

**Coachella Valley Public Cemetery District**  
**Request for Proposal: Landscape Maintenance**

**Date Issued: August 16, 2022**

**Proposal Responses Due: September 23, 2022, 5:00 PM**



**1. INTRODUCTION**

**1(A). Background**

The Coachella Valley Public Cemetery District (CVPCD or District) was formed August 8, 1927, under Section 8890 of the California Health and Safety Code. District boundaries enclose approximately 3,444 square miles within Riverside County. The District since that time has performed over 21,000 interments/burials and has set over 15,000 headstones/grave markers. The Coachella Valley Cemetery is one of over 265 public cemetery Districts in California which are supported, in part, by property taxes and one of many types of special Districts in California.

The cemetery estimates that the facility will meet the need of the public for at least fifty years. The total District property consists of sixty acres, twenty-nine of the sixty have been developed for interment purposes.

A small portion of the property tax revenue that is collected from taxpayers within the District is part of the revenue the cemetery relies on for the annual budget. Individuals who do not reside in the District do not pay property taxes but are required by law to pay a surcharge to the District for interment in the cemetery.

Cemetery Districts are not a department of any State or County government. Although Counties, for a fee, do collect property taxes and deposit them to District accounts.

The Board of Trustees for the District meets once a month for regular business meetings. Laws and rules for these meetings and others are contained in the Brown Act. Laws for the operation of public cemeteries are contained in the California Health and Safety Code.

**1(B). RFP Purpose**

The goal for the CVPCD is to provide best-in-class cemetery grounds for our District. The RFP will solicit bids from qualified companies to maintain the landscaping on CVPCD grounds. The CVPCD has unique needs, as landscaping maintenance includes weed eating around headstone markers, as well as accomplishing mowing on designated days. It is vitally important that companies submitting to bid understand these needs and are prepared to meet them.

# Request for Proposal – Landscape Maintenance

## 1(C). Qualifying Questions

1. Has your company been in continuous operation for less than three years? Yes \_\_\_ No \_\_\_
2. Does any employee or official of the CVPCD have any financial or other interest in your firm? Yes \_\_\_ No \_\_\_
3. Has your company been disqualified by any public agency from participation in public contracts? Yes \_\_\_ No \_\_\_

If the answer to any of the above is Yes, you may not qualify to participate in this bid. Contact the CVPCD for additional information. If the answer to all the above was No, please fill out this sheet with the appropriate contact information for your company.

FULLLEGALNAMEOF COMPANY: \_\_\_\_\_

TYPE OF BUSINESS: Corporation \_\_\_ Partnership (general) \_\_\_ Partnership (limited) \_\_\_

Sole Proprietorship \_\_\_ Limited Liability Company \_\_\_

FEDERALEMPLOYER IDENTIFICATION NUMBER (EIN): \_\_\_\_\_

CONTRACTORS LICENSE NUMBER: \_\_\_\_\_

EXPIRATION DATE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY/STATE/ZIP: \_\_\_\_\_

EMAILADDRESS: \_\_\_\_\_

AUTHORIZED REPRESENTATIVE: \_\_\_\_\_

\*Proposals must be signed by a duly authorized official of the responder. For purposes of the Request for Proposal, "Responder" may also be referred to as Vendor, Contractor, Supplier, Proposer, Company or Firm.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Phone Number

## **2. RFP INSTRUCTIONS AND INFORMATION**

### **2(A). RFP Contact**

Name and Title:

Joshua Bonner

General Manager

Coachella Valley Public Cemetery District

Address:

82925 Avenue 52

Coachella, CA 92236

Contact Information:

(760) 574-9906 (C)

(760) 398-3221 (O)

Josh.Bonner@CVPCD.org

All postings in relation to this RFP will be published on the CVPCD website at CVPCD.org under the "Public Notices" page.

### **2(B). RFP Evaluation Criteria**

A CVPCD evaluation team will evaluate the RFP responses received from each vendor. Prior to the selection of the award to the apparent successful vendor, the CVPCD reserves the right to conduct on-site visits of any vendors' facilities and/or require any vendor to participate in a presentation to the evaluation team and/or the CVPCD Board of the items contained in the RFP response and any other items deemed appropriate by the CVPCD.

If an award is made as a result of this RFP, it shall be awarded to the vendor whose proposal will lead to the best product for the CVPCD with the quality of work, professionalism, price and other factors including, but not limited to: demonstrated technical ability and expertise; reference calls and/or recommendations; licenses, ISO Certifications or any other applicable membership or certifications; presentations to the CVPCD (if applicable); on-site visits at vendor's site (if applicable); product; any additional criteria deemed appropriate by the CVPCD which would lend itself to establishing the service provider's viability to perform the work as outlined in this RFP.

When determining whether a vendor is responsible, or when evaluating a vendor's response, the following factors will be considered, any one of which will suffice to determine whether a potential vendor is a responsible vendor or if the vendor's proposal is the most advantageous to the CVPCD:

1. The ability and skill of the vendor to perform/provide the service required.
2. The character, integrity, reputation, judgment, experience, and efficiency of the vendor.

