

**DRAFT
MAINTENANCE AGREEMENT
LANDSCAPE MAINTENANCE SERVICES**

This Agreement made and entered into this ___ day of, _____ 2016 by and between the CITY OF MADERA, a public agency, hereinafter referred to as "City," and _____, hereinafter referred to as "Contractor".

WHEREAS, City and Contractor desire to contract for the performance by Contractor of the landscape maintenance work and services described in accordance with the terms of Request for Proposal Landscape Maintenance Services RFP No. 201516-01 ("RFP") attached hereto as Exhibit "A" and incorporated herein as though set forth in full. The Contractor has responded to the Request for Proposals ("RFP") to perform these needed services as indicated in the response to RFP attached hereto as Exhibit "B" and incorporated herein as though fully set forth. The City desires to have the Contractor perform the work in accordance with the RFP and the response thereto prepared by the Contractor. The work to be performed in accordance with Exhibit "A" and Exhibit "B" is hereinafter referred to as "Landscape Maintenance Services."

NOW, THEREFORE, in consideration of the premises and of the services to be performed by Contractor, and of the compensation to be paid therefore by City, it is HEREBY MUTUALLY AGREED as follows:

1. TERM. Unless earlier terminated in accordance with Section 14 of this Agreement, this Agreement shall continue in full force and effect for a period commencing on the date entered into above, and ending on _____, 2019, unless extended by mutual written agreement of the parties. City and Contractor may, upon mutual written agreement of both parties, extend this Agreement for up to two (2) additional one-year terms.

Contractor is authorized to commence work immediately upon receipt of a fully executed copy of this Agreement and Notice to Proceed as described in the RFP.

2. ENTIRE AGREEMENT. This Agreement consists of the following documents, in order of precedence, and shall be the entire agreement between parties:

A. This Agreement

B. City's Request for Proposal Landscape Maintenance Services RFP No. 201516-10, dated _____, 2016

C. Contractor's response to RFP dated _____, 2016 and all attachments thereto, by reference, included herein.

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3. COMPENSATION. Landscape Maintenance Areas

A. The amount to be paid Contractor for furnishing all labor, tools, equipment, and chemicals and for Landscape Maintenance Services shall be equal to the following:

Group #1 Downtown Maintenance

Map #	Designation	Location	Monthly	Annual
1	Downtown	Downtown District		
			Group Total	

Group #2 Non-Median Maintenance

4	City Hall	205 West 4 th Street		
5	Corporation Yard	1030 S. Gateway Drive		
6	Frank Bergon Center	238 South D Street		
7	WAC & Youth Hut	113 South Q Street		
8	Kennedy Pond	Kennedy Pond		
9	Mex-Am Center	716 Columbia		
10	Cleveland Linear	South side of Cleveland from Granada west to Glade		
11	Granada Linear	West side of Granada from Cleveland to Foxglove (excluding Veterans Hall property)		
11A	Police Department	330 South C Street		
			Group Total	

Group #3 Median Maintenance

12	Yosemite Ave Islands	Median island on Yosemite from Gateway west to Howard		
13	Gateway Dr	Islands & Park Strips – Cleveland to Fresno River		
14	Howard Road	Islands & Park Strips – Schnoor to west of Autumn		
15	West Cleveland Islands	West from Schnoor to Granada		
16	4 th Street Islands	West on 4th Street from Gateway to Highway 99		
17	Hopy Island	Cypress and Yosemite		
18	Sunrise Island	Sunrise & Lake Street		
19	Barsotti Islands	Park Lane, Park Drive, Park South, North Park		
20	Mainberry Islands	Mainberry, Third, and Westgate		
21	West Park	West Park		
22	Terrace Place	Terrace Place Island, North of Central		
23	4 th & Sunset	4 th & Sunset		
24	Renway Island	Renway Cul-de-sac		
25	Riverview Strips	Riverview East and West of Granada		
26	Gateway Tree Planters	East and West Side of Gateway Drive, Fresno River to Olive Avenue		
27	Roosevelt Planter Boxes	Roosevelt and 13 th		
28	Kennedy Wall	Kennedy, East of Kennedy Pond		
29	Olive Avenue Islands	Olive Ave, Yosemite to Hwy 145		
30	East Cleveland Islands	Cleveland Ave, Gateway Dr. to Tozer		
32	Ave 17/Airport Median	Ave 17 West of Airport Dr.		

