodily injury by disease, policy limit.

CONTRACTOR shall require all subcontractors to provide such workers' compensation insurance for all of the subcontractors' employees. CONTRACTOR shall furnish to CITY a certificate of waiver of subrogation under the terms of the workers' compensation insurance and CONTRACTOR shall similarly require all subcontractors to waive subrogation.

18. INSURANCE

In addition to the workers' compensation insurance and CONTRACTOR's covenant to indemnify CITY, CONTRACTOR shall obtain and furnish to CITY, a policy of general public liability insurance, including motor vehicle coverage covering the PROJECT. Said policy shall indemnify CONTRACTOR, its officers, agents and employees, while acting within the scope of their duties, against any and all claims of arising out of or in connection with the PROJECT, and shall provide coverage in not less than the following amount: combined single limit bodily injury and property damage, including products/completed operations liability and blanket contractual liability, of \$1,000,000 per occurrence. If coverage is provided under a form which includes a designated general aggregate limit, the aggregate limit must be no less than \$1,000,000. Said policy shall name CITY, its officers, and employees as Additional Insureds, and shall specifically provide that any other insurance coverage which may be applicable to the PROJECT shall be deemed excess coverage and that CONTRACTOR's insurance shall be primary.

Under no circumstances shall said above-mentioned insurance contain a self-insured retention, or a "deductible" or any other similar form of limitation on the required coverage.

19. CERTIFICATES OF INSURANCE; ADDITIONAL INSURED
ENDORSEMENTS

Prior to commencing performance of the work hereunder, CONTRACTOR shall furnish to CITY certificates of insurance subject to approval of the City Attorney evidencing the foregoing insurance coverages as required by this Agreement; said certificates shall:

1. provide the name and policy number of each carrier and policy;
2. shall state that the policy is currently in force;
3. shall promise to provide that such policies will not be canceled or modified without thirty (30) days' prior written notice of CITY; and
4. shall state as follows: *"The above-detailed coverage is not subject to any deductible or self-insured retention, or any other form of similar-type limitation."*

CONTRACTOR shall maintain the foregoing insurance coverages in force while working under this Agreement.

The requirement for carrying the foregoing insurance coverages shall not derogate from the provisions for indemnification of CITY by CONTRACTOR under the Agreement. CITY or its representative shall at all times have the right to demand the original or a copy of all said policies of insurance. CONTRACTOR shall pay, in a prompt and timely manner, the premiums on all insurance hereinabove required.

A separate copy of the additional insured endorsement to each of CONTRACTOR's insurance policies, naming the CITY, its officers and employees as Additional Insureds shall be provided to the City Attorney for approval prior to any payment hereunder.

20. NON-ASSIGNABILITY

CONTRACTOR shall not assign the agreement or any interest therein or any portion thereof without prior written approval from the Director of Community Services. The CITY's approval may be conditioned on the proposed assignee or subcontractor agreeing to revisions to the agreement to reflect market conditions of CITY requirements that are then current or other such conditions that the CITY may deem appropriate. Also, no assignee or subcontractor will be approved who is not at least comparable to the original contractor in financial or professional competence to perform the duties.

21.

A.

B.

22. BUSINESS LICENSE

CONTRACTOR will be required to obtain a business license from CITY.

23. NONDISCRIMINATION

CONTRACTOR shall not discriminate in any manner against any person by reason of race, religion, creed, color, natural origin, ancestry, physical handicap, medical condition, marital status or gender. CONTRACTOR shall comply with the CITY adopted program for equal employment opportunities.

24. CITY EMPLOYEES AND OFFICIALS

CONTRACTOR shall employ no CITY official nor any regular CITY employee in the work performed pursuant to this Agreement. No officer or employee of CITY shall have any financial interest in this Agreement in violation of *California Government Code* sections 1090 *et seq.*

25. NOTICES

All notices required or permitted hereunder shall be in writing and delivered in person or by registered or certified mail to the following authorized representative of the party to whom delivery is to be made, at the place of business of such party, or to any other place designated in writing by such party.

FOR CITY

FOR CONTRACTOR

Maintenance Operations Manager
City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648

26. AFFIDAVITS OF SATISFACTION OF CLAIMS

After the completion of the work contemplated by this Agreement, CONTRACTOR shall file with the Department its affidavit stating that all workers and persons employed, all firms supplying materials and all subcontractors upon PROJECT have been paid in full and that there are no claims outstanding against PROJECT for either labor or material, except certain items, if any, to be set forth in an affidavit covering disputed claims, or items in connection with Notices to Withhold which have been filed under the provisions of the statutes of the State of California.

27. WAIVER OF CLAIMS

The acceptance by CONTRACTOR of the payment of the final certificate shall constitute a waiver of all claims against CITY under or arising out of this Agreement.

28. BOND

CONTRACTOR shall, prior to entering upon the performance of this Agreement, furnish a bond approved by the City Attorney in the amount of one hundred percent of the contract price to guarantee payment of all claims for labor and materials furnished.

29. CAPTIONS

Captions of the section of this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

30. IMMIGRATION

CONTRACTOR shall be responsible for full compliance with the immigration and naturalization laws of the United States and shall, in particular, comply with the provisions of U.S.C. Section 1324a regarding employment verification.

31. LEGAL SERVICES SUBCONTRACTING PROHIBITED

CONTRACTOR and CITY agree that CITY is not liable for payment of any subcontractor work involving legal services, and that such legal services are expressly outside the scope of services contemplated hereunder. CONTRACTOR understands that pursuant to Huntington Beach City Charter Section 309, the City Attorney is the exclusive legal counsel for CITY; and CITY shall not be liable for payment of any legal services expenses incurred by CONTRACTOR.

32. ATTORNEY'S FEES

In the event suit is brought by either party to enforce the terms and provisions of this agreement or to secure the performance hereof, each party shall bear its own attorney's fees.

REST OF PAGE NOT USED

33. ENTIRETY

The foregoing, and Exhibit "A" attached hereto, set forth the entire Agreement between the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their authorized officers on _____.

CITY OF HUNTINGTON BEACH, a
municipal corporation of the State of
California

By: _____

print name

ITS: (circle one) Chairman/President/Vice President

Director of Public Works

AND

APPROVED AS TO FORM:

By: _____

print name

ITS: (circle one) Secretary/Chief Financial Officer/Asst.
Secretary - Treasurer

City Attorney

REVIEWED AND APPROVED:

Finance Officer