3. The quality of performance of previous public and private contracts or services, including, but not limited to, the vendor's ability to perform satisfactorily and complete items specified in the contract agreements.
4. The previous and existing compliance by the vendor with laws relating to the contractor services.
5. Evidence of collusion with any other vendor, in which case colluding vendors will be restricted from submitting further bids on the subject project or future tenders.
6. The vendor is not qualified for the work or to the full extent of the RFP.
7. There is uncompleted work with the CVPCD or others, or an outstanding dispute on a previous or current contract that might hinder, negatively affect, or prevent the prompt completion of the work bid upon.
8. Such other information as may be secured having a bearing on the decision to award the contract.
9. Any other reason deemed proper by the CVPCD.

## **2(C) Notices and Response Criteria**

### **2(C)1. Good Faith**

This RFP has been compiled in good faith. The information contained within is selective and subject to the CVPCD's updating, expansion, revision, and amendment.

### **2(C)2. Right to Cancel**

The CVPCD reserves the right to change any aspect of, terminate, or delay this RFP, the RFP process and/or the program, which is outlined within this RFP at any time.

### **2(C)3. Not an Award**

Recipients of this RFP are advised that nothing stated herein, or any part thereof, or any communication during the evaluation and selection process, shall be construed as constituting, offering, or awarding a contract.

### **2(C)4. Property of the CVPCD**

Responses to this RFP will become the property of the CVPCD and will form the basis of negotiations of an agreement between the CVPCD and the apparent successful vendor. Proposals are subject to the California Public Records Act and may be provided to anyone properly requesting same, after contract award. Proprietary or confidential information must be clearly indicated with submitted proposals.

### **2(C)5. CVPCD not Liable for Costs**

The CVPCD is not liable and will not be responsible for any costs incurred by any vendor(s) for the preparation and delivery of the RFP responses, nor will the CVPCD be liable for any costs incurred prior to the execution of an agreement, including but not limited to, presentations by RFP finalists to the CVPCD.

**2(C)6. CVPCD’s Expectations**

During the review of this document, please note the CVPCD’s emphasis on the expectations, qualities, and requirements necessary to be positioned as an RFP finalist and successful vendor.

**2(C)7. Proposal Rejection; No Obligation to Buy**

The CVPCD reserves the right to reject any or all proposals at any time without penalty. The CVPCD reserves the right to refrain from contracting with any vendor. The release of this RFP does not compel the CVPCD to make an award. The CVPCD may elect to proceed further with this project by interviewing firm(s) well-suited to this project, conducting site visits, or proceeding with an award.

**2(C)8. Right to Award**

The CVPCD reserves the right to make an award without further discussion of the proposal submitted. Therefore, the proposal should be submitted initially with the most favorable terms the vendor can offer.

**2(C)9. Non-Endorsement**

As a result of the selection of a vendor to supply products and/or services the CVPCD is neither endorsing nor suggesting that the vendor's product is the best or only solution. The vendor agrees to make no reference to the CVPCD in any literature, promotional material, brochures, sales presentation, or the like without the express written consent of the CVPCD.

**2(C)10. Errors in Proposal**

The CVPCD will not be liable for any errors in vendor proposals. Vendors will not be allowed to alter proposal documents after the deadline for proposal submission. The CVPCD reserves the right to make corrections or amendments due to errors identified in proposals by the CVPCD or the vendor. This type of correction or amendment will only be allowed for such errors as typing, transposition, or anyother obvious error. Vendors are liable for all errors or omissions contained in their proposals.

**2(C)11. Scoring the Submissions**

Each submission will be judged according to a fixed set of criteria. The criteria are:

- **30%** on the approach of the proposal, including the ability to meet the requirements of the RFP
- **35%** on the experience level and references of the contractor
- **35%** on the total cost of the proposal

The District reserves the right to negotiate material aspects of proposals received, including costs, services and scheduling, when determined to be in the best overall interest of the District.

### **3. SCOPE OF SERVICES**

#### **3(A). Project Goals**

The primary goal of this service to maintain cemetery grounds in an aesthetically appealing state, minimizing any unwanted flaws in appearance, and presenting our visitors with a beautiful, tranquil location for the purpose of honoring the memory of their loved ones.

This section describes the specifics regarding the actual work to be performed during the duration of the contract. Cemetery grounds require continuous and regular property landscape and maintenance services.

#### **3(B). Contractor's License**

A California State C-27 Landscaping License is required. Contractor's License shall be maintained in good standing throughout contract term, including renewal periods.

#### **3(C). Contract Term**

This agreement shall commence upon execution by both parties and shall continue for a period of two (2) years, with two (2) one-year optional renewal periods. The prices quoted (Appendix A) shall be fixed during the initial one-year period of this contract and price increases may be allowed thereafter as authorized by the District. Price increases may be requested annually after the first year, subject to the following conditions.

Only one (1) price increase will be allowed each year as the result of:

- 1) Manufacturer or supplier price increases in the product(s) offered.
- 2) Governmental or regulatory agency increases to the trade.
- 3) Consumer Price Index, All Urban Consumers (CPI-U) increases to the industry.

Any request for a price increase must be substantiated with documentation from a manufacturer, supplier, or governmental agency; and must be submitted in writing at least thirty (30) days prior to the effective date of the increase. Overall increases of greater than 5% from prior year prices will not be allowed.

The District shall be the sole judge as to whether a price increase will be allowed.

Decreases in service prices will be allowed at any time. See Appendix B for sample contract.

#### **3(D). Termination**

The District may terminate this agreement and be relieved of any consideration to the Contractor should Contractor fail to perform in the manner required. Furthermore, the District may terminate this agreement for any reason without penalty upon giving thirty (30) days written notice to the Contractor. In the event of termination, the full extent of District liability shall be limited to an equitable adjustment and payment for materials and/or services authorized by and received to the satisfaction of the District prior to termination.