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33	Yosemite Tozer (Crossroads)	Tozier Ave. South of Yosemite		
34	Cleveland Center Median	Cleveland median islands from Glade Ave west to Westberry		
35	Industrial Schnoor	Industrial Avenue between Granada and Schnoor Avenue and Schnoor Avenue between Howard Road and Industrial		
36	Lake Street	Lake Street from Cleveland to Ellis		
37	Ave 13 Median Island-Parkwood	Ave 13 Median Island in front of Parkwood School		
38	Ave 13 Median Island-Valero	Ave 13 West of Hwy 145 in front of Valero Station		
39	Sunset Wall	Sunset East of Schnoor Avenue		
40	Madera South H.S. Medians	Avenue 13 (Pecan) between Stadium and Pine		
41	4 th Street Medians	4 th Street from Lake Street West to Sunset		
The locations of the areas are shown on Attachments C & D.			Group Total	

B. Extra work as identified in the Section II.D of the RFP:

Prior to performing any extra work, the Contractor shall prepare and submit a written description of the work with an estimate of labor and materials. No work shall commence without the written authorization from the City.

Square Foot Rate for Extra Work: \$ _____

Hourly Rate for Extra Work \$ _____

Such compensation shall be paid Contractor after inspection and acceptance of work by City and receipt of a billing for all materials, equipment, and per hour labor charges of Contractor as set forth above including all payments to such Subcontractor. Such billing shall be accompanied by detailed invoices for materials, equipment and Subcontractor expenses purchased and used by Contractor in the performance of said Extra Work.

4. **APPROPRIATIONS.** This Agreement is subject to and contingent upon funds being appropriated therefore by the City Council of City for each fiscal year covered by the Agreement. If such appropriations are not made, this Agreement shall automatically terminate without penalty to City.

5. **PAYMENTS.** Payments to Contractor shall be made not later than thirty days following receipt of the billing invoice and monthly work reports for the month in which said services were performed. Incomplete, inaccurate or otherwise non-compliant invoices will be returned and must be corrected prior to re-submittal.

6. **ADDITION OR DELETION OF AREA SITES.** Upon receipt of not less than thirty days written notice by City, Contractor agrees to accept for maintenance new landscape areas or proportioned property adjacent to existing areas under the provisions of this Agreement. Upon furnishing not less than thirty days written notice to Contractor, City shall at all times have the right to add or delete areas of property to or

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from this Agreement. In the event of addition or deletion of any landscape areas to be maintained hereunder, the number of square feet contained in any such sites shall be added to or deducted from the total number of acres or square feet being maintained; and the remaining monthly payments to become due Contractor in the year in which the addition or deletion is made shall be increased or decreased accordingly by an amount equal to the annual price per acre or square feet multiplied times the number of acres or square feet added or deleted and divided by twelve.

7. **INSURANCE REQUIREMENTS.** During the term of this Agreement, Contractor shall maintain, keep in force and pay all premiums required to maintain and keep in force liability and property damage insurance. The limits of such policy shall be as required by the City of Madera as set forth in the Request for Proposals ("RFP") to perform these needed services attached hereto as Exhibit "A" and incorporated herein as though set forth in full and as indicated in the response to RFP attached hereto as Exhibit "B" and incorporated herein as though fully set forth.

8. **INDEMNIFICATION.** The Contractor agrees to indemnify, defend and hold harmless City and its officers, employees and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation, costs and fees of litigation) of every nature arising out of or in connection with Contractor's performance of work hereunder or its failure to comply with any of its obligations contained in the Agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the City.

9. **SUCCESSOR AND ASSIGNS.** City and Contractor each binds itself, its partners, successors, legal representatives and assigns to the other party to this Agreement and to the partners, successors, legal representatives and assigns of such other party in respect of all promises and agreements contained herein.

10. **CONTRACTOR'S BONDS.** For the landscape areas identified in Exhibits A and B attached hereto, Contractor shall take out and maintain in full force and effect a faithful performance bond equal to one hundred percent (100%) of the total annual contract amount and a payment bond in an amount equal to one hundred percent (100%) of the total annual contract amount, in accordance with the provisions of §§3247-3252 of the California Civil Code.

11. **INDEPENDENT CONTRACTOR.** Neither City nor any of its employees shall have any control over the manner, mode, or means by which Contractor, its agents or employees, perform the services required herein, except as otherwise set forth herein. Contractor shall perform all services required herein as an independent contractor of City and shall not be an employee of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role; however, City shall have the right to review Contractor's work product, result, and advice. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City.

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12. WAGE/LABOR REQUIREMENTS. Attention is directed to Section 1735 of the Labor Code, which reads as follows:

“A contractor shall not discriminate in the employment of persons upon public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code. Every contractor for public works who violates this section is subject to all the penalties imposed for a violation of this chapter.”