**3(E). Maintenance and Landscape Services**

- Apply fertilizer and generally nurture turf as needed for optimal health and appearance. No brown spots or other undesirable grass appearance should be visible. District will be responsible for sourcing, purchasing and supplying fertilizer to contractor.
  - Condition turf and apply rye grass seed during fall. District will be responsible for sourcing, purchasing and supplying seed to contractor.
  - Grass to be mowed on set days of the week, generally Tuesday and Thursday unless agreed otherwise in advance, in writing. Staff reserves the right to notify the contractor of future changes in mowing days. Accomplishing mowing in a set window of time is necessary due to the family’s desire to decorate the area of their lost loved ones. Mowing of designated areas should be completed by 3:00 PM.

Mowing Schedule:

Tuesdays: Sections 1-18, 24 & 30

Thursdays: Sections 19-23 & 26-29

6	12	18	24	30
5	11	17	23	29
4	10	16	22	28
Chapel	Memorial			
3	9	15	21	27
2	8	14	20	26
1	7	Office	19	

- Damage to turf areas and headstones as evidenced by the use of dull blades or improper weed eating techniques could be considered grounds for cancellation of any contract agreement.
- Vacuum and remove all grass after mowing.
- Clippings to be blown off headstones, drives and walkways and removed off the site.
- Perform general weed abatement on grounds.
- Grass trimming around all obstacles as needed.
- Trimming of shrubs and flowers.
- Direction of mowing pattern to be altered on a regular basis to avoid worn spots.
- Verifying any abnormal conditions as necessary to CVPCD staff.
- Perform work in a professional manner in accordance with local and state regulations and standards.

- Edging may be completed on days other than scheduled mowing at the contractor’s choice. Edging is to include the area around cemetery headstones, curbs, sidewalks, streets, and shrubbery beds. **Headstones are of a particular concern and must be maintained in a state that honors the deceased (no weed overgrowth, sand drift, or other landscaping impacts that hinder headstone visibility or state of care).** The following minimum hedging schedule for headstones is recommended, November – March once per 30-days, April – October twice per 30-days. This schedule may be reduced through use of growth regulator (State approved). The District has approximately 15,000 headstones on grounds. The District expects any vendor responding to this RFP to possess the necessary human resources to perform weed eating, and the ability to “staff up” to accommodate a more aggressive Summer schedule.

The following is what headstones should look like (at minimum) year-round:



The following is what headstones may look like during the summer season with more aggressive weed eating and use of growth regulator:





Headstones should never, at any point of the year, be overgrown or covered by weeds and/or grass (zero tolerance for this condition):



When growth regulator is used, it must be right after weed eating has occurred, or weed eating must occur within 24 hours of application. Headstones should never be “burnt” in appearance as shown below:



### **3(E)1. Chemicals and Fertilizers**

Contractor is to abide by Riverside County and the California Environmental Protection Agency regulations when applying any chemicals. Application of chemicals shall be made only by licensed employees.

All weed abatement chemicals, herbicides, and pesticides shall be provided at Contractor’s sole expense.

### **3(F). Irrigation Services**

- Maintain the irrigation system, to include replacement of broken sprinkler heads, water lines, and all other components that are part of the “end line” irrigation system (from the sprinkler valves to the sprinkler heads).

- Be responsible for remedying brown spots in the grass, water puddling, and other issues related to proper watering.
- Must have the ability to remotely monitor watering system alerts afterhours. Automated system should be operated off-hours with no staff or members of the community present (8:30PM to 7:00AM).

Note: Replacement parts for irrigation will be supplied at the CVPCD's expense as needed.

### **3(G). Monthly Site Inspection**

Each month, Contractor shall meet with the Contract Administrator for coordination of pending work requirements and inspection of work performed.

The Contract Administrator will determine if work performed is done satisfactorily. If performance is unacceptable, the Contractor will be required to correct all problem areas by the next monthly inspection. The Contract Administrator shall be the sole and undisputed judge of acceptability of all work performed.

### **3(H). Damages**

Grass, shrubs, trees, fences, sidewalks, light fixtures, irrigation system, headstones or miscellaneous improvements damaged by the Contractor's employees are to be replaced or repaired by the Contractor to the satisfaction of the District, at no cost to the District. It shall be the responsibility of the Contractor and the District to mutually agree upon condition of surfaces, fixtures, furnishings, or other property before starting work on this contract.

### **3(I). Employees**

The Contractor shall employ only qualified workers who are skilled to conduct proper landscape maintenance services. Furthermore, Contractor is to maintain an adequate number of employees to satisfactorily perform scheduled operations.

Contractor shall designate a supervisor who will be at the worksite during all hours worked by the Contractor's personnel. The Contractor's supervisor shall act as the point of contact with the Contract Administrator for any onsite issues that may arise.

Each of the Contractor's employees shall be furnished, at Contractor's expense, a company uniform or uniform shirt to be worn at all times while on District premises. The name of the Contractor's company must be clearly identified on the outer jacket or shirt.

Contractor understands that they are an independent Contractor, and not an employee of the Coachella Valley Public Cemetery District. In addition, personnel performing work under this agreement shall be direct employees of the Contractor. Non-Contractor personnel, sub-contractors, day laborers, and minors (except as lawfully employed by the Contractor) are not to be permitted on the job site. At no time shall Contractor, or Contractor's employees, represent themselves as District staff.

To minimize potential spread of infectious disease, Contractor's employees who are sick or exhibiting signs of sickness should not be allowed on District premises until they have fully recovered. Contractor is responsible for assigning appropriate replacement staff to complete

required work.

The District retains the right to require the Contractor to dismiss from the premises covered by this contract any employee whose conduct is improper, inappropriate, or offensive as determined by the District. Any employee dismissed shall not be reassigned on District premises by the Contractor without the prior written consent of the District.

### **3(J). Insurance**

Respondent must provide proof of the following insurance:

General Liability, Automobile, Worker's Compensation and Professional Liability.

Respondent shall procure, prior to commencement of service, and keep in force for the term of this contract, at Respondent's own cost and expense, the following policies of insurance, certificates, or binders as necessary to represent that coverage as specified below is in place with companies doing business in California and acceptable to the District.

If requested, Respondent shall provide the District with copies of all insurance policies. The insurance shall, at a minimum, include:

Commercial General Liability Insurance. Commercial General Liability insurance, including but not limited to, Bodily Injury, Broad Form Property Damage, Contractual Liability and if necessary, Products and Completed Operations or Owners and Respondent Protective Liability. The policy shall contain severability of interest clause or cross liability clause or the equivalent thereof. Coverage afforded on behalf of the District shall be primary insurance, and any other insurance available to the District under any other policies shall be excess insurance (over the insurance required by this Agreement).

Limits of liability shall include the following:

Bodily Injury three million dollars (\$3,000,000.00),

Property Damage three million dollars (\$3,000,000.00), or

Combined Single Limit (C.S.L.) for Bodily Injury and Property Damage four million dollars (\$4,000,000.00) per accident for bodily injury and property damage for duration of Agreement.

If the policy is a "claim made" type policy, the following shall be included as endorsements:

The retroactive date shall be the effective date of this Agreement or a prior date.

The extended reporting or discovery period shall not be less than thirty-six (36) months.

Automobile Liability Insurance. Automobile Liability Insurance, including all owned, non-owned and hired automobiles used by the Respondent or its agents in the performance of this Agreement shall have a minimum combined single limit of two million dollars (\$2,000,000.00) for Bodily Injury and Property Damage.

Worker's Compensation Insurance.

Worker's Compensation Insurance, as required by the laws of the State of California – Statutory coverage may include Employers Liability coverage with limits not less than one million dollars (\$1,000,000.00). The Respondent certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code, which requires every employer to provide Workers' Compensation

coverage, or to undertake self-insurance in accordance with the provisions of that Code. The Respondent shall comply with the provisions of Section 3700 of the California Labor Code before commencing performance of the work under this Agreement and thereafter as required by that Code. Respondent shall require all Subcontractors to carry Workers' Compensation Insurance, as required by the Labor Code.

Professional Liability Insurance. Professional Liability – errors and omissions insurance in the amount of two million dollars (\$2,000,000.00) per claim and in aggregate for two (2) years beyond the date of project acceptance by the CVPCD.

Terms, Conditions and Endorsements. The aforementioned insurance shall be endorsed and have all the following conditions:

Additional Insured. Respondent shall name the District, its Council members, directors, officers, agents and employees as additional insureds in its Comprehensive Commercial General Liability and Automobile Liability policies. If Respondent submits the ACORD Insurance Certificate, the additional insured endorsement must be set forth on a CG20 10 1185 form (or more recent) and/or CA 20 48 – Designated Insured Form (for business auto insurance). A statement of additional insured endorsement on the ACORD Insurance Certificate form is insufficient proof of the additional insured requirement and will be rejected.

### **3(K). Indemnification**

Contractor shall defend, indemnify, protect and hold harmless the District, its elected and appointed officers, employees, and agents, from and against all claims for damages, liability, and expenses (including attorney's fees) arising out of this agreement and/or Contractor's performance hereunder, except as to such damages, liability, and expenses due to the sole negligence or willful acts of the District, its officers, employees or agents.

## **4. SUMMARY OF RESPONSE**

### **4(A). REQUIRED WALK-THROUGH**

All vendors submitting an RFP are required to schedule a walk-through of CVPCD grounds. All walk-throughs will be scheduled on the following dates:

August 29, 2022, through September 1, 2022.

Contact the General Manager via email or phone (cell) to schedule a walk through. If communicating via email, request a read receipt (follow up by phone if no response received within 24 hours).

(760) 574-9906 (C)

Josh.Bonner@CVPCD.org

Vendors should check-in at the front office at least 5 minutes prior to the scheduled walk-through times above. The CVPCD office is located at **82925 Avenue 52, Coachella, CA.**

Respondents will be responsible for information and conditions covered at the walk-through. Failure to participate in a walk-through may disqualify the bid.

#### **4(B). RFP QUESTIONS**

Vendors and interested parties may submit questions regarding this RFP to the General Manager at [josh.bonner@cvpcd.org](mailto:josh.bonner@cvpcd.org) (please request a read receipt, follow-up by phone if not received within one business day). All questions must be submitted by 5:00 PM on September 12, 2022. All responses to submitted questions will be publicly posted by September 15, 2022.