The Contractor shall comply with Labor Code Section 1775. (a) (1) The contractor and any subcontractor under the contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the contractor or, except as provided in subdivision (b), by any subcontractor under the contractor.

State prevailing wage rates shall apply when the State wage rate is higher than the federal wage rate. All Contractors and Subcontractors are subject to the application of Section 1720 et seq. of the California Labor Code which details the regulations and procedures governing the payment of State prevailing wages.

All Contractors and Subcontractors are subject to the provisions of Section 3700 of the California Labor Code which requires that every employer be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the code.

All Contractors and Subcontractors are subject to the provisions of Section 1810-1814 of the California Labor Code which provide that the maximum hours a worker is to be employed is limited to eight (8) hours a day and forty (40) hours a week and the Contractor or Subcontractor shall forfeit, as a penalty, twenty-five (\$25) dollars for each worker employed in the execution of the Contract for each calendar day during which a worker is required or permitted to labor more than eight (8) hours in any calendar day or more than eight (8) hours in any calendar day or more than forty (40) hours in any calendar week and is not paid overtime.

Section 1815 of the California Labor Code requires that, notwithstanding the provision of Sections 1810-1814, employees of Contractors who work in excess of eight (8) hours per day and forty (40) hours per week shall be compensated for all hours worked in excess of eight hour per day at not less than 1-1/2 times the basic rate of pay.

13. PERMITS. In the performance of the terms of this contract, Contractor shall comply with all applicable laws, regulations and ordinances and shall be

responsible for the securing of any and all permits, which may be required for the performance of the work, and services herein provided. Contractor shall use only those herbicides and pesticides approved for use in the locations and environments proposed for such chemical applications. Contractor shall obtain and provide to City evidence of such approval prior to application. Contractor must comply with all requirements of the County Ag Commission office and obtain all applicable permits. Contractor shall possess a valid applicators license and submit verification of such to City. Any variation from these requirements shall require written consent of the City.

14. TERMINATION.

A. Termination for Contract Default. This Agreement shall be terminated, if at any time, in the opinion of the City Council, upon recommendation of the Director of Parks and Community Services, 1) Contractor fails to conform to the requirements of this contract; 2) Contractor seeks relief under any law for the benefit of insolvents or is adjudicated bankrupt; 3) any legal proceedings are commenced against the Contractor which may interfere with the performance of the contract; or 4) Contractor has failed to supply an adequate working force, or material of proper quality, or has failed in any other respect to prosecute the work with the diligence and force specified and intended in and by the terms of the Agreement, notice thereof in writing may be served upon them; and should he neglect or refuse to provide means for a satisfactory compliance with Agreement as directed by the Director of Parks and Community Services within fourteen (14) days from the receipt of such notice the City Council in any such case shall have the right and power, at its option and without prejudice to any other right it may have, to terminate the Agreement. Any excess of the cost arising there from will be charged against the Contractor and his sureties, who will be liable thereof. In the event of such termination, all monies due the Contractor or retained under terms of the contract shall be forfeited to the City; but such forfeiture will not release the Contractor or this sureties from liability for failure to fulfill the contract.

B. Termination for Convenience. City reserves the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days written notice to Contractor, except that where termination is due to the fault of Contractor and constitutes an immediate danger to health, safety, and general welfare, the period of notice shall be such shorter time as may be determined by the City. Upon receipt of the notice of termination, Contractor shall immediately cease all services hereunder except such as may be specifically approved by the Director of Parks and Community Services. Contractor shall be entitled to compensation for all services rendered prior to receipt of the notice of termination and for any services authorized by the Director of Parks and Community Services thereafter. Contractor may terminate this Agreement, with or without cause, upon thirty (30) days written notice to City.

15. BREACH. In the event Contractor fails to perform any of the terms of this Agreement and fails to correct any such breach within five days after written notice from City to do so, then City may at its option, withhold further payment to Contractor

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hereunder until Contractor has corrected such breach, terminate this Agreement

forthwith, or may have the work necessary to the correction of such breach done by another person, firm or corporation and charge Contractor therefore. The foregoing remedies are cumulative and not in lieu of any other remedies for breach of this Agreement, which may be available to City under the laws of the State of California.

16. LIQUIDATED DAMAGES. If Contractor does not maintain the specific contracted site within two (2) days following the scheduled maintenance day, Contractor shall pay liquidated damages to City in the amount of \$50.00 per day, for each area not maintained and for every day of delay beyond the time prescribed to complete the work under this contract. At the sole discretion of City, extension of the time prescribed to complete the work may be granted due to weather conditions or any other considered acts of emergency that may prevent feasible working conditions. Any extensions granted by City under this section must be authorized by the City in writing.