#### **4(C). RFP RESPONSE SUBMITTAL CHECKLIST**

Vendor shall submit a response in the following format:

1. Vendor shall create one original response (labeled“original”) with original signature and four (4) identical copies (for a total of five (5) responses).
2. The original and each of the four (4) copies shall be sent to:

Coachella Valley Public Cemetery District  
Attn: Joshua Bonner - Landscaping Proposal  
82925 Avenue 52  
Coachella, CA 92241

Responses shall be submitted on or before **September 23, at 5:00 pm** and in a box of sufficient size to hold all the responses. There will be no public bid opening. Responses to this RFP will become the property of the CVPCD and will not be returned.

3. The RFP name must be shown on the lower left-hand corner of the box.
4. Proposal Price Certification (Appendix A)
5. Copy of Firm’s Valid Business License and Insurance

Vendor may drop off the package in our office during normal business hours (8-5, M-F), if doing so please request a written acknowledgment of receipt from CVPCD employee for your records. Vendor may also mail package but should do so in a manner that ensures (and verifies) delivery by RFP deadline date and time.

This checklist is intended merely as an aid to the Vendor in providing a response to this RFP. The Vendor retains the sole responsibility for accuracy and completeness of the response.

#### **4(D). RFP RESPONSE SUBMITTAL RECOMENDATIONS**

The CVPCD recommends each vendor cover the following topics in their proposal (at minimum):

- History of company.
- Minimum of five (5) references establishing professional work history.
- Approach to work, what makes you special? What separates your work form competitors?
- Detailed explanation of pricing.
- Detailed approach to meeting the unique weed eating needs of the District.
- Work force recruitment and retention efforts.
- Chain of command and lines of responsibility for our account.

**4(E). RFP TIMELINE**

The following timeline has been established for this RFP. The CVPCD will attempt to follow this timeline as closely as possible.

RFP Issued: August 16, 2022

RFP Walk Through Required: August 29, 2022, through September 1, 2022.

RFP Questions due: September 12, 2022, 5:00 PM

RFP Response to Questions Due: September 15, 2022

RFP Deadline to Respond: September 23, 2022, 5:00 PM

RFP Committee Evaluations: September 26-28, 2022

RFP Intent to Award Announcement: September 30, 2022

## APPENDIX A

### PROPOSAL PRICE CERTIFICATION

In compliance with the attached specification, the undersigned offers and agrees that if this proposal is accepted by the CVPCD Board within ninety (90) days of the date of proposal opening, that they will furnish any or all the deliverables upon which prices are quoted below.

COMPANY \_\_\_\_\_

ADDRESS \_\_\_\_\_

AUTHORIZED SIGNATURE \_\_\_\_\_

PRINT NAME \_\_\_\_\_

#### 1) Maintenance and Landscape Services

Monthly Total \$ \_\_\_\_\_

#### 2) Extra Work:

Hourly Labor Rate \$ \_\_\_\_\_

#### 3) Emergency/Off Work Hours:

Hourly Labor Rate \$ \_\_\_\_\_

**Payment Terms:** 100% within 30 Days

# APPENDIX B

## COACHELLA VALLEY PUBLIC CEMETERY DISTRICT AGREEMENT FOR GENERAL SERVICES

### 1. PARTIES AND DATE

This Agreement for Services (“Agreement”)      day of **DATE** by and between the Coachella Valley Public Cemetery District, a California public cemetery district (“District”) and **CONTRACTOR**, with its principal place of business at **ADDRESS** (“Contractor”). District and Contractor are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

### 2. RECITALS

#### 2.1 Contractor.

Contractor desires to perform and assume responsibility for the provision of certain landscape services required by District on the terms and conditions set forth in this Agreement. Contractor represents that it is experienced in providing landscape services to public clients, is licensed in the State of California, and is familiar with the plans of District.

#### 2.2 Project.

District desires to engage Contractor to render such services for the landscape project (“Project”) as set forth in this Agreement.

### 3. TERMS

#### 3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Contractor promises and agrees to furnish to District all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the services and advice on various issues affecting the decisions of District regarding the Project and on other programs and matters affecting District (“Services”). The Services are more particularly described in Exhibit “A” attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be two years, from **\*\*\*INSERT DATE\*\*\*** to **\*\*\*INSERT DATE\*\*\***, unless earlier terminated as provided herein. Contractor shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The District reserves the right to extend the Agreement for two (2) additional one-year periods at its sole discretion.

#### 3.2 Compensation.

3.2.1 Compensation. Contractor shall receive compensation for all Services rendered under this Agreement. The total compensation shall not exceed **TOTAL COST (\$)** without written approval of District’s General Manager. Extra Work may be authorized, as



described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement. The total compensation shall be fixed during the initial one-year period of this contract and price increases may be allowed thereafter as authorized by the District. Price increases may be requested annually after the first year, subject to the following conditions.

Only one (1) price increase will be allowed each year as the result of:

- Manufacturer or supplier price increases in the product(s) offered.
- Governmental or regulatory agency increases to the trade.
- Consumer Price Index, All Urban Consumers (CPI-U) increases to the industry.

Any request for a price increase must be substantiated with documentation from a manufacturer, supplier, or governmental agency; and must be submitted in writing at least thirty (30) days prior to the effective date of the increase. Overall increases of greater than 5% from prior year prices will not be allowed. The District shall be the sole judge as to whether a price increase will be allowed. Decreases in service prices will be allowed at any time.

3.2.2 Payment of Compensation. Contractor shall submit to District a monthly itemized statement which indicates work completed and hours of Services rendered by Contractor. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. District shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon.

3.2.3 Reimbursement for Expenses. Contractor shall not be reimbursed for any expenses unless authorized in writing by District.

3.2.4 Extra Work. At any time during the term of this Agreement, District may request that Contractor perform Extra Work. As used herein, "Extra Work" means any work which is determined by District to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Contractor shall not perform, nor be compensated for, Extra Work without written authorization from District's Representative.

### **3.3 Responsibilities of Contractor.**

3.3.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Contractor or under its supervision. Contractor will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. District retains Contractor on an independent contractor basis and not as an employee of District. Contractor retains the right to perform similar or different services for others during the term of this Agreement. Any personnel performing the Services under this Agreement on behalf of Contractor shall also not be employees of District and shall at all times be under Contractor's exclusive direction and control. Neither District, or any of its officials, officers, directors, employees or agents shall have control over the conduct of Contractor or any of Contractor's officers, employees or agents, except as set forth in this Agreement. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

### 3.3.2 Schedule of Services/Time for Performance.

(a) Contractor shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Contractor represents that it has the skilled personnel required to perform the Services in conformance with such conditions. In order to facilitate Contractor's conformance with the Schedule, District shall respond to Contractor's submittals in a timely manner. Upon request of District, Contractor shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

(b) Neither District nor Contractor shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing Party. For purposes of this Agreement, such circumstances include a Force Majeure Event. A Force Majeure Event shall mean an event that materially affects a Party's performance and is one or more of the following: (1) Acts of God or other natural disasters; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the services); (4) strikes and other organized labor action occurring at the site and the effects thereof on the services, only to the extent such strikes and other organized labor action are beyond the control of Contractor and its subcontractors, and to the extent the effects thereof cannot be avoided by use of replacement workers; and (5) pandemics, epidemics or quarantine restrictions. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of a public agency applicable to the services and Agreement.

(c) Should a Force Majeure Event occur, the non-performing Party shall, within a reasonable time of being prevented from performing, give written notice to the other Party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement. Force Majeure Events and/or delays, regardless of the Party responsible for the delay, shall not entitle Contractor to any additional compensation. Notwithstanding the foregoing in this section, the District may still terminate this Agreement in accordance with the termination provisions of this Agreement.

3.3.3 Conformance to Applicable Requirements. All work prepared by Contractor shall be subject to the approval of District.

3.3.4 Reserved.

3.3.5 District's Representative. District hereby designates General Manager, or his or her designee, to act as its representative for the performance of this Agreement ("District's Representative"). District's Representative shall have the power to act on behalf of District for all purposes under this Agreement. Contractor shall not accept direction or orders from any person other than District's Representative or his or her designee.

3.3.6 Contractor's Representative. Contractor hereby designates **\*\*\*INSERT NAME OR TITLE\*\*\***, or his or her designee, to act as its representative for the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent and act on behalf of Contractor for all purposes under this Agreement. Contractor's Representative shall supervise and direct the Services, using his or her best skill and attention, and shall be responsible for all means, methods, techniques, sequences and

procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.3.7 Coordination of Services. Contractor agrees to work closely with District staff in the performance of Services and shall be available to District's staff, contractors and other staff at all reasonable times.

3.3.8 Standard of Care; Performance of Employees. Contractor shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by contractors in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the calling necessary to perform the Services. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including any required business license, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Contractor shall perform, at its own cost and expense and without reimbursement from District, any services necessary to correct errors or omissions which are caused by Contractor's failure to comply with the standard of care provided for herein, and shall be fully responsible to District for all damages and other liabilities provided for in the indemnification provisions of this Agreement arising from the Contractor's errors and omissions. Any employee of Contractor or its subcontractors who is determined by District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to District, shall be promptly removed from the Project by Contractor and shall not be re-employed to perform any of the Services or to work on the Project.

3.3.9 Laws and Regulations. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Services. If Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to District, Contractor shall be solely responsible for all costs arising therefrom. Contractor shall defend, indemnify and hold District, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

### 3.3.10 Insurance

(a) Time for Compliance. Contractor shall not commence work under this Agreement until it has provided evidence satisfactory to the District that it has secured all insurance required under this section. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the District that the subcontractor has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the District to terminate this Agreement for cause.

(b) Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder, and without limiting the indemnity provisions of the Agreement, the Contractor, in partial performance of its obligations

under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Contractor agrees to amend, supplement or endorse the policies to do so.

(1) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01, or the exact equivalent, with limits of not less than \$1,000,000 per occurrence and no less than \$2,000,000 in the general aggregate. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or provisions (1) limiting coverage for contractual liability; (2) excluding coverage for claims or suits by one insured against another (cross-liability); (3) products/completed operations liability; or (4) containing any other exclusion(s) contrary to the terms or purposes of this Agreement.

(2) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 00 01 covering "Any Auto" (Symbol 1), or the exact equivalent, covering bodily injury and property damage for all activities with limits of not less than \$1,000,000 combined limit for each occurrence.

(3) Workers' Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury and disease.

(c) Insurance Endorsements. Required insurance policies shall contain the following provisions, or Contractor shall provide endorsements on forms approved by the District to add the following provisions to the insurance policies:

(1) Commercial General Liability: (1) Additional Insured: The District, its officials, officers, employees, agents, and volunteers shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement. Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Contractor; or (4) contain any other exclusions contrary to the terms or purposes of this Agreement. For all policies of Commercial General Liability insurance, Contractor shall provide endorsements in the form of ISO CG 20 10 10 01 and 20 37 10 01 (or endorsements providing the exact same coverage) to effectuate this requirement. (2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the District except ten (10) days shall be allowed for non-payment of premium.