It is further agreed that in case the work called for under this Agreement is not completed within the specified time, City shall have the right to extend the time of completion as may seem best to serve the interest of City. If the item requiring completion is deemed necessary by City, at City's sole discretion, City may, after reasonable attempt to notify the Contractor cause such action to be taken and shall charge the cost thereof as determined by the City, against the Contractor, or may deduct such cost from an amount due to Contractor from City.

17. ASSIGNMENT AND SUBCONTRACTING. The Contractor shall not assign or subcontract the work, or any part thereof, without the previous written consent of the City, nor shall they assign, by power of attorney or otherwise, any of the money payable under this contract unless written consent of the City has been obtained. No right under this contract, no claim for money due or to become due hereunder shall be asserted against the City, or persons acting for the City, by reason of any so-called assignment of this contract or any part thereof, unless such assignment has been authorized by the written consent of the City. In case the Contractor is permitted to assign monies due or to become due under this contract, the instrument of assignment shall contain a clause subordinating the claim of the assignee to all prior liens for services rendered or materials supplied for the performance of work.

Should any Subcontractor provider fail to perform in a satisfactory manner the work undertaken by him, his subcontract shall be immediately terminated by the Contractor upon notice from the City. The Contractor shall be fully responsible and accountable to the City for the acts and omissions of his Subcontractor providers, and of persons directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him. Nothing contained in this contract shall create any contractual relation between any subcontractor and the City.

18. NOTICES. Except as otherwise specifically provided in this Agreement, any notice, submittal or communication required or permitted to be served on a party hereto,

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may be served by personal delivery to the person or the office of the person identified below. Service may also be made by mail, by placing first class postage affixed thereto, and addressed as indicated below, and depositing said envelope in the United States mail to:

City of Madera

Director of Parks & Community
Services
701 E. 5th Street
Madera, California 93638
559-661-5494

Contractor

19. **FORCE MAJEURE.** The time for performance of services to be rendered pursuant to this Agreement may be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of Contractor, including, but not limited to, acts of God or of a public enemy, acts of the government, fires, earthquakes, floods, epidemic, quarantine restrictions, riots, strikes, freight embargoes, and unusually severe weather if Contractor shall within ten (10) days of the commencement of such condition notify the Director of Parks and Community Services who shall thereupon ascertain the facts and the extent of any necessary delay, and extend the time for performing the services for the period of the enforced delay when and if in the Director of Parks and Community Services' judgment such delay is justified, and the Director of Parks and Community Services' determination shall be final and conclusive upon the parties to this Agreement.

20. **ATTORNEY'S FEES/VENUE.** In the event that any action is brought to enforce the terms of this Agreement, the party found by the court to be in default agrees to pay reasonable attorney's fees to the successful party in an amount to be fixed by the Court. The venue for any claim being brought for breach of this Agreement shall be in Madera County.

21. **GOVERNING LAW.** The laws of the State of California shall govern the rights and obligations of the parties under the Agreement, including the interpretation of the Agreement. If any part of the Agreement is adjudged to be invalid or unenforceable, such invalidity shall not affect the full force and effect of the remainder of the Agreement.

22. **SEVERABILITY.** In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement, which shall be interpreted to carry out the intent of the parties hereunder.

23. **AUTHORITY.** The persons executing this Agreement on behalf of the

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parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by so executing this Agreement the parties hereto are formally bound to the provisions of this Agreement.

24. WAIVER. No delay or omission in the exercise of any right or remedy of a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. No consent or approval of City shall be deemed to waive or render unnecessary City's consent to or approval of any subsequent act of Contractor. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

25. RIGHTS AND REMEDIES ARE CUMULATIVE. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

26. LEGAL ACTION. In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct, or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain injunctive relief, a declaratory judgment, or any other remedy consistent with the purposes of this Agreement.

This Agreement and the attachments and exhibits incorporated herein by reference, represents the entire agreement and understanding between the parties. Any modifications to this Agreement shall be in writing and signed by authorized representatives of the parties. One or more waivers of any term, condition or covenant by either party shall not be construed as a waiver of any other term, condition or covenant.

* * * * *

IN WITNESS WHEREOF, the parties hereto have executed this Agreement at Madera, California, the day and year first above written.

CITY OF MADERA

CONTRACTOR

By _____
Mayor, Robert Poythress

By _____
Title _____

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ATTEST:
Sonia Alvarez,
City Clerk

APPROVED AS TO FORM:
Brent Richardson
City Attorney

By: City Clerk

By: City Attorney