(2) Automobile Liability. (1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the District except ten (10) days shall be allowed for non-payment of premium.

(3) Workers' Compensation: (1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the District except ten (10) days shall be allowed for non-payment of premium. (2) Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the District, its officials, officers, employees, agents, and volunteers.

(d) Primary and Non-Contributing Insurance. All policies of Commercial General Liability and Automobile Liability insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the District, its officials, officers, employees, agents, or volunteers shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

(e) Waiver of Subrogation. All required insurance coverages shall contain or be endorsed to waiver of subrogation in favor of the District, its officials, officers, employees, agents, and volunteers or shall specifically allow Contractor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against District, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

(f) Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be approved in writing by the District and shall protect the District, its officials, officers, employees, agents, and volunteers in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

(g) Evidence of Insurance. The Contractor, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates on forms approved by the District, together with all endorsements affecting each policy. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the District for approval. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the District. If such coverage is cancelled or reduced and not replaced immediately so as to avoid a lapse in the required coverage, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the District evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

(h) Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to transact business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

(i) Enforcement of Agreement Provisions (non estoppel). Contractor acknowledges and agrees that actual or alleged failure on the part of the District to inform Contractor of non-compliance with any requirement imposes no additional obligation on the District nor does it waive any rights hereunder.

(j) Requirements Not Limiting. Requirement of specific coverage or minimum limits contained in this Section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance.

(k) Additional Insurance Provisions

(1) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Contractor, and any approval of said insurance by the District, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(2) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, District has the right but not the duty to obtain the insurance it deems necessary and any premium paid by District will be promptly reimbursed by Contractor or District will withhold amounts sufficient to pay premium from Contractor payments. In the alternative, District may cancel this Agreement.

(3) The District may require the Contractor to provide complete copies of all insurance policies in effect for the duration of the Project.

(4) Neither the District nor any of its officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

(5) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Contractor from liability in excess of such coverage, nor shall it limit the Contractor's indemnification obligations to the District and shall not preclude the District from taking such other actions available to the District under other provisions of the Agreement or law.

(6) Contractor shall report to the District, in addition to Contractor's insurer, any and all insurance claims submitted by Contractor in connection with the Services under this Agreement.

(l) Insurance for Subcontractors. Contractor shall include all subcontractors engaged in any work for Contractor relating to this Agreement as additional insureds under the Contractor's policies, or the Contractor shall be responsible for causing subcontractors to purchase the appropriate insurance in compliance with the terms of these Insurance Requirements, including adding the District, its officials, officers, employees, agents, and volunteers as additional insureds to the subcontractor's policies. All policies of Commercial General Liability insurance provided by Contractor's subcontractors performing work relating to this Agreement shall be endorsed to name the District, its officials, officers, employees, agents and volunteers as additional insureds using endorsement form ISO CG 20 38 04 13 or an endorsement providing equivalent coverage. Contractor shall not allow any subcontractor to commence work on any subcontract relating to this Agreement until it has received satisfactory evidence of subcontractor's compliance with all insurance requirements under this Agreement, to the extent applicable. The Contractor shall provide satisfactory evidence of compliance with this section upon request of the District.

3.3.11 Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as

applicable shall include, but shall not be limited to: (A) adequate life protection and lifesaving equipment and procedures; (B) instructions in accident and incident prevention for all employees and subcontractors, to include instructions on conflict resolution and proper security techniques; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

### **3.4 Labor Code Requirements.**

3.4.1 Prevailing Wage. Contractor is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects (“Prevailing Wage Laws”). If the Services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall defend, indemnify and hold the District, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Contractor and all subcontractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

3.4.2 Registration. If the Services are being performed as part of an applicable “public works” or “maintenance” project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Contractor and all subcontractors performing such Services must be registered with the Department of Industrial Relations. Contractor shall maintain registration for the duration of the Project and require the same of any subcontractors, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

3.4.3 Compliance Monitoring. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Contractor’s sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor’s performance of Services, including any delay, shall be Contractor’s sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay and shall not be compensable by the District. Contractor shall defend, indemnify and hold the District, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.

3.4.4 Labor Certification. By its signature hereunder, Contractor certifies that it is aware of the provisions of Section 3700 of the California 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 agrees to comply with such provisions before commencing the performance of the Services.

### **3.5 Termination of Agreement.**

3.5.1 Grounds for Termination. District may, by written notice to Contractor, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Contractor of such termination, and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. Upon termination, Contractor shall be compensated only for those services which have been fully and adequately rendered to District through the effective date of the termination, and Contractor shall be entitled to no further compensation. Contractor may not terminate this Agreement except for cause. The rights and remedies of the District provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law, equity or under this Agreement.

3.5.2 Effect of Termination. If this Agreement is terminated as provided herein, District may require Contractor to provide all finished or unfinished Documents and Data, as defined below, and other information of any kind prepared by Contractor in connection with the performance of Services under this Agreement. Contractor shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, District may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

### **3.6 Indemnification.**

3.6.1 Scope of Indemnity. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold the District, its officials, employees, agents and volunteers free and harmless from any and all claims, demands, causes of action, suits, actions, proceedings, costs, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity, regardless of whether the allegations are false, fraudulent, or groundless, to property or persons, including wrongful death, (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Contractor, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Contractor's Services, the Project or this Agreement, including without limitation the payment of all expert witness fees, attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent required by Civil Code section 2782, Contractor's indemnity obligation shall not apply to such loss or damage which is caused by the sole negligence or willful misconduct of the District.

3.6.2 Additional Indemnity Obligations. Contractor shall defend, with counsel of District's choosing and at Contractor's own cost, expense and risk, any and all Claims covered by this section that may be brought or instituted against District or its officials, employees, agents and volunteers. In addition, Contractor shall pay and satisfy any judgment, award or decree that may be rendered against District or its officials, employees, agents and volunteers as part of any such claim, suit, action or other proceeding. Contractor shall also reimburse District for the cost of any settlement paid by District or its officials, employees, agents and volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for District's attorney's fees and costs, including expert witness fees. Contractor shall reimburse District and its officials, employees, agents and volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall survive expiration or termination of this



Agreement, and shall not be restricted to insurance proceeds, if any, received by the District, its officials, employees, agents and volunteers.

### **3.7 General Provisions.**

3.7.1 Accounting Records. Contractor shall maintain complete and accurate records with respect to all costs and expenses incurred and fees charged under this Agreement. All such records shall be clearly identifiable. Contractor shall allow a representative of District during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

#### **3.7.2 Independent Contractors and Subcontracting.**

(a) Use of Contractors. Contractor is aware of statutory and case law regarding classification of workers as independent contractors, including California Labor Code Section 2750.3 and Dynamex Operations West, Inc. v. Superior Court, 4 Cal. 5th 903 (2018). To ensure that Contractor is in compliance with the California Labor Code, Contractor shall only utilize its employees to provide the Services. Contractor may not provide the services through any independent contractor, subcontractor or subconsultant ("Subcontractor(s)") unless approved by the District as set forth in Section 3.7.2 below. Contractor represents and warrants that all personnel who perform the Services on Contractor's behalf are Contractor's employees, and that Contractor complies with all applicable laws, rules and regulations governing its employees, including, but not limited to, the California Labor Code, Unemployment Insurance Code and all applicable Industrial Welfare Commission Wage Orders.

(b) Prior Approval Required. Contractor shall not use any Subcontractor to provide the Services, or any portion of the work required by this Agreement, without prior written approval of District. In the event that District authorizes Contractor to use a Subcontractor, Contractor shall enter into a written agreement with the Subcontractor, which must include all provisions of the Agreement, including a restriction on the Subcontractor's use of further independent contractors, subcontractors or subconsultants without the District's prior written consent.

3.7.3 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

#### **Contractor:**

COMPANY NAME  
COMPANY ADDRESS  
Attn: [\*\*\*INSERT\*\*\*]

#### **District:**

Coachella Valley Public Cemetery District  
82-925 Avenue 52  
Coachella, CA 92236  
Attn: General Manager

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.7.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.7.5 Attorneys' Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and all costs of such action.

3.7.6 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be supplemented, amended or modified by a writing signed by both Parties.

3.7.7 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County.

3.7.8 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.7.9 District's Right to Employ Other Contractors. District reserves the right to employ other Contractors in connection with this Project.

3.7.10 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.7.11 Assignment or Transfer. shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the District, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

3.7.12 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Contractor include all personnel, employees, agents, and subcontractors of Contractor, except as otherwise specified in this Agreement. All references to District include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.7.13 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.7.14 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.7.15 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.7.16 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.7.17 Prohibited Interests. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Contractor further agrees to file, or shall cause its employees or subcontractors to file, a Statement of Economic Interest with the District's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, District shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of District, during the term of his or her service with District, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.7.18 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Contractor shall also comply with all relevant provisions of any minority business enterprise program, affirmative action plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.7.19 Authority to Enter Agreement. Contractor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.7.20 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.7.21 Employment Adverse to District. Contractor shall notify District, and shall obtain District's written consent, prior to accepting work to assist with or participate in a third-party lawsuit or other legal or administrative proceeding against District during the term of this Agreement.

3.7.22 Conflict of Employment. Employment by Contractor of personnel currently on the payroll of District shall not be permitted in the performance of this Agreement, even though such employment may occur outside of the employee's regular working hours or on weekends, holidays or vacation time. Further, the employment by Contractor of personnel who

have been on District's payroll within one year prior to the date of execution of this Agreement, where this employment is caused by and or dependent upon Contractor securing this or related Agreements with District, is prohibited.

3.7.23 Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, including, but not limited to, the indemnification and confidentiality obligations, and the obligations related to receipt of subpoenas or court orders, shall survive any such expiration or termination.

**SIGNATURE PAGE FOR AGREEMENT FOR GENERAL SERVICES  
BETWEEN THE COACHELLA VALLEY PUBLIC CEMETERY DISTRICT  
AND  
CONTRACTOR**

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed on the day and year first above written.

**COACHELLA VALLEY PUBLIC CEMETERY DISTRICT**      **CONTRACTOR**

*Approved By:*

By: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_  
[INSERT NAME]  
[INSERT TITLE]

Printed Name: \_\_\_\_\_

*Approved as to Form:*

By: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_  
Best Best & Krieger LLP  
General Counsel

Printed Name: \_\_\_\_\_

*Attested By:*

\_\_\_\_\_  
Board Clerk

**EXHIBIT "A"**

**SCOPE OF SERVICES**

**EXHIBIT "B"**

**SCHEDULE OF SERVICES AND FEES**

**[INSERT SCHEDULE OF SERVICES]**